DOCKET NUMBER 507-10-4821

IN THE MATTER OF	§	BEFORE THE STATE OFFICE
PERMANENT CERTIFICATE	§	
NUMBER 734004	§	OF
ISSUED TO	§	
LORI JAN VAZQUEZ	§	ADMINISTRATIVE HEARINGS

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: LORI JAN VAZQUEZ
c/o JON E. PORTER, ATTORNEY AT LAW
MCDONALD, MACKAY & WEITZ, LLP
1411 WEST AVENUE, SUITE 200
AUSTIN, TX 78701

PRATIBHA J. SHENOY
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 registered nursing license of Lori Jan Vazquez 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. The Respondent filed exceptions to the PFD on January 26, 2011. Board Staff filed a response to the Respondent's exceptions on February 2, 2011. The ALJ issued a final letter ruling on February 17, 2011, in which she declined to make any changes to the PFD.

The Board, after review and due consideration of the PFD, Respondent's

exceptions, Staff's response to Respondent'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, except for Conclusion of Law Number 9, 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 9

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 she included her 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 9 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 agrees with the ALJ that the Respondent's conduct violated the Occupations Code §301.452(b)(10) and (13). The Board also agrees with the ALJ that, pursuant to Board's Disciplinary Matrix, located at 22 Tex. Admin. Code §213.33(b), these violations warrant a sanction at the second tier, sanction I level. Pursuant to the Board's Disciplinary Matrix, either a Warning or Reprimand with Stipulations may be issued at the second tier, sanction I level. Based upon the mitigating factors discussed in the PFD and the adopted findings of fact and conclusions of law, the Board agrees with the ALJ that the Respondent should receive the lesser sanction of a Warning with Stipulations and should be required to complete remedial education courses. However, the Board finds that a $250 fine should also be imposed against the Respondent. The ALJ omits reference to a fine in her recommended sanction. The ALJ did not properly apply or interpret applicable written policy or law in this regard. The Board's Disciplinary Matrix provides that, for a violation of the Occupations Code §301.452(b)(10) at the second tier, sanction I level, a fine of $250 or more for each violation will be imposed. Further, the Board's Disciplinary Matrix provides that, for a violation of the Occupations Code §301.452(b)(13) at the second tier, sanction I level, a fine of $500 or more for each additional violation will be imposed. The Board finds that, based upon the mitigating factors discussed in the PFD and the adopted findings of fact and conclusions of law, the lesser fine of $250 is warranted in this matter.

IT IS THEREFORE ORDERED that RESPONDENT SHALL receive the

sanction of a WARNING WITH STIPULATIONS AND A FINE, 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 this Order SHALL be applicable to Respondent's nurse licensure compact privileges, if any, to practice nursing in the State of Texas.

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

IT IS FURTHER ORDERED that:

(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 not being offered by a pre-approved provider. Home study courses and video programs will not be approved. In order for the course to be approved, the target audience shall include nurses. It shall be a minimum of six (6) hours in length. The course's content shall include the Nursing Practice Act, standards of practice, documentation of care, principles of nursing ethics, confidentiality, professional boundaries, and the Board's Disciplinary 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 "Respecting Professional Boundaries," a 3.9 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/03fbf38973/summary.*

(3) RESPONDENT SHALL pay a monetary fine in the amount of two hundred fifty dollars ($250). 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 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 28th day of April, 2011.

TEXAS BOARD OF NURSING

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

Attachment: Proposal for Decision; Docket No. 507-10-4821 (January 11, 2011).

State Office of Administrative Hearings

Cathleen Parsley
Chief Administrative Law Judge

January 11, 2011

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. 507-10-4821, Texas Board of Nursing v. Lori J. Vazquez

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,

Pratibha J. Shenoy
Administrative Law Judge

PJS/slc
Enclosures
XC: Nikki R. Hopkins, TBN, 333 Guadalupe, Tower III, Ste. 460, Austin, TX 78701 – **VIA INTER-AGENCY**
Dina Flores, Legal Assistant TBN, 333 Guadalupe, Tower III, Ste. 460, Austin, TX 78701 – (with 1 CD; Certified Evidentiary Record) – **VIA INTER-AGENCY**
Jon E. Porter, McDonald, Mackay & Weitz, LLP 1411 West Avenue, Suite 200, Austin, TX 78701-**VIA REGULAR MAIL**

SOAH DOCKET NO. 507-10-4821

IN THE MATTER OF PERMANENT	§	BEFORE THE STATE OFFICE
	§	
CERTIFICATE NO. 734004 ISSUED TO	§	OF
	§	
LORI JAN VAZQUEZ	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Board of Nursing (Board) seeks disciplinary action against Lori Jan Vazquez, a registered nurse (RN) licensed by the Board. From September 11 to November 8, 2007, Ms. Vazquez worked as a hospice nurse for A.E., a client of Heart to Heart Hospice in Austin, Texas. Staff alleges that Ms. Vazquez engaged in unprofessional conduct likely to injure a patient and violated the professional boundaries of the nurse/patient relationship by sharing personal financial information with A.E. and accepting gifts from him. The Administrative Law Judge (ALJ) finds that Staff established the allegations and Ms. Vazquez is subject to sanction. Due to the lack of clear guidance in the applicable statutes and Board rules, the ALJ recommends that Ms. Vazquez receive a warning rather than the reprimand Staff seeks.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

Jurisdiction and notice were not contested, and those matters are addressed only in the Findings of Fact and Conclusions of Law. The hearing convened October 26, 2010, in the William P. Clements Building, 300 West 15th Street, Fourth Floor, Austin, Texas. Assistant General Counsel Nikki Hopkins represented Staff. Attorney Jon Porter represented Ms. Vazquez. The record closed November 12, 2010, with the filing of written closing arguments.

II. STAFF'S CHARGES AND APPLICABLE LAW

A. Staff's Charges

Staff alleges that during the period Ms. Vazquez cared for A.E. as an employee of Heart to Heart, as well as for several months after she left the company, she engaged in conduct that

violated the professional boundaries of the nurse/patient relationship by sharing personal financial information with A.E., and accepting gifts, meals, and cash from A.E. This conduct, Staff asserts, was likely to injure A.E. in that it could have caused confusion between the needs of A.E. and those of Ms. Vazquez, and benefited Ms. Vazquez at A.E.'s expense. Specifically, Staff alleges that Ms. Vazquez and her family accepted meals, toys, sports equipment, cash, clothing, a Christmas tree, a basketball goal, and a used computer from A.E. during a six-month period from September 2007 to March 2008.

B. Applicable Law

Staff asserts that Ms. Vazquez's conduct constitutes grounds for disciplinary action under the Texas Nursing Practice Act (Act)[1] and the Board's rules, which authorize sanctions for:

- Unprofessional or dishonorable conduct that, in the Board's opinion, is likely to deceive, defraud, or injure a patient or the public. **Act § 301.452(b)(10).**
- 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. **Act § 301.452(b)(13).**
- Failure to know, recognize, and maintain professional boundaries of the nurse/client relationship. **22 TEX. ADMIN. CODE § 217.11(1)(J).**[2]
- 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 others. **Board Rule 217.12(6)(D).**
- Failure to refrain from inappropriate involvement in the client's personal relationships and/or the obtainment of the nurse's personal gain at the client's expense. **Board Rule 217.1(29).**

III. EVIDENCE

In August 2010, shortly before his death, A.E. gave a deposition that the parties entered into the record by agreement.[3] Staff called Ms. Vazquez as a witness. In addition, Staff

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[1] TEX. OCC. CODE ch. 301 *et seq.*

[2] For convenience, citations to title 22, part 11, chapters 211-227 of the Texas Administrative Code will be to "Board Rule 2xx.yy."

[3] Resp. Ex. 1.

presented the testimony of: A.E.'s son and daughter; Alton Stephens, a Heart to Heart hospice nurse who cared for A.E. after Ms. Vazquez left Heart to Heart; Carolyn Schooley, RN, an investigator for the Board; and Denise Benbow, RN, Nurse Practice Consultant to the Board. Ms. Vazquez testified on her own behalf, and also called as witnesses: JoAnne Connor, a social worker who was part of A.E.'s Heart to Heart Hospice team; and Jeanette Peresta, a medical social worker who works with Ms. Vazquez at her current employer, Odyssey Health Care.

A. Factual and Background Evidence

Testimony of Ms. Vazquez

Ms. Vazquez became a nurse in 1995[4] and has been licensed in Texas since September 2006.[5] She became a Certified Hospice and Palliative Care Nurse (CHPN) in 2000 and was recertified in 2008.[6] As a hospice nurse, Ms. Vazquez testified that she works as an RN case manager with a team of professionals, including chaplains, social workers, hospice aides, volunteers and doctors, to care for patients who have terminal illnesses and a prognosis of six months or less to live. The nature of hospice, she said, is "comfort care" rather than treatment.

On September 11, 2007, Heart to Heart assigned Ms. Vazquez as the hospice nurse for A.E., a man in his early seventies who suffered from cardiac disease. When Ms. Vazquez first met him, she said A.E. was still working at a local golf course and was able to drive. He later had to cease those activities. From a review of the nursing progress notes she had made,[7] Ms. Vazquez noted that A.E. was taking several medications, including Vicodin (a narcotic pain medication), Ambien or Lunesta (to help with sleep), Roxanol (a form of liquid morphine to aid with acute pain) and Meclizine (to combat dizziness). Overall, Ms. Vazquez testified, A.E.'s health continued to decline during the time she cared for him, as could be expected for a hospice patient. She acknowledged that the medications A.E. was taking, as well as his awareness of his terminal illness, could have affected his behavior and judgment.

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[4] Staff Ex. 5 at 1.

[5] Staff Ex. 1.

[6] Staff Ex. 5 at 4.

[7] Staff Ex. 6 at 20-37.

Ms. Vazquez said she left Heart to Heart because her position was part-time, and she sought full-time employment to obtain benefits. She submitted her resignation to Heart to Heart on October 29, 2007, effective November 8, 2007.[8] During the time she was A.E.'s hospice nurse, Ms. Vazquez said that they formed a nurse/patient bond. She saw A.E. for approximately nine nursing visits, lasting about one hour each. During the nursing visits, A.E. asked her some personal questions, such as whether she was married and whether she had children; Ms. Vazquez said that she answered "yes" or "no" as appropriate, without elaborating. While she was his nurse, Ms. Vazquez emphasized that she never shared any personal financial information with A.E. Although A.E. asked Ms. Vazquez to go to lunch "once or twice," she declined. She said that A.E. never offered her any gifts while she was his nurse. Ms. Vazquez found A.E. to be "kind, funny, friendly, and generous." Though A.E. was "sometimes forgetful," Ms. Vazquez described him as "mentally intact" and not impaired emotionally or intellectually.

When Ms. Vazquez told him she was leaving Heart to Heart and would no longer be his nurse, she said A.E. asked her to keep visiting, and to bring her children. Ms. Vazquez agreed, and said she visited A.E. on a social basis five to seven times over the next several months, often with her three children. During these visits, Ms. Vazquez said she and A.E. developed a bond as friends. A.E. "mostly talked and told stories," and he took an interest in her children. Ms. Vazquez testified that during one visit, A.E. asked her what the family was doing for Christmas, and she responded that they would be "having a quiet Christmas." By this, Ms. Vazquez said she meant that "there would not be a lot of excitement or gift-giving." She also told A.E. that her husband, the children's father, was going out of town for Christmas. Ms. Vazquez felt sure A.E. knew she was no longer his nurse after her last nursing visit on November 2, 2007, because A.E. had begun working with Mr. Stephens, his new hospice nurse.

When A.E. gave baseball gloves to her children "sometime after Thanksgiving" 2007, Ms. Vazquez said that she was surprised and told A.E. that they did not need the gifts. However, A.E. was "extremely insistent" and Ms. Vazquez felt that he would be hurt if she continued to

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[8] Staff Ex. 6 at 11.

refuse. She noted that A.E. was "very generous" by nature and the gifts were "for the kids," so she did not see anything wrong with eventually accepting them. Ms. Vazquez testified that A.E. gave the children a soccer ball in December 2007, which was kept at A.E.'s home for the children to play with during their visits.

Also in December 2007, Ms. Vazquez said that A.E. bought the family an artificial Christmas tree, and took her, her children, and Ms. Vazquez's mother out to dinner at Outback Steakhouse. In early 2008, when Ms. Vazquez's brother was visiting, A.E. took the family out to lunch. While Ms. Vazquez offered to pay on both occasions, she said that "[A.E.] insisted and said, 'A lady doesn't pay.'" She noted that the invitations for both meals came from A.E.

For Christmas 2007, Ms. Vazquez said that A.E. arranged for Ms. Vazquez's family to be "adopted as a 'needy family'" for the holidays by some of his friends. Ms. Vazquez said A.E. asked her to prepare a "Christmas wish list" for the friends. Although she initially declined, A.E. "was insistent," so Ms. Vazquez prepared the list, which included toys the children wanted and their clothing sizes.[9] Ms. Vazquez did not know A.E.'s friends who received the list and gave A.E. Christmas presents to give to Ms. Vazquez's family. Ms. Vazquez also gave gifts to A.E., including baked goods and cards made by her children.

A.E. gave Ms. Vazquez a "Christmas card with $40.00 in cash" inside, which she accepted because "it was a Christmas gift and it was the polite thing to do." Two additional gifts from A.E. that Ms. Vazquez identified were a basketball goal that she recalled receiving in February 2008, and a used computer in March 2008. Both gifts were for her children. Although Staff alleged that Ms. Vazquez took $50.00 in cash from A.E. in exchange for typing up a brief letter for A.E., Ms. Vazquez denied having prepared the letter.[10] She averred that, since she admitted to having accepted the other gifts, she has no reason to lie about the letter. Ms. Vazquez admitted that, in sworn responses to requests for admission completed a few weeks prior to hearing, she stated that she "could not recall" whether or not she typed the letter.[11]

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[9] Staff Ex. 3b at 7.

[10] The letter is Staff Ex. 7 at 2.

[11] Staff Ex. 9 at 3 (Request 16).

In the ethics component of nursing school, as well as through in-service programs at her employers, Ms. Vazquez said the discussion of "boundaries" between a nurse and patient mainly focused on the nurse's duty to refrain from inappropriate touching and sexual relationships. She said that she knows of no rule dictating when a nurse/patient relationship ends, or stating whether a nurse may accept gifts from a current or former patient. Ms. Vazquez testified that in her entire career, she has never had any other complaints brought against her and has never been accused of any ethical or boundary violations. When she learned that the Board was investigating a complaint concerning her relationship with A.E., Ms. Vazquez stopped visiting him. At no time did she believe the gifts from A.E. were improper, especially because she no longer worked as a nurse for A.E., Ms. Vazquez said. Nevertheless, she stated that if she could have known at the time that accepting A.E.'s gifts would "cause this much pain" to A.E. and his family, as well as to herself and her family, she would have refused them.

On cross-examination, Ms. Vazquez acknowledged that she would be concerned if she had an ill, elderly parent who began giving a significant number of gifts to someone whom he had met just seven weeks earlier – regardless of whether that person was a nurse. She agreed that it would be inappropriate to begin a sexual relationship with a former patient the day after she stopped working as his nurse. However, Ms. Vazquez felt that a friendship that included gift-giving could begin immediately after a nurse stopped treating a patient. She noted that the gifts she received were primarily for her children, and were given over a period of several months, not all at once. In addition, A.E. "got great pleasure" from giving to others. Ms. Vazquez stressed that she never asked for any gifts from A.E., and that she tried to refuse each gift, but ultimately gave in to A.E.'s insistence.

Deposition of A.E.

Both Ms. Hopkins (on behalf of the Board) and Mr. Porter (on behalf of Ms. Vazquez) questioned A.E. at his August 2010 deposition. A.E. averred that he was mentally and physically capable of providing sworn testimony about the events at issue.[12] A.E. testified that he never

[12] Resp. Ex. 1 at 9/25 – 10/15.

paid Ms. Vazquez "anything extra" while she was his nurse, and that Ms. Vazquez never requested money, gifts for her children, or meals from A.E.[13] He averred that Ms. Vazquez never used or exploited him in any way, and never put her needs above his.[14] A.E. recalled seeing Ms. Vazquez's "three lovely children"[15] and said that he had given them baseball gloves "for Christmas."[16] He also remembered buying a soccer ball that was kept at his house for the children to play with during their visits.[17] However, A.E. said that he had not purchased a basketball goal for the children,[18] and did not talk to his friends about sponsoring Ms. Vazquez's family for Christmas.[19] While A.E. recalled trading his golf clubs to a friend in exchange for a used computer, he stated that the computer was given to his son or grandson, and not to Ms. Vazquez.[20] A.E. testified that in March 2008, he paid Ms. Vazquez $50.00 to type a letter for him,[21] and later sent the letter to his creditors.[22] A.E. said that he recalled Ms. Vazquez stopped being his nurse "around Christmastime" 2007, and later said it was in "December/January."[23]

Testimony of A.E.'s son[24]

Son testified that he lived with A.E. and served as A.E.'s primary caregiver from 2000 until A.E.'s death. Son met Ms. Vazquez in mid-September 2007, when she became A.E.'s hospice nurse. A.E. had a group of friends who met every Friday to play dominos, and Son learned in late 2007 that the group was "adopting" Ms. Vazquez's family for Christmas. Son noted that "stuff started accumulating for [Ms. Vazquez] in the living room," and described a

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[13] Resp. Ex. 1 at 20/13 – 21/6.

[14] Resp. Ex. 1 at 21/7 – 21/21.

[15] Resp. Ex. 1 at 16/23 – 17/5.

[16] Resp. Ex. 1 at 17/7.

[17] Resp. Ex. 1 at 22/6 – 23/8.

[18] Resp. Ex. 1 at 34/8 – 35/6.

[19] Resp. Ex. 1 at 36/6 – 36/14.

[20] Resp. Ex. 1 at 26/5 – 27/2.

[21] Resp. Ex. 1 at 38/21 – 40/7.

[22] Resp. Ex. 1 at 51/8 – 51/20.

[23] Resp. Ex. 1 at 12/23 – 13/3.

[24] A.E.'s children are referred to herein as Son and Daughter, respectively.

"two to three foot pile of gifts" that were assembled for Ms. Vazquez and her family. At the time, Son said that he had a few conversations with A.E. "about priorities." A.E. had given Son $50.00 as a Christmas gift for Son's child, explaining that "things were tight and [A.E.] didn't have a lot of money." Son said that he privately wondered why A.E. was directing his generosity to Ms. Vazquez rather than to A.E.'s own family, but Son decided not to raise the issue with A.E., as A.E. was "defensive about his actions being questioned." Son noted that A.E. could be "very persuasive" and "if he got something in his mind that he wanted to do, that's all he needed." Son was present when Ms. Vazquez came to A.E.'s home to collect the Christmas gifts from A.E.'s friends, but Son did not speak to Ms. Vazquez at that time.

Son said that he invited Ms. Vazquez to Son's wedding reception in April 2008 because "A.E. told me to," and noted that Ms. Vazquez did attend. Son recalled that one day, A.E. asked Son for $50.00 in cash and indicated that the money was for Ms. Vazquez's assistance in typing up a letter to A.E.'s creditors. While he did not see the typed letter or any exchange of money, Son stated that Ms. Vazquez came over later that day, and when she left, A.E. no longer had the money. This led Son to believe that A.E. had given the $50.00 to Ms. Vazquez. In Son's opinion, his father was mentally and emotionally competent during the late 2007 through early 2008 time period. Son acknowledged that Ms. Vazquez and A.E. were friends, and said A.E. "had a connection" with Ms. Vazquez.

Testimony of A.E.'s daughter

Daughter testified that she moved to A.E.'s house in March 2008 to help care for him as his illness progressed. She said that the house was "full of hospice workers." Daughter believed that Ms. Vazquez was one of A.E.'s current caregivers due to the frequency of Ms. Vazquez's visits and because on occasion, Ms. Vazquez wore nursing scrubs with a nametag. In addition, Daughter testified that Ms. Vazquez "behaved as if she was [A.E.'s] nurse," asking how A.E. was feeling and about his medications, and asking whether she could help in any way.

Daughter became upset when she found out about the gifts A.E. had given Ms. Vazquez. Daughter said she began to question hospice care, noting that A.E. gave a pair of boots to one of

his hospice workers, and took another aide to lunch. Based on how A.E. was "giving stuff to everyone," Daughter believed her father was becoming "mentally unstable." Daughter did not ask Ms. Vazquez to stop visiting because A.E. wanted the visits to continue, but Daughter felt "the line was crossed" when Ms. Vazquez accepted gifts from A.E. In Daughter's opinion, A.E. should not have given gifts – and the gifts should not have been accepted by the recipients – if the recipients were persons who were paid to care for A.E. In any case, Daughter believed that A.E. should not be "giving gifts to anyone" if he was "in debt."

In late March 2008, Daughter testified that she helped A.E. compose a letter that would be sent to A.E.'s creditors, stating that A.E. would no longer be able to meet his debts because he had lost his job due to health reasons. The letter also stated that A.E. did not own "any real estate, automobiles or any assets" and was "under hospice care for the terminally ill."[25] After Daughter and A.E. composed the letter, Daughter said that A.E. gave it to Ms. Vazquez to type up. Ms. Vazquez "came back a couple of days later" with the typed letter. Daughter testified that she saw Ms. Vazquez hand the letter to A.E., and saw A.E. give $50.00 in cash to Ms. Vazquez and $5.00 to each of Ms. Vazquez's children. Daughter said that A.E.'s request that Ms. Vazquez type the letter was consistent with A.E.'s desire to "keep people happy" and "keep people coming back" to see him.

Daughter said she began asking the other hospice employees about gifts to Ms. Vazquez, and learned about the Christmas gifts, meals, and basketball goal. Daughter also learned that A.E. had given a set of his golf clubs to a friend in exchange for a used computer, which A.E. later gave to Ms. Vazquez. Daughter filed a complaint with the Board.

Testimony of Mr. Stephens

Mr. Stephens is a registered nurse and hospice administrator. After Ms. Vazquez left Heart to Heart, Mr. Stephens became A.E.'s hospice nurse. Mr. Stephens testified that A.E. often asked about Ms. Vazquez and "when she was coming back to visit [A.E.]." Mr. Stephens learned that A.E. had given a number of gifts to Ms. Vazquez and that A.E.'s friends were

[25] Staff Ex. 7 at 2.

"adopting" Ms. Vazquez's family for the holidays. "As a nurse," Mr. Stephens questioned whether the situation was "ethical." To the extent that A.E. was organizing Christmas gifts for Ms. Vazquez from A.E.'s friends, Mr. Stephens felt that A.E. was "helping [Ms. Vazquez] through a tough time." A reasonable nurse, Mr. Stephens felt, "might not know right away" whether the Christmas gifts were permissible. However, Mr. Stephens thought the number and value of the gifts A.E. directly gave to Ms. Vazquez were "excessive." Mr. Stephens said he did not know very much about A.E.'s financial situation, but knew that A.E. was not very well off.

At one point, A.E. wanted to give Mr. Stephens a golf shirt, but Mr. Stephens said he declined. When A.E. told him that the shirt was a leftover from the golf course and would be put on sale for $5.00, Mr. Stephens said he accepted it as a *de minimis* gift, but only after informing the Director of Nursing at Heart to Heart and obtaining her approval. In Mr. Stephens' experience, hospice patients often want to give gifts to their caregivers to express their appreciation. Accepting more than a *de minimis* gift, Mr. Stephens opined, is "a boundary violation" because taking care of the patient and assisting the family at a difficult time is his job. After a nurse stops working with a patient, Mr. Stephens feels that the nurse can "visit as a friend," but must be mindful that the patient "still sees you as part of the medical staff."

The Heart to Heart Hospice Policy and Procedure Manual states, "Employees are not to accept gifts or favors from a source which either has a business relationship or desires to have a business relationship with Heart to Heart Hospice. This policy includes accepting gifts from patients and family members."[26] Mr. Stephens said that the policy is especially important because any patient can seek attention through gift-giving, and hospice patients – who are preparing for death – are especially vulnerable. Mr. Stephens felt that A.E. was aware that Ms. Vazquez was no longer his nurse. A.E. was "not easily manipulated" and was generally mentally competent, though his medications could have at times made him confused.

Mr. Stephens admitted that he knows of no Board rules that prohibit a social relationship with a patient or former patient, or that prohibit gifts to a former nurse. However, when

[26] Staff Ex. 6 at 3.

Mr. Stephens began to understand the extent of A.E.'s gifts to Ms. Vazquez, as well as the lunches A.E. provided to other hospice workers, Mr. Stephens grew sufficiently concerned that he alerted Heart to Heart management to what he knew. The definition of "boundaries" under Board rules is "a bit vague," according to Mr. Stephens. As a nurse, Mr. Stephens believes that whether a gift crosses the nurse/patient professional boundary requires a "case-by-case evaluation," and it is best to consult a supervisor or obtain an outside opinion because "you may be too close to the situation." Ultimately, Mr. Stephens opined, "you are always the nurse" because the relationship with a patient begins in a context where the nurse is privy to intimate details and is trusted to take care of the patient at a vulnerable time. It can be "very hard" for a nurse to know when a boundary is crossed, but it is the nurse's job, Mr. Stephens said, to maintain boundaries and manage the relationship.

Testimony of Ms. Connor

Ms. Connor has been a licensed clinical social worker for over 15 years, and has been with Heart to Heart for about three years. She joined Heart to Heart just before Ms. Vazquez stopped working there, and described Ms. Vazquez as an acquaintance. From December 2007 until A.E.'s death, Ms. Connor served as his social worker. She testified that A.E. was competent and showed no signs of being manipulated by anyone, including Ms. Vazquez. A.E., according to Ms. Connor, was social and "a very giving person." Ms. Connor testified that A.E. told her about the Christmas gifts that A.E.'s friends were organizing for Ms. Vazquez. Ms. Connor felt A.E.'s direct and indirect gifts to Ms. Vazquez were voluntary gestures made because A.E. felt Ms. Vazquez was a kind person.

Social workers are allowed by the rules of their profession to accept gifts worth up to $25.00, according to Ms. Connor. She said that she is unaware of the rules applicable to nurses, and conceded that in any case, the gifts Ms. Vazquez received from A.E. exceeded $25.00 in value. From her observations of A.E. and his family, Ms. Connor testified that Daughter had long been estranged from A.E. and appeared to be angry at Ms. Vazquez. Daughter asked Ms. Connor to write a letter stating that Ms. Vazquez had exploited A.E., but Ms. Connor said she refused, because she felt she had no personal knowledge of any exploitation. Ms. Connor

was not present during any of Ms. Vazquez's visits to A.E. after Ms. Vazquez left Heart to Heart. In Ms. Connor's opinion, Ms. Vazquez did not confuse her own needs with those of A.E., and did not financially or emotionally exploit A.E.

Testimony of Ms. Peresta

Ms. Peresta has been in the social work field for 14 years and has been with Odyssey Health Care for six years. She testified that she has worked with Ms. Vazquez at Odyssey, and there have been no complaints at Odyssey about Ms. Vazquez's ethics or professionalism. At Odyssey, Ms. Peresta said that the policy forbids cash gifts and gifts "of excessive value." Ms. Peresta opined that Ms. Vazquez is an ethical person.

Testimony of Ms. Schooley

Ms. Schooley has been a nurse for 40 years, and has worked as a hospice nurse for about eight years. She also has been an investigator for the Board for about eight years, though she was not the investigator for Ms. Vazquez's case. Ms. Schooley testified that hospice patients often want to give gifts because, at the end of their lives, their possessions are "something they still have control over." In her entire career as a nurse, Ms. Schooley has accepted only one gift, a plant worth less than $15.00, that she said was given to her by a former patient's family after the patient's funeral.

Ms. Schooley noted that Board rules define a patient as an "individual under the care and treatment of a health care professional either at a health care facility or in his/her own home."[27] She observed that the Act does not require a nurse to receive payment for the care provided, as a 2005 amendment removed the words "for compensation" from the Act's definition of "Professional Nursing."[28] Ms. Schooley admitted that the corresponding Board rule has not yet

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[27] Board Rule 213.1(29).

[28] That definition states in relevant part, "'Professional nursing' means the performance of an act that requires substantial specialized judgment and skill, the proper performance of which is based on knowledge and application of the principles of biological, physical, and social science as acquired by a completed course in an approved school of professional nursing. The term does not include acts of medical diagnosis or the prescription of therapeutic or

been amended to conform to the statutory change, and retains the words "for compensation."[29] She also conceded that there is no statute or Board rule setting forth precisely when the nurse/patient relationship ends. However, Ms. Schooley averred, the duties of a nurse "don't just end" when the nurse stops caring for a patient; in fact, she posited that the nurse/patient relationship may extend *ad infinitum*. This is because, Ms. Schooley explained, a nurse obtains intimate knowledge of personal details about a patient that a non-nurse would not have, and the nurse always must be responsible for setting appropriate limits in the relationship. Patients, particularly the terminally ill, cannot be expected to bear this responsibility, Ms. Schooley said.

Ms. Schooley described the maintenance of boundaries as "Nursing 101," a key tenet taught in nursing school. However, she agreed that "it may be difficult to draw the line" in a nurse/patient relationship. Despite the lack of bright-line rules, Ms. Schooley found sufficient evidence that Ms. Vazquez "took advantage" of A.E. and that Ms. Vazquez "crossed a boundary" by accepting gifts from a patient – even a former patient – at a vulnerable time. Ms. Schooley felt there was a "role reversal," whereby A.E. began caring for Ms. Vazquez and meeting her needs. Ms. Schooley opined that Ms. Vazquez should have refused A.E.'s gifts, or at least redirected the gifts to charity or another beneficiary, rather than obtaining personal gain or benefits to her family.

B. Evidence Concerning Board Rules

Ms. Benbow testified that, in her role as a Nurse Practice Consultant, she answers questions from nurses and the public and advises the Board with respect to nursing practice as well as interpretation of the Act and Board rules. In preparation for her testimony, she reviewed the Board's records pertaining to Ms. Vazquez, as well as Board rules and the Board's disciplinary matrix, found at 22 TEX. ADMIN. CODE § 213.33(b).

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corrective measures." Act § 301.002(2). Prior to amendment in 2005, the words "for compensation" followed the word "performance" in this definition.

[29] Board Rule 217.1(31) defines "Professional nursing practice" as "[t]he performance *for compensation* of an act that requires substantial specialized judgment and skill, the proper performance of which is based on knowledge and application of the principles of biological, physical, and social science as acquired by a completed course in an approved school of professional nursing" (emphasis added).

Ms. Benbow testified that she believes Ms. Vazquez violated Act § 301.452(b)(10) (sanctioning unprofessional conduct likely to injure a patient) as well as Act § 301.452(b)(13) (sanctioning nursing practice that fails to conform to minimum nursing standards in a manner that exposes a patient unnecessarily to risk of harm). Specifically, Ms. Benbow opined that Ms. Vazquez violated: Board Rule 217.11(1)(J) by failing to maintain the professional boundaries of her nurse/client relationship with A.E.; Board Rule 217.12(6)(D) by engaging in financial exploitation of a client; and Board Rule 217.1(29) by the obtainment of personal gain at the client's expense.

Ms. Benbow acknowledged that there is no definitive rule stating when a nurse's relationship with a patient ends. However, a nurse has continuing obligations, such as the duty to protect a client's confidential information. Ms. Benbow noted that Ms. Vazquez's relationship with A.E. "blurred the lines," as Ms. Vazquez continued to provide social and emotional support to A.E. – an act that is also part of a nurse's role – after Ms. Vazquez left Heart to Heart. While it would have been "no problem" for Ms. Vazquez to be a friend to A.E., Ms. Benbow said Ms. Vazquez violated professional standards by accepting gifts from A.E.

Under the Board's disciplinary matrix pertaining to Act § 301.452(b)(10), Ms. Benbow classified Ms. Vazquez's behavior as a second-tier violation, because the conduct was not isolated (which would be a first-tier violation), but also did not result in benefit to the nurse in excess of $4,999.00 (a third-tier violation). Ms. Benbow said that she did not find evidence of mitigating factors, such as repayment of amounts gained or completion of a relevant educational program, though she noted that Ms. Vazquez had no prior disciplinary history. As aggravating factors, Ms. Benbow identified the fact that A.E. was particularly vulnerable because of his declining health, and there was a continuing course of benefit to Ms. Vazquez over time. Ms. Benbow recommended that Ms. Vazquez receive a warning for this violation.

Under the disciplinary matrix pertaining to Act § 301.452(b)(13), Ms. Benbow also found a second-tier violation. Ms. Benbow said Ms. Vazquez's violation was not a first-tier violation because the risk of harm to A.E. was not "low," but Ms. Vazquez's actions also did not rise to the "serious" risk of harm required for a third-tier violation. In Ms. Benbow's opinion,

Ms. Vazquez would have known that A.E.'s financial circumstances were declining because A.E. was no longer able to work, and because – as alleged by Staff – Ms. Vazquez typed up a letter for A.E. that he sent to his creditors. Since she knew that she was benefiting at the expense of a person with reduced economic resources, Ms. Vazquez's violation would fall into the second tier, Ms. Benbow said.

If a nurse were to read Board Rule 217.1(31) – which retains the words "for compensation" in the definition of nursing practice – Ms. Benbow acknowledged that the nurse might think that the nurse/patient relationship continues only so long as the nurse is being paid to provide care to the patient. However, she said that it is incumbent on a nurse who first meets someone in a nurse/patient context to exercise caution in any future social relationship.

IV. ANALYSIS AND RECOMMENDATION

As a preliminary matter, there is some inconsistency in the sanction sought by Staff. Ms. Benbow recommended a warning for Ms. Vazquez's alleged violation of Act § 301.452(b)(10), but did not specifically recommend a sanction for the alleged violation of Act § 301.452(b)(13). However, in written closing argument, Staff sought a reprimand. Although the two sanctions are similar, the stipulations that accompany a warning may include "practice for a specified period of at least one year under the direction of a registered nurse or vocational nurse designated by the Board," whereas the probationary period accompanying a reprimand may be up to two years.[30] For the reasons stated below, the ALJ recommends that the lesser sanction of a warning be imposed.

Whether Ms. Vazquez may be sanctioned for violations of the Act and Board rules depends on the answers to two inquiries. First, it is necessary to determine whether a nurse/patient relationship existed between Ms. Vazquez and A.E. at the time Ms. Vazquez accepted the various gifts at issue. If such a relationship existed, the question is whether, by accepting the gifts, Ms. Vazquez violated the professional boundaries of the relationship and failed to maintain minimum standards of nursing practice.

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[30] *Compare* Board Rule 213.33(e)(3)(E) (pertaining to warnings) with Board Rule 213.33(e)(4)(E) (pertaining to reprimands).

A nurse/patient relationship with A.E. continued after Ms. Vazquez left Heart to Heart

All of the nurses who testified at hearing agreed that the first question – determining whether a nurse/patient relationship exists at a given time – can be a difficult one to answer. Neither the Act nor Board rules specifically state when a nurse/patient relationship ends. As a result, the determination must be made on a case-by-case basis, depending on the circumstances. Ms. Benbow and Ms. Schooley both admitted that the determination may be complicated by the fact that the Board rule defining professional nursing includes the words "for compensation," while the corresponding statute has been amended to remove those words.[31] Thus, a nurse reading the Board's rules might believe that a nurse/patient relationship requires the element of compensation.

The lack of a bright-line rule means that reasonable nurses may disagree on what obligation a nurse owes a patient – or former patient – at a given point in their relationship. For example, Mr. Stephens and Ms. Schooley suggested that the nurse/patient relationship goes on *ad infinitum* because "you are always the nurse" and a patient may see the nurse in a caregiver context regardless of how much time has passed. Ms. Benbow, on the other hand, did not support the concept of an unending nurse/patient relationship, but noted that the relationship begins with a power imbalance in favor of the nurse, so the nurse has an obligation to monitor and maintain an appropriate boundary even when the relationship becomes more social than professional. Further, some elements of nursing, such as providing social and emotional support, are also present in friendships, so it may be difficult to distinguish the two. However, nurses are constantly called upon to use their judgment on a daily basis as healthcare professionals.

The undisputed evidence is that Ms. Vazquez first met A.E. on September 11, 2007, and made her last nursing visit to him as a Heart to Heart hospice nurse on November 2, 2007. Ms. Vazquez said that while she was A.E.'s nurse, she did not share any personal financial information with him, was not offered and did not receive any gifts, and declined his invitations to lunch, indicating that she believed it would have been wrong for her to accept such gifts or

[31] *Compare* Board Rule 217.1(31) (including the words "for compensation") with Act § 301.002(2) (amended in 2005 to delete the words "for compensation).

favors from a patient. However, as soon as she ceased to be the nurse assigned to A.E. by Heart to Heart, Ms. Vazquez felt that the professional relationship had ended and a social relationship that included gift-giving could begin.

The ALJ found Ms. Vazquez to be credible, and the affection she felt for A.E. is clear. However, the ALJ cannot endorse Ms. Vazquez's view of her professional duty to A.E. Three experienced nurses, two of them from the hospice field, all felt that Ms. Vazquez continued to have a nurse/patient relationship with A.E. even though she no longer worked as his hospice nurse through Heart to Heart. The day after she completed her last shift with Heart to Heart, Ms. Vazquez retained intimate knowledge of A.E.'s health, prognosis, medications, and other facts his friends might not know. Ms. Vazquez had met A.E. only as a patient, and had cared for him as an RN case manager.

All of the nurses who testified agreed that after she left Heart to Heart, it would have been perfectly acceptable for Ms. Vazquez to make social visits to A.E. It is possible that after some period of time, it would be acceptable for Ms. Vazquez to see herself solely as A.E.'s friend. That issue is not raised here, as Ms. Vazquez made an almost seamless transition from professional to social visits.

If it was hard to know whether she was acting as A.E.'s nurse or his friend, prudence and good professional judgment would require Ms. Vazquez to err on the side of refusing A.E.'s gifts, or at least to seek an opinion from current or former supervisors, peers, or a Nurse Practice Consultant such as Ms. Benbow. From her work as a hospice nurse, Ms. Vazquez was well aware that hospice patients are particularly vulnerable because they are facing death, and may have a propensity for gift-giving.

The evidence concerning A.E.'s knowledge and understanding is somewhat conflicting. Mr. Stephens and Ms. Vazquez felt that A.E. knew Ms. Vazquez was no longer his nurse after November 2, 2007, when Mr. Stephens took over as hospice nurse. In his deposition, A.E. seemed confused about the exact date, guessing it might have been "December/January." All of the witnesses who knew A.E. – except for Daughter – testified that he was of sound mind and not

easily manipulated by anyone. A.E. stated unequivocally in his deposition his belief that Ms. Vazquez did not harm him or exploit him. Nonetheless, A.E.'s personal understanding and opinion of whether he was exploited is not determinative. The responsibility to maintain boundaries belongs to Ms. Vazquez rather than to A.E. The ALJ finds that Staff proved by a preponderance of the evidence that a nurse/patient relationship continued between Ms. Vazquez and A.E. after Ms. Vazquez ceased working as A.E.'s hospice nurse through Heart to Heart.

Ms. Vazquez violated the boundaries of the nurse/patient relationship and failed to meet minimum standards of nursing by accepting gifts from A.E.

Between November 2, 2007 and late March 2008, Ms. Vazquez and her family received directly from A.E.: baseball gloves, a Christmas tree, $40.00 in cash, two restaurant meals, a basketball goal, and a used computer. In addition, Ms. Vazquez's family received Christmas gifts of toys and clothing from A.E.'s friends.

Ms. Vazquez testified that she shared personal financial information with A.E., specifically by telling A.E. that she and her family would be having "a quiet Christmas" without "a lot of excitement or gift-giving." Their discussion was sufficient to prompt A.E. to obtain a Christmas wish list from Ms. Vazquez so that her family could be "sponsored as a 'needy family'" by A.E.'s friends. At the same time, Ms. Vazquez had some knowledge of A.E.'s financial circumstances while he made direct and indirect gifts to her and her family. At a minimum, Ms. Vazquez knew that A.E. had to stop working due to his declining health.

There is conflicting testimony about when Ms. Vazquez knew that A.E. could no longer meet his debts. Although Ms. Vazquez testified at hearing that she did not type up a letter to A.E.'s creditors in exchange for $50.00, her testimony was inconsistent with her sworn statement, just a few weeks earlier, that her recollection was insufficient to either admit or deny typing the letter. In contrast, Daughter testified that she witnessed Ms. Vazquez receive the $50.00 payment, which also is consistent with Son's testimony that A.E. asked for $50.00 to give to Ms. Vazquez. While he appeared forgetful on some points, in his deposition A.E. stated that Ms. Vazquez did type up the letter for him. On balance, a preponderance of the evidence supports Staff's allegation that Ms. Vazquez typed up the letter, and knew directly of A.E.'s

strained finances. However, Staff alleges, and the evidence supports a finding, that the letter was typed near the end of March 2008, by which time Ms. Vazquez had already received all of the gifts at issue. At that point, it would have been difficult for Ms. Vazquez to return some of the gifts themselves, although she could have attempted to repay the value of such gifts to A.E. There is no evidence that, prior to typing the letter, Ms. Vazquez knew the full extent of A.E.'s financial difficulties.

A nurse is subject to sanction for a failure to maintain professional boundaries as required by Board Rule 217.11(1)(J). Board Rule 217.1(29) prohibits "the obtainment of the nurse's personal gain at the client's expense." Board Rule 217.12(6)(D) prohibits a nurse from financially exploiting a client or the client's significant others. Ms. Vazquez clearly obtained items of value and meals from A.E., and benefited from his arrangement for friends to sponsor Ms. Vazquez's family at Christmas. She knew that A.E. no longer had an income from work, but she accepted valuable gifts from him from November to March 2008. In late March 2008, when she found out (by typing the letter to A.E.'s creditors) about the extent of A.E.'s financial difficulties, Ms. Vazquez made no attempt to repay any amounts to A.E. These factors indicate that the gifts were obtained at A.E.'s expense.

The ALJ finds that Ms. Vazquez's behavior violated Act §§ 301.452(b)(10) and 301.452(b)(13), as well as Board Rules 217.11(1)(J), 217.12(6)(D) and 217.1(29). The ALJ agrees with Ms. Benbow that, under the Board's disciplinary matrix pertaining to Act §§ 301.452(b)(10) and 301.452(b)(13), and taking into consideration the aggravating and mitigating factors set forth in Board Rule 213.33(c), Ms. Vazquez's behavior constitutes second-tier violations.

The disciplinary matrix permits either a warning or reprimand as a sanction for such violations. The questions at issue are acknowledged by all parties to be difficult ones. A nurse's exercise of sound judgment is complicated further by the Board's failure to amend Board Rule 217.1(31) to delete "for compensation" in conformance with the amendment to Act § 301.002(2). Given these factors, the ALJ recommends that the Board impose the lesser sanction of a warning.

In addition, the ALJ recommends that the Board require Ms. Vazquez to complete such educational programs as the Board deems appropriate under the circumstances.

V. FINDINGS OF FACT

1. Lori Jan Vazquez holds permanent certificate number 734004 issued by the Texas Board of Nursing (Board) in September 2006.

2. On June 22, 2010, Board staff (Staff) sent its Notice of Hearing to Ms. Vazquez by certified mail. The notice was received on June 23, 2010.

3. 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.

4. Administrative Law Judge (ALJ) Pratibha J. Shenoy convened the hearing on the merits on October 26, 2010, at the State Office of Administrative Hearings (SOAH), William P. Clements Building, 300 West 15th Street, Austin, Texas.

5. Assistant General Counsel Nikki Hopkins represented Staff. Attorney Jon Porter represented Ms. Vazquez.

6. The record closed on November 12, 2010, with the filing of written closing statements.

7. On September 11, 2007, Ms. Vazquez was assigned by her employer, Heart to Heart Hospice of Austin, Texas, to be the hospice nurse for patient A.E.

8. A.E. was in his early seventies and suffered from cardiac disease. As a hospice patient, A.E. had a diagnosis of a terminal illness with a prognosis of six months or less to live.

9. A.E. took several medications to manage his pain. His health continued to decline during the time Ms. Vazquez was his hospice nurse, and he was no longer able to work or drive.

10. Between September 11 and November 2, 2007, Ms. Vazquez made nine hour-long nursing visits to A.E.

11. On October 29, 2007, Ms. Vazquez submitted her resignation to Heart to Heart, effective November 8, 2007.

12. Ms. Vazquez told A.E. she would no longer be his hospice nurse. At his request, she agreed to continue visiting him, and to bring her three children to visit him.

13. Between November 2, 2007 and March 30, 2008, Ms. Vazquez visited A.E. on five to seven occasions, often with her children.

14. In early December 2007, Ms. Vazquez accepted a gift from A.E. of baseball gloves for each of her children.

15. In December 2007, Ms. Vazquez told A.E. that she and her family would be having a quiet Christmas without much excitement or gift-giving.

16. At A.E.'s request, Ms. Vazquez agreed to prepare a list of toys her children wanted, along with their clothing sizes, so that A.E.'s friends could sponsor Ms. Vazquez's family as a needy family for Christmas.

17. In December 2007, Ms. Vazquez collected from A.E. the gifts that A.E.'s friends had purchased for Ms. Vazquez and her family.

18. Also in December 2007, Ms. Vazquez accepted A.E.'s gift of an artificial Christmas tree and $40.00 in cash as a Christmas present.

19. In December 2007, A.E. took Ms. Vazquez, her children, and her mother to dinner. In early 2008, A.E. took Ms. Vazquez, her children, and her brother to lunch. A.E. paid for both meals.

20. In February 2008, Ms. Vazquez accepted a basketball goal from A.E. as a gift for her children.

21. In March 2008, A.E. gave his golf clubs to a friend in exchange for a used computer. Ms. Vazquez accepted the computer as a gift from A.E.

22. Also in March 2008, Ms. Vazquez typed a letter for A.E. and accepted $50.00 cash from A.E. in exchange. The letter, directed to A.E.'s creditors, stated that A.E. was no longer able to meet his debts, owned no assets, and was under hospice care for the terminally ill.

23. Ms. Vazquez did not repay the value of any gifts given by A.E.

24. Ms. Vazquez has had no previous disciplinary actions brought against her by the Board.

25. The Act and Board rules do not specify when a nurse/patient relationship ends.

26. Act § 301.002(2) was amended in 2005 to remove the words "for compensation" from the definition of professional nursing. Board Rule 217.1(31) has not yet been amended and retains the words "for compensation" in the definition of professional nursing practice.

VI. CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter. TEX. OCC. CODE ch. 301.

2. SOAH has jurisdiction over the hearing in this matter, including the authority to issue a proposal for decision with findings of fact and conclusions of law. TEX. GOV'T CODE ch. 2003.

3. Proper and timely notice of the hearing was provided. TEX. GOV'T CODE ch. 2001; 22 TEX. ADMIN. CODE § 213.10.

4. A nurse is subject to discipline for:

   a. unprofessional or dishonorable conduct that, in the Board's opinion, is likely to deceive, defraud, or injure a patient or the public. TEX. OCC. CODE § 301.452(b)(10);

   b. 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. TEX. OCC. CODE § 301.452(b)(13);

   c. failure to know, recognize, and maintain professional boundaries of the nurse-client relationship. 22 TEX. ADMIN. CODE § 217.11(1)(J);

   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 others. 22 TEX. ADMIN. CODE § 217.12(6)(D); and

   e. failure to refrain from inappropriate involvement in the client's personal relationships and/or the obtainment of the nurse's personal gain at the client's expense. 22 TEX. ADMIN. CODE § 217.1(29).

5. Based on the Findings of Fact, Ms. Vazquez violated TEX. OCC. CODE §§ 301.452(b)(10), and 301.452(b)(13), and 22 TEX. ADMIN. CODE §§ 217.11(1)(J), 217.12(6)(D) and 217.1(29).

6. The foregoing Findings of Fact and Conclusions of Law indicate that the Board is authorized to sanction Ms. Vazquez.

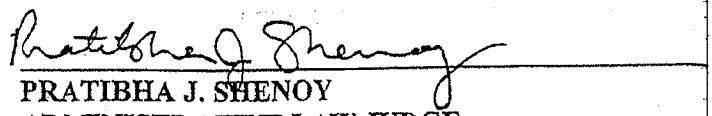
7. Factors to be used by SOAH when recommending a sanction are set forth at 22 TEX. ADMIN. CODE §213.33(c).

8. Under the Board's penalty matrix found at 22 TEX. ADMIN. CODE §213.33(b), the behavior exhibited by Ms. Vazquez warrants a warning with stipulations.

9. Based on the Findings of Fact and Conclusions of Law set forth herein, the ALJ

recommends that the Board issue a warning to Ms. Vazquez and require Ms. Vazquez to complete such educational programs as the Board deems appropriate.

SIGNED January 11, 2011.



PRATIBHA J. SHENOY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS