

Petitioner's nursing employment history continued

9/68 - 1971	Not employed in nursing	
1971 - 1972	Instructor	Prairie View A&M University Prairie View, Texas
1972 - 1973	Assistant Professor	Houston Baptist University Houston, Texas
1973 - 1989	Assistant Professor	University of Texas Health Science Center Houston, Texas
1973 - 1989	Instructor	Houston Community College Houston, Texas
1973 - 1989	Instructor	Alvin Community College Alvin, Texas
1989 - 1996	Director of Nursing	College of the Mainland Texas City, Texas
1996 - 1999	Administrator	American Wellness Center Houston, Texas
2000 - 2004	Accounting	Starting Point Recovery Center Houston, Texas
2005 - 2009	Director of Nursing	Allstar Home Health Agency Houston, Texas
2005 - 2009	Alternate Administrator	Allstar Home Health Agency Houston, Texas
2009 - 2011	Director of Nursing/ Consultant	Oceno Health Services, Inc. Houston, Texas

5. On January 28, 2011, Petitioner's license to practice professional nursing in the State of Texas was revoked by the Texas Board of Nursing. A copy of the January 28, 2011, Opinion and Order of the Board is attached and incorporated herein by reference as a part of this Order.

6. On or about October 17, 2015, Petitioner submitted a Petition for Reinstatement of License to practice professional nursing in the State of Texas.
7. Petitioner presented the following in support of his petition:
 - 7.1. Letter, dated June 20, 2014, from Ron Fishbeck, Supervising Officer, Harris County Community Supervision, Houston, Texas, reflecting Petitioner's termination of community supervision under Cause #115373201010.
 - 7.2. Letter of support from Linda Petree, RN, Comfort, Texas, stating she has known Petitioner for about twelve (12) years. Ms. Petree worked with Petitioner at several home health agencies. Ms. Petree found Petitioner to be extremely knowledgeable in the field of nursing practice. She is efficient and highly competent in all areas. She is an asset to the nursing community and extremely suitable and desirable as a supervising nurse. Petitioner is very personable and able to manage personnel well in an ever changing and stressful field. She is a mature, highly educated, and straight forward person. Ms. Petree highly recommends her nursing license to be reinstated.
 - 7.3. Letter of support from Joshua A. Watkins, Houston, Texas, stating he has known Petitioner for ten (10) years and had the pleasure of working with her at four (4) facilities. Mr. Watkins has the opportunity to experience the magic of her competence with Allstar Home Health as an Alternate Administrator. Her knowledge of home health rules and regulations of local, state and federal guidelines allowed Mr. Watkins to feel assured that Petitioner was capable of doing the job. Petitioner gives 100% of her time to help others without malice. She is a wonderful asset to the nursing field.
 - 7.4. Letter of support from Nkoli Mbonu, RN, Sugar Land, Texas, stating she hired Petitioner in March 2015 as a Quality Assurance compliance person for her office. Petitioner has been very thorough with policies and procedures for local and federal regulations. She is attention-detailed, organized, competent and helpful with the organization. Ms. Mbonu strongly recommends that the Board reinstate Petitioner's license so that she can be more useful with her organization.
 - 7.5. Letter of support from Robert E. Jackson, Houston, Texas, stating he has known Petitioner for over thirty-five (35) years. Petitioner has always faced adversity with dignity, pride and purpose. She will add so much to the quality of the nursing profession and the healthcare industry upon her reinstatement. Mr. Jackson humbly urges the Board to reinstate Petitioner's license to practice nursing.
 - 7.6. Documentation of the required continuing education contact hours.
8. The Executive Director considered evidence of Petitioner's past behavior in light of the character factors set out in 22 Tex. Admin. Code §213.27 and determined that Petitioner currently demonstrates the criteria required for good professional character and relicensure.

9. Relicensure of Petitioner poses no direct threat to the health and safety of patients or the public provided ~~Petitioner complies with the stipulations outlined in this Order.~~
10. The Executive Director's review of Petitioner's eligibility for relicensure has been made on the basis of Petitioner's disclosures.

CONCLUSIONS OF LAW

1. Pursuant to Texas Occupations Code, Sections 301.451-301.555, the Board has jurisdiction over this matter.
2. Pursuant to Section 301.467, Texas Occupations Code, the Board may refuse to issue or renew a license, and may set a reasonable period that must lapse before reapplication. Pursuant to 22 TEX. ADMIN. CODE §213.26, the Board may impose reasonable conditions that a Petitioner must satisfy before reissuance of an unrestricted license.
3. The Board may license an individual with prior behaviors inconsistent with the Board's character requirements if, upon evaluation of the factors in 22 Tex. Admin. Code §213.27, and pursuant to 22 Tex. Admin. Code §213.33, the Board is satisfied that the individual is able to consistently conform her conduct to the requirements of the Nursing Practice Act, the Board's Rules and Regulations, and generally accepted standards of nursing practice.
4. This Order is conditioned upon the accuracy and completeness of Petitioner's disclosures. Any subsequently discovered discrepancies will result in investigation and possible disciplinary action, up to revocation of Petitioner's license(s).

TERMS OF ORDER

I. REINSTATEMENT OF LICENSURE

IT IS THEREFORE AGREED and ORDERED, subject to ratification by the Texas Board of Nursing, that the petition of R J WATKINS JACKSON for reinstatement of license to practice nursing in the state of Texas be **GRANTED** and Registered Nurse License Number 420385 is hereby **REINSTATED** and PETITIONER shall receive the sanction of a **LIMITED LICENSE WITH STIPULATIONS** in accordance with the terms of this Order.

While under the terms of this Order, **PETITIONER SHALL NOT provide direct patient care.** For the purposes of this Order, direct patient care involves a personal relationship between the nurse and the client, and includes, but is not limited to: teaching, counseling, assessing the client's needs and strengths, and providing skilled nursing care.

II. COMPLIANCE WITH LAW AND APPLICABILITY

While under the terms of this Order, PETITIONER agrees to obtain, read, and 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.

- A. PETITIONER SHALL pay all re-registration fees, if applicable, and PETITIONER'S licensure status in the State of Texas will be updated to reflect the applicable conditions outlined herein.
- B. This Order SHALL apply to any and all future licenses issued to PETITIONER to practice nursing in the State of Texas.
- C. This Order SHALL be applicable to PETITIONER's nurse licensure compact privileges, if any, to practice nursing in the State of Texas.
- D. PETITIONER may not work outside the State of Texas in another nurse licensure compact party state without first obtaining the written permission of the Texas Board of Nursing and the Board of Nursing in the nurse licensure compact party state where PETITIONER wishes to work.

III. REMEDIAL EDUCATION COURSE(S)

In addition to any continuing education requirements the Board may require for licensure renewal, PETITIONER SHALL successfully complete the following remedial education course(s) **within one (1) year of relicensure, unless otherwise specifically indicated:**

- A. **A Board-approved course in Texas nursing jurisprudence and ethics** that 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. Home study courses and video programs will not be approved.

- B. The course **“Sharpening Critical Thinking Skills,”** a 3.6 contact hour online program provided by the National Council of State Boards of Nursing (NCSBN) Learning Extension.

In order to receive credit for completion of this/these course(s), PETITIONER SHALL CAUSE the instructor to submit a Verification of Course Completion form or SHALL submit the continuing education certificate, as applicable, to the attention of Monitoring at the Board's office. PETITIONER SHALL first obtain Board approval of any course prior to enrollment if the course is not being offered by a pre-approved provider. *Information about Board-approved courses and Verification of Course Completion forms are available from the Board at www.bon.texas.gov/compliance.*

IV. RESTORATION OF PATIENT CARE PRIVILEGE AND/OR UNENCUMBERED LICENSE(S)

SHOULD PETITIONER desire to provide direct patient care, PETITIONER SHALL petition the Board for such approval, at which time, the PETITIONER MUST satisfy all then existing requirements for re-issuance of the privilege to provide direct patient care. Further, the Board may impose reasonable conditions that must be satisfied by the PETITIONER before re-issuance of an unencumbered license, which, at a minimum, shall include the remedial education courses, work restrictions, supervised practice, and/or employer reporting which would have been requirements of this Order had the license(s) not been placed in limited status.

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PETITIONER'S CERTIFICATION

I understand that I have the right to legal counsel prior to signing this Reinstatement Agreed Order. I waive representation by counsel. I certify that my past behavior, except as disclosed in my Petition for Reinstatement of Licensure, has been in conformity with the Board's professional character rule. I have provided the Board with complete and accurate documentation of my past behavior in violation of the penal law of any jurisdiction which was disposed of through any procedure short of convictions, such as: conditional discharge, deferred adjudication or dismissal. I have no criminal prosecution pending in any jurisdiction.

I have reviewed this Order. By my signature on this Order, I agree to the Findings of Fact, Conclusions of Law, Order, and any conditions of said Order. I waive judicial review of this Order. I understand that this Order is subject to ratification by the Board. When this Order is ratified, the terms of this Order become effective, and a copy will be mailed to me. I agree to inform the Board of any other fact or event that could constitute a ground for denial of licensure prior to reinstating my license to practice Registered nursing in the state of Texas. I understand that if I fail to comply with all terms and conditions of this Order, my license(s) to practice nursing in the State of Texas will be revoked, as a consequence of my noncompliance.

Signed this 27th day of May, 2016

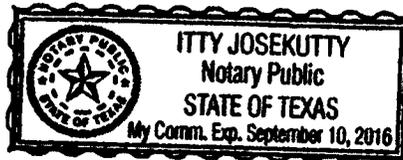
R. Jaanne Jackson
R. J. WATKINS JACKSON, Petitioner

Sworn to and subscribed before me this 22 day of May, 2016

SEAL

J. Josekutty

Notary Public in and for the State of TEXAS



WHEREFORE, PREMISES CONSIDERED, the Texas Board of Nursing does hereby ratify and adopt the Reinstatement Agreed Order that was signed on the 27th day of May, 2016, by R. J. WATKINS JACKSON, Registered Nurse License Number 420385, and said Order is final.

Effective this 21st day of July, 2016.



Katherine A. Thomas, MN, RN, FAAN
Executive Director on behalf
of said Board



DOCKET NUMBER 507-10-3575

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

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BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

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.
Stephanie C. Thomas
Executive Director of the Board

OPINION AND ORDER OF THE BOARD

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

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

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

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

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

Conclusion of Law Number 7

The Government Code §2001.058(e) authorizes the Board to change a finding of fact or conclusion of law made by the ALJ, or to vacate or modify an order issued by the ALJ if the Board determines that the ALJ did not properly apply or interpret applicable law, agency rules, written policies, or prior administrative decisions. The ALJ did not properly apply or interpret applicable law in this matter when he included his recommended sanction as a conclusion of law. A recommendation for a sanction is not a proper conclusion of law. An agency is the final decision maker regarding the imposition of sanctions. Once it has been determined that a violation of the law has occurred, the sanction is a matter for the agency's discretion. The choice of penalty is vested in the agency, not in the courts. The agency is charged by law with discretion to fix the penalty when it determines that the statute has been violated. Thus, the Board is not required to give presumptively binding effect to an ALJ's recommendation regarding sanctions in the same manner as with other findings of fact and conclusions of law. Further, the mere labeling of a recommended sanction as a conclusion of law or as a finding of fact does not change the effect of the ALJ's recommendation...[T]he Board, not the ALJ, is the decision maker concerning sanctions. See *Texas State Board of Dental Examiners vs. Brown*, 281 S.W, 3d 692 (Tex.

App. - Corpus Christi 2009, pet. filed); *Sears vs. Tex. State Bd. of Dental Exam'rs*, 759 S.W.2d 748, 751 (Tex.App.-Austin 1988, no pet); *Firemen's & Policemen's Civil Serv. Comm'n vs. Brinkmeyer*, 662 S.W.2d 953, 956 (Tex.1984); *Granek vs. Tex. State Bd. of Med. Exam'rs*, 172 S.W.3d 761, 781 (Tex.App.-Austin 2005, pet. denied). The Board rejects Conclusion of Law Number 7 because it is a recommended sanction and not a proper conclusion of law. Further, the Board retains the authority to determine the final sanction in this matter. The Board believes that disciplinary action in this matter is warranted based upon the adopted Findings of Fact and Conclusions of Law Numbers 4 and 6. However, the Board disagrees with the ALJ that the proper sanction should be a probated suspension of the Respondent's license, coupled with probationary stipulations for the duration of the Respondent's term of community supervision. Further, the Board finds that the ALJ erred in applying applicable law and the Board's rules, written policies, and prior administrative decisions in formulating this recommendation. Based upon applicable law, the Board's rules, policies, and prior administrative decisions, the Board finds that the Respondent's license should be revoked.

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

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

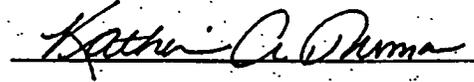
IT IS THEREFORE ORDERED that Permanent Certificate Number 420385, previously issued to R.J. WATKINS JACKSON, to practice nursing in the State of Texas be, and the same is hereby, REVOKED.

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

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

Entered this 29th day of January, 2011.

TEXAS BOARD OF NURSING



KATHERINE A. THOMAS, MN, RN

EXECUTIVE DIRECTOR FOR THE BOARD

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

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

September 1, 2010

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

VIA INTER-AGENCY

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

Dear Ms. Thomas:

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

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

Sincerely,


Roy G. Scudday
Administrative Law Judge

RGS/ap
Enclosure

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

SOAH DOCKET NO. 507-10-3575

IN THE MATTER OF
PERMANENT CERTIFICATE
NO. 420385 ISSUED TO

R. J. WATKINS JACKSON,
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

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

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The hearing convened August 26, 2010, before ALJ Roy G. Scudday in the William P. Clements Building, 300 West 15th Street, Fourth Floor, Austin, Texas. Staff was represented by R. Kyle Hensley, Assistant General Counsel. Respondent was represented by attorney Wendle Van Smith. The record closed at the conclusion of the hearing.

Matters concerning notice and jurisdiction were undisputed. Those matters are set out in the Findings of Fact and Conclusions of Law.

II. DISCUSSION

A. Background

Respondent has been licensed in Texas as an RN in since 1970. On September 4, 2009, Staff sent Respondent a Notice of Formal Charges filed against her. On April 8, 2010, Staff sent Respondent its Notice of Hearing.

B. Evidence

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

1. Undisputed Facts

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

2. Respondent's Testimony

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

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

¹ Bd. Ex. 6.

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

C. Analysis

Code § 301.452(b)(3) provides that a person is subject to disciplinary action for “a conviction for, or placement on deferred adjudication community supervision or deferred disposition for, a felony or for a misdemeanor involving moral turpitude.” The Board rule at 22 TAC § 213.27(b)(3) provides that one of the factors to consider in evaluating good professional character in disciplinary matters is any “conviction for a felony or for a misdemeanor involving moral turpitude or order of probation with or without an adjudication of guilt for an offense that would be a felony or misdemeanor involving moral turpitude if guilt were adjudicated.” The rule at 22 TAC § 213.28(b)(2)(A)(viii) lists “Theft greater or equal to \$1500” as being an offense against property that directly relates to and affects the practice of nursing.

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

The Guidelines set forth the reasoning for these sanctions as follows:

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

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

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

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

III. RECOMMENDATION

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

IV. FINDINGS OF FACT

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

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

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

IV. CONCLUSIONS OF LAW

1. The Texas Board of Nursing (Board) has jurisdiction over this matter pursuant to TEX. OCC. CODE ANN. (Code) ch. 301.

- ~~2. The State Office of Administrative Hearings has jurisdiction over the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.~~
3. Notice of the hearing on the merits was provided as required by Code § 301.454 and by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. Respondent is subject to disciplinary action by the Board pursuant to Code § 301.452(b)(3).
5. Staff had the burden of proof by a preponderance of the evidence.
6. Based on Findings Nos. 6-11, Staff has failed to prove that Respondent's previous criminal conduct supports the revocation of her license pursuant to 22 TEX. ADMIN. CODE §§ 213.27 and 28.
7. Based upon Findings of Fact Nos. 6-11 and Conclusion of Law No. 6, the Board should suspend Respondent's registered nurse license, but fully probate the suspension subject to such conditions as required by the Board, which conditions should remain in effect for the remainder of the period that Respondent is on community supervision.

SIGNED September 1, 2010.



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