

DOCKET NUMBER 507-12-8130

IN THE MATTER OF  
PERMANENT CERTIFICATE  
NUMBER 177351

ISSUED TO  
MORGAN JEANETTE STERLING

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

OPINION AND ORDER OF THE BOARD

TO: MORGAN JEANETTE STERLING  
c/o MARC M. MEYER, ATTORNEY  
LAW OFFICE OF MARC MEYER, PLLC  
33300 EGYPT LANE, SUITE B-200  
MAGNOLIA, TX 77354-2739

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

At the regularly scheduled public meeting on January 17-18, 2013, the Texas Board of Nursing (Board) considered the following items: (1) The Proposal for Decision (PFD) regarding the above cited matter; (2) Respondent's Exceptions to the PFD; (3) Staff's Reply to Respondent's Exceptions (4) Staff's recommendation that the Board adopt all of the Findings of Fact and Conclusions of Law in the PFD regarding the vocational nursing license of Morgan Jeanette Sterling with changes; and (5) 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. The Respondent filed Exceptions to the PFD on December 4, 2012. Staff filed a Reply to Respondent's Exceptions to the PFD on December 5, 2012. On December 7, 2012, the ALJ issued a final letter ruling, in which he declined to make any changes to the PFD.

The Board, after review and due consideration of the PFD, Respondent's Exceptions to the PFD; Staff's Reply to Respondent's Exceptions to the PFD; Staff's recommendations, and the presentation and recommendation 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, except for Finding of Fact Number 8 and Conclusion of Law Number 6. Finding of Fact Number 8 and Conclusion of Law Number 6 are modified and adopted as amended as set forth herein. All proposed findings of fact and conclusions of law filed by any party not specifically adopted herein are hereby denied.



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.  
*William C. Thomas*  
Executive Director of the Board

## 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)(1) authorizes the Board to change a finding of fact or conclusion of law made by the ALJ if the Board determines that the ALJ did not properly apply or interpret applicable law, agency rules, written policies, or prior administrative decisions.

## Conclusion of Law Number 6

The ALJ states in Conclusion of Law Number 6 that the Respondent's license was revoked by operation of law at the time of her imprisonment. The ALJ cites Attorney General Opinion JM-482 (1986) and GA-0064 in support of this conclusion. Further, the ALJ calculates the date of the Respondent's imprisonment as February 5, 2010, a date that pre-dates the Respondent's final sentencing in her criminal matter. In arriving at his conclusion, it appears that the ALJ believes that the Respondent should be given credit for the 89 days she spent in jail awaiting sentencing on her criminal matter<sup>3</sup>. Further, despite the fact that the Board has yet to effectuate the revocation of the Respondent's license in fact, the ALJ concludes that the Respondent's license was revoked by operation of law effective February 5, 2010. The Board rejects the ALJ's analysis, conclusions, and recommendations in this regard, and finds that he failed to properly apply and/or interpret the applicable law in this matter for the reasons set forth herein.

The Board finds that the Respondent's nursing license must be revoked as a matter of law through proper Board action. To hold otherwise would undo many years of Board precedent in the matter of application of Tex. Occ. Code §53.021(b), hold in complete contradiction to several previously adopted administrative decisions concerning the same<sup>4</sup>, permit misapplication of the controlling law, and avoid the proper application of the law, which requires revocation of Respondent's license. Further, the ALJ's analysis is in direct contradiction to the requirements of the Administrative Procedure Act (APA) and the Nursing Practice Act (NPA).

The Board rejects any conclusion in the PFD that an individual's nursing license is "auto-revoked" when the individual is incarcerated. The Board finds that, until a determination is made through the contested case proceeding as set out in the APA, a final order of revocation is not made. While Tex. Occ. Code Chapter 53 mandates 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, the statute does not prescribe how the revocation should occur. However, the Board finds that the use of the statutory language "shall be" indicates that an agency must take affirmative steps in order to effectuate the revocation of the license. Further, the Board finds that it must comply with the notice requirements of the APA and NPA prior to seeking revocation of an individual's license. Section 2001.054 of the APA

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<sup>3</sup> Pursuant to adopted Finding of Fact Number 8, as amended, Respondent was incarcerated in the Texas Department of Criminal Justice (TDCJ) on May 5, 2010. Presumably, the ALJ arrived at his conclusion by calculating 89 days prior to May 5, 2010, or February 5, 2010.

