



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.
Michelle Palmer
Executive Director of the Board

DOCKET NUMBER 507-10-3575

**IN THE MATTER OF
PERMANENT CERTIFICATE
NUMBER 420385
ISSUED TO
R.J. WATKINS JACKSON**

**§
§
§
§
§**

**BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS**

OPINION AND ORDER OF THE BOARD

**TO: R.J. WATKINS JACKSON
c/o WENDLE VAN SMITH, ATTORNEY
ANDERSON & SMITH, ATTORNEYS AND
COUNSELORS AT LAW
ONE ARENA PLACE
7322 SOUTHWEST FREEWAY, SUITE 2010
HOUSTON, TX 77074**

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

At the regularly scheduled public meeting on January 27-28, 2011, the Texas Board of Nursing (Board) considered the following items: (1) The Proposal for Decision (PFD) regarding the above cited matter; (2) Staff's recommendation that the Board adopt the PFD regarding the registered nursing license of R.J. Watkins Jackson with changes; and (3) Respondent's recommendation to the Board regarding the PFD and order, if any.

The Board finds that after proper and timely notice was given, the above styled case was heard by an Administrative Law Judge (ALJ) who made and filed a PFD containing the ALJ's findings of facts and conclusions of law. The PFD was properly served on all parties and all parties were given an opportunity to file exceptions and replies as part of the record herein. Staff filed Exceptions to the PFD on September 16, 2010. The Respondent did not file a response to Staff's Exceptions. The ALJ issued a ruling on Staff's Exceptions on October 6, 2010, in which he modified Finding of Fact Number 9 and Conclusions of Law Numbers 6 and 7.

The Board, after review and due consideration of the PFD, Staff's exceptions, Staff's recommendations, and Respondent's presentation 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, including Finding of Fact Number 9 and Conclusion of Law Number 6 as modified by the ALJ in his letter ruling of October 6, 2010, with the exception of Conclusion of Law Number 7, which is not adopted by the Board because it is not a proper conclusion of law. All proposed findings of fact and conclusions of law filed by any party not specifically adopted herein are hereby denied.

Conclusion of Law Number 7

The Government Code §2001.058(e) authorizes the Board to change a finding of fact or conclusion of law made by the ALJ, or to vacate or modify an order issued by the ALJ if the Board determines that the ALJ did not properly apply or interpret applicable law, agency rules, written policies, or prior administrative decisions. The ALJ did not properly apply or interpret applicable law in this matter when he included his recommended sanction as a conclusion of law. A recommendation for a sanction is not a proper conclusion of law. An agency is the final decision maker regarding the imposition of sanctions. Once it has been determined that a violation of the law has occurred, the sanction is a matter for the agency's discretion. The choice of penalty is vested in the agency, not in the courts. The agency is charged by law with discretion to fix the penalty when it determines that the statute has been violated. Thus, the Board is not required to give presumptively binding effect to an ALJ's recommendation regarding sanctions in the same manner as with other findings of fact and conclusions of law. 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...[T]he Board, not the ALJ, is the decision maker concerning sanctions. *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). The Board rejects Conclusion of Law Number 7 because it is a recommended sanction and not a proper conclusion of law. Further, the Board retains the authority to determine the final sanction in this matter. The Board believes that disciplinary action in this matter is warranted based upon the adopted Findings of Fact and Conclusions of Law Numbers 4 and 6. However, the Board disagrees with the ALJ that the proper sanction should be a probated suspension of the Respondent's license, coupled with probationary stipulations for the duration of the Respondent's term of community supervision. Further, the Board finds that the ALJ erred in applying applicable law and the Board's rules, written policies, and prior administrative decisions in formulating this recommendation. Based upon applicable law, the Board's rules, policies, and prior administrative decisions, the Board finds that the Respondent's license should be revoked.

The Board notes, at the outset, that the ALJ's recommended sanction is inconsistent with his own findings of fact and conclusions of law. Conclusion of Law Number 6 states that Board Staff proved that Respondent's previous criminal conduct supports the revocation of her license. Nevertheless, the ALJ recommends the probated suspension of the Respondent's license in lieu of license revocation. This recommendation is inconsistent and illogical. Further, the ALJ's recommended sanction is inconsistent with 22 Tex. Admin. Code §213.33(b), the Board's Disciplinary Guidelines for Criminal Conduct, and the Board's Disciplinary Sanctions for Fraud, Theft, and Deception. Section 213.33(b) provides for licensure revocation for unprofessional conduct that results in a financial loss to patients or the public in excess of \$4,999. The Respondent's conduct

resulted in a financial loss to the public in an amount greater than or equal to \$200,000, as is set out in Finding of Fact Number 6. Further, the Board's Disciplinary Guidelines for Criminal Conduct provide for license revocation in matters involving a felony offense of theft greater than \$1,500 where the judicial order of deferred adjudication occurred less than five years ago. The Respondent received a deferred adjudication for the first felony offense of theft greater than or equal to \$200,000 a year and a half ago, as is set out in Finding of Fact Number 6. Further, the Board's Disciplinary Sanctions for Fraud, Theft, and Deception authorize licensure revocation in matters involving fraudulent, deceitful, intentional, and/or willful misconduct that results in harm or potential for harm to another person. Although the Board adopts the Findings of Fact without modification, the Board does not find that the Respondent's rehabilitative efforts set forth in these findings are sufficient to override the Board's rules, policies, and guidelines that support the revocation of the Respondent's license. Finally, the revocation of the Respondent's license is consistent with the Board's prior administrative decisions in disciplinary matters with similar facts. As such, the Board finds that the Respondents' license should be revoked.

IT IS THEREFORE ORDERED that Permanent Certificate Number 420385, previously issued to R.J. WATKINS JACKSON, to practice nursing in the State of Texas be, and the same is hereby, REVOKED.

IT IS FURTHER ORDERED that Permanent Certificate Number 420385, previously issued to R.J. WATKINS JACKSON, upon receipt of this Order, be immediately delivered to the office of the Texas Board of Nursing.

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

Entered this 29th day of January, 2011.

TEXAS BOARD OF NURSING



KATHERINE A. THOMAS, MN, RN

EXECUTIVE DIRECTOR FOR THE BOARD

Attachment: Proposal for Decision; Docket No. 507-10-3575 (September 1, 2010).

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

September 1, 2010

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

VIA INTER-AGENCY

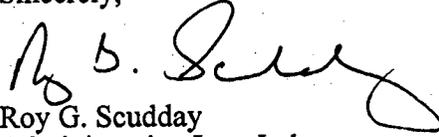
**RE: Docket No. 507-10-3575; In the Matter of Permanent Certificate
No. 420385 Issued to R. J. Watkins Jackson**

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,


Roy G. Scudday
Administrative Law Judge

RGS/ap
Enclosure

XC: R. Kyle Hensley, Assistant General Counsel, Texas Board Nursing, 333 Guadalupe, Tower III, Ste. 460, Austin, TX 78701 - **VIA INTER-AGENCY**
Dina Flores, Legal Assistant TBN, 333 Guadalupe, Tower III, Ste. 460, Austin, TX 78701 - **VIA INTER-AGENCY**
Wendle Van Smith, Anderson & Smith, Attorneys and Counselors at Law, One Arena Place, 7322 Southwest Freeway, Suite 2010, Houston, TX 77074-**VIA REGULAR MAIL**

SOAH DOCKET NO. 507-10-3575

**IN THE MATTER OF
PERMANENT CERTIFICATE
NO. 420385 ISSUED TO**

§
§
§
§
§
§
§

BEFORE THE STATE OFFICE

OF

**R. J. WATKINS JACKSON,
Respondent**

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Staff of the Texas Board of Nursing (Staff/Board) brought action against R. J. Watkins Jackson (Respondent) for violating TEX. OCC. CODE ANN. (Code) § 301.452 and 22 TEX. ADMIN. CODE (TAC) § 217.12, based on Respondent's criminal history, including her felony probation for Theft. The proposal for decision finds that Respondent's Registered Nurse (RN) license should be suspended, but that the suspension should be fully probated.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The hearing convened August 26, 2010, before 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 was represented by attorney Wendle Van Smith. 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 an RN in since 1970. On September 4, 2009, Staff sent Respondent a Notice of Formal Charges filed against her. On April 8, 2010, Staff sent Respondent its Notice of Hearing.

B. Evidence

Staff submitted multiple exhibits. Respondent submitted one exhibit and testified on her own behalf.

1. Undisputed Facts

Respondent, who is 69, has been a Registered Nurse since 1962. On May 28, 2009, in Cause No. 1153732 in the 209th District Court of Harris County, Texas, Respondent entered a plea of *Nolo Contendere* to the 1st degree felony offense of Theft greater than or equal to \$200,000, adjudication was deferred, and Respondent was placed on community supervision for a period of ten years, ordered to pay restitution in the amount of \$66,995.77 and court costs, perform a total of 200 hundred house of community service at the rate of 10 hours per month, and pay the restitution at the rate of \$600.00 per month.¹

2. Respondent's Testimony

Respondent accepted responsibility for the theft that was the result of Medicare fraud, although she was not directly involved in the fraud. She paid \$50,000 in restitution prior to being granted deferred adjudication. She has paid \$1,000 a month in addition to the required \$600.00 a month toward the restitution amount, which now stands at \$44,481.90, and at which rate she will have the entire amount paid in 28 months. She completed the community service hours teaching English as a second language in a six-month period, which was one-third of the time provided. She expressed remorse for her actions.

Respondent submitted a letter from Ron Fishbeck, her supervision officer, stating that results of Respondent's random alcohol/drug tests were negative, that no subsequent arrests or new charges have been filed, that she reports as scheduled, has maintained stable employment, and has no direct or indirect involvement with Medicare or Medicaid billing. Respondent works

¹ Bd. Ex. 6.

as a Quality Assurance nurse at Oceno Health Service, a home health care service. In that position, although she has access to patient records, she does not deal directly with patients and does not have access to patient financial records or insurance information.

C. Analysis

Code § 301.452(b)(3) provides that a person is subject to disciplinary action for “a conviction for, or placement on deferred adjudication community supervision or deferred disposition for, a felony or for a misdemeanor involving moral turpitude.” The Board rule at 22 TAC § 213.27(b)(3) provides that one of the factors to consider in evaluating good professional character in disciplinary matters is 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.” The rule at 22 TAC § 213.28(b)(2)(A)(viii) lists “Theft greater or equal to \$1500” as being an offense against property that directly relates to and affects the practice of nursing.

The Disciplinary Matrix of the Board found at 22 TAC § 213.33(b) provides that discipline for placement on deferred adjudication for a felony will be reviewed under the Board’s Disciplinary Guidelines for Criminal Conduct. Those Guidelines provide that, for the crime of Theft involved in this case, the proper sanction if the licensee is not on felony probation is to issue the license with stipulation, but if the licensee is on felony probation, to revoke the license. The Guidelines set forth the reasoning for these sanctions as follows:

Offense Against Property that involves an intent to deprive person of his/her property without his/her consent. Theft is a crime of moral turpitude. Patients under the care of a nurse are vulnerable by virtue of illness or injury, and the dependent nature of the nurse - patient relationship. Patients frequently bring valuables (medications, money, jewelry, items of sentimental value, checkbook, or credit cards) with them to a health care facility. Nurses frequently provide care in private homes and home-like settings where all of the patient’s property and valuables are accessible to the nurse. Nurses frequently provide care in settings without direct supervision. Theft crimes raise serious concerns whether a nurse/nurse applicant can be trusted to respect a patient’s property/possessions in

the future. A nurse license would provide unfettered opportunity and access to a patient's person and property.

It is clear from the Board rules and Guidelines that Respondent's deferred adjudication for theft is a basis for revocation of her license.² However, as stated in the Guidelines, each case must be considered on its own merits.

Respondent has no direct contact with patients, which is the major concern set forth in the sanction rationale. Respondent has no involvement with Medicare or Medicaid billing, and has no access to patient financial records. Respondent is diligently working to pay the full amount of restitution as soon as possible, well before the scheduled end of the community supervision period. Respondent has no other history of criminal activities. In addition, any failure of Respondent to continue complying with the terms of her community supervision could result in a judgment of conviction being entered against her that would serve as the basis for immediate revocation of her license.

III. RECOMMENDATION

Based upon the above discussion, the ALJ recommends that Respondent's registered nursing license be suspended, but that the suspension be probated subject to such conditions as required by the Board, which conditions should remain in effect for the remainder of the period that Respondent is on community supervision. Inasmuch as no evidence was submitted regarding costs, no costs should be imposed against Respondent.

IV. FINDINGS OF FACT

1. R. J. Watkins Jackson (Respondent) has been licensed as a registered nurse by the Texas Board of Nursing (Staff/Board) since 1970.
2. On September 4, 2009, Staff sent Respondent a Notice of Formal Charges filed against her.

² It should be noticed that the Guidelines refer to felony probation but do not clearly equate that with community supervision as part of deferred adjudication, which are two different things.

3. On April 8, 2010, Staff mailed its 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 August 26, 2010, in the William P. Clements Building, 300 West 15th Street, Austin, Texas.
6. On May 28, 2009, in Cause No. 1153732 in the 209th District Court of Harris County, Texas, Respondent entered a plea of *Nolo Contendere* to the 1st degree felony offense of Theft greater than or equal to \$200,000, adjudication was deferred, and Respondent was placed on community supervision for a period of ten years, ordered to pay restitution in the amount of \$66,995.77 and court costs, perform a total of 200 hundred hours of community service at the rate of 10 hours per month, and pay the restitution at the rate of \$600.00 per month.
7. Respondent paid \$50,000 (out of a total of \$117,000) of restitution prior to the deferred adjudication procedure. She has paid \$1,000 a month in addition to the required \$600.00 a month toward the restitution amount, the balance of which now stands at \$44,481.90, and at which rate she will have the entire amount paid off in 28 months.
8. Respondent completed the community service hours teaching English as a second language in a six-month period, which was one-third of the time provided.
9. Respondent accepted responsibility for the theft that was the result of Medicare fraud, although she was not directly involved in the fraud. She expressed remorse for her actions.
10. Results of Respondent's random alcohol/drug tests were negative, no subsequent arrests or new charges have been filed, she reports as scheduled, has maintained stable employment, and has no direct or indirect involvement with Medicare or Medicaid billing.
11. Respondent works as a Quality Assurance nurse at Oceno Health Service, a home health care service. In that position, although she has access to patient records, she does not deal directly with patients and does not have access to patient financial records or insurance information.

IV. CONCLUSIONS OF LAW

1. The Texas Board of Nursing (Board) has jurisdiction over this matter pursuant to TEX. OCC. CODE ANN. (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, pursuant to TEX. GOV'T CODE ANN. 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 ANN. §§ 2001.051 and 2001.052.
4. Respondent is subject to disciplinary action by the Board pursuant to Code § 301.452(b)(3).
5. Staff had the burden of proof by a preponderance of the evidence.
6. Based on Findings Nos. 6-11, Staff has failed to prove that Respondent's previous criminal conduct supports the revocation of her license pursuant to 22 TEX. ADMIN. CODE §§ 213.27 and 28.
7. Based upon Findings of Fact Nos. 6-11 and Conclusion of Law No. 6, the Board should suspend Respondent's registered nurse license, but fully probate the suspension subject to such conditions as required by the Board, which conditions should remain in effect for the remainder of the period that Respondent is on community supervision.

SIGNED September 1, 2010.



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



Texas Board of Nursing

333 Guadalupe Street, Ste. 3-460, Austin, Texas 78701
Phone: (512) 305-7400 Fax: (512) 305-7401 www.bon.state.tx.us

Katherine A. Thomas, MN, RN
Executive Director

September 16, 2010

Administrative Law Judge Scudday
State Office of Administrative Hearings
P.O. Box 13025
Austin, Texas 78711-3025

Via Facsimile (512) 475-4994

RE: In the Matter of Permanent Certificate Number 420385
Issued to R.J. WATKINS JACKSON
Docket No. 507-10-3575

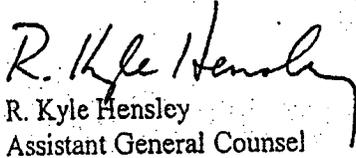
Dear Judge Scudday:

Enclosed please find *Staff's Exceptions to Proposal for Decision*, regarding the above-entitled cause.

By copy of this letter, I am forwarding a copy of this document to the Respondent.

Please feel free to contact me at 305-7659 should you have any questions and/or concerns regarding this matter.

Sincerely,


R. Kyle Hensley
Assistant General Counsel

RKH/rm
Enclosure

cc: R.J. Watkins Jackson
c/o Wendle Van Smith
7322 Southwest Freeway, Suite 2010
Houston, Texas 77074

CM/RRR # 9171082133393817766959
& Via Facsimile 712-995-1499

Members of the Board

Linda Rounds, PhD, FNP, RN
Galveston, *President*

Deborah Bell, CLU, ChFC Ablene	Kristie Benton, MSN, RN Austin	Patricia Clapp, BA Dallas	Tamara Cowen, MN, RN Horsington	Sheri Cresby, JD, SPHR Dallas	Marlye Davis, BSN, RN, MPA Sugar Land
Blanca Rosa Garcia, PhD, RN Corpus Christi	Richard Gibbs, LVN Mesquite	Kathy Loader-Horn, LVN Granbury	Josefina Lujan, PhD, RN El Paso	Daverley Jean Nunnall, LVN Bryan	Mary Jane Srigado, MEd Engle Pass

DOCKET NO. 507-10-3575

IN THE MATTER OF	§	BEFORE THE
PERMANENT CERTIFICATE	§	
NUMBER 420385	§	STATE OFFICE OF
ISSUED TO	§	
R.J. WATKINS JACKSON	§	ADMINISTRATIVE HEARINGS

STAFF'S EXCEPTIONS TO PROPOSAL FOR DECISION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Staff of the Board of Nursing and files this, Staff's Exceptions to Proposal for Decision, and would show the Administrative Law Judge as follows:

I.

Staff excepts to Finding of Fact Number 9. Any discussion in this Proposal for Decision of the Respondent being "not directly involved in the fraud" that was the basis of her plea of no contest to the 1st degree felony offense of theft is improper. Allowing the Respondent to diminish her culpability in her criminal behavior by claiming peripheral involvement in the crime does a disservice to the administrative process. To give credit to such testimony from the Respondent would force the Board to retry all cases involving criminal behavior by bringing live testimony to both prove up the criminal conduct and refute any attempts to negate responsibility for that criminal conduct. As 22 TAC §213.27(c)(1) adamantly states, "The record of conviction or order of deferred adjudication is conclusive evidence of guilt." In the Board's view, the Respondent is guilty of the 1st degree felony crime of theft by stealing over \$200,000. She is a thief. Not a thief who was "not directly involved in the fraud," but simply a thief.

II.

Staff excepts to Conclusions of Law Number 6 and 7. The Disciplinary Guidelines for Criminal Conduct, the Disciplinary Matrix, and 22 TAC §§ 213.27 and 213.28 all point to the revocation of the Respondent's license to practice professional nursing. All of the Board's policies on licensure of nurses on felony probation/community supervision are consistent in their view that such behavior speaks to a Respondent's inability to be trusted with the public. Nurses, by reason of their position of power over people in their care who are physically, emotionally, and financially vulnerable, are required to maintain good professional character. Theft is a crime of moral turpitude. The Respondent has proven herself to be a thief to the magnitude of over \$200,000.

The Administrative Law Judge mistakenly concludes that the Respondent's current lack of direct contact with patients, lack of access to patient financial records, and lack of involvement with Medicare or Medicaid billing argues for a sanction of less than revocation. This view ignores the fact that allowing the Respondent to maintain her nursing license allows her to get jobs that do allow

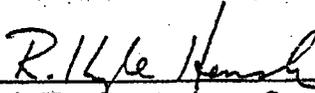
direct contact with patients, that do allow access to patient financial records, and that do allow for involvement with Medicare and Medicaid billing. As the Board points out in the Disciplinary Guidelines for Criminal Conduct comments regarding theft, "A nurse license would provide unfettered opportunity and access to a patient's person and property." By her actions, the Respondent has proven that she cannot be trusted, and that she should be allowed to retain her nursing license.

III.

The Board requests that the ALJ amend the Proposal for Decision to amend Finding of Fact Number 9 to remove any reference to the Respondent not being directly involved in the fraud that constituted the theft. In addition, the Board requests that Conclusion of Law Number 6 be amended to read that the Staff has proven that the Respondent's previous criminal conduct supports a revocation of her license. The Board also requests that Conclusion of Law Number 7 be amended to read that the Respondent's registered nurse license be revoked.

Respectfully submitted,

TEXAS BOARD OF NURSING



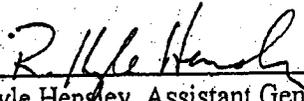
R. Kyle Hensley, Assistant General Counsel
State Bar No. 50511847
333 Guadalupe, Tower III, Suite 460
Austin, Texas 78701
P: (512) 305-7659
F: (512) 305-8101 or (512) 305-7401

CERTIFICATE OF SERVICE

I hereby certify that a true copy of *Staff's Exceptions to Proposal for Decision* was sent via Certified Mail, on this, the 16th day of September, 2010, to:

R.J. Watkins Jackson
c/o Wendle Van Smith
7322 Southwest Freeway, Suite 2010
Houston, Texas 77074

CM/RRR # 9171082133393817766959



R. Kyle Hensley, Assistant General Counsel

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

October 6, 2010

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. 507-10-3575; In the Matter of Permanent Certificate
No. 420385 Issued to R. J. Watkins Jackson**

Dear Ms. Thomas:

I have reviewed Staff's Exceptions filed September 16, 2010, to the Proposal for Decision (PFD) issued in the above-referenced case. Having considered the exceptions, I recommend that the following changes be made to the Findings of Fact and Conclusions of Law:

Finding of Fact No. 9 should be revised as follows:

Respondent accepted responsibility for the theft that was the result of Medicare fraud, although she asserted that she was not directly involved in the fraud. She expressed remorse for her actions.

Conclusion of Law No. 6 should be revised as follows:

Based on Finding of Fact No. 6, Staff proved that Respondent's previous criminal conduct supports the revocation of her license pursuant to 22 TEX. ADMIN. CODE (TAC) §§ 213.27 and 28.

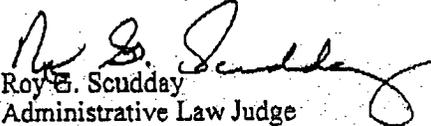
Conclusion of Law No. 7 should be revised as follows:

Based upon Findings of Fact Nos. 6-11 and pursuant to the considerations set forth in 22 TAC § 213.28(e), the Board should suspend Respondent's registered nurse license, but fully probate the suspension subject to such conditions as required by the Board, which conditions should remain in effect for the remainder of the period that Respondent is on community supervision.

SOAH Docket No. 507-10-3575
Exceptions Letter
Page 2

The Board may modify the Conclusions of Law as it determines necessary. However, for the reasons expressed in the PFD, my recommendation remains unchanged. Thank you for your attention to this matter.

Sincerely,


Roy E. Scudday
Administrative Law Judge

RGS/ap

XC: R. Kyla Hensley, Assistant General Counsel, Texas Board Nursing, 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 (1 CD and Certified Evidentiary Record via Interagency Mail)
Wendle Van Smith, Anderson & Smith, Attorneys and Counselors at Law, One Arens Place, 7322 Southwest Freeway, Suite 2010, Houston, TX 77074-VIA FACSIMILE NO. 713/995-1499

In the Matter of Permanent License § **BEFORE THE TEXAS**
Number 420385, Issued to §
R J WATKINS JACKSON, Respondent § **BOARD OF NURSING**

FORMAL CHARGES

This is a disciplinary proceeding under Section 301.452(b), Texas Occupations Code. Respondent, R J WATKINS JACKSON, is a Registered Nurse holding license number 420385, which is in current 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 February 26, 2008, Respondent was arrested by the District Attorney's Office, Houston, Texas, and subsequently charged in the 209th District Court of Harris County, Texas, under Cause No. 1153732 for THEFT PROP >=\$200K (a 1st Degree felony offense committed on March 14, 2000); and Cause No. 1153734 for THEFT PROP >=\$200K (a 1st Degree felony offense committed on January 4, 2001).

On or about May 28, 2009, Respondent entered a plea of Nolo Contendere to THEFT >= \$200K (a 1st Degree Felony Offense committed on March 14, 2000), in the 209th District Court of Harris County, Texas, under Cause No. 1153732. As a result of the plea, the proceedings against Respondent were deferred without entering adjudication of guilt, and Respondent was placed on probation for a period of ten (10) years. Additionally, Respondent was ordered to pay Restitution in the amount of sixty-six thousand nine hundred ninety-five dollars and seventy-seven cents (\$66,995.77), and court costs.

On or about May 28, 2009, Cause No. 1153734 was dismissed in the 209th District Court of Harris County, Texas, because Respondent entered a plea in Cause No. 1153732.

The above action constitutes grounds for disciplinary action in accordance with Section 301.452(b)(3)&(10), Texas Occupations Code, and 22 TEX. ADMIN. CODE §217.12(13).

NOTICE IS GIVEN that staff will present evidence in support of the recommended disposition of revocation of Respondent's license to practice nursing in the State of Texas pursuant to the Board's rules, 22 TEX. ADMIN. CODE §§ 213.27 - 213.33. Additionally, staff will seek to impose on Respondent the administrative costs of the proceeding pursuant to § 301.461, TEX. OCC. CODE ANN. The cost of proceedings shall include, but is not limited to, the cost paid by the Board to the State Office of Administrative Hearings and the Office of the Attorney General or other Board counsel for legal and investigative services, the cost of a court reporter and witnesses, reproduction of records, Board staff time, travel, and expenses. These shall be in an amount of at least one thousand two hundred dollars (\$1200.00).

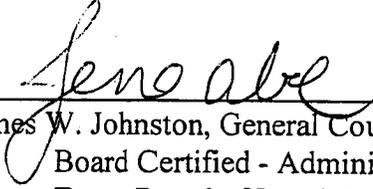
NOTICE IS GIVEN that staff will present evidence in support of the recommended disposition of revocation of Respondent's license to practice nursing in the State of Texas pursuant to the Board's rules, 22 TEX. ADMIN. CODE §§ 213.27 - 213.33. Additionally, staff will seek to impose on Respondent the administrative costs of the proceeding pursuant to § 301.461, TEX. OCC. CODE ANN. The cost of proceedings shall include, but is not limited to, the cost paid by the Board to the State Office of Administrative Hearings and the Office of the Attorney General or other Board counsel for legal and investigative services, the cost of a court reporter and witnesses, reproduction of records, Board staff time, travel, and expenses. These shall be in an amount of at least one thousand two hundred dollars (\$1200.00).

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.state.tx.us.

NOTICE IS GIVEN that to the extent applicable, based on the Formal Charges, the Board will rely on Adopted Disciplinary Sanction Policies for Nurses Lying and Falsification Fraud, Theft & Deception which can be found at the Board's website, www.bon.state.tx.us.

Filed this 4th day of September, 20 09.

TEXAS BOARD OF NURSING


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

Jena Renee Koslan Abel, Assistant General Counsel
State Bar No. 24036103

Robert Kyle Hensley, Assistant General Counsel
State Bar No. 50511847

John F. Legris, Assistant General Counsel
State Bar No. 00785533

TEXAS BOARD OF NURSING
333 Guadalupe, Tower III, Suite 460
Austin, Texas 78701
P: (512) 305-6824
F: (512) 305-8101 or (512)305-7401