



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. Williams*  
Executive Director of the Board

**DOCKET NUMBER 507-12-5231**

**IN THE MATTER OF  
PERMANENT CERTIFICATE  
NUMBERS 215004  
ISSUED TO  
AIMEE MICHELE MUNDAY**

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

**OPINION AND ORDER OF THE BOARD**

**TO: AIMEE MICHELE MUNDAY  
2009 PINEHURST LN, #1109  
MESQUITE, TX 75150**

**MICHAEL J. O'MALLEY  
ADMINISTRATIVE LAW JUDGE  
300 WEST 15TH STREET  
AUSTIN, TEXAS 78701**

At the regularly scheduled public meeting on July 19-20, 2012, 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 nursing license of Aimee Michele Munday 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 Respondent's presentation 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, except for Conclusion of Law Number 8, which is hereby re-designated as a recommendation. All proposed findings of fact and conclusions of law filed by any party not specifically adopted herein are hereby denied.

**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 law<sup>1</sup>, the Board does agree with the ALJ that the appropriate sanction in this

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<sup>1</sup> 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

matter is revocation. The Respondent's conduct, as described in the adopted Findings of Fact and Conclusions of Law, poses a serious risk to the public health and safety. The Respondent's history, as described in the Board's August 11, 2011 Order, and incorporated into adopted Finding of Fact Number 14, indicates a risk of impaired nursing care due to the intemperate use of controlled substances or chemical dependency. The Respondent's failure to comply with the requirements of the Texas Peer Assistance Program for Nurses further indicates a continuing risk to the public health and safety. Based upon the adopted Findings of Fact and Conclusions of Law, including Findings of Fact Numbers 5 through 7 and 12 through 18 and Conclusions of Law Numbers 5 through 7, the Board's Disciplinary Matrix, and the Board's rules, including 22 Tex. Admin. Code §213.29 and §213.33(g) and (m), the Board finds that the Respondent's license should be revoked.

IT IS, THEREFORE, ORDERED THAT Permanent Certificate Number 215004, previously issued to AIMEE MICHELE MUNDAY, 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.



Entered this 19<sup>th</sup> day of July, 2012.

TEXAS BOARD OF NURSING

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

Attachment: Proposal for Decision; Docket No. 507-12-5231 (May 11, 2012).

I certify this to be a true copy of the  
records on file with the Texas Board  
of Nursing.

Date:

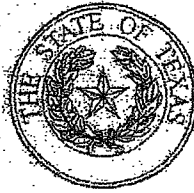
Signed:

7/25/12

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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.).

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

May 11, 2012

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. 507-12-5231; In the Matter of Permanent Certificate  
Number 215004 Issued to Aimee Michele Munday

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](http://www.soah.state.tx.us).

Sincerely,

A handwritten signature in cursive script that reads "Michael J. O'Malley".

Michael J. O'Malley  
Administrative Law Judge

MJO:nl

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 1 CD;  
Certified Evidentiary Record) - VIA INTER-AGENCY  
Aimee Michele Munday, 2009 Pinehurst Lane, #1109, Mesquite, TX 75150 - VIA REGULAR MAIL

**DOCKET NO. 507-12-5231**

<b>IN THE MATTER OF</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
<b>PERMANENT CERTIFICATE</b>	<b>§</b>	
<b>NUMBER 215004</b>	<b>§</b>	<b>OF</b>
<b>ISSUED TO</b>	<b>§</b>	
<b>AIMEE MICHELE MUNDAY</b>	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

Staff of the Texas Board of Nursing (Staff/Board) seeks to discipline Aimee Michele Munday (Respondent) for violations of the Nursing Practice Act, Texas Occupations Code ch. 301, and the Board's rules. Despite being sent proper notice, Respondent did not appear and was not represented at the hearing. Based on Respondent's failure to appear, Staff's allegations were deemed admitted, establishing the violations. The Administrative Law Judge (ALJ) recommends that Respondent's vocational nursing license be revoked.

**I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY**

A probable cause hearing was held in this matter on March 28, 2012, before ALJ Anne K. Perez at the hearing facilities of the State Office of Administrative Hearings (SOAH), 300 West 15th Street, Fourth Floor, Austin, Texas. Despite being sent proper notice, Respondent did not appear and was not represented at the probable cause hearing. Staff presented evidence to establish: (1) that Respondent holds a vocational nursing license issued by the Board; (2) that on August 11, 2011, the Board and Respondent executed an Agreed Order requiring Respondent to timely complete all enrollment requirements of the Texas Peer Assistance Program for Nurses (TPAPN); and (3) that Respondent failed to timely comply with the provisions of the Agreed Order. A probable cause order was entered on April 11, 2012, suspending Respondent's license indefinitely.

The hearing on the merits convened on April 25, 2012, before ALJ Michael J. O'Malley. Staff was represented by Lance Brenton, who moved for default based on Respondent's failure to appear. Staff offered competent evidence establishing jurisdiction and that appropriate notice of the hearing was provided to Respondent. Therefore, the ALJ granted Staff's motion for default and

deemed the factual allegations in the notice of the hearing as admitted, in accordance with 1 Tex. Admin. Code § 155.501.

## II. RECOMMENDATION

Based upon the following Findings of Fact and Conclusions of Law, the ALJ recommends that the Board revoke Respondent's vocational nursing license.

## III. FINDINGS OF FACT

1. Aimee Michele Munday (Respondent) is the holder of Vocational Nurse license number 215004, issued by the Texas State Board of Nursing (Board).
2. Respondent's address of record on file with the Board is: 2009 Pinehurst Lane, #1109, Mesquite, Texas 75150 ("Address").
3. On March 13, 2012, Staff of the Board (Staff) filed Formal Charges against Respondent and issued a Notice of Hearing, informing Respondent of a probable cause hearing on the charges. On that same date, the Board temporarily suspended Respondent's vocational nursing license, on the grounds that her continued practice posed a continuing and imminent threat to the public welfare.
4. The Formal Charges, Notice of probable cause hearing, and Temporary Suspension Order were sent to Respondent at her Address by certified mail, return receipt requested. According to United States Postal Service (USPS) records, the certified letter received and signed for by J. W. Munday on March 16, 2012.
5. A probable cause hearing was held on March 28, 2012, before Administrative Law Judge (ALJ) Anne K. Perez at the hearing facilities of the State Office of Administrative Hearings (SOAH) in Austin, Texas, to determine whether Respondent's license should remain suspended pending a final hearing.
6. Respondent did not attend the probable cause hearing and was not represented at the hearing.
7. A probable cause order suspending indefinitely Respondent's license was issued on April 11, 2012. The probable cause order scheduled an evidentiary hearing on April 25, 2012, to consider the formal charges and suspension of Respondent's license.
8. The probable cause order issued by SOAH was sent by regular first-class mail to Respondent at her Address on April 11, 2012.

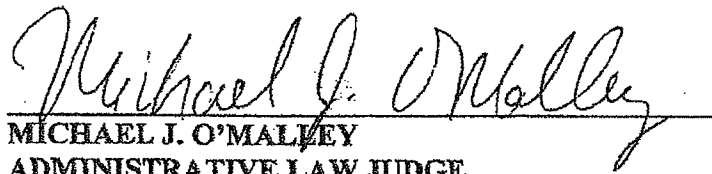
9. On April 12, 2012, Staff's Notice of Hearing (for the April 25, 2012 hearing) and Formal Charges, were sent by certified mail, return receipt requested to Respondent's Address.
10. The Notice of Hearing referenced in Finding of Fact No. 9 contained a statement of the time, place, and nature of the 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.
11. The Notice of Hearing referenced in Finding of Fact No. 9 contained the following language in capital letters in 12-point boldface type: "Failure to appear at the hearing in person or by legal representative, regardless of whether an appearance has been entered, will result in the allegations contained in the formal charges being admitted as true and the proposed recommendation of staff shall be granted by default."
12. The hearing convened April 25, 2012, before ALJ Michael J. O'Malley, at SOAH's hearing facilities in Austin, Texas. Lance Brenton, Assistant General Counsel, appeared on behalf of Staff. Respondent did not appear and was not represented at the hearing.
13. Staff moved for a default, which was granted, and the factual allegations in the Notice of Hearing were deemed admitted.
14. Respondent is under an Agreed Order issued by the Board on August 11, 2011, requiring her to participate in the Texas Peer Assistance Program for Nurses (TPAPN).
15. Respondent's Agreed Order required that: (a) within 45 days of the Board order's issuance, Respondent apply to TPAPN; and (b) within 90 days of the Board order's issuance, Respondent execute a TPAPN participation agreement and remit to TPAPN a nonrefundable participation fee of \$350.
16. Respondent has not executed a TPAPN participation agreement, or made payable to TPAPN the non-refundable participation fee of \$350.
17. On December 28, 2011, Respondent was dismissed from the TPAPN program. TPAPN referred Respondent to the Board for noncompliance.
18. Respondent failed to comply with the August 11, 2011 Agreed Order, which required Respondent to timely comply with all of TPAPN's enrollment requirements.

#### IV. CONCLUSIONS OF LAW

1. The Texas Board of Nursing (Board) has jurisdiction over this matter pursuant to the Nursing Practice Act (Act), Tex. Occ. Code ch. 301.

2. SOAH 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 ch. 2003.
3. The Board's rules authorize service of notice by sending it to Respondent's last known address as reflected in the Board's records. 22 Tex. Admin. Code § 213.10(a).
4. Proper and timely notice was provided to Respondent pursuant to the Administrative Procedure Act, Tex. Gov't Code ch. 2001.
5. The allegations stated in Findings of Fact Nos. 14-18 are deemed admitted, pursuant to 1 Tex. Admin. Code § 155.501.
6. Based upon the foregoing Findings of Fact, Respondent is subject to disciplinary action under Tex. Occ. Code §§ 301.452(b)(1), (9), (10) and (12) and 22 Tex. Admin. Code § 217.12(9) and (11)(B).
7. The Board is authorized to revoke a person's license for violations of the Act, pursuant to Tex. Occ. Code §§ 301.452 and 301.453.
8. Based upon the foregoing Findings of Fact and Conclusions of Law, Respondent's vocational nursing license should be revoked.

SIGNED May 11, 2012.

  
MICHAEL J. O'MALLEY  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARING