



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. Thomas
Executive Director of the Board

DOCKET NUMBER 507-10-2226

IN THE MATTER OF § BEFORE THE STATE OFFIC
PERMANENT CERTIFICATE §
NUMBER 596689 § OF
ISSUED TO §
AMY DEANN STOY § ADMINISTRATIVE HEARING

OPINION AND ORDER OF THE BOARD

**TO: AMY DEANN STOY
C/O LOUIS LEICHTER
LEICHTER LAW FIRM
1602 EAST 7th STREET
AUSTIN, TX 78702**

**ROY G. SCUDDAY
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 petition for reinstatement filed by Amy Deann Stoy with changes; and (3) PETITIONER'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 and the Petitioner filed a response to Staff's exceptions. The ALJ issued a ruling on July 20, 2010, declining to make any changes to the PFD.

First, to the extent that the ALJ relied upon or reached any conclusions based upon past agreed orders relating to other nurses, the Board re-iterates its position that agreed orders signed by other nurses, whether similarly situated or not, cannot be used to establish Board precedent in the instant case. The Occupations Code §301.463 provides that an agreed disposition is a settlement agreement under the Texas Rules of Evidence. Use of a settlement agreement from another proceeding cannot bind the Board in a separate proceeding just because a compromise has not been offered. As stated by Ami Larson, Administrative Law Judge, in SOAH Docket No. 507-08-2496, *Texas Board of Nursing vs. Cathy Ann Anderson*; it is improper to use such agreed orders as a vehicle to establish appropriate recommendations. She stated as follows:¹

"Respondent pointed to other Board orders that have been previously approved that did not require an enforced suspension, and implied that the facts of those cases were similar to, if not more egregious, than her own. [footnote omitted] Based on those other orders, Respondent argued that the Board should accept her evidence of sobriety and treatment as sufficient to demonstrate that no enforced suspension period is necessary or required in her case. The Administrative Law Judge does not find this argument to be persuasive. Without knowing all the facts and circumstances underlying each of the Board orders cited by Respondent, many of which were agreed, the Administrative Law Judge is not willing to draw any conclusions about their relevance to Respondent's case or the appropriate outcome thereof. There is not sufficient evidence in the record to establish that the Board's policy is not routinely followed. Accordingly, the Administrative Law Judge looks to the language of the applicable law and Board policy, rather than to other cases which may or may not be analogous, to determine the appropriate response to Respondent's situation."

¹ *Texas Board of Nursing vs. Cathy Ann Anderson*, SOAH Docket No. 507-08-2496, Proposal for Decision, page 24 (March 16, 2009).

Any conclusion or statement in the PFD to the contrary is not to be considered Board precedent or policy.

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 exceptions, Petitioner's response, Staff's recommendations, and the presentation by Petitioner during the open meeting, if any, has determined that Finding of Fact Number Thirteen contains a technical error regarding the date of the Petitioner's felony conviction. 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 June 17, 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 Thirteen.

IT IS FURTHER ORDERED THAT Findings of Fact Numbers 1 through 12 and 14 through 17 and Conclusions of Law Numbers 1 through 7 contained in the PFD of June 17, 2010, are ADOPTED without modification, with the exception that Conclusion of Law Number 8 is re-designated as a recommendation.* 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 THIRTEEN

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

Applicant's conviction in February 2008 resulted in Applicant's being placed into an intensive substance abuse counseling program at the SAFP Facility from May 2008 to January 12, 2009, a supportive residential substance abuse treatment program

at the Riverside Facility of the Volunteers of America from January 12 to March 12, 2009, and the Helping Open People's Eyes, Inc. (HOPE) Phase II-SAFP Program from March 12 to December 15, 2009.

IT IS FURTHER ORDERED THAT the petition for reinstatement filed by AMY DEANN STOY is hereby, DENIED.

IT IS FURTHER ORDERED THAT Petitioner's nurse licensure compact privileges to practice nursing in Texas, if any, are also hereby, DENIED.

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. 507-10-2226 (June 17, 2010).

* This re-designation is authorized under the Government Code §2001.058(e). Authority is also found in *Texas State Board of Dental Examiners vs. Brown*, 281 S.W. 3d 692 (Tex. App. - Corpus Christi 2009, pet. filed); *Sears v. 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 v. Brinkmeyer*, 662 S.W.2d 953, 956 (Tex.1984); *Granek v. Tex. State Bd. of Med. Exam'rs*, 172 S.W.3d 761, 781 (Tex.App.-Austin 2005, pet. denied).

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

June 17, 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

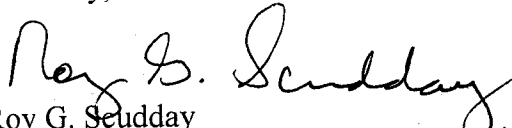
**RE: Docket No. 507-10-2226; In the Matter of Permanent Certificate
No. 596689 Issued to Amy Deann Stoy**

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. Seudday
Administrative Law Judge

RGS/ap
Enclosures

XC: James Johnston, Texas Board of Nursing, 333 Guadalupe, Tower III, Ste. 460, Austin, TX 78701 – **VIA INTER-AGENCY**
Dina Flores, Legal Assistant, Texas Board of Nursing, 333 Guadalupe, Tower III, Ste. 460, Austin, TX 78701 – **VIA INTER-AGENCY**
Louis Leichter, Leichter Law Firm, 1602 East 7th Street, Austin, TX 78702 – **VIA REGULAR MAIL**

SOAH DOCKET NO. 507-10-2226

**IN THE MATTER OF PERMANENT
CERTIFICATE NO. 596689
ISSUED TO**

**AMY DEANN STOY,
Applicant**

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**BEFORE THE STATE OFFICE

OF
ADMINISTRATIVE HEARINGS**

PROPOSAL FOR DECISION

Amy Deann Stoy (Applicant) appealed the denial by Staff of the Texas Board of Nursing (Staff/Board) of her request to reinstate her registered nurse's (RN) license. Staff denied the reinstatement request based on Applicant's criminal history, including her felony probation for Delivery of a Controlled Substance. Applicant asserted she meets the standards for licensure in the Nurse Practice Act (Act), TEX. OCC. CODE ANN. (Code) ch. 301 *et seq.* and the applicable Board rules. The proposal for decision finds that Applicant's RN license should be reinstated.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The hearing convened June 1, 2010, before ALJ Roy G. Scudday in the William P. Clements Building, 300 West 15th Street, Fourth Floor, Austin, Texas. Staff was represented by James W. Johnston, General Counsel. Respondent was represented by attorneys Louis Leichter and Dan Lype. 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. REASONS FOR DECISION

A. Background

Applicant was licensed as an RN from 1993 to 2008. On May 6, 2008, Applicant voluntarily surrendered her license, which surrender was accepted by the Board in an order dated

May 13, 2008. On July 2, 2009, Applicant filed a Petition for Reinstatement of License. On December 2, 2009, Staff sent Applicant a letter stating that her Petition for Reinstatement was denied. On January 14, 2010, Staff sent Applicant a second letter setting forth the reasons for denial of her Petition for Reinstatement.

B. Stated Reasons for Denial

Staff's stated reasons for denial are as follows:

- (1) Criminal conduct that relates to and affects the practice of nursing.
- (2) Unprofessional conduct that is likely to deceive, defraud, or injure a patient or the public.
- (3) Failure to prove good professional character.

All three reasons were based on the following:

- a. On or about August 10, 2000, Applicant was arrested for the misdemeanor offense of Driving While Intoxicated.
- b. On or about March 4, 2001, Applicant was arrested for the misdemeanor offense of Driving While Intoxicated.
- c. On May 2, 2002, in Cause No. 32325 in the County Court at Law of Granbury, Texas, Applicant entered a plea of guilty to the misdemeanor offense of Deadly Conduct, adjudication was deferred, and Applicant was placed on probation for a period of two years and ordered to pay a fine and court costs.
- d. On September 20, 2007, in Cause No. 39080 in the County Court at Law of Granbury, Texas, Applicant entered a plea of non contest to the misdemeanor offense of Theft of Property by Check less than \$500, adjudication was deferred, and Applicant was placed on probation for a period of six months and ordered to pay a fine and court costs.
- e. On February 28, 2008, in Cause No. F41770 in the 118th District Court of Johnson County, Texas, Applicant was convicted of the 2nd degree felony offense of Delivery of a Controlled Substance, sentenced to the Johnson County Jail for a period of 60 days, to

treatment at the Substance Abuse Felony Punishment (SAFP) Facility, and probation for a period of ten years.

C. Legal Standards

The standards for reinstatement of nursing licenses are set out in Code §§ 301.453(c) and 301.467 and the rule at 22 TEX. ADMIN. CODE (TAC) § 213.26.

A person who has surrendered their license may apply for reinstatement of the license.¹ The Applicant has the burden to prove present fitness to practice nursing.² In considering whether to reinstate a surrendered license a number of factors are to be considered, specifically:

- (1) the conduct which resulted in voluntary surrender of the license;
- (2) the conduct of the applicant subsequent to the acceptance of surrender of the license;
- (3) the lapse of time since acceptance of the surrender of the license;
- (4) compliance with all conditions imposed by the board as a prerequisite for issuance of the license; and
- (5) the applicant's present qualification to practice professional nursing based on her history of nursing-related employment or education.³

Additionally, the Applicant must provide evidence of good professional character, which is established if the person:

- (1) is able to distinguish right from wrong;
- (2) is able to think and act rationally;
- (3) is able to keep promises and honor obligations;
- (4) is accountable for her own behavior;
- (5) is able to practice nursing in an autonomous role with patients/clients, their families and significant others and members of the public who are or who may become physically, emotionally or financially vulnerable;
- (6) is able to recognize and honor the interpersonal boundaries appropriate to any therapeutic relationship or health care setting; and

¹ 22 TAC § 213.26(a).

² 22 TAC § 213.26(d).

³ 22 TAC § 213.26(e).

- (7) is able to promptly and fully self-disclose facts, circumstances, events, errors and omissions when such disclosure could enhance the health status of patients/clients or the public or could protect patients/clients or the public from unnecessary risk of harm.⁴

The rule at 22 TAC § 213.28(c) tracks the criteria set forth in Code § 53.022 for evaluating whether an applicant for licensure is eligible notwithstanding a criminal conviction that directly relates to the duties and responsibilities of the licensed occupation. Factors which the Board must consider in determining whether a conviction directly relates to the duties of the licensed occupation include:

- (1) whether the crime involves moral turpitude;
- (2) the nature and seriousness of the crime;
- (3) the relationship of the crime to the purposes for requiring a license to engage in the occupation;
- (4) the extent to which a license might offer an opportunity to engage in further criminal activity; and
- (5) the relationship of the crime to the fitness required to perform the duties and discharge the responsibilities of the licensed occupation.

The additional factors provided for the Board to consider in determining the present fitness of a person convicted of a crime to perform the duties and discharge the responsibilities of the licensed occupation set forth in Code § 53.023 are likewise tracked in the rule at 22 TAC § 213.28(e). These factors include past criminal activity; the age of the person when the crime was committed; the amount of time that has elapsed since commission of the crime; conduct and work activity before and after the criminal activity; evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; and letters of recommendation from employers and law enforcement. Additionally, the applicant should furnish proof that the applicant has maintained a record of steady employment; supported the applicant's dependents; maintained a record of good conduct; and paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted.

⁴ 22 TAC § 213.27.

D. Applicant's Evidence

From 1993 to May 2008, Applicant was licensed by the Board as an RN. She admitted to having been addicted to alcohol and methamphetamines, and having been arrested for DWI. In May 2008, Applicant voluntarily surrendered her license after her felony conviction for delivery of a controlled substance.⁵

Subsequent to her arrest on the delivery charge on June 12, 2007, Applicant participated in the STAR Council on Substance Abuse counseling required by Child Protective Services (CPS) as part of its investigation of her capability of caring for her three minor children. Her conviction in February 2008 resulted in Applicant's being placed into an intensive substance abuse counseling program at the SAFF Facility from May 2008 to January 12, 2009. She then went into a supportive residential substance abuse treatment program at the Riverside Facility of the Volunteers of America from January 12 to March 12, 2009. From March 12 to December 15, 2009, Applicant participated in the Helping Open People's Eyes, Inc. (HOPE) Phase II-SAFP Program. She has been an active participant in Alcoholics Anonymous (AA), and in Caduceus Group, a local support group for medical professionals in recovery. Applicant has been sober since her arrest in June 2007 on the delivery charge. She has been steadily employed for seven months as the Director of Marketing for Arbor House Assisted Living Communities and is supporting herself and her three children.

In support of her petition for reinstatement, Applicant submitted a letter from Tracy Friedmann, her probation officer, stating that results of Applicant's urinalysis tests from August 31, 2007, through April 6, 2009, were negative. Applicant also submitted results of urinalysis tests from March 2009 through February 2010, and drug screen results from February through April 2010, all of which were negative. In addition, Applicant submitted letters of support from Dr. John S. Jackson, a fellow member in Caduceus, and from Jackie A. Sherrod, her counselor at STAR Council. Respondent also provided testimony of Telisa Kelly, her nurse supervisor at Odyssey Healthcare where she worked as an RN from October 2007 through

⁵ Bd. Ex. 9.

March 2008; of Tammie O'Connor, her current supervisor at Arbor House Assisted Living Communities; of David McClure, the former executive director at Odyssey Healthcare; of Dr. Casey Green, a fellow member of AA and Caduceus; and of Carey Price, her AA sponsor. All the letters and testimony indicated that Applicant had successfully overcome her addictions, and was trustworthy, honest, and ready to resume her nursing career.

Applicant submitted several previous Board Orders to support the reinstatement of her license. They include the following:

On June 14, 2006, Mary Angela Garcia, a vocational nurse who had a history of chemical dependency, including deferred adjudications for possession of marijuana and cocaine and delivery of cocaine, and who had been the subject of Board disciplinary action in 2000, had her license suspended until she completed outpatient treatment and completed the Texas Peer Assistance Program for Nurses (TPAPN).⁶

On September 10, 2009, Chasity Barden, a registered nurse who had a history of chemical dependency, including a deferred adjudication in 2008 for the felony offense of Obtaining Drugs by Fraud, specifically Hydrocodone, for which she was placed on community supervision for a period of five years, had her license suspended until she completed a treatment program approved by the Board and obtained 12 consecutive months of sobriety. At the time her license was suspended, she had been sober for not quite two years.⁷

On January 21, 2010, Jo Ann Justice, a vocational nurse who had a history of chemical dependency, including a conviction in 2005 for the felony offense of DWI for which she was placed on ten years' probation, had her license reinstated with conditions. At the time of her reinstatement she had been sober for four and one-half years.⁸

⁶ App. Ex. No. 10.

⁷ App. Ex. No. 16.

⁸ App. Ex. No. 17.

E. The Staff's Evidence

Staff offered the testimony of Melinda Hester, who has been the Board's Nursing Consultant for Practice since 2005. Ms. Hester obtained degrees in nursing in 1979 and 1985, and she is licensed to practice in Texas. During her career, Ms. Hester has worked as a school nurse, instructor, and nursing consultant.

Ms. Hester testified that she is familiar with Board rules, including disciplinary and licensure rules. She stated that an applicant must possess good professional character, which means that the person exhibits honesty, accountability, trustworthiness, and integrity. Ms. Hester reviewed the Petition for Reinstatement and documents provided by the Applicant.

Ms. Hester stated that it is her opinion that it is too soon for the Applicant to have her license reinstated and return to nursing, based on the fact that Applicant only completed the SAFP treatment program in December 2009, and is still on felony probation. She pointed out that the Board's Disciplinary Guidelines for Criminal Conduct provide that, for drug violation convictions that occurred less than 3 years before the filing of the reinstatement petition, the petition should be denied.⁹ Ms. Hester pointed out that the Guidelines provide that a nurse who has engaged in behaviors in violation of controlled substances may affect her cognitive ability to perform the duties of the occupation, and her access to controlled substances would provide her the opportunity to acquire such substances for use or distribution, both with the potential to injure the public. She also stated that Applicant should not be reinstated until after she is no longer on felony probation despite the fact that the Board may have done so in other cases in the past.

Ms. Hester also considered the factors relevant to an applicant for reinstatement with a criminal conviction. She testified that the Applicant's conviction for drugs and deferred adjudication for theft are directly related to the practice of nursing according to the Guidelines. She opined that the seriousness of the crime for which Applicant was convicted and the pattern

⁹ Bd. Ex. 8, p.7.

shown by Applicant's arrests and conviction, as addressed in the Board's Substance Abuse Policy,¹⁰ indicate that more time is needed for Applicant to show that she can be considered sufficiently trustworthy to return to nursing. Although Ms. Hester could not give a definite time when she would think Applicant would be ready for reinstatement, she expressed her belief that no reinstatement should be made while the Applicant was on felony probation.

F. Analysis

The Board rules provide a number of factors to consider in determining whether to reinstate a surrendered license. The factors focus on the conduct that led to the surrender, conduct subsequent to the surrender, and present fitness to practice nursing.

The evidence established that, prior to the surrender of her license, Applicant was addicted to alcohol and methamphetamine, and those addictions were the underlying cause for her pattern of criminal behavior. This pattern was established over a period of seven years, and concerns conduct that relates to and affects the practice of nursing, is unprofessional, and reflects negatively on Applicant's professional character.

The evidence also established a pattern of rehabilitative efforts over the last three years. Applicant has been sober since her arrest in June 2007 on the delivery charge, has been involved in various treatment programs for substance abuse since that same time, has been an active member in AA and Caduceus, has undergone urinalysis and drug screening for over a year without any positive readings for alcohol or drugs, and has been in compliance with the terms of her probation. She has been steadily employed for seven months and is supporting herself and her three children.

¹⁰ App. Ex. 25, Eligibility and Disciplinary Sanctions for Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder.

Based on the Board orders in evidence and other prior orders, Applicant argues that the Board has, on a case-by-case basis, reinstated licenses even when the applicant was on felony probation, and suspended licenses with reinstatement contingent on participation in treatment programs. Applicant has stated that she is willing to abide by whatever conditions the Board requires, including monitoring, random drug testing, and continued participation in support groups, in addition to the conditions of her felony probation.

Based on the totality of the evidence, the ALJ is of the opinion that Applicant has shown her fitness to practice nursing and that she has established a good professional character.

III. RECOMMENDATION

Based upon the above discussion, the ALJ recommends that Applicant's registered nursing license be reinstated subject to such conditions as required by the Board, which conditions should remain in effect for the remainder of the period that Applicant is on felony probation.

IV. FINDINGS OF FACT

1. Amy Deann Stoy (Applicant) was licensed as a registered nurse by the Texas Board of Nursing (Staff/Board) from 1993 to 2008.
2. On May 6, 2008, Applicant voluntarily surrendered her license, which surrender was accepted by the Board in an order dated May 13, 2008.
3. On July 2, 2009, Applicant filed a Petition for Reinstatement of License. On December 2, 2009, Staff sent Applicant a letter stating that her Petition for Reinstatement was denied. On January 14, 2010, Staff sent Applicant a second letter setting forth the reasons for denial of her Petition for Reinstatement.
4. On January 21, 2010, Applicant requested a hearing regarding the denial of her Petition for Reinstatement.
5. On January 20, 2010, Staff mailed its Notice of Hearing to Applicant.
6. 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.


7. On August 10, 2000, Applicant was arrested for the misdemeanor offense of Driving While Intoxicated.
8. On March 4, 2001, Applicant was arrested for the misdemeanor offense of Driving While Intoxicated.
9. On May 2, 2002, in Cause No. 32325 in the County Court at Law of Granbury, Texas, Applicant entered a plea of guilty to the misdemeanor offense of Deadly Conduct, adjudication was deferred, and Applicant was placed on probation for a period of two years and ordered to pay a fine and court costs.
10. On September 20, 2007, in Cause No. 39080 in the County Court at Law of Granbury, Texas, Applicant entered a plea of non contest to the misdemeanor offense of Theft of Property by Check less than \$500, adjudication was deferred, and Applicant was placed on probation for a period of six months and ordered to pay a fine and court costs.
11. On February 28, 2008, in Cause No. F41770 in the 118th District Court of Johnson County, Texas, Applicant was convicted of the 2nd degree felony offense of Delivery of a Controlled Substance, sentenced to the Johnson County Jail for a period of 60 days, sentenced to treatment at the Substance Abuse Felony Punishment (SAFP) Facility, and placed on probation for a period of ten years.
12. Subsequent to her arrest on June 12, 2007, Applicant participated in the STAR Council on Substance Abuse counseling required by Child Protective Services (CPS) as part of its investigation of her capability of caring for her three minor children.
13. Applicant's conviction in February 2009 resulted in Applicant's being placed into an intensive substance abuse counseling program at the SAFP Facility from May 2008 to January 12, 2009, a supportive residential substance abuse treatment program at the Riverside Facility of the Volunteers of America from January 12 to March 12, 2009, and the Helping Open People's Eyes, Inc. (HOPE) Phase II-SAFP Program from March 12 to December 15, 2009.
14. Based on Findings of Fact No. 7-11, Applicant had violated TEX. OCC. CODE ANN. (Code) §§ 301.452(b)(3) and (10) and 22 TEX. ADMIN. CODE (TAC) § 217.12(13), for which violation she had voluntarily surrendered her license.
15. Applicant has been an active participant in Alcoholics Anonymous (AA), and in Caduceus Group, a local support group for medical professionals in recovery.
16. Applicant has been sober since her arrest in June 2007 on the delivery charge.

17. Letters of support from Dr. John S. Jackson, a fellow member in Caduceus, and from Jackie A. Sherrod, her counselor at STAR Council, and testimony from Dr. Casey Green, a fellow member of AA and Caduceus; and of Carey Price, Applicant's AA sponsor all indicated that Applicant had accepted responsibility for her prior actions and is committed to her recovery and continued sobriety.

V. 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. Applicant had the burden of proving her eligibility for reinstatement by a preponderance of the evidence. 22 TEX. ADMIN. CODE (TAC) § 213.26(d).
5. Based on Findings of Fact Nos. 12-17, Applicant has proven that her previous criminal conduct does not disqualify her from having her license reinstated in accordance with 22 TAC § 213.26(e).
6. Based on Findings of Fact Nos. 12-17, Applicant has proven her present fitness to practice nursing as well as to comply with all terms and conditions imposed as part of the reinstatement of her license in accordance with 22 TAC § 213.26(d).
7. Based on Findings of Fact Nos. 12-17, Applicant has proven her present good professional character in accordance with 22 TAC § 213.27.
8. Based upon Findings of Fact Nos. 12-17 and Conclusions of Law Nos. 5-7, the Board should reinstate Respondent's registered nurse license subject to such conditions as required by the Board, which conditions should remain in effect for the remainder of the period that Applicant is on felony probation.

SIGNED June 17, 2010.



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