



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.
Patricia A. Ramos
Executive Director of the Board

DOCKET NUMBER 507-10-3899

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| IN THE MATTER OF | § | BEFORE THE STATE OFFI |
| PERMANENT CERTIFICATE | § | |
| NUMBERS 685022 AND 182304 | § | OF |
| ISSUED TO | § | |
| EMMANUEL U. AKPAN | § | ADMINISTRATIVE HEARINGS |

OPINION AND ORDER OF THE BOARD

TO: EMMANUEL U. AKPAN
USM 29327-077, FCI MEMPHIS SATELLITE
CAMP
P.O. BOX 2000
MILLINGTON, TN 38083

SARAH G. RAMOS
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 Emmanuel U. Akpan 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 June 10, 2010. Staff did not file exceptions to the PFD or a response to the Respondent's exceptions. The ALJ issued a ruling on June 17, 2010, declining to make any changes to the PFD.

The Board has authority to review and modify the PFD in accordance with the Government Code §2001.058(e). The Board, 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 One contains a technical error regarding the registered nurse license number of 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 this technical error.

IT IS, THEREFORE, ORDERED THAT the PFD signed on May 24, 2010, is hereby MODIFIED under the authority of the Government Code §2001.058(e) for the reasons outlined above, in order to correct a technical error in Finding of Fact Number One.

IT IS FURTHER ORDERED THAT Findings of Fact Numbers 2 through 9 and Conclusions of Law Numbers 1 through 6 contained in the PFD of May 24, 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 ONE

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

1. Emmanuel U. Akpan (Respondent) is a registered nurse holding license number 685022 and vocational nursing license number 182304 issued by the Texas Board of Nursing (Board). Respondent's registered nursing license

is in current status and his vocational nursing license is in delinquent status.

IT IS, THEREFORE, ORDERED THAT Permanent Certificate Numbers 685022 and 182304, previously issued to EMMANUEL U. AKPAN, to practice nursing in the State of Texas be, and the same are hereby, REVOKED.

IT IS FURTHER ORDERED that Permanent Certificate Numbers 685022 and 182304, previously issued to EMMANUEL U. AKPAN, 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 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. 507-10-3899 (May 24, 2010).

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

May 24, 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. 507-10-3899; EMMANUEL U. UKPAN V. TEXAS BOARD OF NURSING**

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 "Sarah G. Ramos".

Sarah G. Ramos
Administrative Law Judge

SGR:cm
Enclosures

XC: Lance R. Brenton, Assistant General Counsel, 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 Certified Evidentiary Record) – VIA INTER-AGENCY
Emmanuel Uko Akpan, USM 29327-077, FCI Memphis Satellite Camp, P.O. Box 2000, Millington, Tennessee, 38083 VIA REGULAR MAIL

SOAH DOCKET NO. 507-10-3899

TEXAS BOARD OF NURSING,
Petitioner,

v.

EMMANUEL U. AKPAN,
Respondent,

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION
DISPOSING OF CASE BY SUMMARY DISPOSITION**

The Staff of the Texas Board of Nursing (Staff/Board) brought this action against Emmanuel U. Akpan (Respondent) to revoke his nursing licenses for being incarcerated in prison following a conviction for criminal offenses. The Administrative Law Judge (ALJ) finds that this case can be disposed of by summary disposition, and Respondent's licenses should be revoked.

I. REASONS FOR DECISION

Staff prefiled its business records, exhibits 1-6, and they are admitted into evidence. They show that Respondent has an active registered nursing license and a delinquent vocational nursing license in the State of Texas.

On June 30, 2009, Respondent was convicted of felony health care fraud and related felony offenses. On May 17, 2010, Respondent filed with the State Office of Administrative Hearings (SOAH) a "Motion to Obtain Writ of *Ad Testificandum* Procured by this Agency for Petitioner's Appearance or Alternatively Order of Stay/Adjournment." Respondent asked for the opportunity to appear and present evidence at his hearing, or if he could not do so, for the proceedings to be continued until his appeal is determined by the United States Court of Appeals.

However, as an incarcerated individual, Respondent is not entitled to hold an occupational license.¹ An occupational license is automatically revoked by operation of law upon a licensee's imprisonment following a felony conviction.² Staff provided a certified copy of the United States District Court's judgment in Case Number 3:04-CR-036-L(01), which remanded Respondent to the Federal Corrections Institution for a period of 60 months. Accordingly, the ALJ recommends that Respondent's nursing licenses be revoked.

II. FINDINGS OF FACT

1. Emmanuel U. Akpan (Respondent) is a registered nurse holding license number 680522 and vocational nursing license number 182304 issued by the Texas Board of Nursing (Board). Respondent's registered nursing license is in current status and his vocational nursing license is in delinquent status.
2. On June 30, 2009, Respondent was convicted by the United States District Court in Case Number 3:04-CR-036-L(01) of felony health care fraud and aiding and abetting, in violation of 18 United States Code §§ 1347 and 24(b), and engaging in monetary transaction in property derived from specific unlawful activity, in violation of 18 United States Code § 1957(a).
3. Respondent was remanded to the Federal Corrections Institution for a period of 60 months.
4. On March 8, 2010, by certified mail, Staff mailed notice of its formal charges to Respondent at 3010 Morning Dove Lane, McKinney, Texas 75070, and FCI Memphis, Satellite Camp, P.O. Box 2000, Millington, Tennessee 38083.
5. On March 13, 2010, a person with the same last name as Respondent's as the McKinney address signed for the certified letter with the formal charges.
6. On May 3, 2010, by certified mail, Staff mailed notice of the hearing to Respondent at his McKinney, Texas, and Millington, Tennessee, addresses.

¹ TEX. OCC. CODE ANN. § 53.021 (b) provides:

A license holder's license shall be revoked on the license holder's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

² Op. Tex. Att'y Gen. No. GA-0064 (2003).

7. The notice of hearing informed Respondent of the time, date, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the particular sections of the statutes and rules involved; and the matters asserted.
8. On May 17, 2010, Respondent filed a motion asking to be allowed to be present for his hearing and for the hearing to be abated until the appeal on his conviction is decided by the United States Court of Appeals.
9. In Respondent's motion, he listed his address as Federal Prison Camp, P.O. Box 2000, Millington, Tennessee 38083.

III. CONCLUSIONS OF LAW

1. The Texas Board of Nursing (Board) has jurisdiction over this matter pursuant to the Nursing Practice Act, TEX. OCC. CODE ANN. ch. 301.
2. The State Office of Administrative Hearings 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, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Respondent received proper and timely notice of hearing. TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. The Board is authorized to take disciplinary action if a person has committed an act listed in TEX. OCC. CODE ANN. § 301.452(b), pursuant to TEX. OCC. CODE ANN. § 301.453.
5. A contested case may be disposed of by summary disposition without evidentiary hearing if the pleadings, affidavits, materials obtained by discovery, admissions, matters officially noticed, stipulations, authenticated or certified public, business, or medical records, or other evidence of record show there is no genuine issue as to any material fact and that a party is entitled to a decision in its favor as a matter of law. 1 TEX. ADMIN. CODE § 155.505.
5. Based on Finding of Fact Nos. 2 and 3, Respondent is not entitled to hold a nursing license. TEX. OCC. CODE ANN. § 53.021(b) and Op. Tex. Att'y Gen. No. GA-0064 (2003).
6. Based upon the foregoing Findings of Fact and Conclusions of Law, Respondent's nursing licenses should be revoked.

SIGNED May 24, 2010.



SARAH G. RAMOS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS