



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

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

**In the Matter of
Permanent Vocational Nurse
License Number 194641
Issued to KENNETH EUGENE MORGAN,
Respondent**

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

ORDER OF THE BOARD

TO: Kenneth Morgan
2720 Gains Mill Dr
Fort Worth, TX 76123

During open meeting held in Austin, Texas, on November 12, 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.

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 Vocational Nurse License Number 194641, previously issued to KENNETH EUGENE MORGAN 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 12th day of November, 2025.

TEXAS BOARD OF NURSING

BY: Kristin K. Benton, DNP, RN

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

Attachment: Formal Charges filed September 8, 2025

d17r(2025.10.10)

Re: Permanent Vocational Nurse License Number 194641
Issued to KENNETH EUGENE MORGAN
DEFAULT ORDER - REVOKE

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of November, 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

Kenneth Morgan
2720 Gains Mill Dr
Fort Worth, TX 76123

Copy Via USPS First Class Mail

Kenneth Eugene Morgan
PO Box 508
Crowley, TX 76036

BY: Kristin K. Benton, DNP, RN

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

In the Matter of	§	
Permanent Vocational Nurse	§	BEFORE THE TEXAS
License Number 194641	§	
Issued to KENNETH EUGENE MORGAN,	§	
Respondent	§	BOARD OF NURSING

FORMAL CHARGES

This is a disciplinary proceeding under Section 301.452(b), Texas Occupations Code. Respondent, KENNETH EUGENE MORGAN, is a Vocational Nurse holding license number 194641, 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 December 14, 2023, Respondent failed to successfully complete the Understanding Board order as required by the Order issued on November 14, 2023.

The above action constitutes grounds for disciplinary action in accordance with Section 301.452(b)(1)&(10), Texas Occupations Code, and is a violation of 22 TEX. ADMIN. CODE §217.12(11)(B).

CHARGE II.

On or about November 14, 2024, Respondent failed to successfully complete a Board approved course in Texas nursing jurisprudence and ethics as required by the Order issued on November 14, 2023.

The above action constitutes grounds for disciplinary action in accordance with Section 301.452(b)(1)&(10), Texas Occupations Code, and is a violation of 22 TEX. ADMIN. CODE §217.12(11)(B).

CHARGE III.

On or about November 14, 2024, Respondent failed to successfully complete the course Righting a Wrong as required by the Order issued on November 14, 2023.

The above action constitutes grounds for disciplinary action in accordance with Section 301.452(b)(1)&(10), Texas Occupations Code, and is a violation of 22 TEX. ADMIN. CODE §217.12(11)(B).

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.

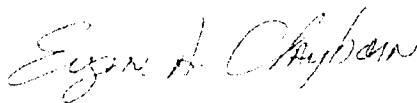
NOTICE IS GIVEN that all statutes and rules cited in these Charges are incorporated as part of this pleading and can be found at the Board's website, www.bon.texas.gov.

NOTICE IS GIVEN that, based on the Formal Charges, the Board will rely on 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 February 10, 2009, April 16, 2014, and November 14, 2023.

Filed this 8th day of September 2025.

TEXAS BOARD OF NURSING



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
Board Certified - Administrative Law
Texas Board of Legal Specialization
State Bar No. 00785767

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

Aaron Jupe, Assistant General Counsel
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
F: (512) 305-8101 or (512) 305-7401

Attachment(s): Order(s) of the Board dated February 10, 2009, April 16, 2014, and November 14, 2023.

D(2025.07.29)

BEFORE THE TEXAS BOARD OF NURSING

In the Matter of	§	AGREED ORDER
Vocational Nurse License Number 194641	§	
issued to KENNETH EUGENE MORGAN	§	
	§	

On this day the Texas Board of Nursing, hereinafter referred to as the Board, considered the matter of KENNETH EUGENE MORGAN, Vocational Nurse License Number 194641, hereinafter referred to as Respondent.

Information received by the Board produced evidence that Respondent may be subject to discipline pursuant to Section 301.452(b)(2),(3),(4)&(10), Texas Occupations Code.

Respondent waived notice and hearing and agreed to the entry of this Agreed Order approved by Kristin K. Benton, DNP, RN, Executive Director, on October 6, 2023.

FINDINGS OF FACT

1. Prior to the institution of Agency proceedings, notice of the matters specified below in these Findings of Fact was served on Respondent and Respondent was given an opportunity to show compliance with all requirements of the law for retention of the license(s).
2. Respondent waived notice and hearing, and agreed to the entry of this Agreed Order.
3. Respondent's license to practice as a vocational nurse in the State of Texas is in current status.
4. Respondent received a Certificate in Vocational Nursing from Panola College, Carthage, Texas, on August 13, 2004. Respondent was licensed to practice vocational nursing in the State of Texas on September 7, 2004.
5. Respondent's nursing employment history is unknown.
6. On or about February 10, 2009, Respondent was issued the sanction of Warning with Stipulations through an Order of the Board. A copy of the February 10, 2009, Order is attached and incorporated herein by reference as part of this Agreed Order.

7. On or about April 16, 2014, Respondent's license(s) to practice nursing in the State of Texas was/were Suspended through an Order of the Board. A copy of the April 16, 2014, Order is attached and incorporated herein by reference as part of this Agreed Order.
8. On or about May 17, 2018, Respondent was convicted by a jury of THEFT OF PROPERTY > = \$1,500 < \$20K, a State Jail Felony offense committed on June 9, 2015, in the 186th Judicial District Court of Bexar County, San Antonio, Texas. As result of the conviction, Respondent was placed on probation for a period of two (2) years, which he appealed. On or about November 13, 2019, the Respondent's conviction was affirmed by the appellate court and the Respondent's sentence commenced. Additionally, on or about August 31, 2021, Respondent's probation was revoked by the 186th Judicial District Court of Bexar County, San Antonio, Texas. As a result of the revocation, Respondent was arrested and sentenced to a six (6) month term of confinement in the Texas Department of Criminal Justice.
9. On or about December 11, 2021, and March 7, 2022, Respondent submitted online application(s) to the Texas Board of Nursing in which he provided false, deceptive, and/or misleading information, in that Respondent answered "No" to the question:

"For any criminal offense* including those pending appeal, have you:

A. been arrested and have a pending criminal charge?

C. been convicted of a felony?

F. been placed on community supervision or court-ordered probation, whether or not adjudicated guilty?

G. been sentenced to serve jail or prison time, or court-ordered confinement?

More specifically, Respondent failed to disclose that on November 13, 2019, his conviction for THEFT OF PROPERTY > = \$1,500 < \$20K, a State Jail Felony offense committed on June 9, 2015, in the 186th Judicial District Court of Bexar County, San Antonio, Texas was affirmed. Respondent was placed on probation for a period of two (2) years. Additionally, Respondent failed to disclose that on about August 31, 2021, Respondent's probation was revoked by the 186th Judicial District Court of Bexar County, San Antonio, Texas. As a result of the revocation, Respondent was arrested and sentenced to a six (6) month term of confinement in the Texas Department of Criminal Justice with a discharge date of December 10, 2021.

10. Formal Charges were filed on April 25, 2023.

CONCLUSIONS OF LAW

1. Pursuant to Texas Occupations Code, Sections 301.451-301.555, the Board has jurisdiction over this matter.

2. Notice was served in accordance with law.
3. The evidence received is sufficient to prove violation(s) of 22 TEX. ADMIN. CODE §217.12(6)(I).
4. The evidence received is sufficient cause pursuant to Section 301.452(b)(2),(3),(4)&(10), Texas Occupations Code, to take disciplinary action against Vocational Nurse License Number 194641, heretofore issued to KENNETH EUGENE MORGAN.
5. Pursuant to Section 301.463(d), Texas Occupations Code, this Agreed Order is a settlement agreement under Rule 408, Texas Rules of Evidence, in civil or criminal litigation.

TERMS OF ORDER

I. SANCTION AND APPLICABILITY

IT IS THEREFORE AGREED and ORDERED, subject to ratification by the Texas Board of Nursing, that Vocational Nurse License Number 194641, previously issued to KENNETH EUGENE MORGAN, to practice nursing in the State of Texas is/are hereby **SUSPENDED** and said suspension is **STAYED** and RESPONDENT is hereby placed on **PROBATION** for a minimum of two (2) years **AND** until RESPONDENT fulfills the additional requirements of this Order.

- A. This Order SHALL apply to any and all future licenses issued to RESPONDENT to practice nursing in the State of Texas.
- B. This Order SHALL be applicable to RESPONDENT'S nurse licensure compact privileges, if any, to practice nursing in the State of Texas.
- C. Until successfully completed, RESPONDENT may not practice nursing in the State of Texas except in accordance with the terms of this Order.
- D. As a result of this Order, RESPONDENT'S license(s) will be designated "single state" as applicable and RESPONDENT may not work outside the State of Texas in another nurse licensure compact party state using a Texas compact license.

II. COMPLIANCE WITH LAW

While under the terms of this Order, RESPONDENT agrees to comply in all respects with the Nursing Practice Act, Texas Occupations Code, §§301.001 *et seq.*, the Rules and Regulations Relating to Nursing Education, Licensure and Practice, 22 TEX. ADMIN. CODE §§211.1 *et seq.*, and this Agreed Order.

III. UNDERSTANDING BOARD ORDERS

Within thirty (30) days of entry of this Order, RESPONDENT must successfully complete the Board's online course, "Understanding Board Orders", which can be accessed on the Board's website from the "Discipline & Complaints" drop-down menu or directly at: <http://www.bon.texas.gov/UnderstandingBoardOrders/index.asp>. Upon successful completion, RESPONDENT must submit the course verification at the conclusion of the course, which automatically transmits the verification to the Board.

IV. REMEDIAL EDUCATION COURSE(S)

In addition to any continuing education requirements the Board may require for licensure renewal, RESPONDENT SHALL successfully complete the following remedial education course(s) **within one (1) year of the effective date of this Order, unless otherwise specifically indicated:**

- A. **A Board-approved course in Texas nursing jurisprudence and ethics** that 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 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. Home study and video programs will not be approved.

- B. **The course "Righting a Wrong,"** a 3.0 contact hour online program provided by the National Council of State Boards of Nursing (NCSBN) International Center for Regulatory Scholarship (ICRS).

In order to receive credit for completion of this/these course(s), RESPONDENT SHALL CAUSE the instructor to submit a Verification of Course Completion form or SHALL submit the continuing education certificate, as applicable, to the attention of Monitoring at the Board's office. RESPONDENT SHALL first obtain Board approval of any course prior to enrollment if the course is not being offered by a pre-approved provider. *Information about Board-approved courses and Verification of Course Completion forms are available from the Board at www.bon.texas.gov/compliance.*

V. **EMPLOYMENT REQUIREMENTS**

In order to complete the terms of this Order, RESPONDENT must work as a nurse in the State of Texas, providing direct patient care in a clinical healthcare setting, for a minimum of sixty-four (64) hours per month for eight (8) quarterly periods [two (2) years] of employment. This requirement will not be satisfied until eight (8) quarterly periods of employment as a nurse 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 period and will not count towards completion of this requirement.

- A. **Notifying Present and Future Employers:** RESPONDENT SHALL notify each present employer in nursing and present each with a complete copy of this Order, including all attachments, if any, within five (5) days of receipt of this Order. While under the terms of this Order, RESPONDENT SHALL notify all future employers in nursing and present each with a complete copy of this Order, including all attachments, if any, prior to accepting an offer of employment.
- B. **Notification of Employment Forms:** RESPONDENT SHALL CAUSE each present employer in nursing to submit the Board's "Notification of Employment" form to the Board's office within ten (10) days of receipt of this Order. RESPONDENT SHALL CAUSE each future employer to submit the Board's "Notification of Employment form" to the Board's office within five (5) days of employment as a nurse.

- C. **No Night or Rotating Shifts, Overtime, or On-Call:** For the first year [four (4) quarters] of employment as a Nurse under this Order, RESPONDENT SHALL NOT practice as a nurse on the night shift, rotate shifts, work overtime, accept on-call assignments, or be used for coverage on any unit other than the identified, predetermined unit(s) to which RESPONDENT is regularly assigned.
- D. **Direct Supervision:** For the first year [four (4) quarters] 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). 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.
- E. **Indirect Supervision:** For the remainder of the stipulation/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 of 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.
- F. **Nursing Performance Evaluations:** 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 individual who supervises the RESPONDENT and these reports shall be submitted by the supervising individual to the office of the Board at the end of each three (3) month quarterly period for eight (8) quarters [two (2) years] of employment as a nurse.

VI. SUBSEQUENT CRIMINAL PROCEEDINGS

IT IS FURTHER AGREED, should the RESPONDENT'S conduct, as outlined in the findings of fact of this Agreed Order, result in subsequent judicial action, including a deferred disposition, RESPONDENT may be subject to further disciplinary action, up to, and including, revocation of RESPONDENT'S license(s) to practice nursing in the State of Texas.

VII. FURTHER COMPLAINTS

If, during the period of probation, an additional allegation, accusation, or petition is reported or filed against 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.

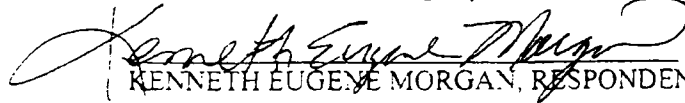
VIII. RESTORATION OF UNENCUMBERED LICENSE(S)

Upon full compliance with the terms of this Agreed Order, all encumbrances will be removed from RESPONDENT'S license(s) and/or privilege(s) to practice nursing in the State of Texas and, subject to meeting all existing eligibility requirements in Texas Occupations Code Chapter 304, Article III, RESPONDENT may be eligible for nurse licensure compact privileges, if any.

RESPONDENT'S CERTIFICATION

I understand that I have the right to legal counsel prior to signing this Order. I waive representation by counsel. I have reviewed this Order. I neither admit nor deny the violation(s) alleged herein. By my signature on this Order, I agree to the entry of this Order, and any conditions of said Order, to avoid further disciplinary action in this matter. I waive judicial review of this Order. I understand that this Order is subject to ratification by the Texas Board of Nursing and a copy of this Order will be mailed to me once the Order becomes effective. I understand that if I fail to comply with all terms and conditions of this Order, I will be subject to investigation and disciplinary sanction, including possible revocation of my license(s) and/or privileges to practice nursing in the State of Texas, as a consequence of my noncompliance.

Signed this 16 day of October, 2023


KENNETH EUGENE MORGAN, RESPONDENT

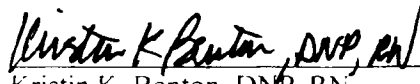
Sworn to and subscribed before me this _____ day of _____, 20____.

SEAL

Notary Public in and for the State of _____

WHEREFORE, PREMISES CONSIDERED, the Texas Board of Nursing does hereby ratify and adopt the Agreed Order that was signed on the 16th day of October, 2023, by KENNETH EUGENE MORGAN, Vocational Nurse License Number 194641, and said Agreed Order is final.

Effective this 14th day of November, 2023.



Kristin K. Benton, DNP, RN
Executive Director on behalf
of said Board



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 M. Brown
Executive Director of the Board

DOCKET NUMBER 507-13-6073

IN THE MATTER OF
PERMANENT CERTIFICATE
NUMBER 194641
ISSUED TO
COMFORT DELANDO ROBERTS

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

OPINION AND ORDER OF THE BOARD

TO COMFORT DELANDO ROBERTS
5231 GINGER RISE
SAN ANTONIO, TX 78253

ROY G. SCUDDAY
ADMINISTRATIVE LAW JUDGE
300 WEST 15TH STREET
AUSTIN, TEXAS 78701

At the regularly scheduled public meeting on April 16-17, 2014, the Texas Board of Nursing (Board) considered the following items: (1) the Proposal for Decision (PFD) regarding the above cited matter; (2) Respondent's exceptions to the PFD; (3) the ALJ's final letter ruling of February 27, 2014; (4) Staff's recommendation that the Board adopt the PFD regarding the vocational nursing license of Comfort Delando Roberts without changes; and (5) 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. The Respondent filed exceptions to the PFD on February 9, 2014. Staff did not file a response to the Respondent's exceptions to the PFD. On February 27, 2014, the ALJ issued his final letter ruling, in which he declined to make any changes to the PFD.

The Board, after review and due consideration of the PFD; Respondent's exceptions to the PFD; the ALJ's final letter ruling of February 27, 2014; Staff's recommendations; and the presentation by the Respondent during the open meeting, 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, without modification. 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

conclusions of law¹, the Board agrees with the ALJ's recommendation that the appropriate sanction in this matter is an enforced suspension of the Respondent's license until a Board approved evaluator provides verification that the Respondent is safe and competent to practice nursing and until the Respondent is able to resolve his outstanding issues with the Louisiana State Board of Practical Nurse Examiners².

The Respondent's conduct, as outlined in adopted Findings of Fact Numbers 9 through 11 and 15 and Conclusions of Law Numbers 6 and 8, raises concerns about the Respondent's ability to practice nursing safely in the future. First, the Respondent committed more than one violation of the Nursing Practice Act and Board rules³. The Respondent has also been previously disciplined by the Board. The Board is cognizant that it must consider taking a more severe disciplinary action if an individual has previously been the subject of disciplinary action by the Board or if an individual is being disciplined for multiple violations of the Nursing Practice Act (Occupations Code Chapter 301) than it would take if the individual had not previously been the subject of disciplinary action by the Board or was only being disciplined for a single violation⁴. Second, the Respondent's conduct involves intentional, fraudulent behavior⁵. In addition, the Respondent's license to practice in Louisiana has been suspended due to his conduct, and the suspension appears to be indefinite⁶. Further, the Respondent's psychological condition is very serious and could affect his ability to practice nursing with reasonable skill and safety⁷. No evidence was provided by the Respondent regarding treatment for his psychological condition. Further, no evidence was provided that would ensure the Board that his psychological condition is currently stable. Without such assurance, the Respondent's psychological condition could pose a risk of harm to patients and the public⁸. No mitigating

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 The Board finds that the Respondent's conduct warrants a second tier, sanction level II sanction for his violation of §301.452(b)(12). The Board agrees that Respondent's violation of §301.452(b)(8) and (12) collectively warrant an enforced suspension of the Respondent's nursing license. See pages 11-12 of the PFD.

³ See adopted Findings of Fact Numbers 9-11 and 15 and adopted Conclusions of Law Numbers 6 and 8.

⁴ Occupations Code §301.4531 and 22 Tex. Admin. Code §213.33(b).

⁵ See adopted Finding of Fact Number 10.

⁶ See adopted Finding of Fact Number 11.

⁷ See generally adopted Finding of Fact Number 15.

⁸ See generally adopted Finding of Fact Number 15 and page 12 of the PFD.

factors were found at hearing.

In reviewing the Respondent's conduct, the aggravating factors, and the lack of mitigation presented at hearing, the Board has determined that the ALJ's recommended sanction is justified. As such, the Board finds that, pursuant to the Board's Disciplinary Matrix and the Board's rules, including 22 Tex. Admin. Code §213.27 and §213.33(e) and (g), the Respondent's license should be suspended, as set out herein.

IT IS THEREFORE ORDERED, that Vocational Nurse License Number 194641, previously issued to COMFORT DELANDO ROBERTS, to practice nursing in Texas is/are hereby SUSPENDED and said suspension is ENFORCED until Respondent meets the following requirements:

(1) RESPONDENT shall undergo a mental health/psychological evaluation that meets the requirements specified by the Board in its adopted Guidelines for Physical and Psychological Evaluations, which may be found at the following link: <http://www.bon.state.tx.us/disciplinaryaction/pdfs/eval-guidelines.pdf>. RESPONDENT SHALL notify the performing evaluator of this Order of the Board. RESPONDENT shall cause the performing evaluator to send a report of the evaluation to the Board's office. RESPONDENT SHALL comply with any recommendations of the evaluator for therapy or other follow-up. If the evaluation states that the RESPONDENT currently lacks fitness to practice nursing, RESPONDENT'S license(s) to practice nursing SHALL remain SUSPENDED until such time as the same evaluator deems the RESPONDENT safe to return to direct patient care.

(2) RESPONDENT SHALL CAUSE the Louisiana State Board of Practical Nurse Examiners to submit verification directly to the Board of the Respondent's eligibility for re-licensure in Louisiana, including identification of any conditions that would be associated with said re-licensure.

Upon verification of successful completion of the requirements set out in this Order, RESPONDENT MUST petition the Board for reinstatement of his license, at which time, the RESPONDENT MUST satisfy all then existing requirements for re-issuance of his license. Further, the Board may impose reasonable conditions that must be satisfied by the RESPONDENT before re-issuance of an unencumbered license.

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(s) is/are 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.

Entered this 16th day of April, 2014.

TEXAS BOARD OF NURSING


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

Attachment: Proposal for Decision; Docket No. 507-13-6073 (February 6, 2014).

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

February 6, 2014

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

VIA INTERAGENCY

RE: Docket No. 507-13-6073; Texas Board of Nursing v. Comfort Delando Roberts

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 "Roy G. Scudday".

Roy G. Scudday
Administrative Law Judge

RGS/ap
Enclosures

XC: R. Kyle Hensley, Assistant General Counsel, TBN, 333 Guadalupe, Tower III, Ste. 460, Austin, TX 78701
- VIA INTERAGENCY
Dina Flores, Legal Assistant TBN, 333 Guadalupe, Tower III, Ste. 460, Austin, TX 78701 (with 1 CD) -
VIA INTERAGENCY
Comfort Delando Roberts, 5231 Ginger Rise, San Antonio, TX 78253 - VIA REGULAR MAIL (with original exhibits submitted at hearing by Mr. Roberts included in package)

SOAH DOCKET NO. 507-13-6073

TEXAS BOARD OF NURSING,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
v.	§	OF
	§	
COMFORT DELANDO ROBERTS,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Staff of the Texas Board of Nursing (Staff/Board) brought action against Comfort Delando Roberts (Respondent) seeking the revocation of his license. This proposal for decision finds that Respondent's license should be suspended until such time as a Board-approved physician provides verification of competency and Respondent has resolved his problems with the Louisiana Board.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The hearing convened January 21, 2014, before Administrative Law Judge (ALJ) Roy G. Scudday in the William P. Clements Building, 300 West 15th Street, Fourth Floor, Austin, Texas. Staff was represented by R. Kyle Hensley, Assistant General Counsel. Respondent appeared on his own behalf. The record closed at the conclusion of the hearing.

Matters concerning notice and jurisdiction were undisputed. Those matters are set out in the Findings of Fact and Conclusions of Law.

II. DISCUSSION

A. Background

Respondent has been licensed in Texas as a Licensed Vocational Nurse (LVN) since September 7, 2004. On August 23, 2013, Staff sent Respondent a Notice of Formal Charges

filed against him. On October 3, 2013, Staff sent Respondent a First Amended Notice of Hearing.

B. Staff's Charges

Staff's made the following charges against Respondent:

Charge I

On or about March 7, 2010, Respondent submitted an Online Renewal Document-Licensed Vocational Nurse to the Texas Board of Nursing in which he provided false, deceptive, and/or misleading information in that he answered "No" to a question that at the time of the submission would have required that he provide a "Yes" answer. Respondent's conduct was likely to deceive the Board and could have affected the decision to issue a license. This action constitutes grounds for disciplinary action in accordance with Texas Occupations Code (Code) § 301.452(b)(2) & (10), and is a violation of 22 Texas Administrative Code (TAC) § 217.12(6)(H) & (I).

Charge II

On or about April 5, 2013, Respondent's practical nursing license was suspended indefinitely in the State of Louisiana due to his failure to cooperate with a board investigation for the Louisiana State Board of Practical Nurse Examiners. Subsequently, on or about August 7, 2013, Respondent's practical nursing license was issued a Letter of Reprimand by the Louisiana State Board of Practical Nurse Examiners, for falsifying his application by failing to report his Texas action to the board as required. This action constitutes grounds for disciplinary action in accordance with Code § 301.452(b)(8).

Charge III

On or about August 22, 2013, Respondent's practical nursing license was suspended in the State of Louisiana due to his failure to cooperate with a board investigation for the Louisiana State Board of Practical Nurse Examiners. This action constitutes grounds for disciplinary action in accordance with Code § 301.452(b)(8).

Charge IV

On or about June 2012, while employed as a Licensed Vocational Nurse and in the role of Administrator with River City Care Center, San Antonio, Texas, Respondent exploited a legally incompetent resident by coercing her into signing

over her automobiles to him, which Respondent misappropriated and subsequently sold. Respondent's conduct was likely to injure the patient in that it could have resulted in confusion between the needs of the nurse and those of the patient. In addition, Respondent's conduct may have caused delayed distress for the resident, which may not be recognized or felt by the resident until harmful consequences occur. This action constitutes grounds for disciplinary action in accordance with Code § 301.452(b)(10) & (13), and is a violation of 22 TAC §§ 217.11(1)(A) & (J) and 217.12(1)(A) & (B), (4), and (6)(C), (D), & (G).

Charge VII

On or about April 24, 2013, while employed as a Licensed Vocational Nurse and in the role of Administrator with River City Care Center, San Antonio, Texas, Respondent indicated that he had prescriptive authority to prescribe medications. Respondent's conduct deceived facility staff and the public into believing he was authorized to prescribe medications in the State of Texas. This action constitutes grounds for disciplinary action in accordance with Code § 301.452(b)(10) & (13), and is a violation of 22 TAC §§ 217.11(1)(A), (B), (C), & (G) and 217.12(1)(A) & (B), (3), and (4).

Charge VIII

On or about June 3, 2013, while employed as a Licensed Vocational Nurse and in the role of Administrator with River City Care Center, San Antonio, Texas, Respondent lacked fitness to practice nursing in that he had a psychological nervous breakdown, including severe stress and anxiety and physical and mental distress. Respondent's condition could have affected his ability to recognize subtle signs, symptoms or changes in the residents' conditions, and could have affected his ability to make rational, accurate, and appropriate assessments, judgments, and decisions regarding resident care, thereby placing the residents in potential danger. This action constitutes grounds for disciplinary action in accordance with Code § 301.452(b)(10) & (12), and is a violation of 22 TAC §§ 217.11(1)(A), (B), & (T) and 217.12(1)(A), (B), & (E), (4), and (5).

Charge IX

On or about June 15, 2013, while employed as a Licensed Vocational Nurse and in the role of Administrator with River City Care Center, San Antonio, Texas, Respondent violated confidentiality of residents when he posted four videos containing protected health information on his personal Facebook page. Respondent's conduct caused confidential information concerning the residents to be disclosed to the public without any written authorization, and Respondent's conduct constitutes a violation of the Health Insurance Portability and Accountability Act (HIPAA). This action constitutes grounds for disciplinary action in accordance with Code § 301.452(b)(10) & (13), and is a violation of 22 TAC §§ 217.11(1)(A), (B), & (E) and 217.12(1)(A) & (B), (4), and (6)(A).

At the hearing, Petitioner withdrew Charges V and VI, and a portion of Charge VII.

C. Evidence

1. Undisputed Facts

a. Charge I

On January 15, 2010, Respondent pled guilty and was placed on Deferred Adjudication for the Class A Misdemeanor offense [REDACTED]

[REDACTED] Respondent was placed on community supervision for a period of three years. On March 7, 2010, Respondent filed an online renewal of his LVN license. In response to the question of whether, within the past 24 months, he had pled guilty to or received deferred adjudication for a criminal offense, Respondent answered "No."¹

b. Charges II and III

On April 5, 2013, the Louisiana State Board of Practical Nurse Examiners (Louisiana Board) suspended Respondent's practical nursing license for failing to sufficiently respond to the Louisiana Board's request for information regarding allegations made against him concerning possible violations of the law regulating practical nursing. Effective August 7, 2013, pursuant to a Consent Order, the Louisiana Board issued a Letter of Reprimand against Respondent's license and assessed a \$500 fine against Respondent for being guilty of fraud or deceit in procuring or attempting to procure a license to practice practical nursing and for being guilty of unprofessional conduct. On August 22, 2013, the Louisiana Board again suspended Respondent's practical nursing license for Respondent's failing to sufficiently respond to the Louisiana Board's request for information regarding allegations made against him concerning possible violations of the law regulating practical nursing. Both suspensions appear to be indefinite as no termination date is set nor are any conditions provided to enable reinstatement.²

¹ Pet. Ex. 6.

² Pet. Ex. 8.

c. Charges IV, VII, VIII, and IX

Respondent holds a license as a nursing facility administrator issued by the Texas Department of Aging and Disability. From October 14, 2010, through June 8, 2013, Respondent was employed as the Administrator of the River City Care Center (River City) in San Antonio, Texas. On June 6, 2013, Respondent filed with River City a Certification of Health Care Provider for Family Member's Serious Health Condition in which he stated that he had a "psychological nervous breakdown, exacerbated by severe stress of the job," anxiety, physical and mental distress, chest pains, and diarrhea. On June 8, 2013, he was terminated from his employment with River City.³

At some point in June 2013, someone posted on the "River City Wrong" Facebook page, videos showing the halls of River City in which the faces of some residents could be seen and in one of which a patient's name was stated.⁴

2. Daryl Quijano's Testimony

Mr. Quijano is the Business Officer of River City and has worked for River City since September 2009. He testified that, in a conversation with Respondent in 2012, he was told that Respondent wanted to sell a 2006 Chevrolet Malibu automobile belonging to Resident H.J., which vehicle Mr. Quijano saw Respondent drive into the nursing home parking lot the day of the conversation. In a subsequent conversation, Mr. Quijano stated that Respondent said he had sold the vehicle to someone on Craig's List and was going to use the proceeds to pay off his bills.

