



**In the Matter of
Permanent Registered Nurse
License Number 732546
Issued to MAYRA L ZELAYA,
Respondent**

**§ BEFORE THE TEXAS
§ BOARD OF NURSING
§ ELIGIBILITY AND
§ DISCIPLINARY COMMITTEE**

ORDER OF THE BOARD

TO: Mayra Zelaya
9955 Kathi Ann Lane
Houston, TX 77038

During open meeting held in Austin, Texas, on March 18, 2025, the Texas Board of Nursing Eligibility and Disciplinary Committee (hereinafter "Committee") heard the above-styled case, based on the failure of the Respondent to appear as required by 22 TEX. ADMIN. CODE Ch. 213.

The Committee finds that notice of the facts or conduct alleged to warrant disciplinary action has been provided to Respondent in accordance with Texas Government Code § 2001.054(c) and Respondent has been given an opportunity to show compliance with all the requirements of the Nursing Practice Act, Chapter 301 of the Texas Occupations Code, for retention of Respondent's license(s) to practice nursing in the State of Texas.

The Committee finds that the Formal Charges were properly initiated and filed in accordance with section 301.458, Texas Occupations Code.

The Committee finds that after proper and timely Notice regarding the violations alleged in the Formal Charges was given to Respondent in this matter, Respondent has failed to appear in accordance with 22 TEX. ADMIN. CODE Ch. 213.

The Committee finds that the Board is authorized to enter a default order pursuant to Texas Government Code § 2001.056.

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. Bennett, DNP, RN
Executive Director
Texas Board of Nursing

The Committee, after review and due consideration, adopts the proposed findings of fact and conclusions of law as stated in the Formal Charges which are attached hereto and incorporated by reference for all purposes and the Staff's recommended sanction of revocation by default. This Order will be properly served on all parties and all parties will be given an opportunity to file a motion for rehearing [22 TEX. ADMIN. CODE § 213.16(j)]. All parties have a right to judicial review of this Order.

All proposed findings of fact and conclusions of law filed by any party not specifically adopted herein are hereby denied.

NOW, THEREFORE, IT IS ORDERED that Permanent Registered Nurse License Number 732546, previously issued to MAYRA L ZELAYA to practice nursing in the State of Texas be, and the same is/are hereby, REVOKED.

IT IS FURTHER ORDERED that this Order SHALL be applicable to Respondent's nurse licensure compact privileges, if any, to practice nursing in the State of Texas.

Entered this 18th day of March, 2025.

TEXAS BOARD OF NURSING

BY: *Kristen K. Benton, DNP, RN*

KRISTIN K. BENTON, DNP, RN
EXECUTIVE DIRECTOR ON BEHALF OF SAID BOARD

Attachment: Formal Charges filed December 20, 2024

d17r(2025.02.04)

Re: Permanent Registered Nurse License Number 732546
Issued to MAYRA L ZELAYA
DEFAULT ORDER - REVOKE

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of April, 2025 a true and correct copy of the foregoing DEFAULT ORDER was served and addressed to the following person(s), as follows:

Via USPS Certified Mail, Return Receipt Requested.
Copy Via USPS First Class Mail

Mayra Zelaya
9955 Kathi Ann Lane
Houston, TX 77038

Kristin K. Benton, DNP, RN

BY: _____

KRISTIN K. BENTON, DNP, RN
EXECUTIVE DIRECTOR ON BEHALF OF SAID BOARD

**In the Matter of
Permanent Registered Nurse
License Number 732546
Issued to MAYRA L ZELAYA,
Respondent**

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**BEFORE THE TEXAS
BOARD OF NURSING**

FORMAL CHARGES

This is a disciplinary proceeding under Section 301.452(b), Texas Occupations Code. Respondent, MAYRA L ZELAYA, is a Registered Nurse holding license number 732546, which is in delinquent status at the time of this pleading.

Written notice of the facts and conduct alleged to warrant adverse licensure action was sent to Respondent at Respondent's address of record, and Respondent was given opportunity to show compliance with all requirements of the law for retention of the license prior to commencement of this proceeding.

CHARGE I.

On or about May 21, 2024, Respondent pled Guilty to ASSLT FAM/HOUSEHOLD MEM W/PREV CONV, a 3rd Degree Felony offense committed on May 8, 2024, in the 486th District Court of Harris County Texas, under Cause No. 186739201010. As a result of the plea the proceedings against Respondent were deferred without entering an adjudication of Guilt, and Respondent was placed on probation for a period of two (2) years and ordered to pay court costs.

The above action constitutes grounds for disciplinary action in accordance with Section 301.452(b)(3), Texas Occupations Code.

NOTICE IS GIVEN that staff will present evidence in support of the recommended disposition of up to, and including, revocation of Respondent's license(s) and/or privilege(s) to practice nursing in the State of Texas pursuant to the Nursing Practice Act, Chapter 301, Texas Occupations Code and the Board's rules, 22 TEX. ADMIN. CODE §§ 213.27 - 213.33 and TEX. OCC. CODE Ch. 53.

NOTICE IS GIVEN that all statutes and rules cited in these Charges are incorporated as part of this pleading and can be found at the Board's website, www.bon.texas.gov.

NOTICE IS GIVEN that, based on the Formal Charges, the Board will rely on adopted Disciplinary Guidelines for Criminal Conduct, which can be found under the "Discipline & Complaints; Board Policies & Guidelines" section of the Board's website, www.bon.texas.gov.

NOTICE IS GIVEN that, based on the Formal Charges, the Board will rely on the Disciplinary Matrix, located at 22 TEX. ADMIN. CODE §213.33(b), which can be found under the "Discipline & Complaints; Board Policies & Guidelines" section of the Board's website, www.bon.texas.gov.

NOTICE IS ALSO GIVEN that Respondent's past disciplinary history, as set out below and described in the Order(s) which is/are attached and incorporated by reference as part of these charges, will be offered in support of the disposition recommended by staff: Order(s) of the Board dated July 20, 2012.

Filed this 20 day of December, 2024.

TEXAS BOARD OF NURSING

Caroline J. Livingston

James W. Johnston, General Counsel
Board Certified - Administrative Law
Texas Board of Legal Specialization
State Bar No. 10838300

John Vanderford, Deputy General Counsel
State Bar No. 24086670

JoAnna Starr, Assistant General Counsel
State Bar No. 24098463

Jacqueline A. Strashun, Assistant General Counsel
State Bar No. 19358600

Eugene A. Clayborn, Assistant General Counsel
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Kristin Giaquinta Schoen, Assistant General Counsel
State Bar No. 24055547

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State Bar No. 24139905

Caroline Livingston, Assistant General Counsel
State Bar No. 24140051

1801 Congress Avenue, Suite 10-200
Austin, Texas 78701
P: (512) 305-8657
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Attachment(s): Order(s) of the Board dated July 20, 2012.

DOCKET NUMBER 507-12-0846

IN THE MATTER OF
PERMANENT CERTIFICATE
NUMBER 732546
ISSUED TO
MAYRA L. ZELAYA

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

OPINION AND ORDER OF THE BOARD

TO: MAYRA L. ZELAYA
c/o DAN LYPE, ATTORNEY
1602 EAST 7th STREET
AUSTIN, TX 78702

CATHERINE C. EGAN
ADMINISTRATIVE LAW JUDGE
300 WEST 15TH STREET
AUSTIN, TEXAS 78701

At the regularly scheduled public meeting on July 19-20, 2012, the Texas Board of Nursing (Board) considered the following items: (1) The Proposal for Decision (PFD) regarding the above cited matter; (2) Staff's recommendation that the Board adopt the PFD regarding the registered nursing license of Mayra L. Zelaya with changes; and (3) 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. Staff filed exceptions to the PFD on February 29, 2012. Respondent filed a response to Staff's exceptions to the PFD on March 15, 2012. On March 27, 2012, the ALJ issued a final letter ruling in this matter, in which she declined to make any changes to the PFD.

The Board, after review and due consideration of the PFD, Staff's exceptions to the PFD, Respondent's response to Staff's exceptions to the PFD, Staff's recommendations, and Respondent's presentation during the open meeting and recommendations, if any, adopts all of the findings of fact and conclusions of law of the ALJ contained in the PFD as if fully set out and separately stated herein, except for Conclusion of Law Number 8, which is hereby re-designated as a recommendation. All proposed findings of fact and conclusions of law filed by any party not specifically adopted herein are hereby denied.

Recommendation for Sanction

Although the Board is not required to give presumptively binding effect to an ALJ's recommendation regarding sanctions in the same manner as with other findings of fact or



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.
Stephanie Williams
Executive Director of the Board

conclusions of law¹, the Board, after weighing the aggravating and mitigating factors in this matter, agrees with the ALJ that the appropriate sanction is a probated suspension of the Respondent's license for a period of five years, with probationary stipulations.

Aggravating Factors

As described in adopted Findings of Fact Numbers 2, 3, 5, and 9, the Respondent received a deferred adjudication for the third degree felony offense of injury to a child. The Board has adopted Disciplinary Guidelines for Criminal Conduct (Guidelines)² that address the Respondent's specific criminal history. For the felony offense of injury to a child, the Guidelines recommend revocation of the Respondent's license if the judicial order of conviction or deferred adjudication occurred five or less years ago. As stated in adopted Finding of Fact Number 5, the Respondent's judicial order of deferred adjudication occurred in 2008, well within this time frame. Further, the Respondent's criminal conduct is related to the practice of nursing and is extremely serious in nature. Nurses are often placed in stressful situations involving patients and other members of the public, such as patient family members and other nursing staff. Nurses must be able to resolve these situations without resorting to violent behavior. Assaultive and threatening behavior, especially towards children, raises serious concerns about a nurse's propensity to repeat the same misconduct in the workplace. The Respondent's conduct poses a risk of harm to the public health and safety.

Mitigating Factors

As described in adopted Findings of Fact Numbers 7 and 17, the Respondent successfully completed the terms of her probation, including attending parenting and anger management classes, and was dismissed from community supervision in December, 2010. Further, as described in adopted Findings of Fact Numbers 18 and 19, the Respondent had no criminal history prior to the incidents in 2008 and 2009, and is not currently under any criminal probation or supervision. Further, it appears that the Respondent's conduct may have been the result of a very stressful period in Respondent's personal life following an altercation with her husband during their separation³. Additionally, no evidence was produced that Respondent has repeated this conduct or that she has ever been aggressive

¹ The Board, not the ALJ, is the final decision maker concerning sanctions. Once it has been determined that a violation of the law has occurred, the sanction is a matter for the agency's discretion. Further, the mere labeling of a recommended sanction as a conclusion of law or as a finding of fact does not change the effect of the ALJ's recommendation. As such, the Board is not required to give presumptively binding effect to an ALJ's recommendation regarding sanctions in the same manner as with other findings of fact and conclusions of law. The choice of penalty is vested in the agency, not in the courts. An agency has broad discretion in determining which sanction best serves the statutory policies committed to the agency's oversight. The propriety of a particular disciplinary measure is a matter of internal administration with which the courts should not interfere. See *Texas State Board of Dental Examiners vs. Brown*, 281 S.W. 3d 692 (Tex. App. - Corpus Christi 2009, pet. filed); *Sears vs. Tex. State Bd. of Dental Exam'rs*, 759 S.W.2d 748, 751 (Tex.App. - Austin 1988, no pet); *Firemen's & Policemen's Civil Serv. Comm'n vs. Brinkmeyer*, 662 S.W.2d 953, 956 (Tex. 1984); *Granek vs. Tex. State Bd. of Med. Exam'rs*, 172 S.W.3d 761, 781 (Tex.App. - Austin 2005, pet. denied); *Fay-Ray Corp. vs. Tex. Alcoholic Beverage Comm'n*, 959 S.W.2d 362, 369 (Tex.App. - Austin 1998, no pet.).

² Approved by the Board and published in the *Texas Register* on March 9, 2007 (32 TexReg 1409) and adopted by reference in 22 Tex. Admin. Code §213.33(g).

³ See page 8 of the PFD.

with a patient⁴.

After reviewing the aggravating and mitigating factors in this matter, the Board finds that sufficient mitigation is present to justify a departure from its recommended Guidelines of revocation to a probated suspension. However, the Board recognizes that the Respondent's criminal conduct poses a potential risk to the public health and safety, and therefore, pursuant to the Board's Disciplinary Matrix, and the Board's rules, including 22 Tex. Admin. Code §213.33(e), (f), and (g), finds that the Respondent's practice should be subject to probationary monitoring for a period of five years. The Board finds that monitoring is necessary to ensure that the Respondent is safe to practice nursing in this state. Further, the Board imposes the probationary conditions herein utilizing its standard and uniform probationary conditions normally imposed in probationary disciplinary orders. The imposition of such conditions is consistent with Board precedent in similar matters involving an individual's criminal history of violent or assaultive behavior.

IT IS THEREFORE ORDERED that Registered Nurse License Number 732546, previously issued to MAYRAL ZELAYA, to practice professional nursing in Texas is hereby **SUSPENDED** for a period of five (5) years, with the suspension **STAYED** and Respondent is hereby placed on **PROBATION** for five (5) years with the following terms of probation:

IT IS FURTHER ORDERED that, while under the terms of this Order, this Order **SHALL** apply to any and all future licenses issued to Respondent to practice nursing in the State of Texas.

IT IS FURTHER ORDERED that this Order **SHALL** be applicable to Respondent's nurse licensure compact privileges, if any, to practice nursing in the State of Texas.

IT IS FURTHER ORDERED that while Respondent's license is encumbered by this order, the Respondent may not work outside the State of Texas pursuant to a nurse licensure compact privilege without the written permission of the Texas Board of Nursing and the Board of Nursing in the party state where Respondent wishes to work.

(1) **RESPONDENT SHALL** comply in all respects with the Nursing Practice Act, Texas Occupations Code, §§301.001 *et seq.*, the Rules and Regulations Relating to Nurse Education, Licensure and Practice, 22 TEX. ADMIN. CODE §211.1 *et seq.* and this Order.

(2) **RESPONDENT SHALL**, within one (1) year of entry of this Order, successfully complete a course in Texas nursing jurisprudence and ethics. **RESPONDENT SHALL** obtain Board approval of the course prior to enrollment only if the course is not being offered by a pre-approved provider. Home study courses and video programs will not be approved. In order for the course to be approved, the target audience shall include nurses. It shall be a minimum of six (6) hours in length. The course's content shall include the Nursing Practice Act, standards of practice, documentation of care, principles of nursing ethics, confidentiality, professional boundaries, and the Board's Disciplinary

⁴ See page 8 of the PFD.

Sanction Policies regarding: Sexual Misconduct; Fraud, Theft and Deception; Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder; and Lying and Falsification. Courses focusing on malpractice issues will not be accepted. RESPONDENT SHALL CAUSE the sponsoring institution to submit a Verification of Course Completion form, provided by the Board, to the Office of the Board to verify RESPONDENT'S successful completion of the course. This course shall be taken in addition to any other courses stipulated in this Order, if any, and in addition to any continuing education requirements the Board has for relicensure. Board-approved courses may be found at the following Board website address: <http://www.bon.texas.gov/disciplinaryaction/stipscourses.html>.

IT IS FURTHER ORDERED, SHOULD RESPONDENT PRACTICE AS A NURSE IN THE STATE OF TEXAS, RESPONDENT WILL PROVIDE DIRECT PATIENT CARE AND PRACTICE IN A HOSPITAL, NURSING HOME, OR OTHER CLINICAL SETTING AND RESPONDENT MUST WORK IN SUCH SETTING A MINIMUM OF SIXTY-FOUR (64) HOURS PER MONTH UNDER THE FOLLOWING PROBATION CONDITIONS FOR FIVE (5) YEAR(S) OF EMPLOYMENT. THE LENGTH OF THE PROBATIONARY PERIOD WILL BE EXTENDED UNTIL SUCH SIXTY (60) MONTHS HAVE ELAPSED. PERIODS OF UNEMPLOYMENT OR OF EMPLOYMENT THAT DO NOT REQUIRE THE USE OF A REGISTERED NURSE (RN) OR A VOCATIONAL NURSE (LVN) LICENSE, AS APPROPRIATE, WILL NOT APPLY TO THIS STIPULATION PERIOD:

(3) RESPONDENT SHALL notify each present employer in nursing of this Order of the Board and the probation conditions on RESPONDENT'S license(s). RESPONDENT SHALL present a complete copy of this Order and all Proposals for Decision issued by the Administrative Law Judge, if any, to each present employer within five (5) days of receipt of this Order. RESPONDENT SHALL notify all future employers in nursing of this Order of the Board and the probation conditions on RESPONDENT'S license(s). RESPONDENT SHALL present a complete copy of this Order and all Proposals for Decision issued by the Administrative Law Judge, if any, to each future employer prior to accepting an offer of employment.

(4) RESPONDENT SHALL CAUSE each present employer in nursing to submit the Notification of Employment form, which is provided to the Respondent by the Board, to the Board's office within ten (10) days of receipt of this Order. RESPONDENT SHALL CAUSE each future employer to submit the Notification of Employment form, which is provided to the Respondent by the Board, to the Board's office within five (5) days of employment as a nurse.

(5) For the first year of employment as a Nurse under this Order, RESPONDENT SHALL be directly supervised by a Registered Nurse, if licensed as a Registered Nurse, or by a Licensed Vocational Nurse or a Registered Nurse, if licensed as a Licensed Vocational Nurse. Direct supervision requires another nurse, as applicable, to be working on the same unit as RESPONDENT and immediately available to provide assistance and intervention. RESPONDENT SHALL work only on regularly assigned, identified and predetermined unit(s). The RESPONDENT SHALL NOT be employed by a nurse registry, temporary nurse employment agency, hospice, or home health agency. RESPONDENT SHALL NOT be self-employed or contract for services. Multiple employers are prohibited. **RESPONDENT shall be permitted to continue her employment with**

Parallon Workforce Management Solutions, Houston, Texas, so long as she only accepts assignment that are a minimum of three months in length. Should Respondent's employment with Parallon Workforce Management Solutions, Houston, Texas cease for any reason, this stipulation shall have full force and effect.

(6) For the remainder of the probation period, RESPONDENT SHALL be supervised by a Registered Nurse, if licensed as a Registered Nurse, or by a Licensed Vocational Nurse or a Registered Nurse, if licensed as a Licensed Vocational Nurse, who is on the premises. The supervising nurse is not required to be on the same unit or ward as RESPONDENT, but should be on the facility grounds and readily available to provide assistance and intervention if necessary. The supervising nurse shall have a minimum of two (2) years experience in the same or similar practice setting to which the Respondent is currently working. RESPONDENT SHALL work only regularly assigned, identified and predetermined unit(s). RESPONDENT SHALL NOT be employed by a nurse registry, temporary nurse employment agency, hospice, or home health agency. RESPONDENT SHALL NOT be self-employed or contract for services. Multiple employers are prohibited. **RESPONDENT shall be permitted to continue her employment with Parallon Workforce Management Solutions, Houston, Texas, so long as she only accepts assignment that are a minimum of three months in length. Should Respondent's employment with Parallon Workforce Management Solutions, Houston, Texas cease for any reason, this stipulation shall have full force and effect.**


(7) RESPONDENT SHALL CAUSE each employer to submit, on forms provided to the Respondent by the Board, periodic reports as to RESPONDENT'S capability to practice nursing. These reports shall be completed by the nurse who supervises the RESPONDENT. These reports shall be submitted by the supervising nurse to the office of the Board at the end of each three (3) month period for five (5) years of employment as a nurse.

IT IS FURTHER ORDERED that if during the period of probation, an additional allegation, accusation, or petition is reported or filed against the Respondent's license(s), the probationary period shall not expire and shall automatically be extended until the allegation, accusation, or petition has been acted upon by the Board.

IT IS FURTHER ORDERED, that upon full compliance with the terms of this Order, all encumbrances will be removed from RESPONDENT'S license(s) to practice nursing in the State of Texas and RESPONDENT shall be eligible for nurse licensure compact privileges, if any.

Entered this 20th day of July, 2012.

TEXAS BOARD OF NURSING


KATHERINE A. THOMAS, MN, RN, FAAN
EXECUTIVE DIRECTOR FOR THE BOARD

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

February 17, 2012

Katherine A. Thomas, M.N., R.N.
Executive Director
Texas Board of Nursing
333 Guadalupe, Tower III, Suite 460
Austin, Texas 78701

VIA INTER-AGENCY

**RE: Docket No. 507-12-0846; In The Matter of Permanent Certificate
Number 732546 Issued to Mayra L. Zelaya, R.N.**

Dear Ms. Thomas:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.507(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

A handwritten signature in cursive script that reads "Catherine C. Egan".

Catherine C. Egan
Administrative Law Judge

CCE:nl
Enclosures

XC: Jena Abel, Assistant General Counsel, TBN, 333 Guadalupe, Tower III, Ste. 460, Austin, TX 78701 – **VIA INTER-AGENCY**
Dina Flores, Legal Assistant TBN, 333 Guadalupe, Tower III, Ste. 460, Austin, TX 78701 – (Certified Evidentiary Record) – **VIA INTER-AGENCY**
Dan Lype, Leichter Law Firm, 1602 East 7th Street, Austin, TX 78702-**VIA REGULAR MAIL**

DOCKET NO. 507-12-0846

**IN THE MATTER OF
PERMANENT CERTIFICATE
NUMBER 732546
ISSUED TO
MAYRA L. ZELAYA, R.N.**

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**BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS**

PROPOSAL FOR DECISION

Staff of the Texas Board of Nursing (Staff/Board) seeks to revoke the nursing license issued to Respondent Mayra L. Zelaya, R.N., by the Board for alleged violations of the Nursing Practice Act (the Act),¹ and the Board rules.² According to Staff, Respondent's nursing license should be revoked because she was placed on deferred adjudication for injury to a child under 15 years of age, a third degree felony, and was subsequently convicted for driving while intoxicated (DWI). The Administrative Law Judge (ALJ) finds that Respondent's criminal conduct violated the Act and Board rules and recommends that Respondent's nursing license be suspended for five years, that the suspension be probated, and that the Board impose any terms and conditions the Board finds appropriate.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The parties did not contest jurisdiction or notice so these matters are addressed in the Findings of Fact and Conclusions of Law without further discussion here.

On November 22, 2011, the parties filed Stipulated Findings of Fact and Conclusions of Law, moved to cancel the hearing set for December 14, 2011, and request permission to submit written arguments on sanctions. ALJ Catherine Egan granted the requested and directed the parties to submit their written briefs by December 19, 2011. Both parties submitted written briefs in compliance with the order. The record closed December 19, 2011.

¹ Tex. Occ. Code ch. 301.

² 22 Tex. Admin. Code (TAC) ch. 217.

II. DISCUSSION

A. Stipulations and Undisputed Evidence

The parties stipulated to several facts surrounding this case, disputing only the appropriate sanctions. In addressing the sanctions, only Respondent presented any documentary evidence. Staff did not object to this documentary evidence so it was admitted. The following is a list of the stipulations and undisputed facts:³

1. Respondent holds license number 732546 issued by the Board on August 8, 2006.
2. On or about November 24, 2008, Respondent entered a guilty plea to the third degree felony offense of "Injury child under 15 B/injury" in the 230th District Court in Harris County, Texas, under Cause No. 1174478 (felony offense).
3. Following Respondent's plea, the District Court deferred entering an adjudication of guilt against Respondent, placed her on probation for two years, and ordered her to pay a fine and court costs.
4. Respondent's judicial order of deferred adjudication for "Injury child under 15 B/injury" occurred on November 24, 2008, less than five years ago.
5. On August 28, 2009, Respondent pled guilty to, and was convicted for, DWI on June 25, 2009, a Class B misdemeanor, in County Court at Law No. 1, Harris County, Texas, under Cause No. 160944701010. The County Court sentenced Respondent to four days confinement in the County Jail and ordered her to pay a fine.
6. The Board has adopted Disciplinary Guidelines for Criminal Conduct that addresses the criminal offense of injury to a child.
7. The criminal offense of injury to a child is related to the practice of nursing.
8. On June 2, 2010, Staff filed the Formal Charges against Respondent and mailed them to her the following day.

³ Stipulated Findings of Fact filed on November 22, 2011, and Respondent's Brief on Sanctions listing undisputed facts.

9. Respondent replied to the Formal Charges on June 8, 2010.
10. Staff filed and mailed to Respondent the First Amended Formal Charges and notice of hearing on October 19, 2011.

Staff relied on the stipulations as recited above. As noted above, Respondent relied on the stipulations and presented additional documentary evidence regarding the factors to consider in determining the appropriate sanctions to impose. This evidence included Respondent's affidavit, the Order terminating community supervision regarding Respondent's felony offense, and letters from her children, her parents, and her husband.⁴

According to Respondent, she has worked as a contract nurse at West Houston Medical Center and Kingwood Medical Center, in Houston, Texas, for the past five years with no complaints about her nursing practice or her care of patients. Respondent has two children, a daughter who was eleven at the time of the incident, and an older son. Respondent's daughter has attention deficit and hyperactivity disorder, commonly called ADHD. Her daughter sees a therapist for behavioral issues because she is prone to temper tantrums, yelling, and jumping up and down on her bed.

Respondent explained that during the evening of her arrest, she had an argument with her husband, with whom she was separated. This argument contributed to her daughter's erratic behavior later that night. After several attempts to get her daughter to bed, Respondent relayed that her daughter began yelling and jumping on the bed. When Respondent put her arms around her daughter and tried to pull her off the bed, her daughter started thrashing about more violently, biting, and scratching Respondent. It was during this time that Respondent's ring scratched her daughters face leaving a mark by her eye.⁵

⁴ Respondent attached Respondent's Exhibits (Exs.) 1 through 8 to her brief on sanctions. As mentioned above, Staff filed no objections to the admissibility of these exhibits. Therefore, the ALJ admitted Respondent's Exs. 1 through 8 into evidence.

⁵ Respondent Ex. 1.

The altercation woke up Respondent's elderly father who was living with them at the time. Startled by the yelling, he called the police.⁶ When the police arrived, they arrested Respondent because they saw the scratch on her daughter's face. Having to choose whether to place her daughter on the stand or to accept deferred adjudication, Respondent chose not to subject her daughter to such an ordeal.⁷

On November 29, 2010, Respondent successfully completed community supervision.⁸ As a result, Respondent is not under any form of criminal probation or supervision. Respondent expressed deep remorse for her conduct and recognized the effect her conduct has had on her family. She asks the Board to permit her to keep her nursing license because she must support her children.

Respondent's children wrote letters attesting to what a good mother Respondent has been to them. They explained that the incident resulting in her arrest for the felony occurred during a very trying personal time. The children acknowledged the sacrifices Respondent has made to give them a better life, and both feel loved and cared for by their mother.

B. Parties' Positions and Legal Authority

1. Allegations and Positions

Staff asserts that Respondent's conduct violated sections 301.452(b)(3) and (10) of the Act and Board Rule 217.12(13),⁹ and warrants the revocation of her nursing license. According to Staff, Respondent's criminal behavior for both offenses demonstrated unprofessional and dishonorable conduct that was likely to injure the patient or the public. Staff pointed out that it is undisputed that Respondent's felony offense, injury to a child, directly relates to the practice of nursing. Staff agreed

⁶ Respondent Ex. 7.

⁷ Respondent Ex. 1.

⁸ Respondent Ex. 2.

⁹ 22 TAC § 217.12(13).

with Respondent that a first offense DWI usually carries no sanction, but argued it is further evidence of Respondent's unprofessional and dishonorable conduct.

Staff explained that nurses have access to those who are especially vulnerable, including children and patients with compromised mental or cognitive abilities. Expressing doubt about Respondent's ability to maintain control under extreme pressure, Staff argued that allowing Respondent to keep her license exposes combative and difficult patients to the risk that she will repeat the same assaultive behavior towards them that she displayed towards her daughter.

Respondent does not dispute Staff's rendition of her criminal history, but requests either a probated suspension or a probated revocation that subjects her nursing license to a period of supervision under specific terms to be determined by the Board. In support of this request for leniency, Respondent points out that the criminal offenses were not committed in her nursing practice, but occurred while she was off-duty. Respondent appreciates the severity of her criminal conduct, but she stressed that there is no evidence that her ongoing practice as a nurse presents a danger to the public or to any patient.

Focusing on the controlling statutory language in sections 301.4535 of the Act in effect at the time of her plea of guilty, Respondent contends the revocation of her nursing license is unnecessary. Respondent pointed out that Staff did not contest that Respondent properly disclosed to the Board her offense and plea and essential requirement to warrant revocation.¹⁰ In 2008, section 301.4535(b) of the Act stated:

On final conviction or a plea of guilty or nolo contendere for an offense listed in Subsection (a), the board, as appropriate, may not issue a license to an applicant, shall refuse to renew a license, or shall revoke a license, *if the applicant or license holder did not previously disclose the conviction or plea and the fifth anniversary of the date the person successfully completed community supervision or parole has not occurred.*

¹⁰ Respondent's Brief on Sanctions at 3.

Additionally, Respondent emphasized that the Board may probate any sanction, including revocation, under section 301.453(c) of the Act. Previously the ALJ in *Traci Lynn Rhode v. Texas Board of Nursing*, SOAH Docket No. 507-08-1738,¹¹ concluded that the Board could probate a suspension mandated under Section 301.4535.¹² In assessing what sanction to impose in the *Rhode* case, the ALJ considered the factors set out in Chapter 53 of the Texas Occupations Code, the Board's rules and the Board's guidelines on criminal conduct.

Turning to the Board's guidelines on criminal conduct, Respondent reasoned that while the guidelines provide a default sanction as a starting point, the guidelines also states that "each case considered on its own merits."¹³ Considering all of these factors, Respondent submits that the Board is warranted in probating either a suspension or revocation of Respondent's license.

2. Legal Authority

Section 301.452(b)(3) states that a nurse is subject to disciplinary action by the Board if convicted for, or placed on deferred adjudication community supervision for, a felony or for a misdemeanor involving moral turpitude. Section 301.452(b)(10) allows the Board to impose disciplinary action against a nurse if the nurse engages in "unprofessional or dishonorable conduct" that is likely to deceive, defraud, or injure a patient or the public. Criminal conduct is considered under Board Rule 217.12(13) to be "unprofessional or dishonorable conduct." This includes a conviction or probation that involves "a crime or criminal behavior or conduct that could affect the practice of nursing."

Staff did not dispute Respondent's reference to section 301.4535(b) of the Act in effect in 2008, as noted above. Additionally, as noted by Respondent, the Board has authority to probate any

¹¹ Proposal for Decision was issued on October 28, 2008.

¹² In *Rhode*, the nurse was appealing her conviction for 1st degree murder.

¹³ *Texas Register*, 33 Tex. Reg. 1409 (2008).

sanction imposed on the nursing license. Specifically, section 301.453(c) states that the Board, "may probate any penalty imposed on a nurse and may accept the voluntary surrender of a license."

Chapter 53 of the Texas Occupational Code sets out factors to consider in evaluating the consequences of criminal conduct in securing and retaining an occupational license, including the nursing profession. Prior to disciplining a nurse for having a criminal conviction or deferred adjudication, the Board must determine whether the offense is directly related to the nursing profession. In this case, the parties have stipulated that Respondent's felony offense directly related to the nursing profession.

Once it is determined that the criminal conviction directly relates to the nursing license, the Board may evaluate other factors set out in the Board rules and the Disciplinary Guidelines. These factors include the extent and nature of the licensee's past criminal activity; the amount of time that has elapsed since the licensee's last criminal activity; the conduct and work activity of the licensee before and after the criminal activity; evidence of the licensee's rehabilitation or rehabilitative effort; letters of recommendation; and whether the licensee maintained a record of good employment, supported their dependents, maintained a record of good conduct, and paid court costs, fines, fees, and restitution.

As for the DWI, the ALJ agrees that the Board's Disciplinary Guideline recommend that no sanction be imposed for a first offense DWI. While Staff suggests the two crimes are related, the evidence does not support such a finding. Moreover, the evidence does not suggest that Respondent's first offence for DWI was directly related to her duties as a nurse. Therefore, the ALJ will not address this issue further.

C. Analysis and Recommendation

The only issue in this contested case is whether the Board should, in its discretion, revoke Respondent's nursing license. Respondent's criminal conduct is undisputed. In 2008, she pled

guilty to the felony offense of injury to a child, and in 2009, she was convicted of DWI. Respondent was not released from community supervision for her felony offense until December 3, 2010. The ALJ appreciates that Respondent appears to have accepted responsibility for her conduct, and acknowledges that she has complied with both Court orders. Respondent attended the required parenting and anger management courses and underwent a drug/alcohol evaluation as part of her probation.

The ALJ is not persuaded that Respondent's first offense DWI should be given significant weight because the Board does not impose any sanctions for a first offense DWI. However, Respondent's guilty plea to the felony offense of injury to a child is significant. The ALJ agrees with Staff's concerns that a nurse must be able to handle stressful situations without resorting to violence. Respondent's behavior towards her daughter occurred during a very stressful period in her personal life following an altercation with her husband during their separation. Nothing in evidence suggests that Respondent has ever repeated this conduct or that she has ever been aggressive with a patient. Additionally, the only evidence about the injury caused to Respondent's child was that she was scratched during the incident.

The ALJ agrees with Staff that Respondent's felony offense warrants disciplinary action, but revocation is unwarranted. Based on the evidence, the Act, the Board rules and the Disciplinary Guideline, the ALJ recommends that the Board suspend Respondent's nursing license for five years, probate the suspension, and impose terms and conditions that are warranted.

III. FINDINGS OF FACT

1. Mayra L. Zelaya (Respondent), a registered nurse, holds license number 732546 issued by the Board on August 8, 2006.
2. On or about November 24, 2008, Respondent entered a guilty plea to the third degree felony offense of "Injury child under 15 B/injury" committed on July 12, 2008, in the 230th District Court in Harris County, Texas, under Cause No. 1174478.

3. Following Respondent's plea, the District Court deferred entering an adjudication of guilt against Respondent, and placed her on probation for two years and ordered her to pay a fine and court costs.
4. On or about August 28, 2009, Respondent pled guilty to and was convicted for driving while intoxicated on June 25, 2009, a Class B misdemeanor, in County Court at Law No. 1, Harris County, Texas, under Cause No. 160944701010. The County Court sentenced Respondent to four days confinement in the County Jail and ordered her to pay a fine.
5. Respondent's judicial order of deferred adjudication for "Injury child under 15 B/injury" occurred on November 24, 2008, less than five years ago.
6. Respondent disclosed her criminal record to the Board.
7. On December 3, 2010, Respondent successfully completed the terms of probation and discharged from community supervision for her felony offense by the District Court.
8. The Board has adopted Disciplinary Guidelines for Criminal Conduct that addresses the criminal offense of injury to a child.
9. The criminal offense of injury to a child is related to the practice of nursing.
10. The Board's Disciplinary Guidelines for Criminal Conduct does not address a first offense of driving while intoxicated.
11. Respondent's conviction for a first offense of driving while intoxicated was not directly related to the nursing profession or to her nursing duties.
12. On June 2, 2010, Staff filed the Formal Charges against Respondent and mailed them to her the following day.
13. Respondent replied to the Formal Charges on June 8, 2010.
14. Staff filed and mailed to Respondent the First Amended Formal Charges and Notice of Hearing on October 19, 2011.
15. 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 a short, plain statement of the matters asserted.
16. On November 22, 2011, the parties filed stipulated Findings of Fact and Conclusions of Law, requested that the hearing on the merits be cancelled, and asked that the matter be considered

by submission. The parties further requested that the ALJ allow them to file written briefs regarding the appropriate sanction to impose in this matter by December 19, 2011. The ALJ granted the requests. Assistant General Counsel Jena Abel represented Staff. Attorney Dan Lye represented Respondent. On or before December 19, 2011, the parties filed the written briefs and the record closed.

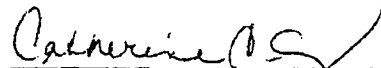
17. Respondent completed the terms of her probation, including attending parenting and anger management classes.
18. Respondent is not currently under any criminal probation or supervision.
19. Respondent had no criminal history prior to 2008 and none following her DWI in 2009.

IV. CONCLUSIONS OF LAW

1. The Texas Board of Nursing (Board) has jurisdiction over this matter pursuant to the Nursing Practice Act (the Act), Tex. Occ. Code ch. 301.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing, including the authority to issue a proposal for decision with findings of fact and conclusions of law, pursuant to Tex. Gov't Code ch. 2003 and the Act § 301.454.
3. Proper and timely notice of the hearing was given Respondent pursuant to the Administrative Procedure Act, Tex. Gov't Code ch. 2001 and 22 Tex. Admin. Code (TAC) §§ 213.10 and 213.22.
4. Based on the Findings of Fact, Respondent violated 22 TAC § 217.12(13), and the Act § 301.452(b)(3) and (10).
5. Based on the Findings of Fact, Respondent is subject to disciplinary action by the Board pursuant to §§ 301.452(b)(3) and (10).
6. In 2008, on a plea of guilty for intentionally, knowingly, or recklessly injuring a child under section 22.04 of the Texas Penal Code, § 301.4535(b) of the Act stated that the Board shall revoke a license if the licensee does not disclose the conviction and the fifth anniversary of the date the licensee successfully complete community supervision or parole has not occurred.
7. The Board has authority to probate any sanction imposed on a nurse, including a suspension, under the Act § 301.453(c).

8. Based on the Findings of Fact and Conclusions of Law, the Board should suspend Respondent's nursing license (permanent certificate number 732546) for five years, probate the suspension, and impose terms and conditions that the Board finds appropriate.

Signed on February 17, 2012.



CATHERINE C. EGAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

DOCKET NO. 507-12-0846

IN THE MATTER OF	§	BEFORE THE
PERMANENT CERTIFICATE	§	
NUMBER 732546	§	STATE OFFICE OF
ISSUED TO	§	
MAYRA L. ZELAYA	§	ADMINISTRATIVE HEARINGS

STAFF'S EXCEPTIONS TO THE PROPOSAL FOR DECISION

COMES NOW, Staff of the Texas Board of Nursing, and files exceptions to the Proposal for Decision issued in this matter on February 17, 2012, and would state as follows:

I.

Staff excepts to Conclusion of Law Number 8. A recommendation for a sanction is not a proper conclusion of law. While it may be appropriate for the ALJ to recommend a sanction, it is ultimately up to the Board to determine what the appropriate sanction should be. Further, the mere labeling of a recommended sanction as a conclusion of law or as a finding of fact does not change the effect of the ALJ's recommendation. Thus, the Board is not required to give presumptively binding effect to an ALJ's recommendation regarding sanctions in the same manner as with other findings of fact and conclusions of law. The Board, not the ALJ, is the final decision maker concerning sanctions. Once it has been determined that a violation of the law has occurred, the sanction is a matter for the agency's discretion. The choice of penalty is vested in the agency, not in the courts. Further, an agency has broad discretion in determining which sanction best serves the statutory policies committed to the agency's oversight. The propriety of a particular disciplinary measure is a matter of internal administration with which the courts should not interfere. See *Texas State Board of Dental Examiners vs. Brown*, 281 S.W. 3d 692 (Tex. App. - Corpus Christi 2009, pet. filed); *Sears vs. Tex. State Bd. of Dental Exam'rs*, 759 S.W.2d 748, 751 (Tex.App. - Austin 1988, no pet); *Firemen's & Policemen's Civil Serv. Comm'n vs. Brinkmeyer*, 662 S.W.2d 953, 956 (Tex. 1984); *Granek vs. Tex. State Bd. of Med. Exam'rs*, 172 S.W.3d 761, 781 (Tex.App. - Austin 2005, pet. denied); *Fay-Ray Corp. vs. Tex. Alcoholic Beverage Comm'n*, 959 S.W.2d 362, 369 (Tex.App. - Austin 1998, no pet.).

Pursuant to the Government Code §2001.058(e), an Administrative Law Judge is required to apply agency rules and policies. The Board has adopted written policies and rules that specifically address the Respondent's criminal conduct. An analysis of the Board's Criminal Guidelines, the Board's unprofessional conduct rule¹, and the Board's

¹ 22 Tex. Admin. Code §213.27.

Disciplinary Matrix² supports the revocation of the Respondent's license.

The Board has adopted Disciplinary Guidelines for Criminal Conduct (Guidelines)³ that sets forth the Board's recommended sanctions for various types of criminal offenses. Where an individual has received a deferred adjudication for INJURY TO A CHILD within the last five years, the Board's Guidelines recommend revocation of the individual's license. In order for a lesser sanction to be imposed, there must be sufficient mitigating evidence. In this case, the Respondent has not produced sufficient mitigating evidence to warrant a sanction less than revocation.

An analysis of the factors in 22 Tex. Admin. Code §213.33(c) also support licensure revocation in this matter. The Respondent caused bodily harm to her own child by scratching her and hitting her with her hand. Despite the Respondent's own self-serving affidavit of "explanation", the District Attorney's Office found the Respondent's conduct serious enough to charge her with Injury to Child, a third degree felony offense. If the District Attorney's Office had determined that the Respondent's actions were not as serious in nature, she could have been charged with a lesser offense, such as misdemeanor assault, etc. However, the District Attorney's Office did not do so, and the Respondent pled guilty to the third degree felony. As such, the criminal offense must be given its appropriate weight. In determining the seriousness of this criminal offense, one should note that the Legislature has commented on the seriousness of such conduct. In 2009, the Legislature unequivocally determined that individuals who plead guilty to the criminal offense of Injury to a Child are, as a matter of law, unfit to hold a nursing license⁴. Although the Respondent's offense occurred prior to the Legislature's 2009 amendment, it is clear that the seriousness of her conduct should not be minimized without substantial mitigation. Respondent has not presented any such mitigation in this case.

The Respondent's underlying conduct involved an unprovoked physical altercation with her minor daughter. The Respondent was under the influence of alcohol at the time. The Respondent's conduct became so disturbing that the Respondent's father called the police. Assaultive and threatening behavior, especially towards children, who are among the most vulnerable of our population, raises serious concerns about a nurse's propensity to repeat the same misconduct in the workplace. Nurses are often placed in stressful situations involving patients and other members of the public, such as patient family members or other nursing staff. Nurses must be able to cope with these situations in an appropriate manner. The Respondent's conduct raises questions about her ability to provide safe, competent care to patients, especially in situations involving combative or difficult patients and stressful conditions. In addition to the crime of INJURY TO A CHILD,

² 22 Tex. Admin. Code §213.33(b).

³ Published March 9, 2007 in the *Texas Register* (32 TexReg 1409).

⁴ See Occupations Code §301.4535. This statute was specifically amended in 2009 (Acts 2009 (HB 3961), 81st Leg., eff. June 19, 2009) to prohibit anyone who was convicted of, or pled guilty or nolo contendere to, the criminal offense of Injury to a Child from holding a nursing license.

the Respondent has also been convicted of a DWI. The ALJ states that the Respondent's DWI should not be given any significant weight because it happened only one time. While it is true that the Board normally does not take disciplinary action on a one-time DWI offense, the Board does review such conduct to determine if the person has a *pattern of criminal conduct*. At the very least, the Respondent has had two instances involving the consumption of alcohol where both instances resulted in criminal activity. The Respondent claims that both incidents resulted from "stressful situations"⁵. Not only does this raise a question about the Respondent's judgment and ability to determine right from wrong, but it also raises a question about a pattern of criminal conduct, particularly in stressful situations. The Respondent has provided no letters of recommendation from employers, co-workers, or patients, to suggest that she is able to control her behavior in the nursing context.

There is also concern about the Respondent's professional character. Pursuant to §213.27(c)(1) and (2), the record of a conviction or deferred adjudication is conclusive evidence of guilt and a licensee guilty of a felony is conclusively deemed to have violated the Occupations Code §301.452(b)(10) and is subject to discipline, including licensure revocation. Further, under §213.27(b), each individual seeking to retain a nursing license must provide evidence of good professional character. In this case, the Respondent has not done so. The Respondent has not provided any evidence that she can act and think rationally; that she is able to keep promises or honor obligations; that she is able to distinguish right from wrong; that she has truly accepted responsibility for her conduct, or that she can safely practice in an autonomous role with patients and clients.

The Board's Disciplinary Matrix for the Respondent's violations of §301.452(b)(3) and (10) also supports licensure revocation. For her violation of 301.452(b)(3), the Matrix incorporates the Guidelines for Criminal Conduct, which have already been discussed herein. Those Guidelines warrant revocation of the Respondent's license. The Respondent's violations of 301.452(b)(10) warrant a second tier, sanction level II sanction. The Respondent's conduct resulted in physical harm to her daughter, a member of the public, and serious risk of future harm to others, including patients and other members of the public. Further, the Respondent has more than one criminal offense, indicating a lack of good judgment and control of one's actions that could harm the public and patients.

The Respondent has provided insufficient mitigating evidence of actual significance. While the few letters of support from Respondent's family and pastor are clearly heartfelt, they are simply insufficient to overcome the seriousness of the Respondent's conduct. The authors of the letters have no knowledge of the Respondent's nursing practice. Respondent has not provided letters of support from a single employer or co-worker attesting to her work as a nurse. Further, Respondent has not provided the Board with any evidence that she sought psychological counseling or continues in a treatment program to

⁵ Respondent claims her DWI was the result of stress related to her impending separation from her husband. Respondent claims the felony charge was the result of stress resulting from dealing with her daughter's ADD and anxiety.

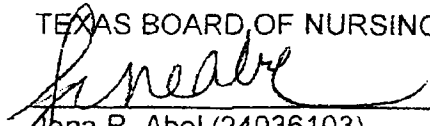
assist with her anger management or other psychological issues or substance abuse/chemical dependency issues⁶. She also has not taken full responsibility for her actions, as she continues to blame her daughter's hyperactivity (a medical condition) for the incident in question. She has not provided the Board with letters from her probation officer attesting to her character. She has not provided copies of the drug screens required under her probation agreement. While Respondent's criminal conduct has obviously affected her family, their support, no matter how heartfelt, cannot assure the Board that the Respondent is currently safe to practice nursing.

In order to deviate from the recommended sanction of revocation that is contained in the Board's Criminal Guidelines and the Board's Disciplinary Matrix, there must be sufficient mitigation evidencing the Respondent's ability to practice safely. The Respondent has provided no such evidence.

WHEREFORE, Staff requests that the ALJ amend the PFD by eliminating Conclusion of Law Number 8, re-designating Conclusion of Law Number 8 as a 'recommendation', and amending the recommendation to include revocation of the Respondent's nursing license.

Respectfully submitted,

TEXAS BOARD OF NURSING


Jena R. Abel (24036103)
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Austin, Texas 78701
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F: (512) 305-8101

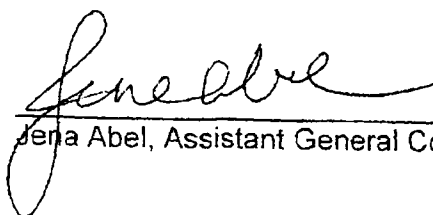
⁶ Although the Respondent completed her court mandated Parenting and Anger Management Course and Intensive Outpatient and Supportive Outpatient treatment and aftercare program, she has provided no evidence of continued sobriety or psychological counseling.

CERTIFICATE OF SERVICE

I hereby certify by my signature below that a true and correct copy of **Staff's Exceptions to the Proposal for Decision** has been provided by facsimile on this the 29th day of February, 2012, to:

Mayra L. Zelaya
c/o Dan Lype, Attorney
1602 East 7th St.
Austin, TX 78702

Fax: (512) 482-0164

A handwritten signature in cursive script, appearing to read "Jera Abel", is written over a horizontal line.

Jera Abel, Assistant General Counsel

SOAH DOCKET NO. 507-12-0846

IN THE MATTER OF PERMANENT
CERTIFICATE

NUMBER 732546 ISSUED TO

MAYRA L. ZELAYA

§
§
§
§
§
§

BEFORE THE
STATE OFFICE OF

ADMINISTRATIVE HEARINGS

RESPONDENT'S REPLY TO STAFF'S EXCEPTIONS TO PFD

COMES NOW, Mayra L. Zelaya, RN. (Respondent) and hereby files her reply to Staff's Exceptions to the ALJ's Proposal for Decision and in support thereof, would submit the following:

I.

REPLY TO STAFF'S EXCEPTIONS

The Respondent respectfully submits that Board's Staff's exceptions be denied. The Respondent believes that the ALJ's Proposal for Decision and recommendation in favor of a probated suspension is reasonable and consistent with both the record and applicable law.

Both parties are apparently in agreement as to the statutes, rules, and legal factors applicable to this case and the determination of the appropriate sanction; the parties differ only as to the result. These issues are addressed at length in the Respondent's Brief on Sanctions and Respondent's counsel does not feel it would be productive to completely rehash the same arguments in this reply. *See Respondent's Brief on Sanctions at 2-10.* Instead, the Respondent wishes to address a few of the specific arguments raised in the Petitioner's Exceptions.

In their Exceptions, Board Staff argue that the mitigating evidence submitted by

the Respondent is insufficient to warrant a sanction less than revocation. The principal factors identified by the Petitioner are:

1. The seriousness of the Respondent's criminal offense;
2. The risk that the Respondent will engage in threatening or harmful behavior with patients, particularly in stressful circumstances;
3. An alleged connection between the Respondent's criminal offenses and alcohol use;

1. Seriousness of the Respondent's Offense:

The Respondent has never disputed the seriousness of her felony offense. She accepted responsibility for her actions by agreeing to enter a plea of guilty and has since successfully completed the terms of her community supervision. In fact, Ms. Zelaya's decision to plead guilty was in a significant part motivated by her wish to protect her daughter from the stress and experience of being called to testify in her criminal case. Respondent's Exhibit No. 1. Furthermore, all of the remaining evidence indicates that the Respondent has made amends with her daughter and family and strives to be an excellent mother to her children. Respondent's Exhibit Nos. 1, 3-8.

While not wishing to ignore the seriousness of her felony offense, the Respondent has provided its factual background as this is necessarily relevant to any determination of her continued fitness to practice. The Board's own Disciplinary Guidelines for Criminal Conduct state that "each case is considered on its own merits" and then provide a long list of factors to be used by the Board "in its case-by-case analysis." Guidelines at 1-2 (attached). These include the nature and seriousness of the crime, the actual damages- physical or otherwise- resulting from the criminal activity, evidence of remorse, evidence

of current maturity and personal accountability, evidence of having learned from past mistakes, evidence of current ability to practice in accordance with the Nursing Practice Act, Board rules and generally acceptable standards of nursing, as well as numerous other factors. *Id.* at 1-2.

Pursuant to the guidelines adopted by the Board, in addition to the factors outlined elsewhere in the Board's rules and Chapter 53 of the Occupations Code, the Respondent provided to the Court the factual background and history of her felony offense. This included the events of the evening in question leading up to her brief physical struggle with her daughter, the actual facts of what occurred, the extent of the contact and harm to her daughter, her efforts to make amends and comply with the terms of her community supervision, her abilities and reputation as a mother, and the total absence of any issues with her nursing practice. These factors were all supported by statements from the Respondent, her daughter, her husband, as well as other individuals familiar with her offense and her character. Respondent's Exhibit Nos. 1-8.

All of these factors are pertinent to the Court's assessment on the issue of sanctions per the Board's own disciplinary guidelines and rules. All of these factors also point to the appropriateness of a probated suspension rather than revocation even given the undoubtedly serious nature of the Respondent's offense.

ii. The Risk Posed by the Respondent's Continued Practice as a Nurse:

The Petitioner also argues that the Respondent has submitted insufficient proof her continued practice as a nurse will not pose a danger to the public. Whether the Respondent can continue to work as a nurse consistent with patient and public safety is clearly the primary issue in determining an appropriate sanction and the Respondent

believes the Court sufficiently weighed this issue in her Proposal for Decision.

As argued in her original Brief on Sanctions and not rebutted by Board Staff, the Respondent has been licensed as a Registered Nurse since 2006 and has never received any complaints in regards to her work as a nurse. There is no evidence that the Respondent has ever assaulted or harmed her patients or reacted in an inappropriate way while under stress. The best evidence of the Respondent's ability to provide safe nursing care is her conduct both before and after her felony offense.

Absent some concrete showing that Ms. Zelaya cannot continue to work as a nurse without an undue risk of harm, the Respondent submits it would be inappropriate to deem her presumptively unsafe based on the offense itself. This would also be in conflict with the Board's rules, statutes, and disciplinary guidelines which provide for a careful case-by-case analysis and prescribe a whole host of factors to be considered by the Board when selecting a sanction. It is clear from the Proposal for Decision that the Court took into account these factors, including those favorable to Board Staff's position, in arriving at the ALJ's recommendation. Based on the totality of the evidence presented by both parties, as analyzed pursuant to the applicable statutes, rules and guidelines, the Court decided that the Respondent's continued practice as a nurse would not pose a risk of harm to her patients or the general public. The Respondent contends this result is consistent with the both the record and applicable law.

iii. Alleged Connection Between Respondent's Offenses and Alcohol Use:

Board Staff also claim that the Respondent's offenses indicate a pattern of alcohol abuse. There is no evidence linking the Respondent's felony offense with alcohol misuse. As a condition of her probation, the Respondent was required to undergo a drug and

alcohol evaluation, however, such evaluation did not result in any alcohol abuse or dependency diagnosis nor did it generate any referrals to treatment. The Respondent's misdemeanor DWI was a one-time occurrence which does not warrant disciplinary action under the Board's Disciplinary Guidelines for Criminal Conduct. Guidelines at 16. Moreover, by her own choice the Respondent has abstained from alcohol since her DWI offense, Respondent's Exhibit No. 1 at 2.

Finally, the Board routinely includes a requirement for regular random drug and alcohol screening in its Orders. If the Board feels sufficiently concerned by possible alcohol misuse, they are free to insert this as a condition of probation.

II.

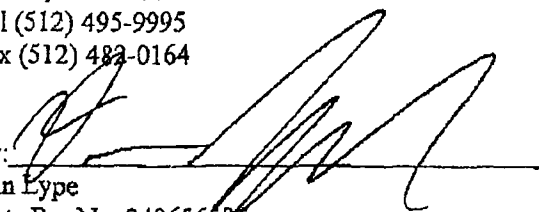
PRAYER FOR RELIEF

WHEREFORE PREMISES CONSIDERED, the Respondent respectfully prays that the honorable Administrative Law Judge enter an Order denying Board's Staff's Exceptions to the ALJ's Proposal for Decision.

Respectfully submitted,

LEICHTER LAW FIRM

1602 East 7th Street
Austin, Texas 78702
Tel (512) 495-9995
Fax (512) 482-0164

By: 
Dan Eype
State Bar No. 24065658

ATTORNEY FOR RESPONDENT
MAYRA ZELAYA

CERTIFICATE OF SERVICE

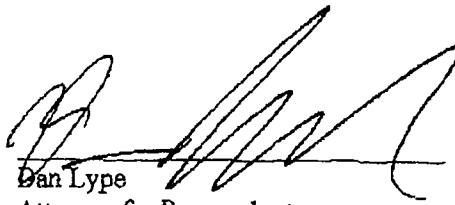
This is to certify that on March 15, 2012, a true and correct copy of the foregoing instrument (Respondent's Reply to Staff's Exceptions to PFD) was forwarded to the following individuals in the manner indicated below:

Jena Abel
Assistant General Counsel
Texas Board of Nursing
333 Guadalupe Street, Suite 3-460
Austin, TX 78701

Via Facsimile (512) 305-8101

Rommell Corro, Deputy Clerk
State Office of Administrative Hearings
300 West 15th Street, Suite 504
Austin, TX 78701-1649

Via Facsimile (512) 322-2061


Dan Lype
Attorney for Respondent
1602 East 7th Street
Austin, Texas 78702
Tel (512) 495-9995
Fax (512) 482-0164

SBN 24065658

Disciplinary Guidelines for Criminal Conduct

This document is provided by the Board to inform licensees and the public of the Board's view of the effect of the first commission of certain crimes on nurse licensure and applicants for licensure. In some instances, the document may provide guidance when multiple crimes are at issue. This list is not exhaustive. Additionally, for further information, please review the Nursing Practice Act (NPA), Texas Occupations Code ch. 301, Board's rules at 22 Texas Administrative Code chs. 211 - 227, and the Board's disciplinary policies located on the Board's web site, www.bnc.state.tx.us.

The Board may require evaluations from Board-approved evaluators to better determine the appropriate recommendation and/or to determine whether an individual is safe to practice nursing and able to comply with the NPA and Board's rules and regulations. The Board will also consider an offense under the law of another state, federal law, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense listed in this guideline. Other applicable laws and rules are Texas Occupations Code ch. 53 and 22 Texas Administrative Code §§ 213.27 - 213.30.

Each case is considered on its own merits. The following list includes some of the factors the Board will use in its case-by-case analysis:

- the nature and seriousness of the crime, i.e. absence of criminal plan or premeditation, presence of contributing influences, evidence of immature thought process/judgment at the time of activity, etc.;
- failure to disclose criminal offense to the Board;
- the actual damages, physical or otherwise, resulting from the criminal activity;
- the extent and nature of the person's past criminal activity;
- conduct evidences a lack of truthfulness or trustworthiness;
- the age of the person when the crime was committed;
- the amount of time that has elapsed since the person's last criminal activity;
- work activity of the person before and after the criminal activity;
- evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release;
- a record of steady employment and has supported his or her dependents;
- other evidence of the person's present fitness, including letters of recommendation from: prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; the sheriff or chief of police in the community where the person resides, and any other persons in contact with the person;
- paid all outstanding court costs, supervision fees, fines, and evidence of restitution to both victim and community;

- whether conduct indicates inability to practice nursing in an autonomous role with patients/clients, their families and significant others and members of the public who are or who may become physically, emotionally or financially vulnerable;
- evidence of remorse;
- evidence of current maturity and personal accountability;
- evidence of having learned from past mistakes;
- evidence of current support structures that will prevent future criminal activity;
- evidence of current ability to practice in accordance with the Nursing Practice Act, Board rules and generally accepted standards of nursing;
- the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved;
- the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of nursing practice;
- whether imprisonment followed a felony conviction, felony community supervision revocation, revocation of parole or revocation of mandatory supervision;
- conduct that results in the revocation of probation imposed because of criminal conduct;
- evidence of the licensee's safe practice;
- Expunction, nondisclosure of criminal offense;
- Successful completion of probation/community supervision;
- if criminal activity due to chemical dependency including alcohol, evidence of evaluation and treatment, after care and support group attendance (written verification of compliance with any treatment); and
- if criminal activity due to mental illness, evidence of evaluation, including a prognosis, by a psychologist or psychiatrist, evidence of treatment, including any medication (written verification of compliance with any treatment).

OFFENSE	PENALTY	PENAL CODE SECTION (or Crim. Pro. ch. 62)	If judicial order for conviction/deferred adjudication occurred 0-5 yrs. ago:	If judicial order for conviction or deferred adjudication occurred ≥ 5 yrs. ago and 5th yr. anniversary since release from probation has not occurred:	Rationale for How Crimes Relate to the Practice of Nursing:
*Abandonment/Endangerment of a Child	F	22.041	Deny/Revoke License	Deny/Revoke License	Offense Against the Person that the Nursing Practice Act has specifically identified as relating to nursing under § 301.4535.
*Agree to Abduct Child for Remuneration: Younger than 18	F	25.031	Deny/Revoke License	Deny/Revoke License	Offense Against the Person that the Nursing Practice Act has specifically identified as relating to nursing under § 301.4535.
*Aiding Suicide: Serious Bodily Injury/Death	F	22.08	Deny/Revoke License	Deny/Revoke License	Offense Against the Person that the Nursing Practice Act has specifically identified as relating to nursing under § 301.4535.
*Assault, Aggravated	F	22.02	Deny/Revoke License	Deny/Revoke License	Offense Against the Person that the Nursing Practice Act has specifically identified as relating to nursing under § 301.4535.
*Attempt, Conspiracy, or Solicitation of ch. 62 offense	M,F	ch. 62	Deny/Revoke License	Deny/Revoke License	Offense that the Nursing Practice Act has specifically identified as relating to nursing under § 301.4535.
*Burglary (if punishable under Penal Code § 30.02(d))	F	ch. 62 (§ 62.001(5)(D))	Deny/Revoke License	Deny/Revoke License	Offense that the Nursing Practice Act has specifically identified as relating to nursing under § 301.4535.
*Capital Murder	F	19.03	Deny/Revoke License	Deny/Revoke License	Offense Against the Person that the Nursing Practice Act has specifically identified as relating to nursing under § 301.4535.
*Child Pornography, Possession or Promotion	F	43.26(a),(c) (ch. 62)	Deny/Revoke License	Deny/Revoke License	Offense Against Public Order and Decency that the Nursing Practice Act has specifically identified as relating to nursing under § 301.4535.
*Indecency w/Child	F	21.11(ch. 62)	Deny/Revoke License	Deny/Revoke License	Offense Against the Person that the Nursing Practice Act has specifically identified as relating to nursing under § 301.4535.
*Indecent exposure x 2 (2d n/deferred)	M	21.08 (ch. 62)	Deny/Revoke License	Deny/Revoke License	Offense Against the Person that the Nursing Practice Act has specifically identified as relating to nursing under § 301.4535.

OFFENSE	PENALTY	PENAL CODE SECTION (or Crim. Pro. ch. 62)	If judicial order for conviction/deferred adjudication occurred 0-5 yrs. ago:	If judicial order for conviction or deferred adjudication occurred ≥5 yrs. ago and 5th yr. anniversary since release from probation has not occurred:	Rationale for How Crimes Relate to the Practice of Nursing:
*Injury to Child/Elderly/Disabled	P	22.04	Deny/Revoke License	Deny/Revoke License	Offense Against the Person that the Nursing Practice Act has specifically identified as relating to nursing under § 301.4535.
*Kidnapping	P	20.03, 20.04 (ch. 62)	Deny/Revoke License	Deny/Revoke License	Offense Against the Person that the Nursing Practice Act has specifically identified as relating to nursing under § 301.4535.
*Manslaughter	F	19.04	Deny/Revoke License	Deny/Revoke License	Offense Against the Person that the Nursing Practice Act has specifically identified as relating to nursing under § 301.4535.
*Murder	P	19.02	Deny/Revoke License	Deny/Revoke License	Offense Against the Person that the Nursing Practice Act has specifically identified as relating to nursing under § 301.4535.
*Online Solicitation of a Minor	F	33.021(b),(c),(d); (ch. 62)	Deny/Revoke License	Deny/Revoke License	Offense Against Property that the Nursing Practice Act has specifically identified as relating to nursing under § 301.4535.
*Prostitution, Compelling	F	43.05 (ch. 62)	Deny/Revoke License	Deny/Revoke License	Offense Against Public Order and Decency that the Nursing Practice Act has specifically identified as relating to nursing under § 301.4535.
*Protective Order, Violation	F	25.07, 25.071	Deny/Revoke License	Deny/Revoke License	Offense Against the Family that the Nursing Practice Act has specifically identified as relating to nursing under § 301.4535.
*Robbery	P	29.02	Deny/Revoke License	Deny/Revoke License	Offense Against Property that the Nursing Practice Act has specifically identified as relating to nursing under § 301.4535.
*Robbery, Aggravated	F	29.03	Deny/Revoke License	Deny/Revoke License	Offense Against Property that the Nursing Practice Act has specifically identified as relating to nursing under § 301.4535.
*Sale or Purchase of a Child	P	25.08	Deny/Revoke License	Deny/Revoke License	Offense Against the Family that the Nursing Practice Act has specifically identified as relating to nursing under § 301.4535.

OFFENSE	PENALTY	PENAL CODE SECTION (or Crim. Pro. ch. 62)	If judicial order for conviction/deferred adjudication occurred 0-5 yrs. ago:	If judicial order for conviction or deferred adjudication occurred ≥5 yrs. ago and 5th yr. anniversary since release from probation has not occurred:	Rationale for How Crimes Relate to the Practice of Nursing:
*Sexual Assault	F	22.011 (ch. 62)	Deny/Revoke License	Deny/Revoke License	Offense Against the Person that the Nursing Practice Act has specifically identified as relating to nursing under § 301.4535.
*Sexual Conduct, Prohibited	F	25.02 (ch. 62)	Deny/Revoke License	Deny/Revoke License	Offense Against the Family that the Nursing Practice Act has specifically identified as relating to nursing under § 301.4535.
*Sexual Assault, Aggravated	F	22.021 (ch. 62)	Deny/Revoke License	Deny/Revoke License	Offense Against the Person that the Nursing Practice Act has specifically identified as relating to nursing under § 301.4535.
*Sexual Performance by Child	F	43.25(b), 24(d) (ch. 62)	Deny/Revoke License	Deny/Revoke License	Offense Against Public Order and Decency that the Nursing Practice Act has specifically identified as relating to nursing under § 301.4535.
*Unlawful Restraint	F	20.02	Deny/Revoke License	Deny/Revoke License	Offense Against the Person that the Nursing Practice Act has specifically identified as relating to nursing under § 301.4535.
Arson	F	28.02(d)	Deny/Revoke License	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke	Offense Against Property that involves intent to destroy or damage property and involves knowledge that financial or personal harm may result. Being a nurse and having autonomy in the care of a vulnerable population may give that individual an opportunity to exploit the patient, employer, or other entities dependent on the professional character of a nurse. Patients would be vulnerable to similar acts involving intent to destroy property or inflict financial harm.
Assault	F	22.01(b)	Deny/Revoke License	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke	Offense Against the Person that involves intentionally, knowingly, or recklessly causing bodily injury to another person. Stress inherent in the practice of nursing, and possible combativeness of patients in vulnerable states requires the control of impulses that lead to an assaultive offense. A

OFFENSE	PENALTY	PENAL CODE SECTION (or Crim. Pro. ch. 62)	If judicial order for conviction/deferred adjudication occurred 0-5 yrs. ago:	If judicial order for conviction or deferred adjudication occurred 25 yrs. ago and 5th yr. anniversary since release from probation has not occurred:	Rationale for How Crimes Relate to the Practice of Nursing:
Burglary	F	30.02	Deny/Revoke License		person who has committed assaultive offenses raises serious question regarding ability to provide safe patient care. Patients could be vulnerable to similar acts involving intent to injure or reckless behavior that would risk injury.
				Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke	Offense Against Property that involves entering another's property w/intent to commit theft or harm to another person. Nurses have access to persons who are vulnerable due to illness or injury. Patients are frequently in a vulnerable position to be exploited. Patients frequently bring valuables (medications, money, jewelry, items of sentimental value, checkbook, or credit cards) with them to a health care facility. Nurses frequently provide care in private homes and home-like settings where all of the patient's property and valuables are accessible to the nurse. Nurses frequently provide care in settings without direct supervision. Theft crimes raise serious concerns whether a nurse/nurse applicant can be trusted to respect a patient's property/possessions in the future. A nurse license would provide unfettered opportunity and access to a patient's person and property.
Criminal Attempt or Conspiracy	F	15.01, 15.02	Deny/Revoke License	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke	Inchoate Offense. Please refer to the rationale listed in the intended offense.
Criminal Mischief	F	28.03	Deny/Revoke License	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke	Offense Against Property that involves destruction to or damage of property and involves knowledge that financial or personal harm may result. Being a nurse and having autonomy in the care of a vulnerable

OFFENSE	PENALTY	PENAL CODE SECTION (or Crim. Pro. ch. 62)	If judicial order for conviction/deferred adjudication occurred 0-5 yrs. ago:	If judicial order for conviction or deferred adjudication occurred ≥5 yrs. ago and 5th yr. anniversary since release from probation has not occurred:	Rationale for How Crimes Relate to the Practice of Nursing:
Criminally negligent homicide	F	19.05	0-3 yrs old Deny/Revoke; 4-5 yrs issue license w/ sanctions if not on felony probation	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke	population may give that individual an opportunity to exploit the patient, employer, or other entities dependent on the professional character of a nurse. Patients would be vulnerable to similar acts of property damage or personal injury.
Drug Violations	F	HSC 481, 482, 483	0-3 yrs old Deny/Revoke/ Suspend; 4-5 yrs issue license w/ sanctions or TPAPN	Issue License w/ stipulations or issue TPAPN Order (if chemically dependent) if not on felony probation; if on felony probation, then Deny/Revoke.	Crimes involving drugs that include the possession, misappropriation and misuse of controlled substances as regulated by Chs. 481, 482 and 483, Health & Safety Code. Nursing allows you access to medications, Rx pads, and physician or DEA authorizations to obtain them. Nurses handle and administer drugs. Controlled substances are ubiquitous in nursing practice. A person who has engaged in behaviors in violation of controlled substances laws raises concerns about the ability to practice nursing safely. A nurse license provides access and opportunity to repeat this type of criminal conduct. Additionally, violations of controlled substances laws which have resulted in use and abuse of controlled substances may affect

OFFENSE	PENALTY	PENAL CODE SECTION (or Crim. Pro. ch. 62)	If judicial order for conviction/deferred adjudication occurred 0-5 yrs. ago:	If judicial order for conviction or deferred adjudication occurred 2.5 yrs. ago and 5th yr. anniversary since release from probation has not occurred:	Rationale for How Crimes Relate to the Practice of Nursing:
Forgery	F	32.21(d),(e)	0-3 yrs old Deny/Revoke; 4-5 yrs issue license w/ sanctions if not on felony probation	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke	a nurse's cognitive ability to perform the duties of the occupation safely. Offense Against Property that involves forging a writing with an intent to defraud or harm another. By definition this conduct is deemed unprofessional or dishonorable conduct as defined in TOC 301.452(b)(10). Professional character is required in nursing and the nurses must exhibit behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity. Patients frequently bring valuables (checkbook, or credit cards) with them to a health care facility. Nurses frequently provide care in private homes and home-like settings without supervision where all of the patient's property and valuables are accessible to the nurse and there would be constant opportunity to commit similar offenses as a nurse. Fraud and intent to deceive raises serious concerns about a person's professional character and whether the nurse can be trusted to respect a patient's property/possessions.
Improper Relationship between Educator and Student	F	21.12	Deny/Revoke License	Issue License w/ stipulations if not on felony probation, if on felony probation, then Deny/Revoke	Offense Against the Person that involves a teacher engaging in sexual contact with a primary or secondary school student. Such a violation of trust given the disparate relationship between a student and teacher raises serious public concern. Nurses are frequently in situations where they provide intimate care to vulnerable patients often having contact with partially clothed or fully undressed patients, including minors. Nurses must maintain appropriate boundaries in the nurse - patient relationship. Sexual misconduct that involves violation of the

OFFENSE	PENALTY	PENAL CODE SECTION (or Crim. Pro. ch. 62)	If judicial order for conviction/deferred adjudication occurred 0-5 yrs. ago:	If judicial order for conviction or deferred adjudication occurred ≥5 yrs. ago and 5th yr. anniversary since release from probation has not occurred:	Rationale for How Crimes Relate to the Practice of Nursing:
Improper Photography	P	21.15	Deny/Revoke License	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke	boundaries between teacher and student raise serious concerns that similar behavior may be repeated in the nurse - patient relationship with even more vulnerable victims. (Note: If required to register on sex offender data base, subject to § 301.4535) Offense Against the Person that involves engaging in the secret photography of another person for purposes of sexual gratification. Such a violation of trust and secret activity raises serious concern that such behaviors may be repeated in nursing care. Nurses are frequently in situations where they provide intimate care to vulnerable patients often having contact with partially clothed or fully undressed patients. Nurses must maintain appropriate boundaries in the nurse - patient relationship. Sexual misconduct involving the secret photography of another person for prurient interests raises serious concerns that similar behavior may be repeated by a nurse with even more vulnerable victims.
Insurance Fraud: Intent to Defraud	P	35.02(a-1), (d)	0-3 yrs old Deny/Revoke; 4-5 yrs issue license w/ sanctions if not on felony probation	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke	Offense Against Property that involves knowingly making a false material representation to an insurance company with the intent of defrauding the insurance company of at least \$1500.00. Professional character is required in nursing and the nurses must exhibit behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity. Patients frequently bring valuables (medications, money, jewelry, items of sentimental value, checkbook, or credit cards) with them to a health care facility. Nurses frequently provide care in private homes and

OFFENSE	PENALTY	PENAL CODE SECTION (or Crim. Pro. ch. 62)	If judicial order for conviction/deferred adjudication occurred 0-5 yrs. ago:	If judicial order for conviction or deferred adjudication occurred ≥5 yrs. ago and 5th yr. anniversary since release from probation has not occurred:	Rationale for How Crimes Relate to the Practice of Nursing:
Insurance Fraud: Claim > \$500	F	35.02(c)	0-3 yrs old Deny/Revoke; 4-5 yrs issue license w/ sanctions if not on felony probation	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke	home-like settings without supervision where all of the patient's property and valuables are accessible to the nurse and there would be constant opportunity to commit similar offenses as a nurse. Fraud and intent to deceive raises serious concerns about a person's professional character and whether the nurse can be trusted to respect a patient's property/possessions.
Medicaid Fraud > \$1500	P	35A.02(b)(4)-(7)	0-3 yrs old Deny/Revoke; 4-5 yrs issue license w/ sanctions if not on felony probation	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke (See Note below)	Offense Against Property that involves intent to defraud or deceive another of at least \$500 by using information known to contain false or misleading material information. By definition this conduct is deemed unprofessional or dishonorable conduct as defined in TOC 301.452(b)(10). Professional character is required in nursing and the nurses must exhibit behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity. Patients frequently bring valuables with them to a health care facility and there is constant opportunity to commit similar offenses as a nurse. Nurses frequently provide care in private homes and home-like settings without supervision where all of the patient's property and valuables are accessible to the nurse. Fraud and intent to deceive raises serious concerns about a person's professional character and whether the nurse can be trusted to respect a patient's property/possessions.

OFFENSE	PENALTY	PENAL CODE SECTION (or Crim. Pro. ch. 62)	If judicial order for conviction/deferred adjudication occurred 0-5 yrs. ago:	If judicial order for conviction or deferred adjudication occurred ≥ 5 yrs. ago and 5th yr. anniversary since release from probation has not occurred:	Rationale for How Crimes Relate to the Practice of Nursing:
					of a hospital, a nursing facility, skilled nursing facility, hospice, an intermediate care facility for the mentally retarded, assisted living facility, or a home health agency. Professional character is required in nursing, and the nurse must exhibit behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity. Patients frequently bring valuables with them to a health care facility. Nurses frequently provide care in private homes and home-like settings without supervision where all of the patient's property and valuables are accessible to the nurse. Nurses often manage and own certified nursing facilities and home health agencies. The commission of Medicaid fraud raises serious concerns of professional character and whether the same misconduct will be repeated with respect to a patient's property/possessions, future Medicaid charges, or in facility certification processes.
Money Laundering ≥ \$1500	F	34.02(e)(1)-(4)	0-3 yrs old Deny/Revoke; 4-5 yrs issue license w/ sanctions if not on felony probation	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke	Offense Against Property that involves knowingly engaging in a criminal enterprise to conceal, invest or possess at least \$1500.00 known to be the proceeds of illegal activity. Professional character is required in nursing and the nurses must exhibit behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity. In nursing, patients frequently bring valuables with them to a health care facility. Nurses frequently provide care in private homes and home-like settings without supervision where all of the patient's property and valuables are accessible to the nurse. A person who has demonstrated behavior associated with

OFFENSE	PENALTY	PENAL CODE SECTION (or Crim. Pro. ch. 62)	If judicial order for conviction/deferred adjudication occurred 0-5 yrs. ago:	If judicial order for conviction or deferred adjudication occurred ≥ 5 yrs. ago and 5th yr. anniversary since release from probation has not occurred:	Rationale for How Crimes Relate to the Practices of Nursing:
Obascrity, Wholesale promotion	F	43.23(a),(h)	0-3 yrs old Deny/Revoke; 4-5 yrs issue license w/ sanctions if not on felony probation	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke	<p>profiteering from criminal enterprises raises questions of professional character and whether similar behavior will be repeated with respect to a patient's property.</p> <p>Offense Against Public Order and Decency that involves the intent to wholesale promote any obscene material, obscene device, or activity. Nurses are frequently in situations where they provide intimate care to vulnerable patients often having contact with partially clothed or fully undressed patients. Nurses must maintain appropriate boundaries in the nurse - patient relationship. The need or desire to profit from sexually explicit and obscene material raises concerns that sexual misconduct may be committed through exploitation of patients.</p>
Prostitution X 3 or Aggravated Promotion	F	43.02, 43.04	Deny/Revoke License	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke	<p>Offense Against Public Order and Decency involving repeatedly offering to engage in sexual conduct for a fee or promoting others to engage in sex for a fee. Professional character is required in nursing and the nurses must exhibit behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity. Nurses are in the position to have access to privileged information and opportunity to exploit patient vulnerability both financially and sexually. There are appropriate boundaries in the nurse - patient relationship which nurses must clearly understand and be trusted not to cross. Repeated acts of illegal sexual conduct raise serious questions regarding the individual's ability to provide safe, competent care to</p>

OFFENSE	PENALTY	FENAL CODE SECTION (or Crim. Pro. ch. 62)	If judicial order for conviction/deferred adjudication occurred 0-5 yrs. ago:	If judicial order for conviction or deferred adjudication occurred ≥5 yrs. ago and 5th yr. anniversary since release from probation has not occurred:	Rationale for How Crimes Relate to the Practice of Nursing:
Resisting Arrest, Use of Deadly Weapon	F	38.03(d)	Deny/Revoke License	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke	vulnerable patients and avoid exploitation of patients. Offense Against Public Administration that involves using a deadly weapon against another person. Stress inherent in the practice of nursing, and possible combativeness of patients in vulnerable states requires the control of impulses that lead to an assaultive offense. A person who has committed assaultive offenses raises serious question regarding ability to provide safe patient care. Patients could be vulnerable to similar acts involving intent to injure or reckless behavior that would risk injury.
Stalking	F	42.072(b)	Deny/Revoke License	Issue License w/ stipulations if not on felony probation, if on felony probation, then Deny/Revoke	Offense Against Public Order and Decency that involves a person knowingly engaging in repetitive conduct that is intended to be threatening in nature and imposing a fear of bodily injury or death on another person. The motivations of an individual who would engage in such threatening behavior raises questions regarding his/her ability to provide safe, competent care to vulnerable patients. Such behavior is unprofessional/ dishonorable conduct that is likely to injure the public. TOC 301.452(b)(10).
Tampering w/ Government Record	F	37.10	0-3 yrs old Deny/Revoke; 4-5 yrs issue license w/ sanctions if not on felony probation	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke	Offense Against Public Administration that requires an intent to defraud or harm another by destroying or falsifying a government record. Professional character is required in nursing and nurses must exhibit behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity. The Board depends on its own government records

OFFENSE	PENALTY	PENAL CODE SECTION (or Crim. Pro. ch. 62)	If judicial order for conviction/deferred adjudication occurred 0-5 yrs. ago:	If judicial order for conviction or deferred adjudication occurred ≥5 yrs. ago and 5th yr. anniversary since release from probation has not occurred:	Rationale for How Crimes Relate to the Practice of Nursing:
Theft ≥ \$1500	P	31.03(c)(4)-(7)	Deay/Revoke License	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deay/Revoke	in the licensing/ authorization process that contain several questions that might affect the ability of an individual to function safely as a nurse. Tampering w/ government records, including falsification of an application for licensure to the Board, raises concerns about the person's propensity to lie, and the likelihood that such conduct will continue in the practice of nursing. Nurses must report patient condition, record objective/subjective information, provide patients with information, and report errors in the nurse's own practice or conduct. Honesty, accuracy and integrity are personal traits valued by the nursing profession, and considered imperative for the provision of safe and effective nursing care.
					Offense Against Property that involves an intent to deprive person of his/her property without his/her consent. Theft is a crime of moral turpitude. Patients under the care of a nurse are vulnerable by virtue of illness or injury, and the dependent nature of the nurse - patient relationship. Patients frequently bring valuables (medications, money, jewelry, items of sentimental value, checkbook, or credit cards) with them to a health care facility. Nurses frequently provide care in private homes and home-like settings where all of the patient's property and valuables are accessible to the nurse. Nurses frequently provide care in settings without direct supervision. Theft crimes raise serious concerns whether a nurse/nurse applicant can be trusted to respect a patient's property/possessions in the future. A nurse license would provide unfettered

OFFENSE	PENALTY	PENAL CODE SECTION (or Crim. Pro. ch. 62)	If judicial order for conviction/deferred adjudication occurred 8-5 yrs. ago:	If judicial order for conviction or deferred adjudication occurred 2-5 yrs. ago and 5th yr. anniversary since release from probation has not occurred:	Rationale for How Crimes Relate to the Practice of Nursing:
Vehicle, Unauthorized Use	P	31.07	0-3 yrs old Deny/Revoke; 4-5 yrs issue license w/ sanctions if not on felony probation	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke	opportunity and access to a patient's person and property. Offense Against Property that involves an intentional or knowing act to deprive a person of his/her vehicle without his/her consent. Theft is a crime of moral turpitude. Patients under the care of a nurse are vulnerable by virtue of illness or injury, and the dependent nature of the nurse - patient relationship. Patients frequently bring valuables (medications, money, jewelry, items of sentimental value, checkbook, or credit cards) with them to a health care facility. Nurses frequently provide care in private homes and home-like settings where all of the patient's property and valuables are accessible to the nurse. Nurses frequently provide care in settings without direct supervision. Theft crimes raise serious concerns whether a nurse/nurse applicant can be trusted to respect a patient's property/possessions in the future.
Assault	M	22.01(a)(1), (c)	0-3 yrs old issue w/sanctions; 4-5 yrs issue license	Issue License	Offense Against the Person that involves causing bodily injury to another person. Stress inherent in the practice of nursing, and possible combativeness of patients in vulnerable states requires the control of impulses that lead to an assaultive offense. A person who has committed assaultive offenses raises serious question regarding ability to provide safe patient care.
Driving While Intoxicated X 3	M, P	49.09	0-3 yrs old Deny/Revoke/ Suspend; 4-5 yrs issue license w/	Deny license or require proof of completion of TPAPN or TPAPN Order	Offense Against Public Health, Safety, and Morals that by the repetitiveness of the conduct indicates a possible issue with substance abuse or chemical dependency

OFFENSE	PENALTY	PENAL CODE SECTION (or Crim. Pro. ch. 62)	If judicial order for conviction/deferred adjudication occurred 0-5 yrs. ago:	If judicial order for conviction or deferred adjudication occurred ≥5 yrs. ago and 5th yr. anniversary since release from probation has not occurred:	Rationale for How Crimes Relate to the Practice of Nursing:
Driving While Intoxicated X 2	M, F	49.09	sanctions or TPAPN		which may affect the nurse's ability to safely perform his/her duties and/or threaten public safety. Nurses who are chemically dependent or who abuse drugs or alcohol and whose judgment may be impaired while caring for patients are at risk for harming patients and demonstrate a potential inability to practice nursing with reasonable skill and safety.
Drug Violations	M	Health & Safety Code chs 481, 482, 483	0-3 yrs old issue w/sanctions or issue TPAPN Order (if appropriate w/chemically dependent); 4-5 yrs issue license w/stipulations if proof of successful treatment and one year sobriety	Deny license or require proof of completion of TPAPN or TPAPN Order	Offense Against Public Health, Safety, and Morals that by the repetitiveness of the conduct indicates a possible issue with substance abuse or chemical dependency which may affect the nurse's ability to safely perform his/her duties and/or threaten public safety. Nurses who are chemically dependent or who abuse drugs or alcohol and whose judgment may be impaired while caring for patients are at risk for harming patients and demonstrate a potential inability to practice nursing with reasonable skill and safety.
			Issue License w/ Stipulations unless proof of successful treatment and five years of sobriety		Crimes involving drugs include the possession, misappropriation and misuse of controlled substances as regulated by Chs. 481, 482 and 483, Health & Safety Code. Nursing allows you access to medications, Rx pads, and physician or DEA authorizations to obtain them. Nurses handle and administer drugs. A person who has engaged in behaviors in violation of a controlled substances act raises concerns about the ability to practice nursing given that a nurse license provides access and opportunity to repeat criminal conduct. Violations of controlled substances act which have resulted in use and abuse of controlled substances may affect a

OFFENSE	PENALTY	PENAL CODE SECTION (or Crim. Pro. ch. 62)	If judicial order for conviction/deferred adjudication occurred 0-5 yrs. ago:	If judicial order for conviction or deferred adjudication occurred 5 yrs. ago and 5th yr. anniversary since release from probation has not occurred:	Rationale for How Crimes Relate to the Practice of Nursing:
False Report or Statement	M, F	32.32, 42.06	0-3 yrs old Deny/Revoke; 4-5 yrs issue license w/ sanctions if not on felony probation; Deny/Revoke if on felony probation	Issue License w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke	nurse's cognitive ability to perform the duties of the occupation. Offense Against Property that involves intentionally or knowingly making a false material representation to obtain money or property. Professional character is required in nursing and the nurses must exhibit behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity. Patients frequently bring valuables (medications, money, jewelry, items of sentimental value, checkbook, or credit cards) with them to a health care facility. Nurses frequently provide care in private homes and home-like settings without supervision where all of the patient's property and valuables are accessible to the nurse and there would be constant opportunity to commit similar offenses as a nurse. Fraud and intent to deceive raises serious concerns about a person's professional character and whether the nurse can be trusted to respect a patient's property/possessions.
Harassment	M	42.07	0-3 yrs old issue w/sanctions; 4-5 yrs issue license	Issue License	Offense Against Public Order and Decency that involves intent to alarm, abuse, or torment another person. It also may involve threats to inflict bodily injury on the person or to commit a felony against the person, a member of his family or household, or his property. Patients under the care of a nurse are vulnerable by virtue of illness or injury, and the dependent nature of the nurse - patient relationship. Nurses are frequently in situations where they provide intimate care to patients and are in the position to have access to privileged information and opportunity to

OFFENSE	PENALTY	PENAL CODE SECTION (or Crim. Pro. ch. 62)	If judicial order for conviction/deferred adjudication occurred 0-5 yrs. ago:	If judicial order for conviction or deferred adjudication occurred ≥5 yrs. ago and 5th yr. anniversary since release from probation has not occurred:	Rationale for How Crimes Relate to the Practice of Nursing:
Insurance Fraud: Claim ≤ \$500	M	35.02 (c)(1)-(3)	0-3 yrs old issue w/sanctions; 4-5 yrs issue license	Issue license	exploit patient vulnerability. There are appropriate boundaries in the nurse - patient relationship which nurses must clearly understand and be trusted not to cross. A person who has committed harassment against another person raises concerns that similar behaviour may be repeated to exploit or harm vulnerable patients.
Medicaid Fraud < \$1500	M	35A.02(b)(2)-(3)	0-3 yrs old issue w/sanctions; 4-5 yrs issue license	Issue license (See Note below)	Offense Against Property that involves an intent to defraud or deceive another by using information known to contain false or misleading material information which by its own definition is deemed unprofessional or dishonorable conduct as defined in TOC 301.452(b)(10). Professional character is required in nursing and the nurses must exhibit behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity. Patients frequently bring valuables with them to a health care facility. Nurses frequently provide care in private homes and home-like settings without supervision where all of the patient's property and valuables are accessible to the nurse. Fraud and intent to deceive raises serious concerns about a person's professional character and whether the nurse can be trusted to respect a patient's property/possessions.
					Offense Against Property that involves knowingly making a false material representation with the intent of recovering Medicaid payments of less than \$1500.00 which would not be authorized but for the misrepresentations. The offense may also involve seeking certification of a hospital, a nursing facility, skilled nursing facility;

OFFENSE	PENALTY	PENAL CODE SECTION (or Crim. Pro. ch. 62)	If judicial order for conviction/deferred adjudication occurred 0-5 yrs. ago:	If judicial order for conviction or deferred adjudication occurred ≥5 yrs. ago and 5th yr. anniversary since release from probation has not occurred:	Rationale for New Crimes Relate to the Practice of Nursing:
Prostitution or Promotion of	M	43.02	0-3 yrs old issue w/sanctions; 4-5 yrs issue license	Issue License	hospice; an intermediate care facility for the mentally retarded; assisted living facility; or a home health agency. Professional character is required in nursing and the nurses must exhibit behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity. Patients frequently bring valuables with them to a health care facility. Nurses frequently provide care in private homes and home-like settings without supervision where all of the patient's property and valuables are accessible to the nurse. Nurses are often in the position to run and often own certified nursing facilities and home health agencies. The commission of Medicaid fraud raises serious concerns of professional character and whether the same misconduct will be repeated with respect to a patient's property/possessions and future Medicaid charges.
					Offense Against Public Order and Decency involving offering to engage in sexual conduct for a fee or promotes others to engage in sex for a fee. Professional character is required in nursing and the nurses must exhibit behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity. Nurses are in the position to have access to privileged information and opportunity to exploit patient vulnerability both financially and sexually. There are appropriate boundaries in the nurse - patient relationship which nurses must clearly understand and be trusted not to cross. Repeated acts of illegal sexual conduct raise serious questions regarding the individual's ability to provide safe, competent care to vulnerable patients and

OFFENSE	PENALTY	PENAL CODE SECTION (or Crim. Pro. ch. 62)	If judicial order for conviction/deferred adjudication occurred 0-5 yrs. ago:	If judicial order for conviction or deferred adjudication occurred 2.5 yrs. ago and 5th yr. anniversary since release from probation has not occurred:	Rationale for How Crimes Relate to the Practices of Nursing:
Protective Order, Violation	M	25.07, 38.112	0-3 yrs old issue w/sanctions; 4-5 yrs issue license	Issue License	the necessary professional character to be a nurse. Offense Against the Family identified by § 301.4535 as directly affecting the practice of nursing. It also may involve threats to inflict bodily injury on the person or to commit a felony against the person, a member of his family or household, or his property. Patients under the care of a nurse are vulnerable by virtue of illness or injury, and the dependent nature of the nurse - patient relationship. Nurses are frequently in situations where they provide intimate care to patients and are in the position to have access to privileged information and opportunity to exploit patient vulnerability. There are appropriate boundaries in the nurse - patient relationship which nurses must clearly understand and be trusted not to cross. A person who has committed harassment against another person raises concerns that similar behaviour may be repeated to exploit or harm vulnerable patients.
Resisting Arrest	M	38.03(a)	0-3 yrs old issue w/sanctions; 4-5 yrs issue license	Issue License	Offense Against Public Administration that involves intentionally obstructing or preventing an arrest by using force against another person. Stress inherent in the practice of nursing, and possible combativeness of patients in vulnerable states requires the control of impulses that lead to an assaultive offense. A person who has committed assaultive offenses raises serious question regarding ability to provide safe patient care. Patients could be vulnerable to similar acts involving intent to injure or reckless behavior that would risk injury.

OFFENSE	PENALTY	PENAL CODE SECTION (or Crim. Pro. ch. 62)	If judicial order for conviction/deferred adjudication occurred 0-5 yrs. ago:	If judicial order for conviction or deferred adjudication occurred ≥5 yrs. ago and 5th yr. anniversary since release from probation has not occurred:	Rationale for How Crimes Relate to the Practice of Nursing:
Criminal Trespass	MA	30.05(d)	Issue license w/ sanctions	Issue License	Offense Against Property that involves entering or remaining on or in the property of another without consent. Nurses frequently provide care in private homes and home-like settings where all of the patient's property and valuables are accessible to the nurse. Nurses frequently provide care in settings without direct supervision. Patients under the care of a nurse are vulnerable by virtue of illness or injury, and the dependent nature of the nurse - patient relationship. Trespass crimes raise serious concerns whether a nurse/nurse applicant can be trusted to respect a patient's property/possessions in the future.
Cruelty to Animals	MA, F	42.09	Issue license w/ sanctions if misdemeanor or not on felony probation; Deny/Revoke if on felony probation	Issue License if misdemeanor or w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke	Offense Against Public Order and Decency that involves the intentional or knowing infliction of torture on, neglect of, or unreasonable abandonment of a domesticated or captured animal. Animals are vulnerable by nature of their reliance on people for their care and provision. Patients under the care of a nurse are vulnerable by virtue of illness or injury, and the dependent nature of the nurse - patient relationship. Persons who are especially vulnerable include the elderly, children, the mentally ill, sedated and anesthetized patients, those whose mental or cognitive ability is compromised and patients who are disabled or immobilized. When harm occurs to these individuals, many times they are unable to communicate the harm inflicted. Individuals who commit crimes involving cruelty to animals raise serious concerns whether they are capable of providing autonomous care to vulnerable individuals in their care.

OFFENSE	PENALTY	PENAL CODE SECTION (or Crim. Pro. ch. 62)	If judicial order for conviction/deferred adjudication occurred 0-5 yrs. ago:	If judicial order for conviction or deferred adjudication occurred ≥ 5 yrs. ago and 5th yr. anniversary since release from probation has not occurred:	Rationale for How Crimes Relate to the Practice of Nursing:
Deadly conduct	MA	22.05(a)	Issue license w/ sanctions	Issue License	Offense Against the Person that involves causing bodily injury to another person. Stress inherent in the practice of nursing, and possible combativeness of patients in vulnerable states requires the control of impulses that lead to an assaultive offense. A person who has committed assaultive offenses raises serious question regarding ability to provide safe patient care.
Forgery	MA	32.21(c)	Issue license w/ sanctions	Issue License	Offense Against Property that involves an intent to defraud or harm another which by its own definition is deemed unprofessional or dishonorable conduct as defined in TDC 301.452(b)(10). Professional character is required in nursing and the nurses must exhibit behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity. Patients frequently bring valuables (checkbook, or credit cards) with them to a health care facility. Nurses frequently provide care in private homes and home-like settings without supervision where all of the patient's property and valuables are accessible to the nurse and there would be constant opportunity to commit similar offenses as a nurse. Fraud and intent to deceive raises serious concerns about a person's professional character and whether the nurse can be trusted to respect a patient's property/possessions.
Obscenity, Participates	MA, F	43.23(c),(h)	0-3 yrs old Deny/Revoke; 4-5 yrs issue license w/ sanctions if not on felony probation	Issue License if misdemeanor or w/ stipulations if not on felony probation; if on felony probation, then Deny/Revoke	Offense Against Public Order and Decency that involves the intent to wholesale promote any obscene material or obscene device. Nurses are frequently in situations where they provide intimate care to vulnerable patients often having contact with partially clothed or fully undressed patients. Nurses must

OFFENSE	PENALTY	PENAL CODE SECTION (or Crim. Pro. ch. 62)	If judicial order for conviction/deferred adjudication occurred 0-5 yrs. ago:	If judicial order for conviction or deferred adjudication occurred ≥5 yrs. ago and 5th yr. anniversary since release from probation has not occurred:	Rationale for How Crimes Relate to the Practice of Nursing:
Theft ≤ \$1499	MA	31.03(e)(1) - (3)	0-3 yrs old issue w/sanctions; 4-5 yrs issue license (stipulations if theft during practice of nursing)	Issue license	maintain appropriate boundaries in the nurse - patient relationship which nurses must clearly understand and be trusted not to cross. Sexual misconduct involving the secret photography of another person for prurient interests raises serious concerns that similar behavior may be repeated by a nurse with even more vulnerable victims. Offense Against Property that involves an intent to deprive person of his/her property without his/her consent. Theft is a crime of moral turpitude. Patients under the care of a nurse are vulnerable by virtue of illness or injury, and the dependent nature of the nurse - patient relationship. Patients frequently bring valuables (medications, money, jewelry, items of sentimental value, checkbook, or credit cards) with them to a health care facility. Nurses frequently provide care in private homes and home-like settings where all of the patient's property and valuables are accessible to the nurse. Nurses frequently provide care in settings without direct supervision. Crimes of theft raise serious concerns whether a nurse/nurse applicant can be trusted to respect a patient's property/possessions in the future. A nurse license would provide unfettered opportunity and access to a patient's person and property.
<u>Terroristic Threat</u>	M, F	22.07	0-3 yrs old issue w/sanctions; 4-5 yrs	Issue License	Offense Against Persons that involves threatening violence to persons or property.

OFFENSE	PENALTY	PENAL CODE SECTION (or Crim. Pru. ch. 62)	If judicial order for conviction/deferred adjudication occurred 0-5 yrs. ago:	If judicial order for conviction or deferred adjudication occurred ≥5 yrs. ago and 5th yr. anniversary since release from probation has not occurred:	Rationale for How Crimes Relate to the Practice of Nursing:
Criminal Trespass	MB	30.05(a)	0-3 yrs old issue w/sanctions; 4-5 yrs issue license	issue license	Stress inherent in the practice of nursing, and possible combativeness of patients in vulnerable states requires the control of impulses that lead to an assaultive offense. A person who has committed assaultive offenses raises serious question regarding ability to provide safe patient care. Patients could be vulnerable to similar acts involving intent to injure or reckless behavior that would risk injury.
Aiding Suicide	MC	22.08	0-3 yrs old issue w/sanctions; 4-5 yrs issue license	Issue license	Offense Against Property that involves an individual who enters or remains on a property without the consent of another. Nurses frequently provide care in private homes and home-like settings and frequently provide care in settings without direct supervision. Offense Against the Person identified by § 301.4535 as directly affecting the practice of nursing.

* Texas Occupations Code § 301.4535 (Nursing Practice Act) offenses (effective September 1, 2005 - bars to nurse licensure). Licensees or applicants for licensure receiving judicial orders for designated offenses on or after September 1, 2005, shall not be licensed, and/or shall not be renewed and not considered for re-licensure until at least the fifth anniversary following release from probation or community service has occurred (TOC § 301.4535). This does not prevent a nurse or applicant for licensure from exercising any right or privilege to have a formal hearing as established by virtue of Texas Occupations Code § 301.454(c).

Note: Licensees may be excluded from working in various federally-funded facilities for convictions for program-related fraud and patient abuse, licensing board actions and default on Health Education Assistance Loans. The Office of Inspector General states that "[n]o payment will be made by any Federal health care program for any items or services furnished, ordered, or prescribed by an excluded individual or entity. Federal health care programs include Medicare, Medicaid, and all other plans and programs that provide health benefits funded directly or indirectly by the United States (other than the Federal Employees Health Benefits Plan). For exclusions implemented prior to August 4, 1997, the exclusion covers the following Federal health care programs: Medicare (Title XVIII), Medicaid (Title XIX), Maternal and Child Health Services Block Grant (Title V), Block Grants to States for Social Services (Title XX) and State Children's Health Insurance (Title XXX) programs." For more information, see <http://www.oig.hhs.gov/fraud/exclusions/aboutexclusions.html>, and 1 Tex. Admin. Code §§ 371.1655 & 371.1657 (mandatory and permissive exclusions from Medicaid and Title V, XIX, XX, and CHIP programs by the Texas Health and Human Services Commission, Office of Inspector General).

The Board's recommendation regarding licensure is independent of any decision by an employer or potential employer to hire a licensed nurse with a criminal history.

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

March 27, 2012

Katherine A. Thomas, M.N., R.N.
Executive Director
Texas Board of Nursing
333 Guadalupe, Tower III, Suite 460
Austin, Texas 78701

VIA FACSIMILE 512/305-8101

**RE: Docket No. 507-12-0846, In The Matter of Permanent Certificate
Number 732546 Issued to Mayra L. Zelaya, R.N.**

Dear Ms. Thomas:

On February 17, 2012, the undersigned Administrative Law Judge issued a Proposal for Decision (PFD) for the consideration by the Texas Board of Nursing. Staff for the Texas Board of Nursing (Staff) filed exceptions to the PFD on February 29, 2012. On March 15, 2012, Respondent Mayra L. Zelaya, R.N. filed a response to Staff's exceptions. After carefully considering Staff's exceptions, and Respondent's response, the ALJ recommends no changes to the PFD.

Sincerely,

A handwritten signature in cursive script that reads "Catherine C. Egan".

Catherine C. Egan
Administrative Law Judge

CCE:nl

XC: Jena Abel, Assistant General Counsel, TBN, 333 Guadalupe, Tower III, Ste. 460, Austin, TX 78701 - **VIA FACSIMILE 512/305-8101**

Dina Flores, Legal Assistant TBN, 333 Guadalupe, Tower III, Ste. 460, Austin, TX 78701 -- **VIA FACSIMILE 512/305-8101**

Dan Lype, Leichter Law Firm, 1602 East 7th Street, Austin, TX 78702-**VIA FACSIMILE 512/482-0164**