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Kristina K. Benton, DNP, RN
Kristina K. Benton, DNP, RN
Executive Director
Texas Board of Nursing

DOCKET NUMBER 507-23-16620

**IN THE MATTER OF § BEFORE THE STATE OFFICE
PERMANENT REGISTERED NURSE §
LICENSE NUMBER 647760, § OF
ISSUED TO §
KATHY MARIE MOSES § ADMINISTRATIVE HEARINGS**

OPINION AND ORDER OF THE BOARD

**TO: KATHY MARIE MOSES
1216 N 4TH AVE
EDINBURG, TX 78541**

**KATERINA DEANGELO
ADMINISTRATIVE LAW JUDGE
PO BOX 13025
AUSTIN, TX 78711-3025**

At the regularly scheduled public meeting on January 25, 2024, the Texas Board of Nursing (Board) considered the following items: the Proposal for Decision (PFD) regarding the above cited matter; Staff's recommendation to the Board regarding the PFD and order; and Respondent's recommendation to the Board regarding the PFD and order, if any.

The Board finds that after proper and timely notice was given, the above styled case was heard by an Administrative Law Judge (ALJ) who made and filed a PFD containing the ALJ's findings of facts and conclusions of law. The PFD was properly served on all parties and all parties were given an opportunity to file exceptions and replies as part of the record herein. No exceptions were filed by any party.

The Board, after review and due consideration of the PFD; Staff's recommendations; and the recommendations made by the Respondent, if any, adopts all of the findings of fact and conclusions of law of the ALJ contained in the PFD. All proposed findings of fact and conclusions of law filed by any party not specifically adopted herein are hereby denied.

Recommendation for Sanction

Pursuant to Tex. Occ. Code. §301.459 (a-1), an Administrative Law Judge may make a recommendation regarding an appropriate action or sanction. The Board, however, has the sole authority and discretion to determine the appropriate action or sanction.

The ALJ found, and the Board agrees, that the Respondent's conduct constitutes a violation of §301.452(b)(10)&(14).¹ The evidence shows that Respondent was providing care for "an 11-year old female patient with the cognitive level of a 1- or 2-year-old." After reviewing the video surveillance and listening to the testimony of Michelle Dobbs, LVN, Marla Flores, RN, and Timothy Sherman, APRN, the ALJ found that during Respondent's shift, she "told Patient A.C. 'No' when the patient had her hands in her mouth. Respondent then approached the patient; slapped her hand; and grabbed the patient's shirt, pulled it to the patient's face, and hit the patient's mouth several times. On another occasion, when Patient A.C. had her hands near her mouth, Respondent pushed the patient's hands away and slapped the patient across the face, saying 'No.' Moreover, Respondent taunted Patient A.C. with food that patient cannot consume. When Patient A.C. briefly put her hand to her mouth, Respondent approached her again and slapped her mouth several times and then pulled her hair. Furthermore, when Patient A.C. was making noises, Respondent approached the patient and hit her on the head with a notebook. Respondent also hit the patient on the back of her shoulder."²

The ALJ found evidence of actual harm to Patient A.C., in that she sustained a raised bruise above her left eyebrow after Respondent's shift.³ Additionally, the ALJ found it aggravating that Respondent failed to document all instances of her striking Patient A.C. during her shift in the patient's medical record, there were valid concerns regarding Respondent's ability to practice autonomously, the evidence showed Respondent did not attempt to stop the violations or redirect the patient's undesired behavior, and in some instances, instigated her actions, the number of events, patient vulnerability, Respondent's conduct was serious and represents a threat to public safety, and evidences poor judgment.⁴

Therefore, after carefully reviewing and considering the aggravating and mitigating factors identified by the ALJ in this case, as well as the ALJ's recommendation for sanction, the Board has determined, pursuant to the Board's Disciplinary Matrix and the Board's rules, including 22 Tex. Admin. Code §213.33(e)(9), that licensure revocation is the most appropriate sanction in this case.

IT IS, THEREFORE, ORDERED THAT Registered Nurse License Number 647760. Previously issued to KATHY MARIE MOSES, to practice nursing in the State of Texas be, and the same is hereby, REVOKED.

IT IS FURTHER ORDERED that his SHALL be applicable to Respondent's multi-state privileges, if any, to practice nursing in the State of Texas.

FURTHER, pursuant to the Occupations Code §301.467, RESPONDENT is not eligible to petition for reinstatement of licensure until at least one (1) year has elapsed from the date of this Order. Further, upon petitioning for reinstatement, RESPONDENT must satisfy all then existing requirements for relicensure.

¹ See page 18 of the PFD.


² See page 16-17 of the PFD

³ See page 13 of the PFD.

⁴ See page 13-14 of the PFD.

Entered this 25th day of January, 2024.

TEXAS BOARD OF NURSING



KRISTIN K. BENTON, DNP, RN
EXECUTIVE DIRECTOR FOR THE BOARD

Attachment: Proposal for Decision; 507-23-16620 (August 31, 2023)

FILED
507-23-16620
8/31/2023 11:21 AM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Crystal Rosas, CLERK

ACCEPTED
507-23-16620
8/31/2023 11:22:29 am
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Crystal Rosas, CLERK

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

August 31, 2023

JoAnna Starr
Texas Board of Nursing

VIA EFILE TEXAS

Kathy M. Moses

VIA EFILE TEXAS

RE: Docket Number 507-23-16620.TBN; *Texas Board of Nursing v. Kathy Marie Moses*

Dear Parties:

Please find attached a Proposal for Decision in this case.

Exceptions and replies may be filed by any party in accordance with 1 Texas Administrative Code section 155.507(b), a SOAH rule which may be found at www.soah.texas.gov.

CC: Service List

**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**TEXAS BOARD OF NURSING,
PETITIONER
v.
KATHY MARIE MOSES,
RESPONDENT**

PROPOSAL FOR DECISION

The Staff of the Texas Board of Nursing (Board) seeks revocation of the Registered Nurse (RN) license held by Kathy Marie Moses (Respondent), based on allegations that she violated the Nursing Practice Act (Act) and the Board's rules.¹ The Administrative Law Judge (ALJ) concludes that Staff met its burden and recommends that the Board revoke Respondent's license.

¹Tex. Occ. Code ch. 301; 22 Tex. Admin. Code chs. 213 and 217. For ease of reference, the Board's rules, found in title 22, part 11, chapters 211 to 228 of the Texas Administrative Code, will be referred to as "Board Rule ____."

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

State Office of Administrative Hearings (SOAH) ALJ Katerina DeAngelo convened a videoconference hearing on July 21, 2023. Assistant General Counsel JoAnna Starr represented Staff, and Respondent represented herself. The record closed that day. There are no contested issues of jurisdiction or notice in this case; therefore, those matters are addressed only in the findings of fact and conclusions of law.

II. STAFF'S ALLEGATIONS AND APPLICABLE LAW

Under the Act, the Board is authorized to take disciplinary action against a nurse for, among other things, unprofessional conduct that is likely to deceive, defraud, or injure a patient or the public and failure to meet minimum standards of nursing practice.² Staff asserts that Respondent's conduct is a ground for disciplinary action under those Act provisions and Board Rules 217.11(1)(A), (1)(B) and 217.12(1)(A), (1)(B), (4), (6)(C), (6)(F).

Board Rule 217.11 addresses minimum standards of nursing practice; and Staff alleged Respondent is subject to sanction under two provisions:

- **Board Rule 217.11(1)(A):** Failure to know and conform to the Act and the Board's rules as well as all federal, state, or local laws, rules or regulations affecting the nurse's current area of nursing practice; and

² Act § 301.452(b)(10), (14).

- **Board Rule 217.11(1)(B):** Failure to implement measures to promote a safe environment for clients and others.

Staff also alleged violations of the following five provisions of Board Rule 217.12, which addresses unprofessional conduct:

- **Board Rule 217.12(1)(A):** Carelessly failing, repeatedly failing, or exhibiting an inability to perform registered nursing in conformity with the standards of minimum acceptable level of nursing practice set out in Board Rule 217.11;
- **Board Rule 217.12(1)(B):** Failing to conform to generally accepted nursing standards in applicable practice settings;
- **Board Rule 217.12(4):** Conduct that may endanger a client's life, health, or safety;
- **Board Rule 217.12(6)(C):** Causing or permitting physical, emotional or verbal abuse or injury or neglect to the client or the public, or failing to report same to the employer, appropriate legal authority and/or licensing board; and
- **Board Rule 217.12(6)(F):** Threatening or violent behavior in the workplace.

When a nurse violates the Act or the Board's rules, the Board is required to impose a disciplinary sanction, which can range from remedial education to license revocation.³ The Board has issued a Disciplinary Matrix that the Board and SOAH

³ Act § 301.453(a); Board Rule 213.33(e).

are required to use in all disciplinary matters.⁴ The Disciplinary Matrix categorizes violations into tiers and sanction levels, based on the seriousness of the offense and risk of harm to patients or the public, and it lists certain aggravating and mitigating factors that must be considered.⁵ Both the Act and the Board's rules direct the Board to consider taking a more severe disciplinary action, including revocation of the nurse's license, when the nurse is being disciplined for multiple violations or has previously been the subject of disciplinary action by the Board.⁶

Board Rule 213.33 includes a list of factors that the Board and SOAH must consider in determining the appropriate disciplinary sanction.⁷ The relevant factors include:

- 1) evidence of actual or potential harm to patients, clients, or the public;
- 2) evidence of a lack of truthfulness or trustworthiness;
- 3) evidence of practice history;
- 4) whether the person has been subject to previous disciplinary action by the Board or any other health care licensing agency in Texas or another jurisdiction and, if so, the history of compliance with those actions;
- 5) the length of time the person has practiced;

⁴ Board Rule 213.33(b).

⁵ Board Rule 213.33(b).

⁶ Act § 301.4531(c); Board Rule 213.33(b).

⁷ Board Rule 213.33(c).

- 6) the actual damages, physical, economic, or otherwise, resulting from the violation;
- 7) the deterrent effect of the penalty imposed;
- 8) attempts by the licensee to correct or stop the violation;
- 9) any mitigating or aggravating circumstances, including those specified in the Disciplinary Matrix;
- 10) whether the person is being disciplined for multiple violations of the Act or its derivative rules and orders;
- 11) the seriousness of the violation;
- 12) the threat to public safety; and
- 13) any other matter that justice may require.⁸

Staff has the burden of proving its allegations and aggravating factors by a preponderance of the evidence.⁹ Respondent has the burden of proving mitigating factors.¹⁰

III. EVIDENCE

Staff offered nine exhibits, all of which were admitted, and called as witnesses Michelle Dobbs, Marla Flores, and Staff's expert, Timothy Sherman. Respondent did not testify on her own behalf, call witnesses, or offer any exhibits.

⁸ Board Rule 213.33(c).

⁹ 1 Tex. Admin. Code § 155.427.

¹⁰ 1 Tex. Admin. Code § 155.427.

1. Background

The facts of this case are undisputed. Respondent received her RN license (license No. 647760) in Texas on January 28, 1998.¹¹ At the time relevant to this case, Respondent worked as an RN at Ageless Living Home Health, Arlington, Texas.¹² On October 20, 2022, Respondent was providing care for Patient A.C. who was 11 years old at the time.¹³ During her shift, Respondent told Patient A.C. “No” when the patient had her hands in her mouth. Respondent then approached the patient; slapped her hand; and grabbed the patient’s shirt, pulled it to the patient’s face, and hit the patient’s mouth several times. On another occasion, when Patient A.C. had her hands near her mouth, Respondent pushed the patient’s hands away and slapped the patient across the face, saying “No.”

Moreover, Respondent, while eating, extended her spoon towards Patient A.C. and, when the patient walked towards the spoon, waved the patient away. When Patient A.C. briefly put her hand to her mouth, Respondent approached her again and slapped her mouth several times and then pulled her hair. Furthermore, when Patient A.C. was making noises, Respondent approached the patient and hit her on the head with a notebook. Respondent also hit the patient on

¹¹ Pet. Ex. 1.

¹² Pet. Ex. 1.

¹³ To preserve the confidentiality of the patient, her name will not be used in this Proposal for Decision.

the back of her shoulder.¹⁴ Patient A.C. developed a raised bruise above her eyebrow after Respondent's shift.¹⁵

2. Testimony of Michelle Dobbs

Ms. Dobbs is a licensed vocational nurse and has been a primary nurse for Patient A. C. for 11 years. Ms. Dobbs cares for Patient A.C., administers medication, and takes her to therapy and doctor appointments. Ms. Dobbs stated that, at the time of the incident, Patient A.C.'s cognitive level was of a 1- or 2-year-old. Ms. Dobbs stated that Patient A.C. is usually a happy child but can be "moody" and gets frustrated often. According to Ms. Dobbs, when Patient A.C. is frustrated or upset, she cries and bites her hands. Ms. Dobbs testified that, when Patient A.C. is asked to stop biting her hands, she complies but she requires a lot of redirections.

Ms. Dobbs stated that she provided care for Patient A.C. on October 20, 2022, before Respondent's shift, and that, at the end of her shift, there were no injuries documented on Patient A.C.'s chart.¹⁶ According to Ms. Dobbs, on October 21, 2022, after Respondent's shift, she noticed that Patient A.C. had a quarter-sized raised bruise to her left temple.¹⁷

¹⁴ The incident was recorded on video surveillance. *See* Pet. Ex. 5.

¹⁵ Pet. Ex. 6 at 5, 75, 91.

¹⁶ Pet. Ex. 6 at 22.

¹⁷ Pet. Ex. 6 at 5.

3. Testimony of Marla Flores

Ms. Flores is a licensed vocational nurse and RN. She is a case manager at Ageless Living Home Health. Ms. Flores testified that she was notified of the incident on October 21, 2022, assessed Patient A.C., and documented a small raised light purple bruise above the patient's left eyebrow.¹⁸ After reviewing the video footage of the incident, Ms. Flores placed Respondent on administrative suspension and called Respondent to discuss the incident. According to Ms. Flores, Respondent was sorry and explained that she was frustrated because Patient A.C. was irritable during her shift and that she kept putting her hands in the mouth.¹⁹ Ultimately, Respondent was terminated from employment.²⁰

Ms. Flores testified that slapping a patient across the face, hitting a patient with a notebook, pulling a patient's hair, and taunting a patient with food the patient cannot consume is not acceptable, safe, or therapeutic and not a proper way to redirect unwanted behavior. According to Ms. Flores, when a nurse is frustrated with a patient's behavior, the nurse should call attention to the behavior, touch the extremities that the patient is putting in their mouth without hitting a patient, and if still having difficulties, contact the patient's physician.

¹⁸ Pet. Ex. 6 at 91.

¹⁹ Respondent reported on Patient A.C.'s chart that Patient A.C. was sticking all four fingers in her mouth and "did this three times in a row." Respondent told the patient to "stop the bad behavior but [the patient] did not and kept on doing that." Respondent reported that she then hit the patient on the hand, which was in her mouth. Pet. Ex. 6 at 96.

²⁰ Pet. Ex. 7 at 21.

4. Testimony of Timothy Sherman

Mr. Sherman is a Board's Nursing Consultant for Practice and a licensed RN and advanced practice registered nurse. He communicates with internal and external stakeholders on current nursing-related issues, provides expertise on the Act and the Board's rules, and reviews and revises continuing education training and resources offered by the Board.

Mr. Sherman expressed his concerns regarding the incident, stating that patients, especially Patient A.C. who is a pediatric patient with significant developmental delays, are vulnerable and depend on others, especially nurses, to ensure that their needs are met, and they are safe. According to Mr. Sherman, a nurse's hazardous behavior towards a patient is a significant deviation from a nurse's role and responsibilities and may cause significant trauma to the patient, including withdrawal from caregivers and becoming resistant and fearful, as well as mirroring abusive behavior. Mr. Sherman testified that, to redirect undesirable behavior, a nurse should assess the situation and identify the cause of the behavior and then select a patient-specific intervention. Mr. Sherman stated that it is never appropriate or therapeutic to hit a patient.

Mr. Sherman opined that Respondent's actions warrant discipline and constitute violations of Board Rules 217.11 and .12. Specifically, Mr. Sherman testified that Respondent violated:

- 1) Board Rule 217.11(1)(A) because her conduct was a significant violation of nurse's duties and noncompliant with nursing standards;
- 2) Board Rule 217.11(1)(B) because she did not ensure a safe environment for Patient A.C.;
- 3) Board Rule 217.12(1)(A) when she repetitively and carelessly deviated from minimal acceptable nursing standards;
- 4) Board Rule 217.12(1)(B) when she did not conform to acceptable nursing standards while practicing autonomously in Patient A.C.'s home without other nurses or direct supervision present;
- 5) Board Rule 217.12(4) when she physically struck Patient A.C.;
- 6) Board Rule 217.12(6)(C) when she instigated the incident; and
- 7) Board Rule 217.12(6)(F) when she struck Patient A.C. with a force.

Looking at the Board's Disciplinary Matrix, Mr. Sherman opined that, if Staff's charge is proven true, the violations of section 301.452(b)(10)—unprofessional or dishonorable conduct that is likely to deceive, defraud, or injure a patient—are Third Tier, Sanction Level I offenses. According to Mr. Sherman, the

Third Tier is the most applicable because Respondent's conduct was not isolated but repetitive and physically abusive when she struck Patient A.C. multiples times during her 1.5-hour shift, putting Patient A.C.'s safety at risk.

Likewise, he opined that the violations of section 301.452(b)(14)—failure to care adequately for a patient or to conform to the minimum standards of acceptable nursing practice in a manner that exposes a patient or other person unnecessarily to risk of harm—are also Third Tier, Sanction Level I offenses. According to Mr. Sherman, the Third Tier is the most applicable because Respondent's conduct constituted an “[a]ct or omission that demonstrates level of incompetence such that the person should not practice without remediation and subsequent demonstration of competency,” which resulted in serious harm and risk of serious harm to Patient A.C.

Regarding the aggravative circumstances, Mr. Sherman testified that Respondent's actions were serious and occurred repeatedly over a short period of time; Patient A.C. was vulnerable because she entirely depended on her caregivers; and it was Respondent's duty to ensure that Patient A.C. was protected; however, the patient was harmed by Respondent's actions. Moreover, Mr. Sherman stated that Respondent's omission to include all instances of her striking the patient during her shift indicates the lack of truthfulness and trustworthiness. He opined that, because Respondent has been licensed in Texas since 1998, she should have experience in dealing with difficult patient situations. Finally, Mr. Sherman testified that Respondent was not able to conform to acceptable nursing standards while practicing autonomously and make sound decisions affecting the well-being of

others. Mr. Sherman stated he was not aware of any mitigating circumstances. Mr. Sherman opined that the result should be revocation of Respondent's license.

IV. ANALYSIS

1. Sanctionable Conduct

Staff alleged that, on or about October 20, 2022, while providing care for Patient A.C., Respondent struck the patient several times, pulled the patient's hair, and taunted the patient with food the patient could not consume, in violation of Board Rules 217.11(1)(A), (1)(B) and 217.12(1)(A), (1)(B), (4), (6)(C), (6)(F). Staff presented uncontroverted evidence that, by doing so, Respondent repetitively and carelessly deviated from the minimum standards of nursing practice; did not ensure a safe environment for Patient A.C.; endangered the patient's health and safety; caused injury to the patient and failed to fully report the incident; and exhibited threatening and violent behavior in the workplace. The ALJ finds that Respondent violated Board Rules 217.11(1)(A), (1)(B) and 217.12(1)(A), (1)(B), (4), (6)(C), (6)(F) and, therefore, she is subject to disciplinary action under Act sections 301.452(b)(10) and (b)(14).