Mr. Quijano testified that on occasions he would observe Respondent administer an injection to a resident if a nurse were not available. He further testified that Respondent had a

³ Pet. Ex. 12.

⁴ Pet. Ex. 16.

prescription pad and signature stamp for Dr. Robert Lira. He stated that Respondent told him that Respondent had authority from Dr. Lira to issue prescriptions in his absence.

Mr. Quijano testified that at some point in time he received a notice from Respondent on Facebook to look at the "River City Wrong" Facebook page. He stated that, when he went to that page, he saw the videos of the River City halls.

3. Respondent's Testimony

In regard to the deferred adjudication in 2010, Respondent testified that at the time he was placed on community supervision, it was his understanding that the case would be dismissed when he paid the restitution involved. He stated that he also mistakenly understood that a non-disclosure agreement order would automatically follow. For that reason, Respondent testified that he thought he was not required to disclose the deferred adjudication on his renewal application, and that his failure to do so was based on his error and not with an intent to defraud the Board.

In regard to the disciplinary actions taken by the Louisiana Board, Respondent testified that he had submitted documentation to that agency in a good faith effort to respond to its requests for information.¹

As for the time he spent as Administrator at River City, Respondent denied ever practicing nursing while in that position. He denied administering injections, denied having a prescription pad or signature stamp for Dr. Lira, and denied ever indicating to anyone that he had authority to issue prescriptions on behalf of Dr. Lira. Respondent also denied ever driving or selling an automobile that had belonged to H.J., or telling Mr. Quijano that he had done so.

¹ Resp. Exs 9, 11-13.

Finally, in regard to the videos on the Facebook page, Respondent unequivocally stated that that was not his Facebook page, that he did not post the videos on that page, and that he did not suggest that Mr. Quijano link to that page.

4. Melinda Hester's Testimony

Staff offered the testimony of Melinda Hester, a Nursing Consultant for the Board. Ms. Hester has been a Registered Nurse for over 33 years with experience in diverse areas. As a Nursing Consultant for the Board, Ms. Hester assists the Enforcement and Legal Divisions with case reviews and testifies as an expert witness in State Office of Administrative Hearings (SOAH) hearings.

Ms. Hester testified that, in her opinion, Respondent gave a false and intentionally misleading answer on the renewal application that is a violation of Code §§ 301.452(b)(2) and (10). The Board's Disciplinary Matrix, located at 22 TAC § 213.33(b), provides that, for a violation of both subsections of Code § 301.452(b), the disciplinary sanction is based on the appropriate tier of the offense, the appropriate sanction level, and applicable aggravating and mitigating factors. For a Second Tier offense at Sanction Level I for those violations, the proper sanction is revocation of the license.

Ms. Hester testified that, in her opinion, the failure of Respondent to provide requested information to the Louisiana Board was a violation of Code § 301.452(b)(8). The Disciplinary Matrix for those violations provides that for a First Tier offense at Sanction Level II the proper sanction would be a reprimand and suspension similar to that taken by the Louisiana Board.

Ms. Hester testified that, in her opinion, the sale of H.J.'s automobile by Respondent and the use of the funds for his own needs was a conflict of interest that caused serious financial harm to a patient in violation of Code § 301.452(b)(10) and (13). The Disciplinary Matrix for those violations provides that for a Third Tier and Second Tier offense, respectively, both at Sanction Level II, the proper sanction would be revocation of his license.

Ms. Hester testified that, in her opinion, Respondent's deceiving of River City staff in believing that he was authorized to prescribe medications for a physician caused a serious risk of harm to patients in violation of Code § 301.452(b)(10) and (13). The Disciplinary Matrix for those violations provides that for a Second Tier offense at Sanction Level II, and a Third Tier offense at Sanction Level I, respectively, the proper sanction would be revocation of his license.

Ms. Hester testified that, in her opinion, Respondent's having a nervous breakdown placed patients at a serious risk of harm in violation of Code § 301.452(b)(10) and (12). The Disciplinary Matrix for those violations provides that for both violations a Second Tier offense at Sanction Level II, the proper sanction would be suspension of the license until Respondent is cleared by a physician.

Finally, Ms. Hester testified that, in her opinion, Respondent's posting of videos of patients on Facebook was in violation of Code § 301.452(b)(10) and (13). The Disciplinary Matrix for both those violations provide that for a Second Tier offense at Sanction Level II and a Third Tier offense at Sanction Level I, respectively, the proper sanction would be revocation of his license.

D. Analysis

Code § 301.452(b)(2) provides that a person is subject to disciplinary action for "fraud or deceit in procuring or attempting to procure a license to practice professional nursing or vocational nursing." Code § 301.452(b)(8) provides that a person is subject to disciplinary action for "revocation, suspension, or denial of, or any other action relating to, the person's license or privilege to practice nursing in another jurisdiction." Code § 301.452(b)(10) provides that a person is subject to disciplinary action for "unprofessional or dishonorable conduct that, in the board's opinion, is likely to deceive, defraud, or injure a patient or the public." Code § 301.452(b)(12) provides that a person is subject to disciplinary action for "lack of fitness to practice because of a mental or physical health condition that could result in injury to a patient or the public." Code § 301.452(b)(13) provides that a person is subject to disciplinary action for "failure to care adequately for a patient or to conform to the minimum standards of acceptable

nursing practice in a manner that, in the board's opinion, exposes a patient or other person unnecessarily to risk of harm."

The Board rule at 22 TAC § 217.11 provides as follows:

(1) Standards Applicable to All Nurses. All vocational nurses, registered nurses and registered nurses with advanced practice authorization shall:

(A) Know and conform to the Texas Nursing Practice Act and the board's rules and regulations as well as all federal, state, or local laws, rules or regulations affecting the nurse's current area of nursing practice;

(B) Implement measures to promote a safe environment for clients and others;

(C) Know the rationale for and the effects of medications and treatments and shall correctly administer the same;

(E) Respect the client's right to privacy by protecting confidential information unless required or allowed by law to disclose the information;

(J) Know, recognize, and maintain professional boundaries of the nurse-client relationship;

(T) Accept only those nursing assignments that take into consideration client safety and that are commensurate with the nurse's educational preparation, experience, knowledge, and physical and emotional ability;

The Board rule at 22 TAC § 217.12 provides the following:

(1) Unsafe Practice--actions or conduct including, but not limited to:

(A) Carelessly failing, repeatedly failing, or exhibiting an inability to perform vocational, registered, or advanced practice nursing in conformity with the standards of minimum acceptable level of nursing practice set out in Rule 217.11.

(B) Carelessly or repeatedly failing to conform to generally accepted nursing standards in applicable practice settings;

(E) Accepting the assignment of nursing functions or a prescribed health function when the acceptance of the assignment could be reasonably expected to result in unsafe or ineffective client care;

(3) Failure to practice within a modified scope of practice or with the required accommodations, as specified by the board in granting a coded license or any stipulated agreement with the board.

- (4) Careless or repetitive conduct that may endanger a client's life, health, or safety. Actual injury to a client need not be established.
- (5) Inability to Practice Safely--demonstration of actual or potential inability to practice nursing with reasonable skill and safety to clients by reason of illness, use of alcohol, drugs, chemicals, or any other mood-altering substances, or as a result of any mental or physical condition.
- (6) Misconduct--actions or conduct that include, but are not limited to:
 - (A) Falsifying reports, client documentation, agency records or other documents;
 - (C) Causing or permitting physical, emotional or verbal abuse or injury or neglect to the client or the public, or failing to report same to the employer, appropriate legal authority and/or licensing board;
 - (D) Violating professional boundaries of the nurse/client relationship including but not limited to physical, sexual, emotional or financial exploitation of the client or the client's significant other(s);
 - (G) Misappropriating, in connection with the practice of nursing, anything of value or benefit, including but not limited to, any property, real or personal of the client, employer, or any other person or entity, or failing to take precautions to prevent such misappropriation;
 - (H) Providing information which was false, deceptive, or misleading in connection with the practice of nursing;
 - (I) Failing to answer specific questions or providing false or misleading answers that would have affected the decision to license, employ, certify or otherwise utilize a nurse;

Charge I. Staff alleges that by answering "No" to the question of whether, within the past 24 months, he had pled guilty to or received deferred adjudication for a criminal offense, Respondent gave a false and intentionally misleading answer on the renewal application subjecting him to disciplinary action pursuant to Code §§ 301.452(b)(2) and (10). However, the evidence establishes that Respondent answered "No" in the erroneous assumption that a non-disclosure order was in effect regarding his deferred adjudication. There is no evidence that Respondent's answer was intended to defraud or deceive the public, just that the answer was mistaken. As a result, Staff has failed to prove this charge.

Charges II and III. Staff alleges that the failure of Respondent to provide requested information to the Louisiana Board and the subsequent suspension of Respondent's license to practice nursing in Louisiana is a basis for disciplinary action pursuant to Code § 301.452(b)(8).

Although Respondent has sought to show that the action of the Louisiana Board was not justified, the fact is that Respondent's Louisiana license has been suspended. For that reason Staff has established that Respondent's Texas license should likewise be suspended.

Charges IV and VII. Staff alleges that the sale of H.J.'s automobile by Respondent and the use of the funds for his own needs was a conflict of interest that caused serious financial harm to a patient that constituted unprofessional conduct and failure to care adequately for a patient subjecting him to disciplinary action pursuant to Code § 301.452(b)(10) and (13). Staff alleges that Respondent's deceiving of staff in believing that he was authorized to prescribe medications for a physician caused a serious risk of harm to patients and also subjects him to disciplinary action pursuant to Code § 301.452(b)(10) and (13).

Staff has the burden to show by a preponderance of the evidence that Respondent's conduct falls within the above-stated violations. A preponderance of the evidence is evidence that establishes the ultimate fact "with that degree of certainty as to make the conclusion reasonably probable." *State Farm Mut. Auto Ins. Co. v. Davis*, 576 S.W.2d 920 at 921 (Tex. Civ. App.—Amarillo 1979, writ ref'd n.r.e).

The basis for these charges comes down to the respective credibility of Mr. Quijano and Respondent. Although there is evidence based on the testimony of Mr. Quijano that the allegations are true, there is an equal amount of evidence based on the testimony of Respondent that the allegations are not true. There is no corroborating documentary or testamentary evidence in the record to support either person's testimony. The evidence is not even clear that an automobile belonging to H.J. was sold. As a result, the evidence does not establish as a reasonable probability that Respondent sold an automobile belonging to H.J. or used the proceeds of such a sale for his own needs. Nor does the evidence establish as a reasonable probability that Respondent deceived the River City staff in believing that he was authorized to prescribe medications for Dr. Lira. As a result, Staff has failed to prove these charges.

Charge VIII. Staff alleges that Respondent's nervous breakdown placed patients at a serious risk of harm, subjecting him to disciplinary action pursuant to Code § 301.452(b)(10) and

(12). Although it is questionable that having a nervous breakdown is on its face unprofessional conduct, it is clear that such a breakdown raises the question of a person's "lack of fitness to practice because of a mental or physical health condition that could result in injury to a patient or the public." Respondent admitted to having suffered from anxiety and severe stress. This condition appears to fall within the parameter of Code § 301.452(b)(12). The appropriate sanction for this condition is the suspension of Respondent's license until such time as a Board-approved physician provides verification of competency.

Charge IX. Staff alleges that Respondent's posting of videos of patients on Facebook was in violation of Code § 301.452(b)(10) and (13). However, the evidence fails to establish that the "River City Wrong" Facebook page was the personal page of Respondent as alleged in the Charge. The evidence further fails to establish that Respondent posted the videos on the Facebook page as alleged. Accordingly, Staff has failed to prove the charge as alleged.

Ms. Hester's testimony was to the effect that the totality of the violations supported the revocation of Respondent's license. However, as discussed above, Staff has only proved Charges II, III, and VIII. Based on Ms. Hester's testimony regarding the proper sanctions for those charges, Respondent's license should be suspended until such time as a Board-approved physician provides verification of competency and Respondent has resolved his problems with the Louisiana Board.

III. FINDINGS OF FACT

1. Comfort Delando Roberts (Respondent) has been licensed as a licensed vocational nurse by the Texas Board of Nursing (Board) since 2004. Respondent is also licensed as a nursing facility administrator by the Texas Department of Aging and Disability.
2. On August 23, 2013, the staff of the Board (Staff) sent Respondent a Notice of Formal Charges filed against him.
3. On October 3, 2013, Staff mailed a First Amended Notice of Hearing to Respondent.
4. 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.

5. The hearing convened January 21, 2014, before Administrative Law Judge (ALJ) Roy G. Scudday in the William P. Clements Building, 300 West 15th Street, Austin, Texas. All parties appeared at the hearing. The record closed upon conclusion of the hearing.
6. On January 15, 2010, Respondent pled guilty and was placed on deferred adjudication for the Class A Misdemeanor offense [REDACTED] Respondent was placed on community supervision for a period of three years.
7. On March 7, 2010, Respondent filed an online renewal of his LVN license. In response to the question of whether, within the past 24 months, he had pled guilty to or received deferred adjudication for a criminal offense, Respondent answered "No."
8. Respondent's answer on the online renewal was a result of his mistaken assumption that a non-disclosure order had been issued regarding the deferred adjudication. The answer was not given with the intent to defraud or deceive the public.
9. On April 5, 2013, the Louisiana State Board of Practical Nurse Examiners (Louisiana Board) suspended Respondent's practical nursing license for failing to sufficiently respond to the Louisiana Board's request for information regarding allegations made against him concerning possible violations of the law regulating practical nursing.
10. Effective August 7, 2013, pursuant to a Consent Order, the Louisiana Board issued a Letter of Reprimand against Respondent's license and assessed a \$500 fine against Respondent for being guilty of fraud or deceit in procuring or attempting to procure a license to practice practical nursing and for being guilty of unprofessional conduct.
11. On August 22, 2013, the Louisiana Board again suspended Respondent's practical nursing license for failing to sufficiently respond to the Louisiana Board's request for information regarding allegations made against him concerning possible violations of the law regulating practical nursing. Both this suspension and the April 5 suspension appear to be indefinite as no termination date is set nor are there any conditions provided to enable reinstatement.
12. From October 14, 2010, through June 8, 2013, Respondent was employed as the Administrator of the River City Care Center (River City) in San Antonio, Texas.
13. The evidence does not establish that Respondent sold an automobile belonging to H.J. or used the proceeds of such a sale for his own needs.
14. The evidence does not establish that Respondent deceived the River City staff in believing that he was authorized to prescribe medications for Dr. Robert Lira.

15. On June 6, 2013, Respondent filed with River City a Certification of Health Care Provider for Family Member's Serious Health Condition in which he stated that he had a "psychological nervous breakdown, exacerbated by severe stress of the job," anxiety, physical and mental distress, chest pains, and diarrhea.
16. At some point in June 2013, someone posted on the "River City Wrong" Facebook page videos showing the halls of River City in which the faces of some residents could be seen and in one of which a patient's name was stated.
17. There is no evidence that Respondent posted the videos on the "River City Wrong" Facebook page or that the "River City Wrong" Facebook page was Respondent's personal Facebook page.

IV. CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter. Tex. Occ. Code (Code) ch. 301.
2. The State Office of Administrative Hearings has jurisdiction over the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.
3. Notice of the hearing on the merits was provided as required by Code § 301.454 and by the Administrative Procedure Act. Tex. Gov't Code §§ 2001.051 and 2001.052.
4. Staff had the burden of proof by a preponderance of the evidence. 1 Tex. Admin. Code (TAC) § 155.427.
5. Based on the findings set forth in Findings of Fact Nos. 6-8, Respondent did not violate 22 TAC § 217.12(6)(H) & (I), subjecting him to disciplinary action pursuant to Code § 301.452(b)(2) & (10).
6. Based on the findings set forth in Findings of Fact Nos. 9-12, Respondent is subject to disciplinary action pursuant to Code § 301.452(b)(8).
7. Based on the findings set forth in Findings of Fact Nos. 13 and 14, Respondent did not violate 22 TAC §§ 217.11(1)(A), (B), (C), (G), & (J), and 217.12(1)(A) & (B), (3), (4), and (6)(C), (D), & (G), subjecting him to disciplinary action pursuant to Code § 301.452(b)(10) & (13).
8. Based on the finding set forth in Finding of Fact No. 15, Respondent violated 22 TAC § 217.12(1)(a) and (5), subjecting him to disciplinary action pursuant to Code § 301.452(b)(12).

9. Based on the findings set forth in Findings of Fact Nos. 16 and 17, Respondent did not violate 22 TAC §§ 217.11(1)(A), (B), & (E) and 217.12(1)(A) & (B), (4), and (6)(A), subjecting him to disciplinary action pursuant to Code § 301.452(b)(10) & (13).

V. RECOMMENDATION

Based upon the above findings of fact and conclusions of law, the ALJ recommends that Respondent's license should be suspended until such time as a Board-approved physician provides verification of competency and Respondent has resolved his problems with the Louisiana Board.

SIGNED February 6, 2014.



ROY G. SCUDDAY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

DOCKET NO.507-13-6073

IN THE MATTER OF
PERMANENT CERTIFICATE
NUMBER 194641
ISSUED TO
COMFORT DELANDO ROBERTS

BEFORE THE
STATE OFFICE OF
ADMINISTRATIVE HEARING

RESPONDENT'S REPLY & EXCEPTION TO THE PROPOSAL FOR DECISION

NOW COMES, Comfort Roberts respondent, files his reply and exception to the proposal for decision would show as follows: charge II, III & VIII should be dismissed in accordance with the Texas Board of Nurses Policies for lack of evidence to support the charge by a preponderance of the evidence:

Charge II

The proposal for decision to suspend respondent's license until problems are resolved with Louisiana Board are not in compliance with disciplinary matrix established for Texas Board of Nurses. Please see below rules developed by Texas Board of Nursing in conjunctions with Texas Occupational Code:

- Texas Occupational Code 301.452
- Texas Board of Nurses Rule 213.27 (d)(3)
- Texas Board of Nurse Disciplinary Matrix for code 301.452(b)(8)

see attached exhibit labeled Charges II & III, which contains relevant copies of the State's exhibit 8, which was previously admitted into evidence on 01/21/2014, Please see the record on file with the court for the entire unseparated version of state's exhibit 8, this attached exhibit will also contain a copy of the relevant rules and regulations to be considered when determining if a violation has occurred and the disciplinary matrix for determining level of sanction to be applied

A review of Charge II as listed in the state's admitted exhibit 8 from the hearing on 01/21/2014, Alleges that on or about April 5, 2013, respondent's practical nursing license was suspended indefinitely in the state of Louisiana due to his failure to cooperate with a board investigation for the Louisiana State Board of Nurses of Practical Nurse Examiners.

A review of the state's exhibit 8, admitted in into evidence at the hearing on 01/21/2014, indicates that the above charge listed by Texas Board of Nurses on the Third Amended Formal Charges is not the same charge listed on the exhibit 8 obtained from Louisiana Board of Nurses. The letter dated April 5, 2013 from the Louisiana State Board of Nurses, state's exhibit 8, states the respondent failed to sufficiently respond to the board's request for information regarding allegations made against you concerning possible violations of the law regarding practical nursing.

However the additional documents under the state's exhibit 8, revealed a consented order form Louisiana State Board of Nurse Examlners signed by respondent containing the exact same charges that the respondent had entered into an agreed order offered on 10/21/2008 with the Texas Board of Nurses. The respondent's nursing license was returned to an unencumbered status after successful completion of the stipulations and remains unencumbered as of the date of this hearing.

However, Texas Boards of Nurses Policies states under rule 213.27:

(d) The following provisions shall govern the determination of present good professional character and fitness of a Petitioner, Applicant, or Licensee who has been licensed to practice nursing in any jurisdiction and has been disciplined, or allowed to voluntarily surrender in lieu of discipline, in that jurisdiction.

(3) The only defenses available to a Petitioner, Applicant, or Licensee under section (d) are outlined below and must be proved by clear and convincing evidence:

(D) The misconduct for which the individual was disciplined does not constitute professional misconduct in Texas.

A review of the Texas Board of Nurses Disciplinary Matrix for code 301.452(b)(8) is not applicable to Charge II & not in line with the board's policy, therefore to consider this code for disciplinary purposes would not be consistent with the rules established by the board and approved through the powers of the governor for the State of Texas, because Texas has previously disciplined respondent for this action via agreed order offered on 10/21/2008 in which respondent successfully completed and license was restored to an unencumbered status and has remained unencumbered since the hearing on 01/21/2014, proving good professional character.

CHARGE III

The proposal for decision to suspend respondent's license until problems are resolved with Louisiana Board are not in compliance with disciplinary matrix established for Texas Board of Nurses. Please see below rules developed by Texas Board of Nursing in conjunction with Texas Occupational Code:

- Texas Occupational Code 301.452
- Texas Board of Nurses Rule 213.27 (d)(3)(A)
- Texas Board of Nurse Disciplinary Matrix for code 301.452(b)(8)

*see attached exhibit labeled Charges II & III, which contains relevant copies of the State's exhibit 8, which was previously admitted into evidence on 01/21/2014, Please see the record on file with the court for the entire unseparated version of state's exhibit 8, this attached exhibit will also contain a copy of the relevant rules and regulations to be considered when

determining if a violation has occurred and the disciplinary matrix for determining level of sanction to be applied"

A review of Charge II as listed in the state's admitted exhibit 8 from the hearing on 01/21/2014, Alleges that on or about August 22, 2013, Respondent's practical nursing license was suspended indefinitely in the state of Louisiana due to his failure to cooperate with a board investigation for the Louisiana State Board of Nurses of Practical Nurse Examiners.

A review of the state's exhibit 8, admitted in into evidence at the hearing on 01/21/2014, indicates that the above charge listed by Texas Board of Nurses on the Third Amended Formal Charges is not the same charge listed on the exhibit 8 obtained from Louisiana Board of Nurses. The letter dated August 22, 2013 from the Louisiana State Board of Nurses, state's exhibit 8, states the respondent failed to sufficiently respond to the board's request for information regarding allegations made against you concerning possible violations of the law regarding practical nursing.

However, Texas Boards of Nurses Rules & Regulations states under rule 213.27 as follows:

(d) The following provisions shall govern the determination of present good professional character and fitness of a Petitioner, Applicant, or Licensee who has been licensed to practice nursing in any jurisdiction and has been disciplined, or allowed to voluntarily surrender in lieu of discipline, in that jurisdiction.

(3) The only defenses available to a Petitioner, Applicant, or Licensee under section (d) are outlined below and must be proved by clear and convincing evidence:

(A) The procedure followed in the disciplining jurisdiction was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process.

A review of the Texas Board of Nurses Disciplinary Matrix for code 301.452(b)(8) is not applicable to Charge III and is not in line with the boards rules and regulations, therefore to consider this code for disciplinary purposes would not be consistent with the rules and regulations established by the board and approved through the powers of the governor for the

State of Texas, according to the letter sent by the Louisiana State Board of Nurses dated August 22, 2013 obtained from the state as exhibit 8 only states that the respondent's license was suspended for failure to sufficiently respond to the board's request for information, the letter does not elude to the possible violations of the nurse practice act nor not it state what is needed or lacking to establish a violations or vindicate respondent of the alleged allegations of violation of the nurse practice act. Until the respondent is allow due process in the other jurisdiction, this board can't discipline respondent properly as required in the boards rules and regulations and to do so without sufficient evidence of wrong doing would be a denial of due process to respondent in Texas.

CHARGE VIII

The proposal for decision to suspend respondent's license until such time as a Board approved physician provides verification of competency does not comply with the Board's rules. Please see below rules developed by Texas Board of Nursing and in conjunctions Texas Administrative Code & Texas Occupational Code:

- Texas Board of disciplinary Matrix
- Texas Board of Nurses Rule 213.29 Criteria and Procedure Regarding Intemperate Use and Lack of Fitness in Eligibility and Disciplinary Matters.
- Texas Administrative Code Rule 217.11 & 217.12
- Texas Occupational Code

see attached exhibit labeled Charge VIII, which contain a copy of the relevant rules and regulations to be considered when determining if a violation has occurred and the disciplinary matrix for determining level of sanction to be applied

A review of Charge VIII as listed on the states admitted exhibit from the hearing on 01/21/2014 alleges that respondent on or about June 3, 2013, while employed as a Licensed Vocational

Nurse and in the role of Administrator with River City Care Center, San Antonio, Texas, respondent lacked fitness to practice nursing in that he had a psychological nervous breakdown including severe stress and anxiety.

A review of the Texas Board of Nurses Rule and Regulations rule 213.29:

(a) A person desiring to obtain or retain licensure to practice professional or vocational nursing shall provide evidence of current sobriety and fitness consistent with this rule:

(b) Such person shall provide a sworn certificate to the Board stating that he/she has read and understands the requirements for licensure as a registered or vocational nurse and that he or she has not:

(2) Within the past five years, been diagnosed with, treated or hospitalized for schizophrenia and or other psychotic disorders, bi-polar disorder, paranoid personality disorder, antisocial personality disorder or borderline personality disorder.

A review of the Texas Board of Nurses Disciplinary Matrix for code 301.452(b)(10) is not applicable to Charge VIII & not in line with the board's rules and regulations, therefore to consider this code for disciplinary purposes would not be consistent with the rules and regulations established by the board and approved through the powers of the governor for the State of Texas.

A review of the Texas Board of Nurses Disciplinary Matrix for code 301.452(b)(12) is consistent with Texas Board of Nurses Rule 213.29 when considering disciplinary sanction with the appropriate charge from the Board. However code 301.452 (b)(12) is not applicable to Charge VIII & not in line with the Board's rules and regulations, therefore to consider this code for disciplinary purposes would not be consistent with the rules and regulations established by the board and approved through the powers of the governor for the State of Texas.

A review of 22 TAC 217.11(1)(A),(B) & (T) confirms that referenced codes do not apply as respondent was not practicing or working in the role of a nurse as demonstrated in the hearing. The Board was also not able to produce any evidence that indicated respondent was

practicing or working in the role of a nurse. Latoya McHenry a witness for the state testified that respondent was the administrator and not in the role of a nurse.

A review of 22 TAC 217.12(1)(A),(B),(E),(4), and (5) confirms that referenced codes do not apply as respondent was not practicing or working in the role of a nurse as proven in the hearing and through testimony of Latoya McHenry, a witness for the state. The Board was also not able to produce any evidence that indicated respondent was practicing or working in the role of a nurse.

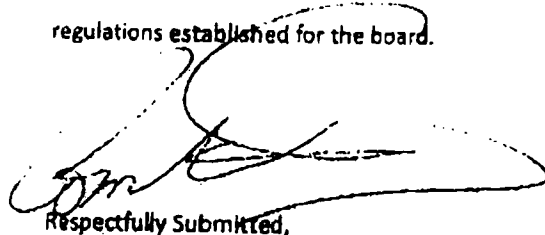
A review of the state's exhibit 12 admitted into evidence on 01/21/2014 did not reveal any diagnosis that would subject respondent to disciplinary action requiring an evaluation by a Board approved physician to certify competency as listed in rule 213.29(a)(b)(2). The respondent acknowledged having anxiety and stress at the hearing, both of which are not one of the qualified diagnosis listed by the Board that would require a mental evaluation. The medical definition of "psychological nervous breakdown" is sometimes used to describe a stressful situation in which someone becomes temporarily unable to function normally in day-to-day life. It's commonly understood to occur when life's demands become physically and emotionally overwhelming.

Clerical Errors

The respondent also notice that the proposal for decision eluded to a possible order of non-disclosure on page 4, under charge 1, page 6 under respondents testimony 1st paragraph and finally page 13, line numbers 6 and 8, all of which mentions the charge, the disposition of the charge, the case number, the district court, county and other facts surround the case that

confidential and not available to the public. Publicly displaying the information creates a violation of the order of non-disclosure.

In conclusion, the respondent prays that the honorable judge will review the exceptions listed and makes the corrections as prayed for which would be in compliance with the rules and regulations established for the board.



Respectfully Submitted,

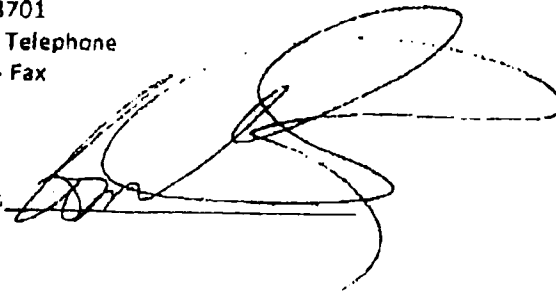
Comfort Roberts
5231 Glinger Rise
San Antonio, Texas
210-823-0700
210-957-1231

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above motion of exception and reply sent this, the 9th day of February, 2014, via fax to:

Texas Board of Nursing
Attention R. Kyle Hensley
333 Guadalupe, Tower III, suite 460
Austin, Texas 78701
512-305-7659 – Telephone
512-305-8101--- Fax

Comfort Roberts



Exhibit's for Charge II & III

**(exhibit's contained herein were are copies of those
admitted during the hearing on 01/21/2014, only)**

- **Texas Occupational Code 301.452**
- **Texas Board of Nurses Rule 213.27 (d)(3)(A)**
- **Texas Board of Nurse Disciplinary Matrix for code
301.452(b)(8)**

Above codes also included

- 192
- (e) The Board may determine as part of probation that the public may be better protected if probationer is suspended from the practice of nursing for a specific time period in order to correct deficiencies in skills, education, or personal rehabilitation and to assure documented proof of rehabilitation. Prior to the lifting of the actual suspension of license, the probationer will provide documentation of completion of educational courses or treatment rehabilitation.

The provisions of this §213.24 adopted to be effective August 15, 2002, 27 TexReg 7107.

§213.25 Monitoring.

- (a) The Board shall identify and monitor licensees who present a risk to the public and who are subject to Board orders. The monitoring system shall track at least the name, license number, address, employer, and any other information necessary to demonstrate compliance or non-compliance with an order of the Board.
- (b) Monitored licensees will pay a monthly fee as stated in the Board order. Said fee shall be paid on or before the 5th of each month.

The provisions of this §213.25 adopted to be effective August 15, 2002, 27 TexReg 7107.

§213.26 Reinstatement of a License.

- (a) A person whose license to practice nursing in this state has been revoked, suspended, or surrendered may apply for reinstatement of the license. In the case of revocation, petition shall not be made prior to one year after the effective date of the revocation. The Board may approve or deny a petition. In the case of denial, the Board may set a reasonable time that must elapse before another petition may be filed. The Board may impose reasonable conditions that a petitioner must satisfy before reinstatement of an unencumbered license.
- (b) A petition for reinstatement shall be in writing and in the form prescribed by the Board.
- (c) Petitioner's appearance at any hearing concerning reinstatement of a license shall be in person unless otherwise approved by the executive director.
- (d) The burden of proof is on the petitioner to prove present fitness to practice as well as compliance with all terms and conditions imposed as a part of any revocation, surrender, or suspension. A license may be reissued with a limited practice designation or with stipulations. If petition for reinstatement is denied, Petitioner may request a hearing before SOATL.
- (e) In considering reinstatement of a surrendered, suspended, or revoked license, the Board will evaluate:
 - (1) the conduct which resulted in voluntary surrender, suspension, or revocation of the license;
 - (2) the conduct of the petitioner subsequent to the suspension, revocation, or acceptance of surrender of license;
 - (3) the lapse of time since suspension, revocation, or acceptance of surrender;
 - (4) compliance with all conditions imposed by the Board as a prerequisite for issuance of the license; and
 - (5) the petitioner's present qualification to practice nursing based on his or her history of nursing-related employment or education.

The provisions of this §213.26 adopted to be effective August 15, 2002, 27 TexReg 7107; amended to be effective May 17, 2004, 29 TexReg 4884

→ **§213.27 Good Professional Character.**

- (a) Good professional character is the integrated pattern of personal, academic and occupational behaviors which, in the judgment of the Board, indicates that an individual is able to consistently conform his or her conduct to the requirements of the Nursing Practice Act, the Board's rules and regulations, and generally accepted standards of nursing practice including, but not limited to, behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity.
- (b) Factors to be used in evaluating good professional character in eligibility and disciplinary matters are:
 - (1) Good professional character is determined through the evaluation of behaviors demonstrated by an individual in his or her personal, academic and occupational history. An individual's age, education, and experience necessarily affect the nature and extent of behavioral history and, therefore, shall be considered in each evaluation.
 - (2) A person who seeks to obtain or retain a license to practice professional or vocational nursing shall provide evidence of good professional character which, in the judgment of the Board, is sufficient to insure that the individual can consistently act in the best interest of patients/clients and the public in any practice setting. Such evidence shall establish that the person:
 - (A) is able to distinguish right from wrong;
 - (B) is able to think and act rationally;
 - (C) is able to keep promises and honor obligations;
 - (D) is accountable for his or her own behavior;

2-11-14

- (E) is able to practice nursing in an autonomous role with patients/clients, their families, significant others, and members of the public who are or who may become physically, emotionally, or financially vulnerable;
- (F) is able to recognize and honor the interpersonal boundaries appropriate to any therapeutic relationship or health care setting; and
- (G) is able to promptly and fully self-disclose facts, circumstances, events, errors, and omissions when such disclosure could enhance the health status of patients/clients or the public or could protect patients/clients or the public from unnecessary risk of harm.
- (3) Any conviction for a felony or for a misdemeanor involving moral turpitude or order of probation with or without an adjudication of guilt for an offense that would be a felony or misdemeanor involving moral turpitude if guilt were adjudicated.
- (4) Any revocation, suspension, or denial of, or any other adverse action relating to, the person's license or privilege to practice nursing in another jurisdiction.
- (c) The following provisions shall govern the determination of present good professional character and fitness of a Petitioner, Applicant, or Licensee who has been convicted of a felony in Texas or placed on probation for a felony with or without an adjudication of guilt in Texas, or who has been convicted or placed on probation with or without an adjudication of guilt in another jurisdiction for a crime which would be a felony in Texas. A Petitioner, Applicant, or Licensee may be found lacking in present good professional character and fitness under this rule based on the underlying facts of a felony conviction or deferred adjudication, as well as based on the conviction or probation through deferred adjudication itself.
 - (1) The record of conviction or order of deferred adjudication is conclusive evidence of guilt.
 - (2) In addition to the disciplinary remedies available to the Board pursuant to Tex. Occ. Code Ann. §301.452(b)(3) and (4), Texas Occupations Code chapter 53, and §213.22, a Licensee guilty of a felony under this rule is conclusively deemed to have violated Tex. Occ. Code Ann. §301.452(b)(10) and is subject to appropriate discipline, up to and including revocation.
- (d) The following provisions shall govern the determination of present good professional character and fitness of a Petitioner, Applicant, or Licensee who has been licensed to practice nursing in any jurisdiction and has been disciplined, or allowed to voluntarily surrender in lieu of discipline, in that jurisdiction.
 - (1) A certified copy of the order, judgment of discipline, or order of adverse licensure action from the jurisdiction is prima facie evidence of the matters contained in such order, judgment, or adverse action and is conclusive evidence that the individual in question has committed professional misconduct as alleged in such order of judgment.
 - (2) An individual disciplined for professional misconduct in the course of practicing nursing in any jurisdiction or an individual who resigned in lieu of disciplinary action (disciplined individual) is deemed not to have present good professional character and fitness and is, therefore, ineligible to file an Application for Endorsement in the Texas Board of Nursing during the period of such discipline imposed by such jurisdiction, and in the case of revocation or surrender in lieu of disciplinary action, until the disciplined individual has filed an application for reinstatement in the disciplining jurisdiction and obtained a final determination on that application.
 - (3) The only defenses available to a Petitioner, Applicant, or Licensee under section (d) are outlined below and must be proved by clear and convincing evidence:
 - Charge III → (A) The procedure followed in the disciplining jurisdiction was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process.
 - (B) There was such an infirmity of proof establishing the misconduct in the other jurisdiction as to give rise to the clear conviction that the Board, consistent with its duty, should not accept as final the conclusion on the evidence reached in the disciplining jurisdiction.
 - (C) The denying of lack of present good professional character and fitness by the Board during the period required under the provisions of section (d) would result in grave injustice.
 - Charge II → (D) The misconduct for which the individual was disciplined does not constitute professional misconduct in Texas.
 - (4) If the Board determines that one or more of the foregoing defenses has been established, it shall render such orders as it deems necessary and appropriate.
- (e) An individual who applies for initial licensure, reinstatement, renewal, or endorsement to practice professional or vocational nursing in Texas after the expiration of the three-year period in subsection (f) of this section, or after the completion of the disciplinary period assessed or ineligibility period imposed by any jurisdiction under subsection (d) of this section shall be required to prove, by a preponderance of the evidence:
 - (1) that the best interest of the public and the profession, as well as the ends of justice, would be served by his or her admission to practice nursing; and
 - (2) that (s)he is of present good professional character and fitness.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.043, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 803, Sec. 21(5), eff. September 1, 2007.

SUBCHAPTER J. PROHIBITED PRACTICES AND DISCIPLINARY ACTIONS

Sec. 301.451. CERTAIN PROHIBITED PRACTICES. A person may not:

- (1) sell, fraudulently obtain, or fraudulently furnish a nursing diploma, license, renewal license, or record;
- (2) assist another person in selling, fraudulently obtaining, or fraudulently furnishing a nursing diploma, license, renewal license, or record;
- (3) practice nursing under a diploma, license, or record that was:
 - (A) obtained unlawfully or fraudulently; or
 - (B) signed or issued unlawfully or under false representation; or
- (4) practice nursing in a period in which the person's license is suspended or revoked.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.044, eff. Sept. 1, 2003.

Sec. 301.4515. USE OF CERTAIN NURSING TITLES. Unless the person is practicing under the delegated authority of a registered nurse or is otherwise authorized by state or federal law, a person may not use, in connection with the person's name:

- (1) the title "nurse aide," "nurse assistant," or "nurse technician"; or
- (2) any other similar title.

Added by Acts 2003, 78th Leg., ch. 876, Sec. 8, eff. June 20, 2003.

→ Sec. 301.452. GROUNDS FOR DISCIPLINARY ACTION. (a) In this section, "intemperate use" includes practicing nursing or being on duty or on call while under the influence of alcohol or drugs. ←

→ (b) A person is subject to denial of a license or to disciplinary action under this subchapter for: ←

(1) a violation of this chapter, a rule or regulation not inconsistent with this chapter, or an order issued under this chapter;

(2) fraud or deceit in procuring or attempting to procure a license to practice professional nursing or vocational nursing;

(3) a conviction for, or placement on deferred adjudication community supervision or deferred disposition for, a felony or for a misdemeanor involving moral turpitude;

(4) conduct that results in the revocation of probation imposed because of conviction for a felony or for a misdemeanor involving moral turpitude;

(5) use of a nursing license, diploma, or permit, or the transcript of such a document, that has been fraudulently purchased, issued, counterfeited, or materially altered;

(6) impersonating or acting as a proxy for another person in the licensing examination required under Section 301.253 or 301.255;

(7) directly or indirectly aiding or abetting an unlicensed person in connection with the unauthorized practice of nursing;

→ (8) revocation, suspension, or denial of, or any other action relating to, the person's license or privilege to practice nursing in another jurisdiction; ←

(9) intemperate use of alcohol or drugs that the board determines endangers or could endanger a patient;

(10) unprofessional or dishonorable conduct that, in the board's opinion, is likely to deceive, defraud, or injure a patient or the public;

(11) adjudication of mental incompetency;

(12) lack of fitness to practice because of a mental or physical health condition that could result in injury to a patient or the public; or

(13) failure to care adequately for a patient or to conform to the minimum standards of acceptable nursing practice in a manner that, in the board's opinion, exposes a patient or other person unnecessarily to risk of harm.

Disciplinary Matrix

§301.452(b)(8) revocation, suspension, or denial of, or any other action relating to, the person's license or privilege to practice nursing in another jurisdiction:		
First Tier Offense: Action in another jurisdiction results from a default order issued due to the nurse's failure to answer violations, and the violations are not those in which the other jurisdiction or Texas would have revoked the license but for the nurse's failure to respond. Action in another jurisdiction is based on alcohol or substance misuse and the nurse is otherwise eligible for a stipulation of the license based on Board's rules and alcohol or substance misuse policy. http://www.bon.state.tx.us/disciplinaryaction/dsp.html	Sanction Level I: Warning or Reprimand with Stipulations, which may include remedial education; supervised practice; perform public service; verified abstinence from unauthorized use of drugs and alcohol to be verified through urinalysis; limit specific nursing activities; and/or periodic board review. Order to participate in Board approved peer assistance program. Action should be at least consistent with action from other jurisdiction.	Sanction Level II: Revocation, Suspension, or Denial of Licensure when the individual doesn't respond or is not eligible for stipulated license. Action should be at least consistent with action from other jurisdiction.
Second Tier Offense: Revocation in another jurisdiction based on practice violations or unprofessional conduct that could result in similar sanction (revocation) in Texas.	Sanction Level I: Revocation, denial of licensure, or voluntary surrender.	Sanction Level II: Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or §301.457f, which may ultimately result in revocation.
Aggravating Circumstances for §301.452(b)(8): Multiple offenses, patient vulnerability, impairment during the incident, the nature and seriousness of the violation in the other jurisdiction, and patient harm or risk of harm associated with the violation, criminal conduct.		
Mitigating Circumstances for §301.452(b)(8): Nurse's failure to defend against the notice of violations and the resulting default order was not result of conscious indifference. The nurse has a meritorious defense against the unanswered violations outlined in the default order.		

§301.452(h)(9) intemperate use of alcohol or drugs that the Board determines endangers or could endanger a patient;		
First Tier Offense: Misuse of drugs or alcohol without patient interaction and no risk of patient harm or adverse patient effects. No previous history of misuse and no other aggravating circumstances.	Sanction Level I: Referral to a Board approved peer assistance program for nurses pursuant to Board rules and policy on alcohol or substance abuse or misuse. http://www.bon.state.tx.us/disciplinaryaction/dsp.html	Sanction Level II: For individuals receiving a diagnosis of no chemical dependency and/or no substance abuse/misuse, Warning with Stipulations that may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities and/or periodic board review. Appropriate when individual declines participation in peer assistance program or is otherwise ineligible for the program.

1 of 2 TBWE
Agreed

BEFORE THE TEXAS BOARD OF NURSING

In the Matter of Vocational Nurse § AGREED
License Number 194641, issued to §
COMFORT DELANDO ROBERTS § ORDER



Notary Public for the State of Texas
My Commission Expires 12/31/2014
I hereby certify that the foregoing is a true and correct copy of the original as the same appears in the records of the Board of Nursing.

On this day the Texas Board of Nursing, hereinafter referred to as the Board, considered the matter of COMFORT DELANDO ROBERTS, Vocational Nurse License Number 194641, hereinafter referred to as Respondent.

Information received by the Board produced evidence that Respondent may have violated Section 301.452(b)(1)&(10) and Section 301.451(1)&(3), Texas Occupations Code. Respondent waived notice and hearing, and agreed to the entry of this Order entered on October 21, 2008, by Katherine A. Thomas, MN, RN, Executive Director, subject to ratification by the Board.

FINDINGS OF FACT

1. Prior to the institution of Agency proceedings, notice of the matters specified below in these Findings of Fact was served on Respondent and Respondent was given an opportunity to show compliance with all requirements of the law for retention of the license.
2. Respondent waived notice and hearing, and agreed to the entry of this Order.
3. Respondent is currently licensed to practice vocational nursing in the State of Texas.
4. Respondent received a Certificate in Vocational Nursing from Panola Junior College, Carthage, Texas, in August 2004. Respondent was licensed to practice vocational nursing in the State of Texas on September 7, 2004.
5. Respondent's vocational nursing employment history includes:

2004 - Present	Agency Nurse PRN	Nursing Agency Houston, Texas
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of 2 TSV
Agreed order

Respondent's vocational nursing employment history continued:

03/05 - 2006	Agency Nurse	Nurse Finders Houston, Texas
02/06 - Present	Assistant Director of Nursing	Spanish Meadows Rehabilitation Houston, Texas

6. At the time of the initial incident, Respondent was employed as an Agency Nurse with Nurse Finders, Houston, Texas, and had been in this position for one (1) year and one (1) month.
7. On March 12, 19, and 26, 2006, while employed with Nurse Finders, Houston, Texas, and on assignment with Memorial Hermann Southwest Hospital, Houston, Texas, Respondent practiced as a professional nurse without a license. Respondent's conduct was likely to deceive the employer and could have affected the decision to continue employment.
8. On or about February 2006 and March 2006, while employed with Nurse Finders, Houston, Texas, and on assignment with Memorial Hermann Southwest Hospital, Houston, Texas, Respondent submitted an altered on-line verification document to Memorial Hermann Southwest Hospital. The on-line verification document had been altered to indicate that Respondent held a Registered Nurse Compact Texas License. Respondent's conduct was likely to deceive the employer and could have affected the decision to continue employment.
9. Charges were filed on April 16, 2008.
10. Charges were mailed to Respondent on April 18, 2008.

CONCLUSIONS OF LAW

1. Pursuant to Texas Occupations Code, Sections 301.451-301.555, the Board has jurisdiction over this matter.
2. Notice was served in accordance with law.
3. The evidence received is sufficient to prove violations of Section 301.452(b)(1)&(10) and Section 301.451(1)&(3), Texas Occupations Code, and 22 TEX. ADMIN. CODE §217.12(1)(B), (4), (5)(A)(H)(I), &(11)(B).
4. The evidence received is sufficient cause pursuant to Section 301.452(b), Texas Occupations Code, to take disciplinary action against Vocational Nurse License Number 194641, heretofore issued to COMFORT DELANDO ROBERTS, including revocation of Respondent's license to practice vocational nursing in the State of Texas.

icf

LOUISIANA STATE BOARD OF PRACTICAL NURSE EXAMINERS
 3121 NORTH CAUSEWAY BOULEVARD, SUITE 505
 METAIRIE, LOUISIANA 70002-3716
 (504) 838-8781
 FAX (504) 838-8270
 www.lsbprne.com

RECEIVED

AUG -7 2013

LETTER OF REPRIMAND

In the matter of: **Comfort Roberts**
5231 Ginger Rise
San Antonio, TX 78253

License #242439

Date: **July 8, 2013**

The Louisiana State Board of Practical Nurse Examiners hereby issues this Letter of Reprimand against Comfort Roberts, LPN based on the following:

It came to the attention of the board that the respondent had disciplinary action taken on his practical nursing license in the state of Texas in 2009. Review of his 2010 Louisiana renewal application, indicated that he falsified his application by failing to report his Texas action to the board as required.

In reviewing his 2010 renewal application, the respondent answered "NO" to question I, SINCE YOUR LAST RENEWAL, HAVE YOU: had any disciplinary action, consent order or settlement imposed, including entering a chemical impaired program, or is any disciplinary action pending on your license in any state (including Louisiana)?

According to information received from the National Council of State Boards of Nursing, the respondent was disciplined by the Texas Board of Nursing in 2009. The respondent entered into an agreement with the Texas Board of Nursing. He was issued a warning with stipulations and a fine on 2/10/2009 for practicing as a professional nurse without a license on March 12, 19, and 26, 2006 while employed with Nurse Finders. On or about February 2006 and March 2006, the respondent submitted an altered on-line verification document to Memorial Hermann Southwest Hospital. The on-line verification document had been altered to indicate that the respondent held a registered nurse compact Texas license, when in fact he did not.

Based on the evidence submitted, the Board has concluded that Mr. Roberts is in violation of the following provisions of Louisiana Revised Statutes, Title 37, Chapter 11, Nurses, Part II. Practical Nurses, Section 969 A. 4. (a) is guilty of fraud or deceit in procuring or attempting to procure a license to practice practical nursing; (f) is guilty of unprofessional conduct; (g) has violated any provisions of this Part; and §978. A. (8) Violate any provisions of this Part.

Q

LOUISIANA STATE BOARD OF PRACTICAL NURSE EXAMINERS
3421 NORTH CAUSEWAY BOULEVARD, SUITE 808
METairie, LOUISIANA 70002-3715
(504) 836-5781
FAX (504) 836-5279
www.lsbpng.com

August 22, 2013

CERTIFIED MAIL RETURN RECEIPT REQUESTED
7011 3500 0001 1472 5543

Comfort Roberts
5231 Onger Rise
San Antonio, TX 78253

Dear Mr. Roberts:

You have failed to sufficiently respond to the board's request for information regarding allegations made against you concerning possible violations of the law regulating practical nursing. Therefore, and in accordance with the Louisiana Administrative Code, Title 46:XLVII.306 F(3)(b), your practical nursing license is hereby suspended.

You may not practice as a practical nurse in the state of Louisiana while your license is suspended. You must immediately cease the practice of practical nursing. In addition, you must return your license to the Board of Practical Nurse Examiners no later than 10 days from the date of this letter. Failure to return your license and/or continuing to work while your license is suspended will result in further disciplinary action, which may include permanent revocation.

This suspension is a matter of public record and is reportable to the national disciplinary data bank and any and all other appropriate agencies, including health care employers.

After you have returned your license, you may then submit a written request for reinstatement which must include your response to the allegations made against you. In addition, you must submit a \$150.00 license reinstatement fee, payable by cashier's check or money order only.

Upon receipt of the reinstatement fee and favorable review of your response to the allegations, your license may be returned to you while the board continues its investigation.

LOUISIANA STATE BOARD OF
PRACTICAL NURSE EXAMINERS

M. Lynn Ansardi R N

M. Lynn Ansardi
Executive Director

MLA/kp

Exhibit's for Charge VIII

- **Texas Board of disciplinary Matrix**
- **Texas Board of Nurses Rule 213.29 Criteria and Procedure Regarding Intemperate Use and Lack of Fitness in Eligibility and Disciplinary Matters.**
- **Texas Administrative Code Rule 217.11 & 217.12**
- **Texas Occupational Code**

Texas Board of Nurses Rule 4 Keynote

→ §213.29 Criteria and Procedure Regarding Intemperate Use and Lack of Fitness in Eligibility and Disciplinary Matters.

(a) A person desiring to obtain or retain a license to practice professional or vocational nursing shall provide evidence of current sobriety and fitness consistent with this rule.

→ (b) Such person shall provide a sworn certificate in the Board stating that he/she has read and understands the requirements for licensure as a registered or vocational nurse and that he/she has not:

- (1) within the past five years, become addicted to or treated for the use of alcohol or any other drug; or
 (2) within the past five years, been diagnosed with, treated or hospitalized for schizophrenia and/or other psychotic disorders, bi-polar disorder, paranoid personality disorder, antisocial personality disorder or borderline personality disorder.

(c) If a registered or vocational nurse is reported to the Board for intemperate use, abuse of drugs or alcohol, or diagnosis of or treatment for chemical dependency; or if a person is unable to sign the certification in subsection (b) of this section, the following restrictions and requirements apply:

- (1) Any matter before the Board that involves an allegation of chemical dependency, or misuse or abuse of drugs or alcohol, will require at a minimum that such person obtain for Board review an evaluation that meets the criteria of §213.33 of this chapter (relating to Factors Considered for Imposition of Penalties/Sanctions and/or Fines);
- (2) Those persons who have become addicted to or treated for alcohol or chemical dependency will not be eligible to obtain or retain a license to practice as a nurse unless such person can demonstrate sobriety and abstinence for the preceding twelve consecutive months through verifiable and reliable evidence, or can establish eligibility to participate in a peer assistance program created pursuant to Chapter 467 of the Health and Safety Code;
- (3) Those persons who have become addicted to or treated for alcohol or chemical dependency will not be eligible to obtain or retain an unencumbered license to practice nursing until the individual has attained a five-year term of sobriety and abstinence or until such person has successfully completed participation in a board-approved peer assistance program created pursuant to Chapter 467 of the Health and Safety Code;
- (4) Those persons who have been diagnosed with, treated, or hospitalized for the disorders mentioned in subsection (b) of this section shall execute an authorization for release of medical, psychiatric, and treatment records.

(d) It shall be the responsibility of those persons subject to this rule to submit to and pay for an evaluation that meets the criteria of §213.33 of this chapter.

(e) Prior intemperate use, mental illness, or diminished mental capacity is relevant only so far as it may indicate current intemperate use or lack of fitness.

(f) With respect to chemical dependency in eligibility and disciplinary matters, the executive director is authorized to:

- (1) review submissions from a movant, materials and information gathered or prepared by staff, and identify any deficiencies in file information necessary to determine the movant's request;
- (2) close any eligibility file in which the movant has failed to respond to a request for information or to a proposal for denial of eligibility within 60 days thereof;
- (3) approve eligibility, enter eligibility orders and approve renewals, without Board ratification, when the evidence is clearly insufficient to prove a ground for denial of licensure; and
- (4) propose conditional orders in eligibility, disciplinary and renewal matters for individuals who have experienced chemical/alcohol dependency within the past five years provided:
 - (A) the individual presents reliable and verifiable evidence of having functioned in a sober/abstinent manner for the previous twelve consecutive months; and
 - (B) licensure limitations/stipulations and/or peer assistance program participation can be implemented which will ensure that patients and the public are protected until the individual has attained a five-year term of sobriety/abstinence.

(g) With respect to mental illness or diminished mental capacity in eligibility, disciplinary, and renewal matters, the executive director is authorized to propose conditional orders for individuals who have experienced mental illness or diminished mental capacity within the past five years provided:

- (1) the individual presents reliable and verifiable evidence of having functioned in a manner consistent with the behaviors required of nurses under the Nursing Practice Act and Board rules for at least the previous twelve consecutive months; and
- (2) licensure limitations/stipulations and/or peer assistance program participation can be implemented which will ensure that patients and the public are protected until the individual has attained a five-year term of controlled behavior and consistent compliance with the requirements of the Nursing Practice Act and Board rules.

14/2 301412 (12.1.10)

Disciplinary Matrix

	urinalysis; limit specific nursing activities, and/or periodic board review. Denial of licensure until applicant establishes he/she has received treatment and demonstrates one (1) year of verifiable sobriety, then license with stipulations that include supervision; limited practice; abstention from drugs/alcohol; and random drug testing through urinalysis.	service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities, and/or periodic board review. Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or §301.4551, which may ultimately result in revocation.
Fourth Tier Offense: Misuse of drugs or alcohol with serious physical injury or death of a patient or a risk of significant physical injury or death.	Sanction Level I: Denial of Licensure, Revocation or Voluntary Surrender.	Sanction Level II: Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or §301.4551, which may ultimately result in revocation.
Aggravating Circumstances for §301.452(b)(9): Actual harm; severity of harm; number of events; illegal substance; criminal action; criminal conduct or criminal action involved; criminal justice probation; inappropriate use of prescription drug; unsuccessful/repeated treatment; concurrent diversion violations; ineligible to participate in approved peer assistance program because of program policy or Board policy.		
Mitigating Circumstances for §301.452(b)(9): Self-remediation, including participation in inpatient treatment, intensive outpatient treatment, and after care program. Verifiable proof of sobriety by random, frequent drug/alcohol screens.		

→ **§301.452(b)(10)** unprofessional or dishonorable conduct that, in the board's opinion, is likely to deceive, defraud, or injure a patient or the public;

First Tier Offense: Isolated failure to comply with Board rules regarding unprofessional conduct resulting in unsafe practice with no adverse patient effects. Isolated violation involving minor unethical conduct where no patient safety is at risk, such as negligent failure to maintain client confidentiality or failure to honestly disclose or answer questions relevant to employment or licensure.*	Sanction Level I: Remedial Education and/or a fine of \$250 or more for each additional violation. Elements normally related to dishonesty, fraud or deceit are deemed to be unintentional.	Sanction Level II: Warning with Stipulations that may include remedial education; supervised practice; perform public service; limit specific nursing activities; and/or periodic Board review; and/or a fine of \$500 or more for each additional violation. Additionally, if the isolated violations are associated with mishandling or misdocumenting of controlled substances (with no evidence of impairment) then stipulations may include random drug screens to be verified through urinalysis and practice limitations.
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Disciplinary Matrix

Second Tier Offense: Failure to comply with a substantive Board rule regarding unprofessional conduct resulting in serious risk to patient or public safety. Repeated acts of unethical behavior or unethical behavior which places patient or public at risk of harm. Personal relationship that violates professional boundaries of nurse/patient relationship.	Sanction Level I: Warning or Reprimand with Stipulations which may include remedial education, supervised practice, and/or perform public service. Fine of \$250 or more for each violation. If violation involves mishandling or misdocumenting of controlled substances, misdemeanor crimes or criminal conduct involving alcohol, drugs or controlled substances, then the stipulations will also include abstention from unauthorized use of drugs and alcohol, to be verified by random drug testing through urinalysis, limit specific nursing activities, and/or periodic Board review. Board will use its rules and disciplinary sanction policies related to drug or alcohol misuse in analyzing facts. http://www.bon.state.tx.us/disciplinaryaction/dsp.html.	Sanction Level II: Denial of Licensure, Suspension, or Revocation of Licensure. Any Suspension would be enforced at a minimum until nurse pays fine, completes remedial education and presents other rehabilitative efforts as prescribed by the Board. If violation involves mishandling of controlled substances, misdemeanor crimes or criminal conduct involving alcohol, drugs or controlled substances then suspension will be enforced until individual has completed treatment and one year verifiable sobriety before suspension is stayed, thereafter the stipulations will also include abstention from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities and/or periodic Board review. Probated suspension will be for a minimum of two (2) or three (3) years with Board monitored and supervised practice depending on applicable Board policy. Financial exploitation of a patient or public will require full restitution before nurse is eligible for unmonitored license.
Third Tier Offense: Failure to comply with a substantive Board rule regarding unprofessional conduct resulting in serious patient harm. Repeated acts of unethical behavior or unethical behavior which results in harm to the patient or public. Sexual or sexualized contact with patient. Physical abuse of patient. Financial exploitation or unethical conduct resulting in a material or financial loss to a patient or public in excess of \$4,999.99.	Sanction Level I: Denial of licensure or revocation of nursing license. Nurse or individual is not subject to licensure or reinstatement of licensure until restitution is paid.	Sanction Level II: Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.456 or §301.4581, which may ultimately result in revocation.
Aggravating Circumstances for §301.452(h)(10): Number of events, level of material or financial gain, actual harm, severity of harm, prior complaints or discipline for similar conduct, patient vulnerability, involvement of or impairment by alcohol, illegal drugs, or controlled substances or prescription medications, criminal conduct.		
Mitigating Circumstances for §301.452(b)(10): Voluntary participation in established or approved remediation or rehabilitation program and demonstrated competency, full restitution paid.		
* Denotes a violation that is subject to disciplinary action, but may be eligible for a corrective action agreement (non-disciplinary action). The sanctions contained in this Matrix are disciplinary actions. Board rules regarding corrective actions (non-disciplinary actions) are located at 22 Tex. Admin. Code §213.32 and are not applicable to this Matrix. Further, a corrective action is not available as a sanction in a disciplinary action.		

