



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. Plummer
Executive Director of the Board

DOCKET NUMBER 507-14-0185

**IN THE MATTER OF
PERMANENT CERTIFICATE
NUMBER 535393
ISSUED TO
JO ANN ALICE BENNETT**

**§ BEFORE THE STATE OFFICE
§ OF
§ ADMINISTRATIVE HEARINGS
§**

OPINION AND ORDER OF THE BOARD

**TO: JO ANN ALICE BENNETT
13470 RIVER OAKS BLVD.
BEAUMONT, TX 77713**

**8206 SUNSET TRAIL
TEMPLE, TX 76502**

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

At the regularly scheduled public meeting on January 23-24, 2014, 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 Jo Ann Alice Bennett 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. No exceptions were filed by any party.

The Board, after review and due consideration of the PFD; Staff's recommendations; and the presentation by the Respondent 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, without modification, except for Finding of Fact Number 1, which is modified and adopted as set out herein. All proposed findings of fact and conclusions of law filed by any party not specifically adopted herein are hereby denied.

Modification of PFD

The Board has authority to review and modify a PFD in accordance with the Government Code §2001.058(e). Specifically, §2001.058(e)(3) authorizes the Board to change a finding of fact or conclusion of law made by the ALJ or vacate or modify an order issued by the ALJ if the Board determines that a technical error in a finding of fact should be changed.

Finding of Fact Number 1

Finding of Fact Number 1, as contained in the PFD, contains a typographical error in the date that the Respondent was licensed as a registered nurse in Texas. The Respondent was licensed as a registered nurse in Texas on September 15, 1986.

For this reason, and under the authority of §2001.058(e)(3), IT IS, THEREFORE ORDERED THAT FINDING OF FACT NUMBER 1 is MODIFIED and ADOPTED as follows:

Modified Finding of Fact Number 1

1. Jo Ann Alice Bennett (Respondent) was licensed in Texas as a registered nurse (RN) on September 15, 1986, by the Texas Board of Nursing (Board).

Recommendation for Sanction

Although 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 or conclusions of law², the Board agrees with the ALJ that revocation of the Respondent's registered nursing license is required by law³.

IT IS, THEREFORE, ORDERED THAT Permanent Certificate Number 535393, previously issued to JO ANN ALICE BENNETT, to practice nursing in the State of Texas be, and the same is hereby, REVOKED.

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.

FURTHER, pursuant to the Occupations Code §301.467, RESPONDENT is not eligible to petition for reinstatement of licensure until at least one (1) year has elapsed from the date of this Order. Further, upon petitioning for reinstatement, RESPONDENT must satisfy all then existing requirements for relicensure.

² The Board, not the ALJ, is the final decision maker concerning sanctions. Once it has been determined that a violation of the law has occurred, the sanction is a matter for the agency's discretion. 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. As such, 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. The choice of penalty is vested in the agency, not in the courts. An agency has broad discretion in determining which sanction best serves the statutory policies committed to the agency's oversight. The propriety of a particular disciplinary measure is a matter of internal administration with which the courts should not interfere. 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); *Fay-Ray Corp. vs. Tex. Alcoholic Beverage Comm'n*, 959 S.W.2d 362, 369 (Tex.App. - Austin 1998, no pet.).

³ As cited by the ALJ in adopted Conclusion of Law Number 6, the Respondent's license is subject to revocation by operation of law pursuant to Tex. Occ. Code §53.021(b). Section 53.021(b) provides that 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.

Entered this 23rd day of January, 2014.

TEXAS BOARD OF NURSING



KATHERINE A. THOMAS, MN, RN, FAAN
EXECUTIVE DIRECTOR
FOR THE BOARD

Attachment: Proposal for Decision; Docket No. 507-14-0185 (October 30, 2013).

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

October 30, 2013

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

VIA INTERAGENCY

RE: Docket No. 507-14-0185; Texas Board of Nursing v. Jo Ann Alice Bennett

Dear Ms. Thomas:

Please find enclosed a Proposal for Decision on Summary Disposition 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 cursive script that reads "Roy G. Scudday".

Roy G. Scudday
Administrative Law Judge

RGS/ap
Enclosures

XC: Jena Abel, Texas Board of Nursing, 333 Guadalupe, Tower III, Ste. 460, Austin, TX 78701 - **VIA INTERAGENCY**
Dina Flores, Legal Assistant TBN, 333 Guadalupe, Tower III, Ste. 460, Austin, TX 78701 (Certified Evidentiary Record) - **VIA INTERAGENCY**
Jo Ann Alice Bennett, 13470 River Oaks Blvd., Beaumont, TX 77713 - **VIA REGULAR MAIL**
Jo Ann Alice Bennett, 1817377, Lane Murray Unit, 1916 N. Hwy. 36 Bypass, Gatesville, TX 76596 - **VIA REGULAR MAIL**
Jo Ann Alice Bennett, 8206 Sunset Trail, Temple, TX 76502 - **VIA REGULAR MAIL**

TEXAS BOARD OF NURSING,
Petitioner

v.

JO ANN ALICE BENNETT,
Respondent

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§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION ON SUMMARY DISPOSITION

The staff (Staff) of the Texas Board of Nursing (Board) brought action against Jo Ann Alice Bennett (Respondent) seeking revocation of her license. This proposal for decision recommends that Respondent's license should be revoked.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

On October 9, 2013, Staff filed a Motion for Summary Disposition. Respondent did not file a response. Because there is no genuine issue as to any material fact, the Administrative Law Judge has determined that Staff is entitled to a decision in its favor as a matter of law, pursuant to 1 Texas Administrative Code § 155.505(a), and that the oral hearing scheduled for November 12, 2013, should be cancelled.

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 was licensed in Texas as a registered nurse (RN) on September 15, 1988. On August 28, 2013, Staff sent Respondent a Notice of Formal Charges filed against her. On September 16, 2013, Staff sent Respondent a Notice of Hearing.

On September 17, 2012, Respondent entered a plea of Guilty to the third degree felony offense of Assault on a Public Servant. As a result of the plea, Respondent was sentenced to incarceration for a period of three years. On September 6, 2013, Respondent notified the Board of her incarceration.

B. Analysis

Texas Occupations Code (Code) § 53.021(b) provides that 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." This section of the Code has been interpreted to mean that, upon incarceration for a felony, the felon's license is revoked by operation of law.

Code § 301.454(c)(4) provides that a person is entitled to a hearing at the State Office of Administrative Hearing when the Board proposes to revoke a license. This conforms to the provision of Texas Government Code § 2001.051 that requires that each party in a contested case where the legal rights of a person are to be determined is entitled to an opportunity for a hearing to respond and present evidence and argument. As noted above, Respondent has been given an opportunity for hearing and has chosen not to respond to Staff's Motion for Summary Disposition. As a result, Respondent's license should be revoked.

III. FINDINGS OF FACT

1. Jo Ann Alice Bennett (Respondent) was licensed in Texas as a registered nurse (RN) on September 15, 1988, by the Texas Board of Nursing (Board).
2. On August 28, 2013, the staff (Staff) of the Board sent Respondent a Notice of Formal Charges filed against her by certified mail to her address of record. The certified mailing was returned with the notation (Moved, Left no Address)
3. On September 16, 2013, Staff mailed a Notice of Hearing to Respondent by certified mail to her address of record. The certified mailing was returned with the notation (Undeliverable as Addressed).

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. On September 17, 2012, a Judgment was entered for conviction of Respondent of the third degree felony offense of Assault on a Public Servant in Cause No. 12-14609, in the 252nd District Court of Jefferson County, Texas. Respondent was sentenced to confinement in the Institutional Division of the Texas Department of Criminal Justice for a period of three years.
6. On September 6, 2013, Respondent notified Staff that she was incarcerated, acknowledged receipt of the Notice of Hearing, and requested additional time to file a Response.
7. On October 9, 2013, Staff filed a Motion for Summary Disposition, with a copy mailed to Respondent by certified mail to the Lane Murray Unit in Greenville, Texas. Respondent did not file a response.

IV. CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter. Tex. Occ. Code (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. Tex. Gov't Code ch. 2003.
3. Notice of the hearing on the merits was provided. Code § 301.454; Tex. Gov't Code §§ 2001.051 and 052.
4. The ALJ has the authority to issue a proposal for decision on summary disposition if there is no genuine issue as to any material fact and the moving party is entitled to a decision in its favor as a matter of law. 1 Tex. Admin. Code § 155.505(a)
5. Staff had the burden of proof by a preponderance of the evidence.
6. Based on the findings set forth in Findings of Fact Nos. 5 and 6, Respondent's license is subject to revocation by operation of law pursuant to Code § 53.021(b).

V. RECOMMENDATION

Based upon the above findings of fact and conclusions of law, the ALJ recommends that Respondent's license be revoked.

SIGNED October 30, 2013.



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