DOCKET NUMBER 507-10-5790

IN THE MATTER OF	§	**BEFORE THE STATE OFFIC**
PERMANENT CERTIFICATE	§	
NUMBER 174293	§	**OF**
ISSUED TO	§	
WINIFRED JOYCE BAKER	§	**ADMINISTRATIVE HEARING**

TEXAS BOARD OF NURSING
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.
Executive Director of the Board

OPINION AND ORDER OF THE BOARD

TO: WINIFRED JOYCE BAKER
PO BOX 6543
FORT WORTH, TX 76115

PAUL D. KEEPER
ADMINISTRATIVE LAW JUDGE
300 WEST 15TH STREET
AUSTIN, TEXAS 78701

At the regularly scheduled public meeting on April 28-29, 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 vocational nursing license of Winifred Joyce Baker 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. No exceptions were filed by any party.

The Board, after review and due consideration of the PFD, Staff's recommendations, and Respondent's presentation during the open meeting, adopts all of the findings of fact and conclusions of law of the ALJ contained in the PFD as if fully set out and separately stated herein, except for Conclusion of Law Number 10, which is not adopted by the Board. All proposed findings of fact and conclusions of law filed by any

party not specifically adopted herein are hereby denied.

Conclusion of Law Number 10

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 10 because it is a recommended sanction and not a proper conclusion of law. Further, the Board retains authority to determine the final sanction in this matter. The ALJ recommends the revocation of the

Respondent's license. The Board agrees with the ALJ that the Respondent violated the Occupations Code §301.452(b)(10) and (13). The Board further agrees with the ALJ that the Respondent's conduct was likely to injure the patients under her care. However, despite the seriousness of the Respondent's actions, the Board disagrees with the ALJ that the Respondent's license should be revoked. The Board finds, instead, that a lesser sanction is warranted under its Disciplinary Matrix, located at 22 Tex. Admin. Code §213.33(b). The Board finds that the ALJ failed to correctly interpret or apply applicable law in this matter when he recommended revocation of the Respondent's license.

The Board finds that the Respondent's conduct warrants a second tier offense, sanction level I sanction for her violations of the Occupations Code §301.452(b)(10). Further, the Board finds that the Respondent's conduct warrants a second tier offense, sanction level I sanction for her violations of the Occupations Code §301.452(b)(13). At these sanction levels, the Disciplinary Matrix provides for the imposition of either a Warning or a Reprimand with Stipulations. The Board finds that, based upon the seriousness of the violations, the number of violations, and the associated risk of serious patient harm, as specified in the adopted findings of fact, the sanction of a Reprimand with Stipulations is appropriate and necessary to adequately protect the interests of the public. 22 Tex. Admin. Code §213.33(e)(4) requires the issuance of a Reprimand to include reasonable probationary stipulations, such as supervised practice, periodic Board review, remedial education, and limited nursing activities. The Board finds that the imposition of such probationary stipulations are necessary to ensure the Respondent's ability to safely practice nursing. Finally, the imposition of these probationary stipulations are consistent with the Board's prior administrative decisions involving similar facts.

IT IS, THEREFORE, ORDERED THAT RESPONDENT shall receive the sanction of a REPRIMAND 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 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, Respondent may not work outside the State of Texas pursuant to a nurse licensure compact privilege without the written permission of the Texas Board of Nursing and the Board of Nursing in the party state where Respondent wishes to work.

(1) RESPONDENT SHALL, 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 <u>not</u> being offered by a pre-approved provider. Home study courses and video programs will not be approved. In order for the course to be approved, the target audience shall include nurses. It shall be a minimum of six (6) hours in length. The course's content shall include the Nursing Practice Act, standards of practice, documentation of care, principles of nursing ethics, confidentiality, professional boundaries, and the Board's Disciplinary 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.*