Disciplinary Matrix

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§301.452(b)(11) adjudication of mental incompetency;		
	Sanction Level I: Denial of licensure or revocation of nursing license.	Sanction Level II: Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455, which may ultimately result in revocation.

→ §301.452(b)(12) lack of fitness to practice because of a mental or physical health condition that could result in injury to a patient or the public; or

First Tier Violation: A physical condition or diagnosis of schizophrenia and/or other psychotic disorder, bi-polar disorder, paranoid personality disorder, anti-social personality disorder, and/or borderline personality disorder without patient involvement or harm; but less than two years of compliance with treatment and less than two years of verifiable evidence of competent functioning.	Sanction Level I: Referral to the Board approved Peer Assistance Program or Warning with Stipulations for a minimum of one (1) year to include therapy and appropriate treatment and monitored practice that may include remedial education, supervised practice, perform public service, abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis, limit specific nursing activities and/or periodic Board review.	Sanction Level II: Denial of license or Suspension of license until individual is able to provide evidence of competency, then probation that may include remedial education, supervised practice, perform public service, abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis, limit specific nursing activities and/or periodic Board review.
Second Tier Violation: Lack of fitness based on any mental health or physical health condition with potential harm or adverse patient effects or other serious practice violations. "Lack of fitness" includes observed behavior that includes, but is not limited to: slurred speech, unsteady gait, sleeping on duty, inability to focus or answer questions appropriately.	Sanction Level I: With evidence of drug or alcohol misuse: Refer to Sanctions in §301.452(b)(9). Warning or Reprimand with Stipulations for a minimum of one (1) year to include supervision, therapy, and monitored practice that may include remedial education, supervised practice, perform public service, abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis, limit specific nursing activities and/or periodic Board review.	Sanction Level II: With evidence of drug or alcohol misuse: Refer to Sanctions in §301.452(b)(9). Denial of license or Suspension of license until individual is able to provide evidence of competency, then probation that may include remedial education, supervised practice, perform public service, abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities and/or periodic Board review.
Third Tier Violation: Lack of fitness based on any mental health or physical health condition with evidence of patient harm, significant risk of harm, or other serious practice violations.	Sanction Level I: Denial of licensure or revocation of nursing license.	Sanction Level II: Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or §301.4551, which may ultimately result in revocation.

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301.452(h)(12) (16)

Disciplinary Matrix

Aggravating Circumstances of §301.452(h)(12): Seriousness of mental health diagnosis, multiple diagnosis, recent psychotic episodes, lack of successful treatment or remediation, number of events or hospitalization, actual harm, severity of harm, prior complaints or discipline for similar conduct.

Mitigating Circumstances of §301.452(h)(12): Self report, length of time since condition was relevant, successful response to treatment, positive psychological/chemical dependency evaluation from a board approved evaluator who has opportunity to review the Board's file.

§301.452(h)(13) failure to care adequately for a patient or to conform to the minimum standards of acceptable nursing practice in a manner that, in the Board's opinion, exposes a patient or other person unnecessarily to risk of harm.

First Tier Offense: Practice below standard with a low risk of patient harm.	Sanction Level I: Remedial Education and/or fine of \$250 when there is isolated incident or a fine of more than \$250 for each additional violation.	Sanction Level II: Warning or Reprimand with Stipulations that may include remedial education, supervised practice, perform public service, abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis, limit specific nursing activities and/or periodic board review and/or fine of \$500 or more for each additional violation.
Second Tier Offense: Practice below standard with patient harm or risk of patient harm.	Sanction Level I: Warning or Reprimand with Stipulations that may include supervised practice, limited specific nursing activities and/or periodic board review and/or a fine of \$500 or more for each additional violation.	Sanction Level II: Denial, suspension of license, revocation of license, or request for voluntary surrender.
Third Tier Offense: Practice below standard with a serious risk of harm or death that is known or should be known. Act or omission that demonstrates level of incompetence such that the person should not practice without remediation and subsequent demonstration of competency. In addition, any intentional act or omission that risks or results in serious harm.	Sanction Level I: Denial, suspension of license, revocation of license or request for voluntary surrender.	Sanction Level II: Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or §301.4551, which may ultimately result in revocation.

Aggravating Circumstances for §301.452(h)(13): Number of events, actual harm, impairment at time of incident, severity of harm, prior complaints or discipline for similar conduct, patient vulnerability, failure to demonstrate competent nursing practice consistently during nursing career.

Mitigating Circumstances for §301.452(h)(13): Outcome not a result of care, participation in established or approved remediation or rehabilitation program and demonstrated competency, systems issues.

Acts 1999, 76th Leg., ch. 300, Sec. 1, eff. Sept. 1, 1999. Amended
by Acts 2003, 78th Leg., ch. 553, Sec. 1.043, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 803, Sec. 21(5), eff. September
1, 2007.

SUBCHAPTER J. PROHIBITED PRACTICES AND DISCIPLINARY ACTIONS

Sec. 301.451. CERTAIN PROHIBITED PRACTICES. A person may not:

- (1) sell, fraudulently obtain, or fraudulently furnish a nursing diploma, license, renewal license, or record;
- (2) assist another person in selling, fraudulently obtaining, or fraudulently furnishing a nursing diploma, license, renewal license, or record;
- (3) practice nursing under a diploma, license, or record that was:
 - (A) obtained unlawfully or fraudulently; or
 - (B) signed or issued unlawfully or under false representation; or
- (4) practice nursing in a period in which the person's license is suspended or revoked.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended
by Acts 2003, 78th Leg., ch. 553, Sec. 1.044, eff. Sept. 1, 2003.

Sec. 301.4515. USE OF CERTAIN NURSING TITLES. Unless the person is practicing under the delegated authority of a registered nurse or is otherwise authorized by state or federal law, a person may not use, in connection with the person's name:

- (1) the title "nurse aide," "nurse assistant," or "nurse technician"; or
- (2) any other similar title.

Added by Acts 2003, 78th Leg., ch. 076, Sec. 8, eff. June 20, 2003.

Chx 211

Sec. 301.452. GROUNDS FOR DISCIPLINARY ACTION. (a) In this section, "intemperate use" includes practicing nursing or being on duty or on call while under the influence of alcohol or drugs.

(b) A person is subject to denial of a license or to disciplinary action under this subchapter for:

- (1) a violation of this chapter, a rule or regulation not inconsistent with this chapter, or an order issued under this chapter;
- (2) fraud or deceit in procuring or attempting to procure a license to practice professional nursing or vocational nursing;
- (3) a conviction for, or placement on deferred adjudication community supervision or deferred disposition for, a felony or for a misdemeanor involving moral turpitude;
- (4) conduct that results in the revocation of probation imposed because of conviction for a felony or for a misdemeanor involving moral turpitude;
- (5) use of a nursing license, diploma, or permit, or the transcript of such a document, that has been fraudulently purchased, issued, counterfeited, or materially altered;
- (6) impersonating or acting as a proxy for another person in the licensing examination required under Section 301.253 or 301.255;
- (7) directly or indirectly aiding or abetting an unlicensed person in connection with the unauthorized practice of nursing;
- (8) revocation, suspension, or denial of, or any other action relating to, the person's license or privilege to practice nursing in another jurisdiction;
- (9) intemperate use of alcohol or drugs that the board determines endangers or could endanger a patient;
- (10) unprofessional or dishonorable conduct that, in the board's opinion, is likely to deceive, defraud, or injure a patient or the public;
- (11) adjudication of mental incompetency;
- (12) lack of fitness to practice because of a mental or physical health condition that could result in injury to a patient or the public; or
- (13) failure to care adequately for a patient or to conform to the minimum standards of acceptable nursing practice in a manner that, in the board's opinion, exposes a patient or other person unnecessarily to risk of harm.

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TITLE 22

EXAMINING BOARDS

PART 11

TEXAS BOARD OF NURSING

CHAPTER 217

LICENSURE, PEER ASSISTANCE AND PRACTICE

RULE §217.11

Standards of Nursing Practice

Change VIII

The Texas Board of Nursing is responsible for regulating the practice of nursing within the State of Texas for Vocational Nurses, Registered Nurses, and Registered Nurses with advanced practice authorization. The standards of practice establish a minimum acceptable level of nursing practice in any setting for each level of nursing licensure or advanced practice authorization. Failure to meet these standards may result in action against the nurse's license even if no actual patient injury resulted.

- (1) Standards Applicable to All Nurses. All vocational nurses, registered nurses and registered nurses with advanced practice authorization shall:
- (A) Know and conform to the Texas Nursing Practice Act and the board's rules and regulations as well as all federal, state, or local laws, rules or regulations affecting the nurse's current area of nursing practice;
- (B) Implement measures to promote a safe environment for clients and others;
- (C) Know the rationale for and the effects of medications and treatments and shall correctly administer the same;
- (D) Accurately and completely report and document:
- (i) the client's status including signs and symptoms;
 - (ii) nursing care rendered;
 - (iii) physician, dentist or podiatrist orders;
 - (iv) administration of medications and treatments;
 - (v) client response(s); and
 - (vi) contacts with other health care team members concerning significant events regarding client's status;
- (E) Respect the client's right to privacy by protecting confidential information unless required or allowed by law to disclose the information;
- (F) Promote and participate in education and counseling to a client(s) and, where applicable, the family/significant other(s) based on health needs;
- (G) Obtain instruction and supervision as necessary when implementing nursing procedures or practices;

(H) Make a reasonable effort to obtain orientation/training for competency when encountering new equipment and technology or unfamiliar care situations;

(I) Notify the appropriate supervisor when leaving a nursing assignment;

(J) Know, recognize, and maintain professional boundaries of the nurse-client relationship;

(K) Comply with mandatory reporting requirements of Texas Occupations Code Chapter 301 (Nursing Practice Act), Subchapter I, which include reporting a nurse:

(i) who violates the Nursing Practice Act or a board rule and contributed to the death or serious injury of a patient;

(ii) whose conduct causes a person to suspect that the nurse's practice is impaired by chemical dependency or drug or alcohol abuse;

(iii) whose actions constitute abuse, exploitation, fraud, or a violation of professional boundaries; or

(iv) whose actions indicate that the nurse lacks knowledge, skill, judgment, or conscientiousness to such an extent that the nurse's continued practice of nursing could reasonably be expected to pose a risk of harm to a patient or another person, regardless of whether the conduct consists of a single incident or a pattern of behavior.

(v) except for minor incidents (Texas Occupations Code §§301.401(2), 301.419, 22 TAC §217.16), peer review (Texas Occupations Code §§301.403, 303.007, 22 TAC §217.19), or peer assistance if no practice violation (Texas Occupations Code §301.410) as stated in the Nursing Practice Act and Board rules (22 TAC Chapter 217).

(L) Provide, without discrimination, nursing services regardless of the age, disability, economic status, gender, national origin, race, religion, health problems, or sexual orientation of the client served;

(M) Institute appropriate nursing interventions that might be required to stabilize a client's condition and/or prevent complications;

(N) Clarify any order or treatment regimen that the nurse has reason to believe is inaccurate, non-efficacious or contraindicated by consulting with the appropriate licensed practitioner and notifying the ordering practitioner when the nurse makes the decision not to administer the medication or treatment;

(O) Implement measures to prevent exposure to infectious pathogens and communicable conditions;

(P) Collaborate with the client, members of the health care team and, when appropriate, the client's significant other(s) in the interest of the client's health care;

(Q) Consult with, utilize, and make referrals to appropriate community agencies and health care resources to provide continuity of care;

(R) Be responsible for one's own continuing competence in nursing practice and individual professional growth;

(S) Make assignments to others that take into consideration client safety and that are commensurate with the educational preparation, experience, knowledge, and physical and emotional ability of the person to whom the assignments are made;

→ (T) Accept only those nursing assignments that take into consideration client safety and that are commensurate with the nurse's educational preparation, experience, knowledge, and physical and emotional ability;

(U) Supervise nursing care provided by others for whom the nurse is professionally responsible; and

(V) Ensure the verification of current Texas licensure or other Compact State licensure privilege and credentials of personnel for whom the nurse is administratively responsible, when acting in the role of nurse administrator.

(2) Standards Specific to Vocational Nurses. The licensed vocational nurse practice is a directed scope of nursing practice under the supervision of a registered nurse, advanced practice registered nurse, physician's assistant, physician, podiatrist, or dentist. Supervision is the process of directing, guiding, and influencing the outcome of an individual's performance of an activity. The licensed vocational nurse shall assist in the determination of predictable healthcare needs of clients within healthcare settings and:

(A) Shall utilize a systematic approach to provide individualized, goal-directed nursing care by:

(i) collecting data and performing focused nursing assessments;

(ii) participating in the planning of nursing care needs for clients;

(iii) participating in the development and modification of the comprehensive nursing care plan for assigned clients;

(iv) implementing appropriate aspects of care within the L.VN's scope of practice; and

(v) assisting in the evaluation of the client's responses to nursing interventions and the identification of client needs;

(B) Shall assign specific tasks, activities and functions to unlicensed personnel commensurate with the educational preparation, experience, knowledge, and physical and emotional ability of the person to whom the assignments are made and shall maintain appropriate supervision of unlicensed personnel.

(C) May perform other acts that require education and training as prescribed by board rules and policies, commensurate with the licensed vocational nurse's experience, continuing education, and demonstrated licensed vocational nurse competencies.

(3) Standards Specific to Registered Nurses. The registered nurse shall assist in the determination of healthcare needs of clients and shall:

(A) Utilize a systematic approach to provide individualized, goal-directed, nursing care by:

- (i) performing comprehensive nursing assessments regarding the health status of the client;
- (ii) making nursing diagnoses that serve as the basis for the strategy of care;
- (iii) developing a plan of care based on the assessment and nursing diagnosis;
- (iv) implementing nursing care; and
- (v) evaluating the client's responses to nursing interventions;

(B) Delegate tasks to unlicensed personnel in compliance with Chapter 224 of this title, relating to clients with acute conditions or in acute care environments, and Chapter 225 of this title, relating to independent living environments for clients with stable and predictable conditions.

(4) Standards Specific to Registered Nurses with Advanced Practice Authorization. Standards for a specific role and specialty of advanced practice nurse supersede standards for registered nurses where conflict between the standards, if any, exist. In addition to paragraphs (1) and (3) of this subsection, a registered nurse who holds authorization to practice as an advanced practice nurse (APN) shall:

(A) Practice in an advanced nursing practice role and specialty in accordance with authorization granted under Board Rule Chapter 221 of this title (relating to practicing in an APN role; 22 TAC Chapter 221) and standards set out in that chapter.

(B) Prescribe medications in accordance with prescriptive authority granted under Board Rule Chapter 222 of this title (relating to APNs prescribing; 22 TAC Chapter 222) and standards set out in that chapter and in compliance with state and federal laws and regulations relating to prescription of dangerous drugs and controlled substances.

Source Note: The provisions of this §217.11 adopted to be effective September 28, 2004, 29 TexReg 9192; amended to be effective November 15, 2007, 32 TexReg 8165

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TITLE 22

EXAMINING BOARDS

PART 11

TEXAS BOARD OF NURSING

CHAPTER 217

LICENSURE, PEER ASSISTANCE AND PRACTICE

RULE §217.12

Unprofessional Conduct

The unprofessional conduct rules are intended to protect clients and the public from incompetent, unethical, or illegal conduct of licensees. The purpose of these rules is to identify unprofessional or dishonorable behaviors of a nurse which the board believes are likely to deceive, defraud, or injure clients or the public. Actual injury to a client need not be established. These behaviors include but are not limited to:

- (1) Unsafe Practice—actions or conduct including, but not limited to:
 - (A) Carelessly failing, repeatedly failing, or exhibiting an inability to perform vocational, registered, or advanced practice nursing in conformity with the standards of minimum acceptable level of nursing practice set out in Rule 217.11.
 - (B) Carelessly or repeatedly failing to conform to generally accepted nursing standards in applicable practice settings;
 - (C) Improper management of client records;
 - (D) Delegating or assigning nursing functions or a prescribed health function when the delegation or assignment could reasonably be expected to result in unsafe or ineffective client care;
 - (E) Accepting the assignment of nursing functions or a prescribed health function when the acceptance of the assignment could be reasonably expected to result in unsafe or ineffective client care;
 - (F) Failing to supervise the performance of tasks by any individual working pursuant to the nurse's delegation or assignment; or
 - (G) Failure of a clinical nursing instructor to adequately supervise or to assure adequate supervision of student experiences.
- (2) Failure of a chief administrative nurse to follow appropriate and recognized standards and guidelines in providing oversight of the nursing organization and nursing services for which the nurse is administratively responsible.
- (3) Failure to practice within a modified scope of practice or with the required accommodations, as specified by the board in granting a coded license or any stipulated agreement with the board.
- (4) Careless or repetitive conduct that may endanger a client's life, health, or safety. Actual injury to a client need not be established.
- (5) Inability to Practice Safely—demonstration of actual or potential inability to practice nursing with reasonable skill and safety to clients by reason of illness, use of alcohol, drugs, chemicals, or any other mood-altering substances, or as a result of any mental or physical condition.

Transmission Log

Comfort Roberts

Sunday, 2014-02-09 19:36

2109571231

Date	Time	Type	Job #	Length	Speed	Fax Name/Number	Pages	Status
2014-02-09	19:23	SCAN	356	13:23	9600	15123222061	31	OK -- V.29 AM31

DOCKET NO.307-13-6073

IN THE MATTER OF
PERMANENT CERTIFICATE
NUMBER 194641
ISSUED TO
COMFORT DELAMON ROBERTS

BEFORE THE
STATE OFFICE OF
ADMINISTRATIVE HEARING

RESPONDENT'S AFFIDAVIT & EXCEPTION TO THE PRELIMINARY FOR DECISION

NOW COMES, Comfort Roberts respondent, files his reply and exception to the proposal for decision would show as follows: Charge II, IN A VIII should be dismissed in accordance with the Texas Board of Nurses Policies for lack of evidence to support the charge by a preponderance of the evidence:

Charge II

The proposal for decision to suspend respondent's license until problems are resolved with Louisiana Board are not in compliance with disciplinary matters established for Texas Board of Nurses. Please see hearing rules developed by Texas Board of Nursing in conjunction with Texas Occupational Code:

- Texas Occupational Code 301.452
- Texas Board of Nurses Rule 213.27 (d)(3)
- Texas Board of Nurse Disciplinary Matrix for code 301.452(b)(8)

"see attached exhibit labeled Charges II & III, which contains relevant copies of the State's exhibit I, which was previously admitted into evidence on 01/21/2014. Please see the record on file with the court for the entire transcript version of state's exhibit I, this attached exhibit will also contain a copy of the relevant rules and regulations to be considered when determining if a violation has occurred and the disciplinary matrix for determining level of sanction to be applied"

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

February 27, 2014

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

VIA FACSIMILE NO. 512/305-8101

RE: Docket No. 507-13-6073; Texas Board of Nursing v. Comfort Delando Roberts

Dear Ms. Thomas:

I have reviewed Respondent's Exceptions filed February 10, 2014, to the Proposal for Decision (PFD) issued in the above-referenced case. Staff did not file a Response.

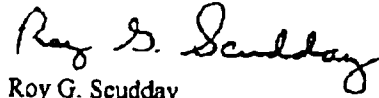
Respondent first excepts to the recommendation that Respondent's license be suspended until he has resolved his problems with the Louisiana Board of Practical Nurse Examiners, on the basis that Respondent has not been allowed proper due process on the problems with his Louisiana license. However, the fact that his Louisiana license has been suspended is a sufficient basis for the recommendation.

Respondent next excepts to the recommendation that Respondent's license be suspended until such time as a Board-approved physician provides verification of competency, on the basis that he was not practicing as a nurse at the time of his admitted psychological nervous breakdown (Finding of Fact No. 15). However, as set forth in the PFD, I am of the opinion that such a condition falls within the parameters of Texas Occupations Code § 301.452(b)(12).

SOAH Docket No. 507-13-6073
Exceptions Letter
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For the reasons expressed in the PFD, my recommendation remains unchanged.

Sincerely,



Roy G. Scudday
Administrative Law Judge

RGS/ap

XC

R. Kyle Hensley, Assistant General Counsel, TBN, 333 Guadalupe, Tower III, Ste. 460, Austin, TX 78701
- VIA FACSIMILE NO. 512/305-8101

Dina Flores, Legal Assistant TBN, 333 Guadalupe, Tower III, Ste. 460, Austin, TX 78701 - VIA
FACSIMILE NO. 512/305-8101 AND CERTIFIED EVIDENTIARY RECORD VIA
INTERAGENCY MAIL

Comfort Delando Roberts, 5231 Ginger Rise, San Antonio, TX 78253 - VIA REGULAR MAIL



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.
Katherine A. Thomas
Executive Director of the Board

BEFORE THE TEXAS BOARD OF NURSING

In the Matter of Vocational Nurse § AGREED
License Number 194641, issued to §
COMFORT DELANDO ROBERTS § ORDER

On this day the Texas Board of Nursing, hereinafter referred to as the Board, considered the matter of COMFORT DELANDO ROBERTS, Vocational Nurse License Number 194641, hereinafter referred to as Respondent.

Information received by the Board produced evidence that Respondent may have violated Section 301.452(b)(1)&(10) and Section 301.451(1)&(3), Texas Occupations Code. Respondent waived notice and hearing, and agreed to the entry of this Order offered on October 21, 2008, by Katherine A. Thomas, MN, RN, Executive Director, subject to ratification by the Board.

FINDINGS OF FACT

1. Prior to the institution of Agency proceedings, notice of the matters specified below in these Findings of Fact was served on Respondent and Respondent was given an opportunity to show compliance with all requirements of the law for retention of the license.
2. Respondent waived notice and hearing, and agreed to the entry of this Order.
3. Respondent is currently licensed to practice vocational nursing in the State of Texas.
4. Respondent received a Certificate in Vocational Nursing from Panola Junior College, Carthage, Texas, in August 2004. Respondent was licensed to practice vocational nursing in the State of Texas on September 7, 2004.
5. Respondent's vocational nursing employment history includes:

2004 - Present	Agency Nurse PRN	Nursing Agency Houston, Texas
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Respondent's vocational nursing employment history continued:

03/05 - 2006	Agency Nurse	Nurse Finders Houston, Texas
02/06 - Present	Assistant Director of Nursing	Spanish Meadows Rehabilitation Houston, Texas

6. At the time of the initial incident, Respondent was employed as an Agency Nurse with Nurse Finders, Houston, Texas, and had been in this position for one (1) year and one (1) month.
7. On March 12, 19, and 26, 2006, while employed with Nurse Finders, Houston, Texas, and on assignment with Memorial Hermann Southwest Hospital, Houston, Texas, Respondent practiced as a professional nurse without a license. Respondent's conduct was likely to deceive the employer and could have affected the decision to continue employment.
8. On or about February 2006 and March 2006, while employed with Nurse Finders, Houston, Texas, and on assignment with Memorial Hermann Southwest Hospital, Houston, Texas, Respondent submitted an altered on-line verification document to Memorial Hermann Southwest Hospital. The on-line verification document had been altered to indicate that Respondent held a Registered Nurse Compact Texas License. Respondent's conduct was likely to deceive the employer and could have affected the decision to continue employment.
9. Charges were filed on April 16, 2008.
10. Charges were mailed to Respondent on April 18, 2008.

CONCLUSIONS OF LAW

1. Pursuant to Texas Occupations Code, Sections 301.451-301.555, the Board has jurisdiction over this matter.
2. Notice was served in accordance with law.
3. The evidence received is sufficient to prove violations of Section 301.452(b)(1)&(10) and Section 301.451(1)&(3), Texas Occupations Code, and 22 TEX. ADMIN. CODE §217.12(1)(E),(4),(6)(A)(H)(I),&(11)(B).
4. The evidence received is sufficient cause pursuant to Section 301.452(b), Texas Occupations Code, to take disciplinary action against Vocational Nurse License Number 194641, heretofore issued to COMFORT DELANDO ROBERTS, including revocation of Respondent's license to practice vocational nursing in the State of Texas.

ORDER

IT IS THEREFORE AGREED and ORDERED, subject to ratification by the Texas Board of Nursing, that RESPONDENT SHALL receive the sanction of a WARNING WITH STIPULATIONS, and 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.

IT IS FURTHER AGREED and ORDERED that this Order SHALL be applicable to Respondent's multistate licensure privilege, if any, to practice vocational nursing in compact states.

IT IS FURTHER AGREED and ORDERED that while Respondent's license is encumbered by this Order, Respondent may not work outside the State of Texas pursuant to a multistate licensure 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.

IT IS FURTHER AGREED that:

(1) RESPONDENT SHALL deliver the wallet-sized license issued to ROBERT DELANDO ROBERTS, to the office of the Texas Board of Nursing within ten (10) days from the date of ratification of 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) contact 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 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.state.tx.us/disciplinaryaction/stipscourses.html>.*

(3) RESPONDENT SHALL pay a monetary fine in the amount of Five Hundred Dollars (\$500). RESPONDENT SHALL pay this fine within forty-five (45) days of entry of this Order. Payment is to be made directly to the Texas Board of Nursing in the form of cashier's check or U.S. money order. Partial payments will not be accepted.

IT IS FURTHER AGREED, SHOULD RESPONDENT PRACTICE AS A LICENSED VOCATIONAL 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 STIPULATIONS FOR ONE (1) YEAR OF EMPLOYMENT. THE LENGTH OF THE STIPULATION PERIOD WILL BE EXTENDED UNTIL SUCH TWELVE (12) MONTHS HAVE ELAPSED. PERIODS OF UNEMPLOYMENT OR OF EMPLOYMENT THAT DO NOT REQUIRE THE USE OF A VOCATIONAL NURSE (LVN) LICENSE WILL NOT APPLY TO THIS STIPULATION PERIOD:

(4) RESPONDENT SHALL notify each present employer in nursing of this Order of the Board and the stipulations on RESPONDENT's license. 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 stipulations on RESPONDENT's license. 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.

(5) 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.

(6) For the duration of the stipulation period, RESPONDENT SHALL be supervised by a Registered Nurse or 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.

(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 Registered Nurse or Licensed Vocational 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 one (1) year of employment as a nurse.

IT IS FURTHER AGREED, that upon full compliance with the terms of this Order, RESPONDENT SHALL be issued an unencumbered license and multistate licensure privileges, if any, to practice vocational nursing in the State of Texas.

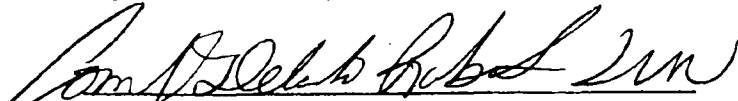
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RESPONDENT'S CERTIFICATION

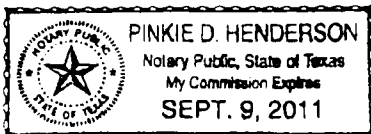
I understand that I have the right to legal counsel prior to signing this Agreed Order. I have reviewed this Order. I neither admit nor deny the violations alleged herein. By my signature on this Order, I agree to the Findings of Fact, Conclusions of Law, Order, and any conditions of said Order, to avoid further disciplinary action in this matter. I waive judicial review of this Order. I understand that this Order is subject to ratification by the Board. When this Order is ratified, the terms of this Order become effective, and a copy will be mailed to me. I understand that if I fail to comply with all terms and conditions of this Order, I will be subject to investigation and disciplinary sanction, including revocation of my license to practice vocational nursing in the State of Texas, as a consequence of my noncompliance.

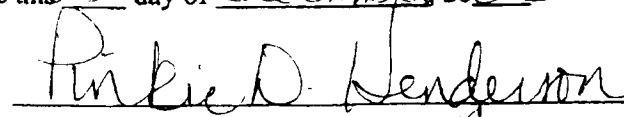
Signed this 22nd day of December, 2008


COMFORT DELANDO ROBERTS, Respondent

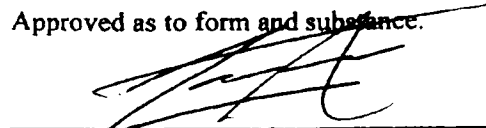
Sworn to and subscribed before me this 22nd day of December, 2008

SEAL




Notary Public in and for the State of Texas

Approved as to form and substance.


Louis Leichter, Attorney for Respondent

Signed this 22nd day of December, 2008

WHEREFORE, PREMISES CONSIDERED, the Texas Board of Nursing does hereby ratify and adopt the Agreed Order that was signed on the 22nd day of December, 2008, by COMFORT DELANDO ROBERTS, Vocational Nurse License Number 194641, and said Order is final.

Effective this 10th day of February, 2009.


Katherine A. Thomas, MN, RN
Executive Director on behalf of said Board

