



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

**DOCKET NUMBER 507-23-24302**

**IN THE MATTER OF  
PERMANENT VOCATIONAL NURSE  
LICENSE NUMBER 312613  
ISSUED TO  
GERARDO VASQUEZ**

**§ BEFORE THE STATE OFFICE  
§  
§ OF  
§  
§ ADMINISTRATIVE HEARINGS**

**OPINION AND ORDER OF THE BOARD**

**TO: GERARDO VASQUEZ  
2107 SAGE DRIVE  
WESLACO, TX 78596**

**JESSICA WITTE  
ADMINISTRATIVE LAW JUDGE  
PO BOX 13025  
AUSTIN, TX 78711-3025**

At the regularly scheduled public meeting on April 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)(1)&(10).<sup>1</sup> Furthermore, the ALJ found that revocation is warranted given "the egregiousness and pervasiveness of the violations." "Respondent essentially ignored the requirements of the Agreed Order for more than five years in which he was mostly working as a nurse, and continued violating the Agreed Order an egregious number of times since beginning monitoring under its terms in 2021."<sup>2</sup> The ALJ found no mitigating factors and found the following to be aggravating: multiple violations, multiple employers at issue, multiple stipulations violated, involvement of alcohol and Respondent's prior disciplinary history.<sup>3</sup>

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.

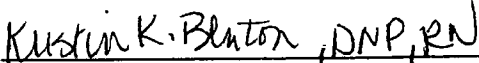
IT IS, THEREFORE, ORDERED THAT Permanent Vocational Nurse License Number 312613. Previously issued to GERARDO VASQUEZ, to practice nursing in the State of Texas be, and the same is hereby, REVOKED.

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.

Entered this 18th day of April, 2024.

TEXAS BOARD OF NURSING

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

Attachment: Proposal for Decision; 507-23-24302 (January 10, 2024)

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<sup>1</sup> See page 8 of the PFD.

<sup>2</sup> See page 9 of the PFD.

<sup>3</sup> See page 9 of the PFD.

FILED  
507-23-24302  
1/10/2024 10:03 AM  
STATE OFFICE OF  
ADMINISTRATIVE HEARINGS  
Amy Robles, CLERK

ACCEPTED  
507-23-24302  
1/10/2024 10:21:26 am  
STATE OFFICE OF  
ADMINISTRATIVE HEARINGS  
Amy Robles, CLERK

# State Office of Administrative Hearings

Kristofer S. Monson  
Chief Administrative Law Judge

January 10, 2024

JoAnna Starr, Assistant General Counsel  
Texas Board of Nursing

**VIA EFILE TEXAS**

Gerardo Vasquez  
2107 Sage Drive  
Weslaco, Texas 78596

**VIA EFILE TEXAS & REGULAR MAIL**

**RE: Docket Number 507-23-24302; *Texas Board of Nursing v. Gerardo Vasquez***

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](http://www.soah.texas.gov).

CC: Service List

**BEFORE THE  
STATE OFFICE OF ADMINISTRATIVE  
HEARINGS**

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**TEXAS BOARD OF NURSING,  
PETITIONER  
v.  
GERARDO VASQUEZ,  
RESPONDENT**

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**PROPOSAL FOR DECISION**

The staff (Staff) of the Texas Board of Nursing (Board) has brought formal disciplinary charges against Gerardo Vasquez (Respondent), a licensed vocational nurse (LVN), alleging that Respondent failed to comply with a prior agreed order. Staff seeks revocation of Respondent's LVN license. The Administrative Law Judge (ALJ) finds that Staff proved its allegations and recommends that the Board revoke Respondent's LVN license.

## **I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY**

ALJ Jessica Witte of the State Office of Administrative Hearings (SOAH) convened the hearing via videoconference on December 8, 2023. Staff was represented by Assistant General Counsel JoAnna Starr. Respondent appeared and represented himself. The record closed on the same date. Matters concerning notice and jurisdiction were not contested and are set out in the Findings of Fact and Conclusions of Law.

## **II. APPLICABLE LAW**

Pursuant to the Nursing Practice Act (Act), a nurse is subject to disciplinary action for violating a Board order.<sup>1</sup> Additionally, a nurse may be disciplined for unprofessional conduct in the practice of nursing that is likely to deceive, defraud, or injure a patient or the public.<sup>2</sup> The Board defines “unprofessional conduct” to include: (1) a positive drug screen for which there is no lawful prescription, and (2) violating an order of the Board.<sup>3</sup> The Board identifies these behaviors as acts likely to deceive, defraud, or injure clients or the public.<sup>4</sup>

When a nurse violates the Act or related rules, the Board is required to impose a disciplinary sanction, which can range from remedial education to license

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<sup>1</sup> Tex. Occ. Code § 301.451(b)(1).

<sup>2</sup> Tex. Occ. Code § 301.451(b)(10).

<sup>3</sup> 22 Tex. Admin. Code § 217.12(10)(D), (11)(B).

<sup>4</sup> 22 Tex. Admin. Code § 217.12(1).

revocation.<sup>5</sup> The Board and SOAH are required to use the Board's Disciplinary Matrix in all disciplinary matters.<sup>6</sup> The Disciplinary Matrix categorizes violations into tiers, and into sanction levels within tiers, based on the seriousness of the offense and risk of harm to patients or the public. Aggravating and mitigating factors are contained in the Disciplinary Matrix as well as in 22 Texas Administrative Code section 213.33 and must be considered by the Board and SOAH.<sup>7</sup>

Staff has the burden of proving its allegations by a preponderance of the evidence, and Respondent has the burden of proving mitigating factors.<sup>8</sup>

### **III. EVIDENCE**

At the hearing, Staff offered 15 exhibits, which were admitted without objection. Staff also offered the testimony of Respondent (adversely); Diane Dougal, Board Compliance Supervisor; and Timothy Sherman, Board Nursing Consultant for Advanced Practice. Respondent did not offer any additional testimony, witnesses, or exhibits. Respondent, generally, did not dispute the facts at issue.

On November 12, 2014, Respondent agreed to the entry of an agreed order (Agreed Order), which was adopted by the Board on December 9, 2014.<sup>9</sup> The

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<sup>5</sup> Tex. Occ. Code § 301.453; 22 Tex. Admin. Code § 217.33(e).

<sup>6</sup> 22 Tex. Admin. Code § 213.33(b).

<sup>7</sup> 22 Tex. Admin. Code § 213.33(c).

<sup>8</sup> 1 Tex. Admin. Code § 155.427; *see also Granek v. Tex. State Bd. of Med. Exam'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.).

<sup>9</sup> Staff Ex. 3 at 14-15.

Agreed Order stemmed from Respondent having pled guilty to a criminal misdemeanor of driving while intoxicated and admitting to drinking alcohol before driving. Section IV of the Agreed Order set forth certain employment requirements for the next two years (or eight quarters) that Respondent worked as a nurse, including:

- Respondent is required to notify current and future employers of the Agreed Order;
- Respondent is required to ensure that employers submit a “Notification of Employment” form to the Board within five days of employment and submit nursing performance evaluations of Respondent to the Board every quarter; and
- Respondent is required to have indirect supervision while working.<sup>10</sup>

Section V of the Agreed Order required Respondent to abstain from the use of alcohol, tramadol, and all controlled substances while under the terms of the Agreed Order; and, while working as a nurse, submit to random periodic screens for the same.<sup>11</sup> Respondent acknowledged that a failure to comply with the terms of the Agreed Order would subject him to investigation and disciplinary sanction, including possible revocation of his license or privileges to practice nursing in the State of Texas.<sup>12</sup>

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<sup>10</sup> Staff Ex. 3 at 10-11.

<sup>11</sup> Staff Ex. 3 at 11-12.

<sup>12</sup> Staff Ex. 3 at 14.

According to the resume that Respondent submitted to the Board in November 2021, he has worked in the following nursing positions since the Agreed Order was entered:

- January to September 2015: Atrium Place Nursing and Rehab Center;
- October 2015 to July 2016: Alfredo Gonzalez Texas State Veterans Home;
- December 2017 to June 2018: Colonial Manor Nursing and Rehab;
- December 2018 to May 2019: The Heights of Alamo;
- May to August 2019: Retama Manor Nursing Center;
- January to May 2020: Valley Baptist Medical Center; and
- Beginning May 2020: Valley Grande Manor.<sup>13</sup>

The Board did not receive any notifications of employment regarding Respondent until a form was submitted by Valley Grande Manor on September 13, 2021, indicating that Respondent began employment there on August 5, 2021.<sup>14</sup> After Respondent submitted his resume, another notification of employment form was submitted by Sun Valley Rehabilitation and Healthcare on December 20, 2022, indicating that Respondent began employment there on the same date.<sup>15</sup> Respondent testified that his previous employers were aware of the Agreed Order and unwilling to work with its restrictions; however, they still offered him short-term employment. None of Respondent's employers have submitted to

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<sup>13</sup> Staff Ex. 5 at 6-7.

<sup>14</sup> Staff Ex. 7 at 4.

<sup>15</sup> Staff Ex. 7 at 6.



the Board any nursing performance evaluations of Respondent, as required by the Agreed Order. Respondent testified that he is not currently working as a nurse.

Respondent did not begin submitting to periodic screenings for alcohol, tramadol, and controlled substances until October 2021.<sup>16</sup> Since then, Respondent has failed to check in to the drug and alcohol testing program, as required, on 44 separate dates. Respondent testified that he believed most of these were due to him being locked out of his account because of nonpayment. The records of the testing program show that Respondent missed 39 check-ins due to his account being suspended; however, these are in addition to 44 missed check-ins while his account was in good standing.<sup>17</sup> Since he began submitting to periodic screenings in October 2021, Respondent has also tested positive for metabolites of alcohol on at least 11 dates.<sup>18</sup> Respondent admitted to drinking alcohol on occasion throughout the years since the Agreed Order was entered.<sup>19</sup>

Respondent submitted to a Board-referred chemical dependence evaluation by Dr. Troy Martinez, psychologist, on April 15, 2022. Dr. Martinez found Respondent to be guarded and withholding when asked about alcohol use, and on objective testing measures. The evaluation concluded that Respondent likely has a substance use disorder and recommended he enroll in a treatment program.<sup>20</sup>

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<sup>16</sup> Staff Ex. 9 at 13.

<sup>17</sup> Staff Ex. 9.

<sup>18</sup> Staff Exs. 8, 11.

<sup>19</sup> Staff Exs. 5, 6.

<sup>20</sup> Staff Ex. 14.

Respondent testified that he did not know whether he had a substance use disorder and has not sought any treatment, but acknowledged that he may have an alcohol problem.

#### **IV. ANALYSIS**

Staff alleges that Respondent violated the Agreed Order by failing to: provide his employers with a copy of the Agreed Order; ensure his employers submitted notification of employment forms and quarterly performance evaluations to the Board; timely enroll in the drug and alcohol testing program; check in as required with the testing program once enrolled; and abstain from the use of alcohol. Staff alleges that Respondent, therefore, violated Texas Occupations Code section 301.452(b)(1) and (b)(10). Respondent does not, generally, dispute these allegations. He admitted to continuing to drink alcohol since the Agreed Order was issued, failing to register with the testing program for many years that he was working as a nurse, and failing to check in with the testing program as required once enrolled. He speculated that some of the failed check-ins were due to his account being locked; however, the evidence showed that 44 failed instances were while his account was in good standing. Respondent argued that there have been no complaints about the nursing care he provided, and that he should be permitted to maintain his license and participate in a peer assistance program.

Staff met its burden to establish that Respondent failed to ensure submission of notifications of employment and quarterly performance evaluations; failed to timely register with the drug and alcohol testing program; failed to check in as

required with the testing program once enrolled; and used alcohol in contravention of the Agreed Order.<sup>21</sup>

The failure to comply with the Agreed Order subjects Respondent to discipline under Texas Occupations Code section 301.452(b)(1). Additionally, Respondent is subject to discipline under Texas Occupations Code section 301.452(b)(10) for unprofessional conduct in the practice of nursing that is likely to deceive, defraud, and injure a patient or the public, because the Board defines unprofessional conduct to include a violation of a Board order.<sup>22</sup>

The ALJ finds that a second tier in the Disciplinary Matrix is appropriate under either provision. Neither the first or third tiers are applicable in this cause, as the first tier is limited to isolated failures of procedural rules and the third tier is reserved for conduct resulting in serious harm to a patient or public. In this case, the violation comprises not an isolated procedural violation but many failures to comply with substantive requirements in a prior Board order. Moreover, the evidence does not establish harm to a patient or the public to justify a tier three sanction. Therefore, a second-tier sanction is appropriate.

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<sup>21</sup> The Agreed Order contemplated that Respondent would be prohibited from using alcohol for only the time period he was under the terms of the Agreed Order, namely two years or eight quarters while employed as nurse. However, Respondent did not comply with the terms of the Agreed Order for many years by failing to ensure that the Board was notified of his ongoing employment as a nurse and failing to register with the testing program. Therefore, Respondent has remained subject to the terms of the Agreed Order, including the prohibition on consuming alcohol, many years later.

<sup>22</sup> 22 Tex. Admin. Code § 217.12(11)(B).

Within the second tier for either provision, sanction level II is appropriate because of the aggravating factors (that is, multiple violations, multiple employers at issue, multiple stipulations violated, and involvement of alcohol) and Respondent's prior disciplinary history. Specifically, in the Disciplinary Matrix, under section 301.452(b)(1), the sanction level I in the second tier states: "Violations of stipulations that are related to alcohol or drug misuse will result in next higher administrative sanction [sanction level II]." <sup>23</sup>

Furthermore, a higher sanction level is warranted given the egregiousness and pervasiveness of the violations. The Board gave Respondent an opportunity through the Agreed Order to demonstrate his fitness to practice in response to the previous disciplinary issues. Respondent essentially ignored the requirements of the Agreed Order for more than five years in which he was mostly working as a nurse, and continued violating the Agreed Order an egregious number of times since beginning monitoring under its terms in 2021. This conduct justifies a more severe sanction. Accordingly, the ALJ recommends revocation of Respondent's license. In support of the recommended sanction, the ALJ makes the following findings of fact and conclusions of law.

## **V. FINDINGS OF FACT**

1. Gerardo Vasquez (Respondent) received Licensed Vocational Nurse (LVN) License No. 312613 from the Texas Board of Nursing (Board) in 2013.
2. In December 2014, the Board issued an agreed order (Agreed Order) that required Respondent to comply with certain employment requirements,

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<sup>23</sup> 22 Tex. Admin. Code § 213.33(b).

including: to notify his employers of the Agreed Order; ensure that the employers submit “Notification of Employment” form within five days of employment and quarterly performance evaluations to the Board; submit to random periodic drug and alcohol screenings; and abstain from the use of alcohol while under the terms of the Agreed Order.

3. Between January 2015 and May 2021, Respondent held six different nursing positions. None of these employers submitted notification of employment forms to the Board regarding Respondent’s employment.
4. None of Respondent’s employers from January 2015 to present have submitted quarterly performance evaluations of Respondent to the Board.
5. Respondent did not enroll in the Board’s drug and alcohol testing program until October 2021. Since then, Respondent has failed to check in to the program on 44 separate dates while his account was in good standing.
6. Since enrolling in the testing program, Respondent has tested positive for metabolites of alcohol on 11 separate dates.
7. Respondent has consumed alcohol, at least periodically, on a continuous basis since the entry of the Agreed Order.
8. Respondent failed to comply with the Agreed Order by failing to have his employers submit notifications of employment and quarterly performance evaluations; missing check-ins for the alcohol testing program; and consuming alcohol.
9. On July 27, 2023, the State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) issued an order (Initial Order) setting the merits hearing for December 8, 2023, setting prehearing deadlines, and providing information on joining the hearing via Zoom videoconference.
10. Staff issued its Notice of Hearing to Respondent on October 24, 2023. Together, SOAH’s Initial Order and the Notice of Hearing 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.

11. SOAH ALJ Jessica Witte convened the hearing on the merits via Zoom videoconference on December 8, 2023. Assistant General Counsel JoAnna Starr represented Staff. Respondent appeared and represented himself. The record closed upon the electronic filing of the admitted exhibits.

## **VI. CONCLUSIONS OF LAW**

1. The Board has jurisdiction over the licensing and discipline of nurses. Tex. Occ. 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. Tex. Occ. Code § 301.459; Tex. Gov't Code ch. 2003.
3. Respondent received adequate and proper notice of the hearing on the merits. Tex. Occ. 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, and Respondent had the burden of establishing any mitigating factors. 1 Tex. Admin. Code § 155.427.
5. Respondent is subject to sanction pursuant to Texas Occupations Code section 301.452(b)(1) because he failed to comply with an order of the Board.
6. The failure to comply with a Board order constitutes unprofessional conduct and subjects Respondent to sanction pursuant to Texas Occupations Code section 301.452(b)(10) and the Board's rule found at 22 Texas Administrative Code section 217.12(11)(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. Tex. Occ. 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 found at 22 Texas Administrative Code section 213.33(b).

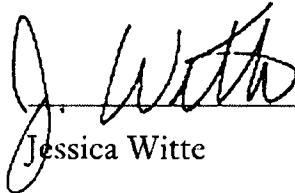
9. The Board may consider as aggravating factors: the number of offenses, the involvement of alcohol, and Respondent's prior disciplinary history. 22 Tex. Admin. Code § 213.33(b), (c)(6).
10. Respondent did not establish any mitigating factors to be considered by the Board. 22 Tex. Admin. Code § 213.33(b)-(c).

## **VII. ALJ RECOMMENDATION**

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

**Signed JANUARY 10, 2024.**

ALJ Signature:

A handwritten signature in black ink, appearing to read "J. Witte", is written over a horizontal line.

Jessica Witte

Presiding Administrative Law Judge

### Automated Certificate of eService

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Associated Case Party: TEXAS BOARD OF NURSING

Name	BarNumber	Email	TimestampSubmitted	Status
Cynthia LLoCastro		cynthia.locastro@bon.texas.gov	1/10/2024 10:03:47 AM	SENT
JoAnna Starr		joanna.starr@bon.texas.gov	1/10/2024 10:03:47 AM	SENT

Associated Case Party: GERARDOVASQUEZ

Name	BarNumber	Email	TimestampSubmitted	Status
GERARDO VASQUEZ		VSQZNURSE@GMAIL.COM	1/10/2024 10:03:47 AM	SENT



FILED  
507-23-24302  
1/26/2024 10:42 AM  
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ACCEPTED  
507-23-24302  
1/26/2024 10:44:50 am  
STATE OFFICE OF  
ADMINISTRATIVE HEARINGS  
Amy Robles, CLERK

# State Office of Administrative Hearings

Kristofer S. Monson  
Chief Administrative Law Judge

January 26, 2024

JoAnna Starr, Assistant General Counsel  
Texas Board of Nursing

**VIA EFILE TEXAS**

Gerardo Vasquez  
2107 Sage Drive  
Weslaco, Texas 78596

**VIA EFILE TEXAS & REGULAR MAIL**

**RE: Docket Number 507-23-24302; *TEXAS BOARD OF NURSING*  
*v. GERARDO VASQUEZ***

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

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Associated Case Party: TEXAS BOARD OF NURSING

Name	BarNumber	Email	TimestampSubmitted	Status
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JoAnna Starr		joanna.starr@bon.texas.gov	1/26/2024 10:42:48 AM	SENT

Associated Case Party: GERARDOVASQUEZ

Name	BarNumber	Email	TimestampSubmitted	Status
GERARDO VASQUEZ		VSQZNURSE@GMAIL.COM	1/26/2024 10:42:48 AM	SENT