2. Disciplinary Matrix and Sanction Analysis

The ALJ is required to analyze the following factors in determining the tier and sanction level of the Disciplinary Matrix.²¹ Considering penalty factor 1 under

²¹ Board Rule 213.33(c).

Board Rule 213.33(c):²² evidence established that Respondent's conduct caused harm to Patient A.C.—the patient had a small, raised bruise above her left eyebrow after Respondent's shift. Considering penalty factor 2:²³ Respondent's failure to document all instances of her striking Patient A.C. during her shift brings her trustworthiness into question. Considering penalty factors 4, 5, 6, and 7:²⁴ Respondent has been licensed in Texas since 1998; no evidence of prior disciplinary actions was presented; and Staff raised valid concerns of Respondent's ability to practice nursing autonomously. Considering penalty factor 10:²⁵ evidence showed that Respondent did not attempt to stop the violations or redirect the patient's undesired behavior and, in some instances, instigated her actions.

Considering penalty factor 11:²⁶ number of events, actual harm, and patient vulnerability are all aggravating circumstances for penalty under Act sections 301.452(b)(10) and (b)(14).²⁷ Considering penalty factor 13:²⁸ Respondent effected multiple violations of the Act, encompassing numerous Board's rules. Considering penalty factors 14 and 15:²⁹ Respondent's conduct was serious and represents a

²² Board Rule 213.33(c)(1) (evidence of actual or potential harm to patients, clients, or the public).

²³ Board Rule 213.33(c)(2) (evidence of lack of truthfulness or trustworthiness).

²⁴ Board Rule 213.33(c)(4), (5), (6), (7) (evidence of practice history; evidence of present fitness to practice; whether the person has been subject to previous disciplinary action by the Board; the length of time the person has practiced).

²⁵ Board Rule 213.33(c)(10) (attempts by the person to correct or stop the violation).

²⁶ Board Rule 213.33(c)(11) (mitigating or aggravating circumstances).

²⁷ No evidence of mitigating factors was presented at the hearing.

²⁸ Board Rule 213.33(c)(13) (whether the person is being disciplined for multiple violations of the Act or its derivative rules and orders).

²⁹ Board Rule 213.33(c)(14), (15) (seriousness of the violations and the threat to public safety).

threat to public safety. Considering penalty factor 16:³⁰ Respondent's acts of poor judgment and non-conformance to professional standards do not show good professional character.

When analyzed under Act section 301.452(b)(10), Respondent's conduct falls within the Second Tier in the Disciplinary Matrix. The First Tier is not suitable because Respondent's actions were not isolated and resulted in harm to Patient A.C.³¹ The ALJ does not agree with Staff's expert who opined that a Third Tier categorization would be appropriate under the Disciplinary Matrix.³² According to Mr. Sherman, Respondent's repetitive and physically abusive actions that put Patient A.C.'s safety at risk rose to the Third Tier. However, because the preponderance of the evidence did not show that the harm to Patient A.C. was "serious" or that Respondent's actions constituted "physical abuse," the ALJ finds that the Third Tier is not appropriate. The ALJ concludes that the Second Tier fits best because Respondent's conduct was unprofessional, repeated, and placed Patient A.C. at serious risk.³³

³⁰ Board Rule 213.33(c)(16) (evidence of good professional character as set forth in Board Rule 213.27).

³¹ A First Tier offense is an isolated failure to comply with the Board's rules regarding unprofessional conduct resulting in unsafe practice with no adverse patient effects. Board Rule 213.33(b).

³² Third Tier offenses, in relevant parts, include failure to comply with a substantive Board's rule regarding unprofessional conduct resulting in serious patient harm; repeated acts of unethical behavior or unethical behavior that results in harm to the patient or public; and physical abuse of patient. Board Rule 213.33(b).

³³ Second Tier offenses, in relevant parts, include failure to comply with a substantive Board's rule regarding unprofessional conduct resulting in serious risk to patient or public safety and repeated acts of unethical behavior or unethical behavior that places patient or public at risk of harm. Board Rule 213.33(b).

When analyzed under Act section 301.452(b)(14), Respondent's conduct also falls within the Second Tier in the Disciplinary Matrix. Because Respondent's actions placed Patient A.C. at risk and harmed the patient, First Tier is not appropriate.³⁴ The ALJ does not agree with Staff's expert who opined that a Third Tier categorization would be appropriate under the Disciplinary Matrix.³⁵ According to Mr. Sherman, Respondent's conduct constituted an "[a]ct or omission that demonstrates level of incompetence such that the person should not practice without remediation and subsequent demonstration of competency," which resulted in serious harm and risk of serious harm to Patient A.C.³⁶ Because the preponderance of the evidence did not show that the harm to Patient A.C. was "serious," Respondent has been licensed for 25 years with no prior disciplinary actions, Respondent's actions were below standard and caused harm the ALJ finds that the Second Tier is more applicable than the Third Tier.³⁷

Staff's expert further opined that Sanction Level I categorization would be appropriate under the Disciplinary Matrix for Act sections 301.452(b)(10) and (b)(14) and recommended that the sanction to be revocation of Respondent's RN license. The ALJ agrees with the sanction recommendation, however, concludes that

³⁴ A First Tier offense is practicing below the minimum standard with a low risk of patient harm. Board Rule 213.33(b).

³⁵ Third Tier offenses, in relevant parts, include failure to comply with a substantive Board's rule regarding unprofessional conduct resulting in serious patient harm; repeated acts of unethical behavior or unethical behavior that results in harm to the patient or public; and physical abuse of patient. Board Rule 213.33(b).

³⁶ A Third Tier offense is practicing below the minimum standard with a serious risk of harm or death that is known or should be known; act or omission that demonstrates level of incompetence such that the person should not practice without remediation and subsequent demonstration of competency; and any intentional act or omission that risks or results in serious harm. Board Rule 213.33(b).

³⁷ The Second Tier covers practice below the minimum standard with patient harm or risk of patient harm. Board Rule 213.33(b).

Sanction Level II for both Act sections 301.452(b)(10) and (b)(14) is more appropriate in this case considering the multiple violations of the Act and the Board's rules, aggravating factors, and the lack of mitigating factors.³⁸

3. Recommended Sanction

Accordingly, the ALJ recommends the Board find Respondent's conduct to be Second Tier, Sanction Level II offenses under Act sections 301.452(b)(10) and (b)(14). After reviewing the guidelines set out in the Board's Disciplinary Matrix and the evidence pertinent to the relevant penalty factors, the ALJ recommends revocation of Respondent's RN license.³⁹ In support of the recommended sanction, the ALJ makes the following findings of fact and conclusions of law.

V. FINDINGS OF FACT

1. Kathy Marie Moses (Respondent) received her Registered Nurse (RN) license (license No. 647760) in Texas on January 28, 1998.
2. At the time relevant to this case, Respondent worked as an RN at Ageless Living Home Health, Arlington, Texas.
3. On October 20, 2022, Respondent was providing care for Patient A.C., an 11-year old female patient with cognitive level of a 1- or 2-year-old.
4. During her shift, Respondent told Patient A.C. "No" when the patient had her hands in her mouth. Respondent then approached the patient; slapped her

³⁸ Sanction Level II for Act sections 301.452(b)(10) and (b)(14) call for denial of licensure, suspension, or revocation of licensure. Rule 213.33(b).

³⁹ Both the Act and the Board's rules direct the Board to consider taking a more severe disciplinary action, including revocation of Respondent's license, because she is being disciplined for multiple serious violations that impose threat to public safety. *See* Act § 301.4531(c); Board Rule 213.33(b).

hand; and grabbed the patient's shirt, pulled it to the patient's face, and hit the patient's mouth several times. On another occasion, when Patient A.C. had her hands near her mouth, Respondent pushed the patient's hands away and slapped the patient across the face, saying "No." Moreover, Respondent taunted Patient A.C. with food the patient cannot consume. When Patient A.C. briefly put her hand to her mouth, Respondent approached her again and slapped her mouth several times and then pulled her hair. Furthermore, when Patient A.C. was making noises, Respondent approached the patient and hit her on the head with a notebook. Respondent also hit the patient on the back of her shoulder.

5. Patient A.C. developed a raised bruise above her eyebrow after Respondent's shift.
6. Respondent reported on Patient A.C.'s chart that she then hit Patient A.C. on the hand, which was in her mouth, in order to stop Patient A.C. from sticking her hands in her mouth.
7. Respondent did not document on Patient A.C.'s chart all instances of her striking Patient A.C. during her shift.
8. On April 24, 2023, Staff of the Texas Board of Nursing (Board) sent Respondent a Notice of Hearing and Formal Charges. Together, the Notice of Hearing and Formal Charge contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and either a short, plain statement of the factual matters asserted or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the state agency.
9. Administrative Law Judge Katerina DeAngelo of the State Office of Administrative Hearings (SOAH) convened a videoconference hearing on July 21, 2023. Assistant General Counsel JoAnna Starr represented Staff, and Respondent represented herself. The record closed that day.
10. Aggravating factors related to Respondent's conduct include number of events, actual harm, patient vulnerability, failure to document all instances of her striking Patient A.C., and poor judgment.

11. There are no mitigating factors.

VI. CONCLUSIONS OF LAW

1. The Board has jurisdiction over the licensing and discipline of nurses. Tex. Occ. Code (Code) ch. 301.
2. SOAH has jurisdiction over contested cases referred by the Board, including the authority to issue a proposal for decision with findings of fact and conclusions of law. Code § 301.459; Tex. Gov't Code ch. 2003.
3. Respondent received adequate and proper notice of the hearing on the merits. Code § 301.454; Tex. Gov't Code §§ 2001.051-.052.
4. Staff had the burden of proof by a preponderance of the evidence of the allegations of misconduct and aggravating factors. Respondent had the burden of proof by a preponderance of the evidence of mitigating factors. 1 Tex. Admin. Code § 155.427.
5. Respondent is subject to sanction because she committed unprofessional conduct by failing to promote a safe environment for her patient; causing physical injury to the patient; failing to report her conduct; and exhibiting threatening and violent behavior in the workplace. Tex. Occ. Code § 301.452(b)(10); 22 Tex. Admin. Code § 217.12(1)(A), (1)(B), (4), (6)(C), (6)(F).
6. Respondent is subject to sanction because her conduct failed to meet minimum practice standards that require nurses to implement measures to promote a safe environment for clients and others. Tex. Occ. Code § 301.452(b)(14); 217.11(1)(A), (1)(B).
7. The Board may impose a disciplinary sanction, which can range from remedial education to revocation of a nurse's license, and which may include assessment of a fine. Code § 301.453; 22 Tex. Admin. Code § 213.33(e).
8. To determine the appropriate disciplinary sanction to be imposed in this case, the Board must consider the factors set forth in 22 Texas Administrative Code section 213.33(c) and the Board's Disciplinary Matrix, 22 Texas Administrative Code section 213.33(b).

9. The Board may also consider any aggravating and mitigating circumstances set forth in the findings of fact above. 22 Tex. Admin. Code § 213.33.

VII. RECOMMENDATION

Based on the above findings of fact and conclusions of law, the ALJ recommends that the Board revoke Respondent's RN license.

Signed August 31, 2023.

ALJ Signature:

A handwritten signature in black ink that reads "Katerina DeAngelo". The signature is written in a cursive style and is positioned above a horizontal line.

Katerina DeAngelo

Presiding Administrative Law Judge