

DOCKET NUMBER 507-10-3286

IN THE MATTER OF
PERMANENT CERTIFICATE
NUMBERS 698413 and 181394
ISSUED TO
SCOTT PHILIP SANDIDGE

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BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARING



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.
Thomas H. Walston
Executive Director of the Board

OPINION AND ORDER OF THE BOARD

TO: SCOTT PHILIP SANDIDGE
C/O CATHERINE TABOR, ATTORNEY
1608 HARTFORD ROAD, SUITE 100
AUSTIN, TX 78703-3314

THOMAS H. WALSTON
ADMINISTRATIVE LAW JUDGE
300 WEST 15TH STREET
AUSTIN, TEXAS 78701

At the regularly scheduled public meeting on October 21-22, 2010, 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 and registered nursing licenses of Scott Philip Sandidge without 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, 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. All proposed findings of fact and conclusions of law

filed by any party not specifically adopted herein are hereby denied.

IT IS, THEREFORE, ORDERED THAT Permanent Certificate Numbers 698413 and 181394, previously issued to SCOTT PHILIP SANDIDGE, to practice nursing in the State of Texas be, and the same are hereby, REVOKED.

IT IS FURTHER ORDERED that Permanent Certificate Numbers 698413 and 181394, previously issued to SCOTT PHILIP SANDIDGE, 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 22nd day of October, 2010.

TEXAS BOARD OF NURSING



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



Attachment: Proposal for Decision; Docket No. 507-10-3286 (June 1, 2010).

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

June 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. 507-10-3286; In the Matter of Permanent Certificate
Numbers 698413 and 181394 Issued to Scott Philip Sandidge**

Dear Ms. Thomas:

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

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

Sincerely,

A handwritten signature in black ink that reads "Thomas H. Walston".

Thomas H. Walston
Administrative Law Judge

THW:nl

Enclosures

XC: Nikki Hopkins, Staff Attorney, 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**
Catherine Tabor, Attorney at Law, 1608 Hartford Road, Suite 100, Austin, TX 78703-3314-**VIA REGULAR MAIL**

SOAH DOCKET NO. 507-10-3286

IN THE MATTER OF
PERMANENT CERTIFICATE
NUMBERS 698413 AND 181394
ISSUED TO
SCOTT PHILIP SANDIDGE

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BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Board of Nursing (Staff/Board) seeks to revoke the registered nurse license and the vocational nurse license of Scott Philip Sandidge (Respondent) for violating the Nursing Practice Act (the Act), TEX. OCC. CODE ANN., Chapter 301. Specifically, Staff alleged that Respondent received deferred adjudication, community supervision, and a 10-year probated sentence after pleading guilty to the felony offense of Indecency with a Child by Sexual Contact. In addition, Staff alleged that Respondent was required to register under the Sex Offender Registration Program. Staff filed a Motion for Summary Disposition with supporting evidence to prove its allegations. The Administrative Law Judge (ALJ) granted summary disposition in favor of Staff, and by this Proposal for Decision, the ALJ recommends that the Board revoke Respondent's licenses.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

Jurisdiction and notice were not contested, so those matters are addressed in the Findings of Fact and Conclusions of Law without further discussion.

Staff filed Formal Charges against Respondent on June 16, 2008, and Respondent timely filed an answer. On March 23, 2010, Staff served Respondent with a Notice of Hearing for a hearing on the merits scheduled for June 8, 2010. On March 29, 2010, Staff served Respondent with a First Amended Notice of Hearing, which corrected Respondent's license numbers.

On April 16, 2010, Staff filed a Motion for Summary Disposition. Pursuant to 1 TEX ADMIN. CODE (TAC) §§ 155.103(c)(3) and 155.505, the deadline for Respondent to file a response to the Motion for Summary Disposition was May 3, 2010. Respondent did not file a response, and on May 10, 2010, the ALJ issued Order No. 1, granting Staff's motion and cancelling the hearing on the merits. Later on May 10, 2010, counsel for Respondent filed a motion for reconsideration of Order

No. 1 and for leave to file a late response. The ALJ entered Order No. 2 on May 11, 2010, extending the time for Respondent to file a response until May 14, 2010. As of May 28, 2010, Respondent still had not filed a response to Staff's Motion for Summary Disposition. Therefore, the ALJ issued Order No. 3, confirming that Staff's Motion for Summary Disposition was granted. The record closed that same date.

II. DISCUSSION

A. Summary Disposition Evidence

Respondent holds a Registered Nurse license, certificate number 698413, and a Vocational Nurse license, certificate number 181394. Staff provided summary disposition evidence that showed the following: On January 3, 2008, the presiding judge of the District Court of Montgomery County, Texas, 221st Judicial District, in Cause No. 06-03-03048-CR, entered a Deferred Adjudication Judgment and Order against Respondent. This Deferred Adjudication Judgment and Order stated that Respondent Scott Philip Sandidge appeared in person and by counsel, and Respondent entered a plea of guilty to the offense of "INDECENCY WITH A CHILD BY SEXUAL CONTACT." The offense was committed on July 4, 2004. Among other things, the Deferred Adjudication Judgment and Order: (1) deferred further proceedings without entering an adjudication of guilt, pursuant to Article 42.12 of the Code of Criminal Procedure; (2) placed Respondent on Community Supervision and probation for a period of ten years; and (3) required Respondent to register with his local law enforcement authority in the "Sex Offender Registration Program," pursuant to Chapter 62 of the Texas Code of Criminal Procedure.

As noted previously, Respondent did not file a response to Staff's Motion for Summary Disposition, offer summary disposition evidence in his own behalf, or otherwise challenge Staff's summary disposition evidence.

B. Applicable Law

The Board may take disciplinary action against a licensee for placement on deferred adjudication community supervision for a felony, and for unprofessional or dishonorable conduct that is likely to deceive, defraud, or injure a patient or the public. TEX. OCC. CODE § 301.452 (b)(3) and (10) states:

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

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

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

In addition, the Board’s rules at 22 TAC § 213.27(c)(1)-(2) provide that an order of deferred adjudication of a felony is conclusive evidence of guilt of the felony, and a licensee guilty of a felony is conclusively deemed to have committed unprofessional or dishonorable conduct that is likely to deceive, defraud, or injure a patient or the public, as provided in TEX. OCC. CODE § 301.452 (b)(10).

Further, TEX. OCC. CODE § 301.4535(a)(5), (16) and (b) requires the Board to revoke the license of a nurse who pleads guilty to indecency with a child or to an offense that requires the defendant to register as a sex offender:

(a) The board shall suspend a nurse’s license or refuse to issue a license to an applicant on proof that the nurse or applicant has been initially convicted of: . . .

(5) continuous sexual abuse of a young child or children under Section 21.02, Penal Code or *indecency with a child under Section 21.11, Penal Code*; . . . [or]

(16) an offense for which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure; . . .

(b) On final conviction *or a plea of guilty or nolo contendere* for an offense listed in Subsection (a), the board, as appropriate, may not issue a license to an applicant, shall refuse to renew a license, *or shall revoke a license*.¹ (Emphasis added.)

¹ Section 301.4535 applies to a person who is initially convicted of an offense or placed on deferred adjudication after a plea of guilty or nolo contendere for an offense on or after September 1, 2005.

C. ALJ's Analysis

An ALJ may issue a proposal for decision on all or part of a contested case by summary disposition if the summary disposition evidence shows there is no genuine issue as to any material fact and a party is entitled to a decision in its favor as a matter of law. 1 TAC § 155.505(a). Staff provided competent summary disposition evidence that on January 3, 2008, in Cause No. 06-03-03048-CR, Respondent entered a plea of guilty to the offense of "INDECENCY WITH A CHILD BY SEXUAL CONTACT," and a Deferred Adjudication Judgment and Order was entered against him. This Deferred Adjudication Judgment and Order placed Respondent on Community Supervision for a period of ten years and required Respondent to register as a sex offender pursuant to Chapter 62 of the Texas Code of Criminal Procedure.

Because Respondent pled guilty to the felony offense of indecency with a child, and because Respondent was ordered to register as a sex offender, TEX. OCC. CODE § 301.4535(a)(5), (16) and (b) require the Board to revoke Respondent's nursing licenses. Further, under 22 TAC § 213.27(c)(1)-(2), the order of deferred adjudication for a felony is conclusive evidence of Respondent's guilt, and Respondent is conclusively deemed to have engaged in unprofessional or dishonorable conduct likely to deceive, defraud, or injure a patient or the public, in violation of TEX. OCC. CODE § 301.452(b)(10).²

Therefore, based on the summary disposition evidence and the applicable law and rules, the ALJ granted Staff's motion for summary disposition and recommends that the Board revoke Respondent's nursing licenses.

² TEX. OCC. CODE § 301.452 (b)(3) does not require a conviction of a felony for the Texas Board of Nursing to take disciplinary action; rather, it expressly allows disciplinary action based on an order of deferred adjudication. Likewise, TEX. OCC. CODE § 301.4535(b) does not require a conviction but instead expressly requires the Board to revoke a license based on a plea of guilty to certain offenses, including the offense for which Respondent pled guilty. Therefore, analysis under TEX. OCC. CODE § 53.021(c) and (d), which limits the treatment of certain deferred adjudications as a conviction, is not required.

III. FINDINGS OF FACT

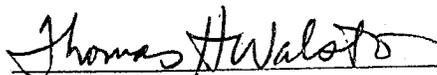
1. Scott Philip Sandidge (Respondent) holds a registered nurse license (Certificate Number 698413) and a vocational nurse license (Certificate Number 181394) issued by the Texas Board of Nursing (the Board).
2. On January 3, 2008, Respondent entered a plea of guilty to the offense of "INDECENCY WITH A CHILD BY SEXUAL CONTACT" in Cause No. 06-03-03048-CR, pending in the District Court of Montgomery County, Texas, 221st Judicial District. Respondent committed the offense on July 4, 2004.
3. On January 3, 2008, after Respondent pleaded guilty, the presiding judge of the District Court of Montgomery County, Texas, 221st Judicial District, in Cause No. 06-03-03048-CR, entered a Deferred Adjudication Judgment and Order against Respondent.
4. The Deferred Adjudication Judgment and Order: (1) deferred further proceedings without entering an adjudication of guilt pursuant to Article 42.12 of the Code of Criminal Procedure; (2) placed Respondent on Community Supervision and probation for a period of ten years; and (3) required Respondent to register with his local law enforcement authority in the "Sex Offender Registration Program," pursuant to Chapter 62 of the Texas Code of Criminal Procedure.
5. Staff for the Board served Respondent with formal charges and a notice of hearing that stated the day, time, and location of the hearing, referenced the applicable law, and contained a short, plain statement of the facts asserted against him.
6. On April 16, 2010, Staff filed a Motion for Summary Disposition against Respondent with supporting summary disposition evidence.
7. The deadline for Respondent to file a response to the Motion for Summary Disposition initially was May 3, 2010, and was then extended until May 14, 2010.
8. Respondent did not file a response to Staff's Motion for Summary Disposition.
9. The ALJ granted Staff's Motion for Summary Disposition on May 28, 2010.

IV. CONCLUSIONS OF LAW

1. The Texas State Board of Nursing (Board) has jurisdiction to discipline its licensees under TEX. OCC. CODE §§ 301.452 and 301.4535.
2. The State Office of Administrative Hearings has jurisdiction to conduct this contested case hearing and issue a proposal for decision under TEX. GOV'T CODE ANN. ch. 2001.

3. Respondent received proper notice of the hearing as required by TEX. GOV'T CODE ANN. § 2001.052.
4. Respondent is subject to discipline by the Board for having pled guilty to a felony offense. TEX. OCC. CODE § 301.4535(b).
5. Respondent is subject to discipline by the Board for violating Act §§ 301.452(b)(3) and (10) and 301.4535(8) and 22 TEX. ADMIN. CODE § 217.12.
6. Because Respondent pled guilty to the felony offense of indecency with a child and because Respondent was required to register as a sex offender under the Texas Code of Criminal Procedure, Chapter 62, the Board is required to revoke Respondent's nursing licenses by Tex. Occ. Code § 301.4535(a)(5), (16) and (b).
7. Based upon the Findings of Fact and Conclusions of Law, the Board should revoke Respondent's registered nurse license, Certificate Number 698413, and Respondent's vocational nurse license, Certificate Number 181394.

SIGNED June 1, 2010



THOMAS H. WALSTON

ADMINISTRATIVE LAW JUDGE

STATE OFFICE OF ADMINISTRATIVE HEARINGS