(2) RESPONDENT SHALL, within one (1) year of entry of this Order, successfully complete a course in medication administration. 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. The didactic portion of this course shall be a minimum of six (6) hours in length. The course shall contain a minimum twenty-four (24) hour clinical component which is to be provided by the same Registered Nurse who provides the didactic portion of this course. The clinical component SHALL focus on tasks of medication administration only. In order for the course to be approved, the course's content shall include: a review of proper administration procedures for all standard routes; computation of drug dosages; the five (5) rights of medication administration; factors influencing the choice of route; and possible adverse effects resulting from improper administration. The course description shall indicate goals and objectives for the course, resources to be utilized, and the methods to be used to determine successful completion of the course. RESPONDENT SHALL successfully complete both the didactic and clinical portions of the course to satisfy this stipulation. RESPONDENT SHALL CAUSE the instructor 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, within one (1) year of entry of this Order, successfully complete a course in physical assessment. RESPONDENT SHALL obtain Board approval of the course prior to enrollment. Home study courses and video programs will not be approved. In order for the course to be approved, the target audience shall include Nurses. The didactic portion of this course shall be a minimum of six (6) hours in length. RESPONDENT SHALL perform physical assessments on live patients in a clinical setting for a minimum of twenty-four (24) hours. The clinical component SHALL focus on tasks of physical assessment only and shall be provided by the same Registered Nurse who provides the didactic portion of this course. To be approved, the course shall cover all systems of the body. Performing assessments on mock patients or mannequins WILL NOT be accepted. The course description shall indicate goals and objectives for the course, resources to be utilized, and the methods to be used to determine successful completion of the course. RESPONDENT SHALL successfully complete both the didactic and clinical portions of the course to satisfy this stipulation. RESPONDENT SHALL CAUSE the instructor 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.*

(4) RESPONDENT SHALL, within one (1) year of entry of this Order,

successfully complete the course "Sharpening Critical Thinking Skills," a 3.6 contact hour online program provided by the National Council of State Boards of Nursing (NCSBN) Learning Extension. In order to receive credit for completion of this program, RESPONDENT SHALL SUBMIT the continuing education certificate of completion for this program to the Board's office, to the attention of Monitoring. This course is to be taken in addition to any continuing education requirements the Board may have for relicensure. *Information regarding this workshop may be found at the following web address: http://learningext.com/hives/a0f6f3e8a0/summary.*

IT IS FURTHER ORDERED, SHOULD RESPONDENT PRACTICE AS A NURSE IN THE STATE OF TEXAS, RESPONDENT WILL PROVIDE DIRECT PATIENT CARE AND PRACTICE IN A HOSPITAL, NURSING HOME, OR OTHER CLINICAL SETTING A MINIMUM OF SIXTY-FOUR (64) HOURS PER MONTH UNDER THE FOLLOWING STIPULATIONS FOR TWO (2) YEAR(S) OF EMPLOYMENT. THE LENGTH OF THE STIPULATION PERIOD WILL BE EXTENDED UNTIL SUCH TWENTY FOUR (24) MONTHS HAVE ELAPSED. PERIODS OF UNEMPLOYMENT OR OF EMPLOYMENT THAT DO NOT REQUIRE THE USE OF A REGISTERED NURSE (RN) OR A VOCATIONAL NURSE (LVN) LICENSE, AS APPROPRIATE, WILL NOT APPLY TO THIS STIPULATION PERIOD.

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

Administrative Law Judge, if any, to each future employer prior to accepting an offer of employment.

(6) 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.

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

(8) For the remainder of the stipulation period, RESPONDENT SHALL be supervised by a Registered Nurse, if licensed as a Registered Nurse, or by a Licensed Vocational Nurse or a Registered Nurse, if licensed as a Licensed Vocational Nurse, who is on the premises. The supervising Nurse is not required to be on the same unit or ward as RESPONDENT, but should be on the facility grounds and readily available to provide assistance and intervention if necessary. The supervising nurse shall have a minimum of two (2) years experience in the same or similar practice setting to which the

RESPONDENT is currently working. RESPONDENT SHALL work only regularly assigned, identified and predetermined unit(s). RESPONDENT SHALL NOT be employed by a nurse registry, temporary nurse employment agency, hospice, or home health agency. RESPONDENT SHALL NOT be self-employed or contract for services. Multiple employers are prohibited.

(9) RESPONDENT SHALL CAUSE each employer to submit, on forms provided to the Respondent by the Board, periodic reports as to RESPONDENT'S capability to practice nursing. These reports shall be completed by the Nurse who supervises the RESPONDENT. These reports shall be submitted by the supervising nurse to the office of the Board at the end of each three (3) month period for TWO (2) year(s) of employment as a nurse.

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

Entered this 29th day of April, 2011.

TEXAS BOARD OF NURSING

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

Attachment: Proposal for Decision; Docket No. 507-10-5790 (November 18, 2010).

State Office of Administrative Hearings

Cathleen Parsley
Chief Administrative Law Judge

November 18, 2010

VIA INTER-AGENCY

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

RE: DOCKET NO. 507-10-5790; IN THE MATTER OF PERMANENT CERTIFICATE NO. 174293 ISSUED TO WINIFRED JOYCE BAKER

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,

Paul D. Keeper
Administrative Law Judge

PDK:cm
Enclosures
XC: Lance R. Brenton, Staff Attorney, Texas Board of Nursing, 333 Guadalupe, Tower III, Ste. 460, Austin, TX 78701 – **VIA INTER-AGENCY**
Dina Flores, Legal Assistant Texas Board of Nursing, 333 Guadalupe, Tower III, Ste. 460, Austin, TX 78701 – (with 1 CD(s); Certified Evidentiary Record) – **VIA INTER-AGENCY**
Winifred Baker, P.O. Box 1426, Mansfield, TX 76063 - **VIA REGULAR MAIL**

SOAH DOCKET NO. 507-10-5790

IN THE MATTER OF PERMANENT	§	BEFORE THE STATE OFFICE
	§	
CERTIFICATE NO. 174293 ISSUED TO	§	OF
	§	
WINIFRED JOYCE BAKER	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Staff of the Texas Board of Nursing (Staff/Board) sought to revoke the vocational nurse license of Winifred Joyce Baker (Respondent) for violations of the Texas Nurse Practice Act, TEX. OCC. CODE ANN. ch. 301 (Act). The administrative law judge (ALJ) recommends that Respondent's license be revoked.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The hearing convened on October 19, 2010, before ALJ Paul Keeper in Austin, Texas. Staff was represented by Lance R. Brenton, assistant general counsel. Respondent failed to appear. Staff moved for entry of a default proposal for decision. Staff offered competent evidence establishing jurisdiction and notice. Those matters are addressed in the findings of fact and conclusions of law.

II. RECOMMENDATION

In accordance with 1 TEX. ADMIN. CODE (TAC) § 155.501, the ALJ grants Staff's motion for default and recommends that Respondent's license vocational nursing license be revoked.

III. FINDINGS OF FACT

1. Winifred Joyce Baker (Respondent) is a licensed vocational nurse and holds License No. 174293 issued by the Texas Board of Nursing (Staff/Board).

2. On August 20, October 11, and November 20, 2007, and on September 14, 2009, Staff sent notices to Respondent that Staff was initiating an investigation of charges against her. The notices were sent to Respondent's address of record with the Board by certified mail and regular mail.

3. None of Staff's certified mail notices of investigation of charges were received by Respondent.

4. On September 17 and October 28, 2009, Staff sent to Respondent by certified mail and regular mail the notice of the Formal Charges that had been filed against her.

5. On December 7, 2009, Respondent sent to Staff a written response to Staff's Formal Charges, reflecting Respondent's receipt of the Formal Charges.

6. On August 20, 2010, Staff sent by certified mail its Notice of Hearing to Respondent at her last known address, P.O. Box 1426, Mansfield, Texas 76063, as shown in the Board's records. The notice was returned unclaimed.

7. 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.

8. The notice of hearing contained the following language in capital letters in at least 12-point boldface type: "FAILURE TO APPEAR AT THE HEARING IN PERSON OR BY LEGAL REPRESENTATIVE, REGARDLESS OF WHETHER AN APPEARANCE HAS BEEN ENTERED, WILL RESULT IN THE ALLEGATIONS CONTAINED IN THE FORMAL CHARGES BEING ADMITTED AS TRUE AND THE PROPOSED RECOMMENDATION OF STAFF SHALL BE GRANTED BY DEFAULT."

9. On October 19, 2010, the hearing on the merits was convened according to the notice of hearing. Respondent did not appear and was not represented at the hearing on the merits, and the factual allegations set forth in the Formal Charges were deemed admitted.

10. On June 17, 2007, while Respondent was a staff nurse at John Peter Smith Health Facility at the Tarrant County Jail, Fort Worth, Texas, she inappropriately administered three 5-milligram (mg) doses of intravenous Valium directly into the vein of an inmate after the inmate had possible seizure activity three times, each lasting 30 to 60 seconds.

11. Respondent's conduct on June 17, 2007, was likely to injure the inmate from non-efficacious care and/or possible adverse overdose reactions due to the administration of excessive medication.

12. On June 26, 2007, while Respondent was a staff nurse at John Peter Smith Health Facility at the Tarrant County Jail, Fort Worth, Texas, she misappropriated facility supplies to inappropriately initiate intravenous access and then administer intravenous Valium 5mg to a staff emergency medical technician (EMT) without his consent and without a physician's order, after JK recovered from a seizure and refused the Valium.

13. Respondent's conduct on June 26, 2007, was likely to injure the EMT from non-efficacious care and/or possible adverse reactions due to the medication administered without the benefit of a physician's expertise.

14. On June 26, 2007, while Respondent was a staff nurse at John Peter Smith Health Facility at the Tarrant County Jail, Fort Worth, Texas, she failed to document in a medical record an assessment of the seizure or that she initiated intravenous access and administered intravenous Valium 5mg after the staff EMT recovered from the seizure.

15. On June 26, 2007, Respondent's conduct resulted in an incomplete medical record.

16. On September 2, 2009, Staff received notice from the Texas Guaranteed Student Loan Corporation that Respondent had defaulted on her Texas Guaranteed Student Loan.

17. Respondent's conduct in defaulting on her loan was an exhibition of unprofessional conduct that may have deprived other students of funds necessary for their educational programs.

IV. CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter. 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. TEX. GOV'T CODE ANN. ch. 2003.

3. Notice of the formal charges and 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. The Board's rules authorize service of the notice of hearing by sending it to the licensee's last known address as shown in the Board's records. 22 TAC § 213.10(a) and 1 TAC § 155.501(c)(1).

5. The Board had the burden of proving the case by a preponderance of the evidence. 1 TAC § 155.427.

6. Based on Findings of Fact Nos. 10 and 11, Respondent's actions: (1) constitute grounds for disciplinary action in accordance with Code § 301.452(b)(10), (13); and (2) are a violation of 22 TAC §§ 217.11(1)(B), (1)(C), (2)(A) and 217.12(1)(A), (1)(B), and (4).

7. Based on Findings of Fact Nos. 12 and 13, Respondent's action: (1) violated Chapter 481 of the Texas Health and Safety Code (Controlled Substances Act); (2) constitutes grounds for disciplinary action in accordance with Code § 301.452(b)(10), (13); and

(3) is a violation of 22 TAC §§ 217.11(1)(A), (1)(B), (1)(C), (2)(A) and 217.12(1)(A) & (B), (4), (6)(G), and (11)(B).

8. Based on Findings of Fact Nos. 14 and 15, Respondent's action: (1) violated the Controlled Substances Act; (2) constitutes grounds for disciplinary action in accordance with Code § 301.452(b)(10) and (13); and (3) is a violation of 22 TAC §§ 217.11(1)(A), (1)(D) and (2)(A) and 217.12(1)(A), (1)(B) and (11)(B).

9. Based upon Findings of Fact Nos. 16 and 17, Respondent's action constitutes grounds for disciplinary action in accordance with Code § 301.452(b)(10) and is a violation of 22 TAC § 217.12(7).

10. Based on these Findings of Fact and Conclusions of Law, the Board should revoke Respondent's vocational nurse license.

SIGNED November 18, 2010.

Paul D. Keeper
Administrative Law Judge