

DOCKET NUMBER 507-08-2090

IN THE MATTER OF
PERMANENT CERTIFICATE
NUMBER **548343**
ISSUED TO
CAROL A. RITCHEY

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BEFORE THE 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.
Patricia R. Thomas
Executive Director of the Board

OPINION AND ORDER OF THE BOARD

TO: Carol A. Ritchey
c/o Nancy Roper Willson, Attorney
408 W. Eighth St., Suite 206
Dallas, TX 75208

During open meeting held in Austin, Texas, July 17-18, 2008, the Texas Board of Nursing finds that after proper and timely notice was given, the above-styled case was heard by an Administrative Law Judge who made and filed a proposal for decision containing the Administrative Law Judge's findings of fact and conclusions of law. The proposal for decision 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 Texas Board of Nursing, after review and due consideration of the proposal for decision, and exceptions and replies filed, if any, adopts the findings of fact and conclusions of law of the Administrative Law Judge as if fully set out and separately stated herein with the exception of Conclusion of Law Number 6. All proposed findings of fact and conclusions of law filed by any party not specifically adopted herein are hereby denied.

Conclusion of Law Number 6 is hereby re-designated as a Recommendation because it is a recommendation for a sanction and therefore not a proper conclusion of law. *Chalifoux Jr. V. State Bd. Of Medical Examiners*, 2006 S.W.3d (03-05-00320-CV) (Tex.App. – Austin 2006); *Grotti v. State Bd. Of Medical Examiners*, 2005 LEXIS 8279 (Tex.App. –Austin 2005, no pet.). The Board

adopts the Recommended Sanction of REVOCATION.

NOW, THEREFORE, IT IS ORDERED that Permanent Certificate Number 548343, previously issued to CAROL A. RITCHEY, to practice professional nursing in the State of Texas be, and the same is hereby, REVOKED.

IT IS FURTHER ORDERED that Permanent Certificate Number 548343, previously issued to CAROL A. RITCHEY, upon receipt of this Order, be immediately delivered to the office of the Texas Board of Nursing for the State of Texas.

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

Entered this 17th day of July, 2008.

TEXAS BOARD OF NURSING

BY:


KATHERINE A. THOMAS, MN, RN
EXECUTIVE DIRECTOR ON BEHALF OF SAID BOARD

SOAH DOCKET NO. 507-08-2090

TEXAS BOARD OF NURSING,
PETITIONER

V.

CAROL RITCHEY,
RESPONDENT

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Board of Nursing (Staff/Board) brought this case seeking revocation of the registered nurse's (RN) license of Carol Ritchey (Respondent) for violating the Nursing Practice Act (Act), TEX. OCC. CODE ANN. ch. 301, by having received deferred adjudication community supervision probations for two acts of aggravated assault with a deadly weapon. Respondent did not contest the validity of Staff's contentions. The proposal for decision recommends that the Board revoke Respondent's license.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

Jurisdiction and notice were not contested issues so those matters are addressed only in the Findings of Fact and Conclusions of Law below.

The hearing in this matter was held April 9, 2008, before State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) Ann Landeros. General Counsel James Johnston represented Staff and Applicant appeared through her attorney Nancy Roper Wilson. The record closed that same date.

II. DISCUSSION

A. Background

Respondent has held an RN license issued by the Board since 1988. In 2006, she was arrested for shooting a gun at her daughter and granddaughter. As a result of those acts, Respondent pled guilty to two charges of aggravated assault and received a five year deferred adjudication

community supervision in two felony criminal cases in the District Court No. 2 of Tarrant County, Texas.

Staff alleged that the Board is required under § 301.4535 of the Act to revoke Respondent's RN license as a result of her guilty pleas to the aggravated assault offenses.

B. Applicable Law

The Act requires the Board to suspend a license for an *initial conviction* for aggravated assault. However, Respondent's deferred adjudication community supervision is not a conviction. Therefore, this case is controlled by § 301.4535(b) of the Act, which permits the Board to revoke a license for a final conviction or upon a plea of guilty if the licensee failed to disclose the plea.¹

The Board may discipline a licensee for being placed on deferred adjudication for a felony criminal offense or for dishonorable or unprofessional conduct likely to injure the public.² That discipline can include a license suspension for up to five years or a license revocation.³ Aggravated

¹ Act § 301.4535. REQUIRED SUSPENSION, REVOCATION, OR REFUSAL OF LICENSE FOR CERTAIN OFFENSES.

(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: . . . (6) aggravated assault under Section 22.02, Penal Code; . . .

(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 if the applicant or license holder did not previously disclose the conviction or plea and the fifth anniversary of the date the person successfully completed community supervision or parole has not occurred.

(c) A person is not eligible for an initial license or for reinstatement or endorsement of a license to practice nursing in this state before the fifth anniversary of the date the person successfully completed and was dismissed from community supervision or parole for an offense described by Subsection (a).

² Act § 301.452(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; . . . (10) unprofessional or dishonorable conduct that, in the board's opinion, is likely to deceive, defraud, or injure a patient or the public; . . .

³ Act § 301.453.

assault is a felony. Unprofessional conduct includes criminal conduct.⁴ The Board has determined that aggravated assault is criminal conduct that directly relates to the practice of nursing.⁵

C. Evidence

Staff introduced the two criminal "Unadjudicated Judgment on Plea of Guilt or Nolo Contendere and Suspension of Imposition of Sentence" in Cause Nos. 1041232D and 1041229D in the District Court No. Two of Tarrant County, Texas. Those Judgments established that Respondent had pled guilty to and received a sentenced of probation for two criminal offenses of aggravated assault with a deadly weapon. Staff also introduced the police report of the offenses, which described how Respondent shot a 9mm handgun several times at her daughter and granddaughter. One of the bullets pierced the outside wall of her neighbors house just a foot or so away from where the neighbor was standing. The report also stated that other neighbors, including children, were in the immediate vicinity when the shots were fired.

Staff's evidence also included a letter to Respondent from Staff dated July 23, 2007, that indicated she had not reported her guilty pleas in the criminal matters to the Board.⁶

Respondent did not present any evidence. She agreed with Staff's assertions: (1) that aggravated assault is a crime listed in § 301.4535 of the Act; (2) that aggravated assault is a crime related to nursing; and (3) that the law requires her license to be revoked under these circumstances.

D. Analysis

Respondent is subject to discipline under § 301.4535(b) of the Act because she pled guilty to the felony of aggravated assault and failed to inform the Board of those pleas.

⁴ 22 TAC § 217.12(13).

⁵ 22 TAC § 213.28(b)(1)(A)(iv).

⁶ Staff Ex. 2.

Respondent's conduct also violated the Act and the Board's rules because it was unprofessional conduct that endangered the public. Her shots not only endangered her putative targets (her daughter and granddaughter) but also her neighbors, one of whom was almost hit by a bullet. For felonious assaultive conduct that endangered the public, revocation of Respondent's nursing license is an appropriate sanction.

III. FINDINGS OF FACT

1. Carol Ritchey (Respondent) holds a registered nurse's license issued by the Texas Board of Nursing (Board).
2. In 2006, Respondent shot a 9 mm handgun several times at her daughter and granddaughter.
3. One of the bullets from Respondent's guns hit within a foot of where a neighbor was standing.
4. By shooting her gun outdoors when people were standing nearby, Respondent endangered the public.
5. In 2007, Respondent was placed on deferred adjudication community supervision in two cases for the felonies of aggravated assault. Her probations are for five year terms.
6. Staff served Respondent with 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 her.
7. All parties appeared and were represented at the hearing in this matter held April 9, 2008.

IV. CONCLUSIONS OF LAW

1. The Texas State Board of Nursing has jurisdiction to discipline its licensees under §§ 301.452 and 301.4535 of the Nursing Practice Act (Act), TEX. OCC. CODE ANN.
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 felony crimes and failing to disclose those pleas to the Board. Act § 301.4535(b).

5. Respondent is subject to discipline by the Board for violating § 301.452 of the Act and 22 TEX. ADMIN. CODE § 217.12.
6. The Board should revoke Respondent's license.

SIGNED April 24, 2008



**ANN LANDEROS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**