



TEXAS BOARD OF NURSING,
PETITIONER

V.

NATALIE BERBAN BERGMAN
RESPONDENT

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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.
Patricia P. Roman
Executive Director of the Board

PROPOSAL FOR DECISION

The Staff of the Texas Board of Nursing (Staff/Board) seeks to revoke the registered nurse's (RN) license of Natalie Berban Bergman (Respondent) for violating the Nursing Practice Act (the Act), TEX. OCC. CODE ANN. ch. 301. According to Staff, Respondent received deferred adjudication community supervision probations for two criminal violations — manufacturing or delivering a controlled substance (methamphetamine) in an amount greater than four grams and less than 200 grams and endangering a child. Respondent did not contest the validity of Staff's contentions, but maintains she would not have pled "no contest" to these criminal charges had she understood she might lose her nursing license. The Administrative Law Judge (ALJ) 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 May 14, 2008, before State Office of Administrative Hearings (SOAH) ALJ Catherine Egan. General Counsel Victoria Cox North represented Staff. Attorney Humberto Saldana, III, represented Respondent. The record closed that same date.

II. DISCUSSION

A. Background

Respondent holds a RN's license issued by the Board under certificate number 593614. In

August 2006, she was arrested for manufacturing or "cooking" methamphetamine (a meth lab) and for endangering her six-year old son. On April 2, 2007, Respondent pled "no contest" to the felony charge of possession with intent to deliver a controlled substance, specifically methamphetamine (meth), in the 186th Judicial District Court of Bexar County, Texas, Cause No. 2006CR9233A. On the same day and in the same court, Respondent also pled "no contest" to the state felony charge of endangering a child in Cause No. 2006CR9865A.

B. Applicable Law

The Board may take discipline action against a licensee for placement on deferred adjudication community supervision or deferred disposition for a felony or a misdemeanor involving moral turpitude and for "unprofessional or dishonorable conduct that, in the board's opinion, is likely to deceive, defraud, or injure a patient or the public or the public."¹ Although Respondent's deferred adjudication community supervision is not a conviction, it is covered by Section 301.452(b)(3) as Respondent was placed on, and is still on, deferred adjudication community supervision.

The Board is also required to suspend a nurse's license if the licensee "has been initially convicted of: . . . (8) intentionally, knowingly, or recklessly abandoning or endangering a child under Section 22.041, Penal Code."² Section 22.041 of the Penal Code presumes that a person has

¹ Section 301.452 (b)(3) and (10) of the Act states that: (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;

² Section 301.4535 of the Act provides the following:

(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: . . . (8) intentionally, knowingly, or recklessly abandoning or endangering a child under Section 22.041, 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

engaged in conduct that places a child in imminent danger of death, bodily injury, or physical or mental impairment if the person manufactures meth in a child's presence.

As noted above, 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. That discipline can include a license suspension for up to five years or a license revocation.³ Respondent was charged with two felonies. Unprofessional conduct includes criminal conduct.⁴ The Board has determined that endangerment to a child is criminal conduct that directly relates to the practice of nursing.⁵

C. Evidence

Staff introduced the two criminal judgments establishing that Respondent pled no contest to the two criminal charges discussed above. As a result, Respondent received a combined sentence of deferred adjudication with community supervision for ten years that was subsequently reduced to five years.

Staff called two of the three police officers involved in Respondent's arrest to testify. On the night of August 19-20, 2006, Respondent was at home with her husband; six-year-old son, Forrest; and a friend called Hondo McReynolds. As a result of a "Crime Stoppers" call, police were dispatched to Respondent's home to check on the safety of a child. When the police arrived, Officers Johnny Salinas and Kenneth Thuleen testified that Respondent's husband and friend were in the front living area of the apartment and Respondent was in the master bedroom in the back of the apartment. Respondent's son was asleep in another bedroom. Upon entering the apartment, the police officers discovered marijuana on the coffee table and an active meth lab.

supervision or parole for an offense described by Subsection (a).

³ Act § 301.453.

⁴ 22 TAC § 217.12(13).

⁵ 22 TAC § 213.28(b)(1)(A)(iv).

The officers explained that a meth lab can explode at any time because meth is highly flammable and volatile during its manufacture. Consequently, the police officers immediately evacuated the apartment to ensure everyone's safety and called the Fire Department. Although they were only in Respondent's apartment for a matter of minutes, both officers testified that the meth caused their eyes to burn, sting and water—common side effects during the manufacture of meth. Respondent was arrested for manufacturing a controlled substance (meth) in an amount greater than four grams and less than 200 grams and for endangering a child—her son.

Respondent explained that she was asleep in the master room and did not know that her husband was manufacturing meth in apartment. Respondent insists that she would not do anything to jeopardize her son's health, but that she felt she had to pled "no contest" so that Child Protective Service's would return her son to her. Respondent is still married to the man she testified is responsible for the presence of a meth lab in her home, but claims both she and her husband are now rehabilitated.

Respondent pled "no contest" to both charges, received five years deferred adjudication for each case to run concurrently, and was ordered to pay \$333 in restitution and to pay a fine and court costs. On March 20, 2008, the District Court issued an order reducing Respondent's term of community supervision to five years. Respondent asked for leniency because she is a good nurse and was not responsible for the presence of a meth lab in her home. As a result of her plea, Respondent has attended and completed parenting classes and participated in out-patient drug/alcohol treatment. She has undergone many unannounced drug tests, all indicating she is not using drugs.

D. ALJ's Analysis

Respondent is subject to discipline under Section 301.4535(b) of the Act because she pled guilty to the felony of manufacturing a controlled substance and to the state felony of endangering a child. While Respondent claims she is not guilty and pled "no contest" to expedite the return of her child from CPS, the bottom line is that Respondent pled "no contest" to these charges. In *Powell v. State Bd. of Medical Examiners*, 734 S.W.2d 138 (Tex.App.-Dallas, 1987), the Court held that a

collateral attack on the underlying criminal conviction is permissible only if the judgment is void and not merely voidable. A judgment is void if the Court lacked jurisdiction to proceed with the criminal case. Respondent failed to show that the Criminal Court lacked jurisdiction to proceed with Respondent's criminal case. Therefore, the ALJ concludes that Respondent's contention that she is not guilty of the crimes she pled "no contest" to is an impermissible collateral attack on the underlying criminal conviction.

In addition, the ALJ finds it disturbing that Respondent appears to take no responsibility for the presence of an active meth lab in her home. It is difficult to believe that Respondent could be in such close proximity to a meth lab and not know it, particularly given the side effects (stinging, burning, watery eyes) and how quickly both officers reacted to the presence of meth production. Indeed, it appears Respondent simply turned a blind eye to the production of a controlled substance in her home until it directly affected her (her arrest and the removal of her son). As a nurse, Respondent should have recognized that a controlled substance was being manufactured in her home and should have recognized the dangers not only to her immediate family but also to her neighbors who could have been harmed had the meth lab exploded.

Although it is commendable that Respondent and her husband have taken steps to ensure they do not continue this type of behavior in the future, these are recent and serious events. Respondent has not demonstrated yet that she is capable of ensuring that the controlled substances are not manufactured or delivered from her home. For felonious conduct that endangered the public and her child, the revocation of Respondent's nursing license is an appropriate sanction.

III. FINDINGS OF FACT

1. Natalie Bergman (Respondent) holds a registered nurse's license issued by the Texas Board of Nursing (the Board).
2. In August 2006, Respondent was arrested for manufacturing or "cooking" methamphetamine (a meth lab) in an amount greater than four grams and less than 200 grams and endangering a child, her six-year old son.

3. On April 2, 2007, Respondent pled "no contest" to the felony charge of possession with intent to deliver a controlled substance, specifically methamphetamine (meth), in the 186th Judicial District Court of Bexar County, Texas, Cause No. 2006CR9233A.
4. On the same day and in the same court, Respondent also pled "no contest" to the state felony charge of endangering a child in Cause No. 2006CR9865A.
5. In August 2006, Respondent manufactured a controlled substance (methamphetamine) in an amount greater than four grams and less than 200 grams and endangered a child, her son.
6. Respondent received a combined sentence of deferred adjudication with community supervision for ten years that was subsequently reduced to five years.
7. Staff for the Board 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.
8. All parties appeared and were represented at the hearing in this matter held May 14, 2008.

IV. CONCLUSIONS OF LAW

1. The Texas State Board of Nursing (Board) has jurisdiction to discipline its licensees under Sections 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 no contest to felony crimes. Act § 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. Based upon the Findings of Fact and Conclusions of Law, permanent license number 593614 issued to Respondent by the Board should be revoked.

SIGNED July 14, 2008



**CATHERINE C. EGAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

DOCKET NUMBER 507-08-2408

IN THE MATTER OF	§	BEFORE THE STATE OFFICE
PERMANENT CERTIFICATE	§	
NUMBER 593614	§	OF
ISSUED TO	§	
NATALIE BERBAN BERGMAN	§	ADMINISTRATIVE HEARINGS

ORDER OF THE BOARD

TO: Natalie Berban Bergman
c/o Humberto Saldana, III, Attorney
111 Soledad Street, Suite 650
San Antonio, TX 78205

During open meeting held in Austin, Texas, 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. All proposed findings of fact and conclusions of law filed by any party not specifically adopted herein are hereby denied.

NOW, THEREFORE, IT IS ORDERED that Permanent Certificate Number 593614, previously issued to NATALIE BERBAN BERGMAN, to practice nursing in the State of Texas be, and the same is hereby, REVOKED.

IT IS FURTHER ORDERED that Permanent Certificate Number 593614, previously issued to NATALIE BERBAN BERGMAN, 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 23rd day of October, 2008.



TEXAS BOARD OF NURSING

BY:

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