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

DOCKET NUMBER 507-10-1589

IN THE MATTER OF	§	BEFORE THE STATE OFFICE
PERMANENT CERTIFICATE	§	
NUMBERS 600519 AND 130635	§	OF
ISSUED TO	§	
LEILA KAY BRAWNER	§	ADMINISTRATIVE HEARINGS

OPINION AND ORDER OF THE BOARD

TO: LEILA KAY BRAWNER
5421 BRYAN STREET, APT #113
DALLAS, TX 75206

STEVEN D. ARNOLD
ADMINISTRATIVE LAW JUDGE
300 WEST 15TH STREET
AUSTIN, TEXAS 78701

At the regularly scheduled public meeting on July 22-23, 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 Leila Kay Brawner 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 has authority to review and modify the PFD in accordance with the Government Code §2001.058(e). The Board of Nursing, after review and due consideration of the PFD, Staff's recommendations, and the presentation by Respondent during the open meeting, if any, has determined that Finding of Fact Number Nine contains technical errors regarding the citations of the criminal cases involving the Respondent. Therefore, the Board finds that the current PFD should BE MODIFIED under the authority of the Government Code §2001.058(e)(3) to correct these technical errors.

IT IS, THEREFORE, ORDERED THAT the PFD signed on April 30, 2010, is hereby MODIFIED under the authority of the Government Code §2001.058(e) for the reasons outlined above, in order to correct certain technical errors in Finding of Fact Number Nine.

IT IS FURTHER ORDERED THAT Findings of Fact Numbers 1 through 8 and Conclusions of Law Numbers 1 through 7 contained in the PFD of April 30, 2010, are ADOPTED without modification. All proposed findings of fact and conclusions of law filed by any party or the ALJ not specifically adopted herein are hereby DENIED.

AMENDED FINDING OF FACT NUMBER NINE

IT IS FURTHER ORDERED THAT FINDING OF FACT NUMBER NINE is AMENDED and ADOPTED as follows:

1. Respondent's plea in Cause NO. CR07-00010 included an agreement by the State to dismiss Cause Nos. CR07-00007, CR07-00008, CR07-00009, and CR07-00033, but (under the provisions of Section 12.45 of the Penal Code) to take into consideration these admitted unadjudicated offenses in determining the sentence in Cause No. CR07-00010.

IT IS, THEREFORE, ORDERED THAT Permanent Certificate Numbers 600519 and 130635, previously issued to LEILA KAY BRAWNER, to practice nursing in the State of Texas be, and the same are hereby, REVOKED.

IT IS FURTHER ORDERED that Permanent Certificate Numbers 600519 and 130635, previously issued to LEILA KAY BRAWNER, 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 privileges, if any, to practice nursing in the State of Texas.

Entered this 23rd day of July, 2010.

TEXAS BOARD OF NURSING

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

Attachment: Proposal for Decision; Docket No. 507-10-1589 (April 30, 2010).

SOAH DOCKET NO. 507-10-1589

IN THE MATTER OF REGISTERED NURSE LICENSE NO. 600519 AND VOCATIONAL NURSE LICENSE NO. 130635 ISSUED TO	§	**BEFORE THE STATE OFFICE**
	§	**OF**
LEILA KAY BRAWNER, Respondent	§	**ADMINISTRATIVE HEARINGS**

PROPOSAL FOR DECISION

Staff of the Texas Board of Nursing (Board) seeks to revoke the Registered Nurse License No. 600519 and Vocational Nurse License No. 130635 of Leila Kay Brawner (Respondent) on the basis that Respondent entered a plea of guilty to the charge of manufacture and possession, with intent to deliver a controlled substance, namely cocaine (greater than or equal to 1 gram but less than 4 grams), a second degree felony, in violation of Section 301.452(b)(3) and (10) of the Texas Occupation Code and 22 TEX. ADMIN. CODE §217.12(13) as well as an assessment for court costs associated with this proceeding. This Proposal for Decision recommends that Respondent's licenses be revoked but recommends denial of the assessment of court costs.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

There are no contested issues of notice or jurisdiction in this proceeding. Therefore, these matters are addressed in the Findings of Fact and Conclusions of Law without further discussion here.

The hearing convened on March 4, 2010, before Administrative Law Judge Steven D. Arnold in the William P. Clements Building, 300 West 15th Street, Fourth Floor, Austin, Texas. Staff Attorney R. Kyle Hensley represented Staff. Respondent appeared *pro se*. The hearing concluded and the record closed that day.

II. DISCUSSION

A. Board's Evidence

The Board submitted 13 exhibits, all admitted as evidence without objection. Bonnie Cone, Nursing Consultant for Practice for the Board, testified on behalf of the Board.

The Board admitted evidence that, on May 1, 2006, Respondent was arrested by the Texas Highway Patrol and subsequently indicted in the 294th Judicial District Court, Van Zandt County, Texas, under Cause No. CR07-00007 for possession of a controlled substance, namely methamphetamine (less than 1 gram), a state jail felony, and unlawfully carrying a weapon, a class A misdemeanor.[1]

The Board also presented evidence that on August 17, 2006, Respondent was arrested and subsequently indicted in the 294th Judicial District Court, Van Zandt County, Texas, under Cause No. CR07-00008 for possession of a controlled substance, namely methamphetamine (less than 1 gram), a state jail felony; under Cause No. CR07-00009 for manufacture and possession with intent to deliver a controlled substance, namely clonazepam (less than 28 grams), a state jail felony; and under Cause No. CR07-00010 for manufacture and possession with intent to deliver a controlled substance, namely cocaine (greater than or equal to 1 gram but less than 4 grams), a second degree felony.[2]

Additionally, the Board presented evidence that on January 10, 2008, under the terms of a plea agreement, Respondent entered a plea of guilty to manufacture and possession with intent to deliver of a controlled substance, namely cocaine (greater than or equal to one gram but less than four grams). As a result of the guilty plea and the plea agreement, the proceedings against Respondent were deferred without entering an adjudication of guilt and Respondent was placed on community supervision for four

---

[1] Board Ex. 7.

[2] Board Ex. 8, 9.

years and ordered to pay a fine, court costs, and restitution. Respondent's plea in Cause No. CR07-0010 included an agreement by the State to dismiss Cause Nos. CR07-00007, CR07-0008, CR07-0009, and CR07-0033, but (under the provisions of Section 12.45 of the Penal Code) to take into consideration these admitted unadjudicated offenses in determining the sentence in Cause No. CR07-0010.[3]

Ms. Cone testified that as part of her duties, she evaluated Respondent's actions described above. She testified that Respondent's actions constituted very serious and substantial actions that clearly involved crimes of moral turpitude. She stated that nurses have access to controlled substances and are involved in a very stressful profession – they are there when life comes in and when life goes out, oftentimes causing them to turn to controlled substances for relief. Ms. Cone stated that she reviewed the documents admitted into evidence and the Board's Disciplinary Matrix[4] and determined that for the actions taken by Respondent, the appropriate sanction would be revocation of her licenses. She then stated that she had also reviewed the Board's Disciplinary Guidelines for Criminal Conduct[5] and determined that these, too, indicated that revocation of Respondent's licenses was the appropriate sanction.

B. Respondent's Evidence

Respondent testified briefly in her own behalf, but primarily relied on documentary evidence offered by the Board for her defense. Respondent's principal defense was contained in letters to the Board where she attempted to explain the charges brought against her. In the first such letter, she stated that in May 2006 she was pulled over by a State Trooper who searched her newly-purchased automobile and found a weapon. Respondent claimed that the weapon had been left by the prior owner. Respondent further stated that in August 2006, she drove to a motel where her daughter had been staying with the intent to take her daughter to Florida with her. She stated that she had been there about 15 minutes when a lady and a man came into the room and made plans to buy some type of drugs. At that point, she heard a knock on the door, which was

---

[3] Board Ex. 10.

[4] Board Ex. 12.

[5] Board Ex. 13 at 7.

the police. She stated that the police let the man and lady leave and arrested Respondent and her daughter.[6]

In the second letter, dated February 7, 2007, Respondent discussed the August 16, 2006, charge discussed above. She emphasized that she had she had not been formally charged with either offense described and that she was there to pick up her daughter, not to manufacture with intent to deliver a controlled substance of any kind.[7]

In her third letter, dated September 14, 2008, Respondent emphasized the fact that she had not been convicted of any crime, rather she had been the subject of deferred adjudication. She stated that she believes the State has given her another chance to prove her worth, and she further believes that she is living up to that chance.[8]

C. Applicable Law

Staff asserts Respondent's actions constitute grounds for disciplinary action under the following provisions of the Act and the Board's rules, which authorize sanctions against a licensee for:

- A conviction for, or placement on deferred adjudication community supervision or deferred disposition for, a felony or for a misdemeanor involving moral turpitude. **Act § 301.452(b)(3)**.

- 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)**.

- Criminal Conduct – including, but not limited to, conviction or probation, with or without an adjudication of guilt, or receipt of a judicial order involving a crime or criminal behavior or conduct that could affect the practice of nursing. **22 TEX. ADMIN. CODE § 217.12(13).**

---

[6] Board Ex. 5.

[7] Board Ex. 5a.

[8] Board Ex. 5c.

D. Discussion

Respondent does not dispute that she plead guilty and received deferred adjudication for the crimes alleged by the Board. Her argument relates to the conduct underlying the crimes and the effect of the deferred adjudication. Unfortunately, neither of those arguments bears significant weight in this proceeding. The Nursing Practice Act clearly states that being placed on deferred adjudication for a crime of the nature that Respondent admitted to committing warrants the sanction of revocation of the person's nursing license. The Board's Disciplinary Matrix and its Disciplinary Guidelines for Criminal Conduct confirm this result. Clearly the Board has the authority to revoke Respondent's licenses.

The Board asked that administrative costs be assessed against Respondent but failed to provide any evidence of those costs. Therefore, the ALJ finds that no administrative costs should be assessed against Respndent.

III. FINDINGS OF FACT

1. Leila Kay Brawner (Respondent) holds Registered Nurse License No. 600519 and Vocational Nurse License No. 130635 (Licenses) issued by the Texas Board of Nursing (Board).

2. Based on Respondent's plea of guilty to the charge of manufacture and possession, with intent to deliver a controlled substance, namely cocaine (greater than or equal to 1 gram but less than 4 grams), a second degree felony, in violation of Section 301.452(b)(3) and (10) of the Texas Occupation Code and 22 TEX. ADMIN. CODE §217.12(13), the Board notified that it intended to revoke Respondent's Licenses.

3. Respondent timely requested a hearing.

4. On February 11, 2010, the Board mailed a Notice of Administrative Hearing to Respondent. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.

5. The hearing on the merits was held on March 4, 2010. All parties appeared and participated in the hearing. The record closed that same day.

6. On May 1, 2006, Respondent was arrested by the Texas Highway Patrol and subsequently indicted in the 294th Judicial District Court, Van Zandt County, Texas, under Cause No. CR07-00007 for possession of a controlled substance, namely methamphetamine (less than 1 gram), a state jail felony, and unlawfully carrying a weapon, a class A misdemeanor.

7. On August 17, 2006, Respondent was arrested and subsequently indicted in the 294th Judicial District Court, Van Zandt County, Texas, under Cause No. CR07-00008 for possession of a controlled substance, namely methamphetamine (less than 1 gram), a state jail felony; under Cause No. CR07-00009 for manufacture and possession with intent to deliver a controlled substance, namely clonazepam (less than 28 grams), a state jail felony; and under Cause No. CR07-00010 for manufacture and possession with intent to deliver a controlled substance, namely cocaine (greater than or equal to 1 gram but less than 4 grams), a second degree felony.

8. On January 10, 2008, under the terms of a plea agreement, Respondent entered a plea of guilty to manufacture and possession with intent to deliver of a controlled substance, namely cocaine (greater than or equal to one gram but less than four grams). As a result of the guilty plea and the plea agreement, the proceedings against Respondent were deferred without entering an adjudication of guilt and Respondent was placed on community supervision for four years and ordered to pay a fine, court costs, and restitution.

9. Respondent's plea in Cause No. CR07-0010 included an agreement by the State to dismiss Cause Nos. CR07-00007, CR07-0008, CR07-0009, and CR07-0033, but (under the provisions of Section 12.45 of the Penal Code) to take into consideration these admitted unadjudicated offenses in determining the sentence in Cause No. CR07-0010.

IV. CONCLUSIONS OF LAW

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

2. SOAH has jurisdiction over matters related to 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 conviction for, or placement on deferred adjudication community supervision or deferred disposition for, a felony or for a misdemeanor involving moral turpitude. TEX. OCC. CODE § 301.452(b)(3).

5. A nurse is subject to discipline for unprofessional conduct likely to deceive, defraud, or injure clients or the public. TEX. OCC. CODE § 301.452(b)(10).

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

7. Under the Board's Disciplinary Matrix and its Disciplinary Guidelines for Criminal Conduct, the actions taken by Respondent warrant revocation of Respondent's licenses.

V. RECOMMENDATION

The Board should order that Respondent's Registered Nurse License No. 600519 and Vocational Nurse License No. 130635 be revoked.

ISSUED April 30, 2010.

STEVEN D. ARNOLD
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS