



I do hereby certify this to be a complete, accurate and true copy of the document which is on file or is of record in the offices of the Texas Board of Nursing.
 Kristin K. Benton, DNP, RN
 Executive Director
 Texas Board of Nursing

DOCKET NUMBER 507-23-26213

IN THE MATTER OF § BEFORE THE STATE OFFICE
PERMANENT REGISTERED NURSE §
LICENSE NUMBER 967192 & § OF
PERMANENT VOCATIONAL NURSE §
LICENSE NUMBER 327692 §
ISSUED TO §
JESSICA FOWLER, RESPONDENT § ADMINISTRATIVE HEARINGS

OPINION AND ORDER OF THE BOARD

TO: JESSICA FOWLER
 13461 ARIZONA DR
 TYLER, TX 75707

SHELLY M. DOGETT
 ADMINISTRATIVE LAW JUDGE
 300 WEST 15TH STREET
 AUSTIN, TEXAS 78701

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), the 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 Board agrees with the ALJ that revocation is statutorily mandated in this case pursuant to Tex. Occ. Code §301.4535(b).

IT IS, THEREFORE, ORDERED THAT Registered Nurse License Number 967192 and Licensed Vocational Nurse Number 327692, previously issued to JESSICA FOWLER, to practice nursing in the State of Texas be, and the same are hereby, REVOKED.

IT IS FURTHER ORDERED that this Order 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 §301.4535(c), Respondent is not eligible to petition for reinstatement of licensure until at least five (5) years have elapsed from the date the RESPONDENT completes and is dismissed from community supervision or parole. Further, upon petitioning for reinstatement, RESPONDENT must satisfy all then existing requirements for relicensure.

Entered this 25th day of January, 2024.

TEXAS BOARD OF NURSING



Kristin K. Benton, DNP, RN
Kristin K. Benton, DNP, RN
EXECUTIVE DIRECTOR FOR THE BOARD

Attachment: Proposal for Decision; Docket No. 507-23-26213 (November 20, 2023)

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

November 20, 2023

John Vanderford, Attorney for the Petitioner
Texas Board of Nursing

VIA EFILE TEXAS

Jessica Fowler, Respondent
13461 Arizona Drive
Tyler, Texas 75707

VIA EFILE TEXAS & MAILED

RE: Docket Number 507-23-26213.TBN; *Texas Board of Nursing v. Jessica Fowler*

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.
JESSICA FOWLER,
RESPONDENT**

PROPOSAL FOR DECISION ON SUMMARY DISPOSITION

The staff (Staff) of the Texas Board of Nursing (Board) seeks to revoke the licensed vocational nurse (LVN) license and registered nurse (RN) license of Jessica Fowler (Respondent) because she pleaded guilty to a charge of recklessly causing bodily injury to a child, elderly individual, or disabled individual under Texas Penal Code section 22.04, a state jail felony. Staff filed a Motion for Summary Disposition (Motion) requesting a proposal for decision in its favor as a matter of law, and Respondent did not file a response. The record **CLOSED** on November 13, 2023. After considering the pleadings, the summary disposition evidence, and the applicable law, the Administrative Law Judge (ALJ) concludes that

Staff's Motion should be **GRANTED** and that Respondent's RN and LVN licenses are subject to mandatory revocation. Therefore, the ALJ recommends the Board revoke Respondent's RN and LVN licenses. The hearing set for **December 4, 2023**, moreover, is **CANCELED**.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

On August 22, 2023, Staff referred this case to the State Office of Administrative Hearings (SOAH) for a contested case hearing, which was scheduled for December 4, 2023. On August 25, 2023, Staff filed and served its Notice of Hearing, along with the Formal Charges, on Respondent. On October 27, 2023, Staff filed and served Respondent with the Motion and supporting evidence. The record closed on November 13, 2023, the deadline for Respondent to respond to Staff's Motion.¹ Respondent did not file a response.

Staff's evidence established jurisdiction and proper notice to Respondent. Those matters are set out in the Findings of Fact and Conclusions of Law without further discussion.

II. SUMMARY DISPOSITION EVIDENCE

Staff presented uncontested summary disposition evidence (Staff Exhibits 1 and 2) establishing the following relevant facts:

¹ See 1 Tex. Admin. Code § 155.505(b)(2) (stating a response and any opposing summary disposition evidence shall be filed no later than 15 days after the filing of the motion for summary disposition).

- The Board issued LVN license number 327692 to Respondent on August 8, 2018. Respondent's LVN license is in current status.²
- The Board issued RN license number 967192 to Respondent on May 30, 2019. Respondent's RN license is in current status.³
- On June 9, 2023, in Case No. 114-0439-23, *State v. Jessica Renee Fowler*, in the 114th District Court in Smith County, Texas, the court issued an Order of Deferred Adjudication after Respondent entered a guilty plea to one count of recklessly causing bodily injury to a child, elderly individual, or disabled individual, a violation of Texas Penal Code section 22.04, a state jail felony.⁴ The offense was committed on February 4, 2022.⁵ The court found that the evidence substantiated Respondent's guilt but deferred adjudication of the case and placed Respondent on community supervision for 12 months and ordered her to pay \$251.50 in court costs.⁶

III. APPLICABLE LAW

Summary disposition of a contested case may be granted, in full or in part, without the necessity of a hearing on the merits if the pleadings, the motion for summary disposition, and the summary disposition evidence show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision in its favor as a matter of law on all or some of the issues expressly set out in the motion.⁷

² Staff Ex. 1 at 2.

³ Staff Ex. 1 at 1.

⁴ Staff Ex. 2 at 2-3, 11-12.

⁵ Staff Ex. 2 at 2, 11-12.

⁶ Staff Ex. 2 at 2-3.

⁷ 1 Tex. Admin. Code § 155.505(a).

In seeking disciplinary action against Respondent, Staff relies on Texas Occupations Code (Code) sections 301.4535(a)(7) and (b),⁸ which require the Board to revoke a nurse's license if the nurse enters a plea of guilty to intentionally, knowingly, recklessly, or with criminal negligence causing bodily injury to a child, elderly individual, or disabled individual under section 22.04 of the Texas Penal Code.⁹

IV. ARGUMENTS, ANALYSIS, AND RECOMMENDATION

The uncontroverted summary disposition evidence shows that on June 9, 2023, Respondent pleaded guilty to recklessly causing bodily injury to a child, elderly individual, or disabled individual, an offense under section 22.04 of the Texas Penal Code.¹⁰ The Order of Deferred Adjudication cites Texas Penal Code section 22.04(f), which provides that an offense under section 22.04(a)(3) or (a-1)(3) is a state jail felony when the conduct is committed recklessly.¹¹ Therefore, as a matter of law, Respondent's licenses are subject to mandatory revocation under Code section 301.4535(b), and the ALJ does not have discretion to recommend otherwise.

The discretionary disciplinary authority of Code chapter 53 does not come into play because the Board is mandated by its own statute to revoke Respondent's

⁸ Code section 301.4535 was last amended on September 1, 2023. The amendment is neither relevant nor applicable in this case. *See* Acts 2023, 88th Leg., R.S., ch. 830 (H.B. 2187), § 8 (effective Sept. 1, 2023).

⁹ Code § 301.4535(a)(7), (b).

¹⁰ Staff Ex. 2 at 2-3.

¹¹ Tex. Penal Code § 22.04(f).

licenses under these circumstances. Respondent's offense was committed recklessly, as described by Code section 301.4535(a)(7). Accordingly, revocation is required and no evidentiary hearing is necessary to consider aggravating or mitigating factors relative to the sanctions in this case.

For these reasons, Staff's Motion is **GRANTED**, and the ALJ recommends that the Board revoke Respondent's LVN and RN licenses.

V. FINDINGS OF FACT

1. The Texas Board of Nursing (Board) issued licensed vocational nurse (LVN) license number 327692 to Jessica Fowler (Respondent) on August 8, 2018.
2. The Board issued registered nurse (RN) license number 967192 to Respondent on May 30, 2019.
3. Respondent's LVN and RN licenses are in current status.
4. On June 9, 2023, in Case No. 114-0439-23, *State v. Jessica Renee Fowler*, in the 114th District Court in Smith County, Texas, Respondent pleaded guilty to the offense of recklessly causing bodily injury to a child, elderly individual, or disabled individual, a violation of Texas Penal Code section 22.04 and a state jail felony. The offense was committed on February 4, 2022. The court found that the evidence substantiated Respondent's guilt but deferred adjudication of the case and placed Respondent on community supervision for 12 months and ordered her to pay \$251.50 in court costs.
5. On August 22, 2023, the Board referred this case to the State Office of Administrative Hearings (SOAH) for a contested case hearing, which was scheduled for December 4, 2023.
6. On August 25, 2023, staff (Staff) for the Board filed and served a Notice of Hearing on Respondent. The notice 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.

7. On October 27, 2023, Staff filed and served Respondent with its Motion for Summary Disposition (Motion) and supporting evidence. The Motion was filed more than 30 days before the scheduled hearing date and contained the information required by 1 Texas Administrative Code section 155.505.
8. The record closed on November 13, 2023, the deadline for Respondent to respond to the Motion.
9. Respondent did not file a response to the Motion.

VI. CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter. Tex. Occ. Code ch. 301.
2. SOAH has jurisdiction over the hearing in this proceeding, including the authority to issue a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003; Tex. Occ. Code § 301.454; 1 Tex. Admin. Code § 155.505.
3. Respondent received timely and adequate notice of the allegations against her. Tex. Gov't Code §§ 2001.051-.052.
4. Summary disposition shall be granted on all or part of a contested case if the pleadings, the motion for summary disposition, and the summary disposition evidence show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision in its favor as a matter of law on all or some of the issues expressly set out in the motion. 1 Tex. Admin. Code § 155.505(a).
5. Recklessly causing bodily injury to a child, elderly individual, or disabled individual is an offense under Texas Penal Code section 22.04 and a state jail felony.

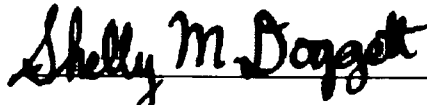
6. Respondent's LVN and RN licenses are subject to mandatory revocation. Tex. Occ. Code § 301.4535(a)(7), (b).

VII. RECOMMENDATION

Based on the above Findings of Fact and Conclusions of Law, the ALJ recommends that the Board revoke Respondent's LVN and RN licenses.

SIGNED NOVEMBER 20, 2023

ALJ Signature:

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

Shelly M. Doggett

Presiding Administrative Law Judge

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

December 6, 2023

John Vanderford, Attorney for Petitioner
Texas Board of Nursing

VIA EFILE TEXAS

Jessica Fowler, Respondent
13461 Arizona Drive
Tyler, Texas 75707

VIA EFILE TEXAS & MAILED

RE: Docket Number 507-23-26213.TBN; *Texas Board of Nursing v. Jessica Fowler*

Dear Parties:

Please be advised that the time period to file exceptions to the Proposal for Decision (PFD) issued in the above-referenced hearing has expired and neither party filed exceptions. Therefore, the Administrative Law Judge recommends that the PFD be adopted as written. Because SOAH has concluded its involvement in the matter, the case is being returned to the **Texas Board of Nursing**.

CC: Service List