<sup>4</sup> See SOAH Docket Numbers 507-12-6396; 507-10-3000; and 507-11-3752.

states that the revocation of a license is not effective unless the agency gives notice of the facts or conduct alleged to warrant the intended action and gives the license holder the opportunity to show compliance with all requirements of law for the retention of the license. Similarly, §301.454 of the NPA provides that notice must be given to the license holder of the facts and conduct alleged to warrant the intended action by the Board, and provide the license holder the opportunity, in writing or through informal meeting, to show compliance with all requirements of law for the retention of the license. The Board finds that its duty under Tex. Occ. Code §53.021(b) to revoke the license of an individual who has been imprisoned does not modify or eliminate the Board's independent duty to provide the Respondent with the due process required by the APA and NPA prior to seeking said revocation. The ALJ appears to rely on two Attorney General Opinions in support of his conclusion that a license not only can be, but should be, "auto-revoked" upon an individual's incarceration. An Attorney General Opinion cannot be applied in circumvention of the statutory duties imposed by the APA and NPA. The Board is aware that Attorney General Opinion GA -0064 opines that a licensee is revoked at the time the licensee is incarcerated. However, the Board notes that this Opinion was not discussing the specific application of Tex. Occ. Code §301.454 or the Board's duty to provide an appropriate notice of hearing when seeking to revoke a nursing license. The Board finds that a license revocation must occur, if at all, under the statutory authority of the APA, particularly §2001.054, and the NPA, particularly §301.454. To the extent that these Attorney General Opinions are being used as vehicles to disregard the express duties of the Board found in the APA and NPA and circumvent the due process rights of the Respondent under the APA and NPA, the Board finds that these Opinions are not controlling as to the effective date of the revocation of the license. Further, the Board finds that the revocation of the Respondent's license can only be effectuated after proper notice and opportunity for hearing and through the issuance of a final Board Order.

Further, to the extent the issue was addressed by the Respondent, the Board rejects any notion that the ALJ and/or the Respondent can turn the Board's properly noticed disciplinary proceeding into a reinstatement hearing based upon the proposition that the Respondent's nursing license was "auto-revoked" on February 5, 2010. Pursuant to the Tex. Occ. Code §301.467, an application to reinstate a revoked license may not be made before the first anniversary of the date of the revocation, and must be made in the manner and form the Board requires. Further, the Board's rules require a petitioner for reinstatement to show compliance with all the terms and conditions imposed as a part of the revocation, surrender, or suspension<sup>5</sup>. The Board also has the right to evaluate a Petition for Reinstatement pursuant to the factors outlined by statute and rule, either accept or deny the Petition, and then proceed with a contested case proceeding, if necessary. The Respondent did not file a Petition for Reinstatement with the Board under Tex. Occ. Code §301.467(a) in this matter, nor did the Board evaluate or make a determination regarding a Petition for Reinstatement. Further, the Respondent did not request a hearing at the State Office of Administrative Hearings based upon the Board's denial of her Petition for Reinstatement, as one was never filed with the Board. As such, the Board finds any conclusion that this matter could, or should, be treated as a reinstatement proceeding instead of a disciplinary proceeding to be inappropriate and misplaced. To hold otherwise is to deny the Board's right to properly review a Petition for Reinstatement under its lawful authority and jurisdiction to do so.

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<sup>5</sup> See 22 Tex. Admin. Code §213.26.

For the reasons outlined herein, and under the authority of §2001.058(e)(1), IT IS, THEREFORE ORDERED THAT CONCLUSION OF LAW NUMBER 6 is AMENDED and ADOPTED as follows:

Amended Conclusion of Law Number 6

6. Based on Findings of Fact Nos. 7 and 8, Respondent's license shall be revoked pursuant to Tex. Occ. Code §53.021(b).

Finding of Fact Number 8

The Board also addresses Finding of Fact Number 8. While this finding may be technically correct in that the Respondent was incarcerated while awaiting her final sentencing for a period of 89 days, the Board finds this information to be irrelevant and confusing. For the reasons already set forth herein, the Board rejects the ALJ's analysis and conclusion that the Respondent's nursing license was "auto-revoked" upon her imprisonment. Therefore, the ALJ's analysis of when the Respondent was, in fact, imprisoned, is irrelevant and unnecessary. Further analysis of whether the Respondent is entitled to have time credited for purposes of configuring the effective date of her revocation is also irrelevant and unnecessary. However, to the extent that it may be necessary to address this point, the Board rejects the ALJ's analysis of the Respondent's imprisonment date, specifically with regard to the 89 days the ALJ credits the Respondent with, which results in a revocation date prior to the Respondent's actual sentencing date. To the extent the ALJ relies on Attorney General Opinion GA-0064 in his analysis or conclusion in this regard, the Board does not find this Opinion controlling as to the effective date of the revocation of the license. Because the Board finds this information unnecessary and irrelevant, the Board amends Finding of Fact Number 8 as described herein.

For the reasons outlined herein, and under the authority of §2001.058(e)(1), IT IS, THEREFORE ORDERED THAT FINDING OF FACT NUMBER 8 is AMENDED and ADOPTED as follows:

Amended Finding of Fact Number 8

8. Respondent was incarcerated in TDCJ on May 5, 2010.

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>6</sup>, the Board agrees with the ALJ that Tex. Occ. Code §53.021(b)

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<sup>6</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 sanction best serves the statutory policies committed to the agency's oversight. The propriety of a particular

mandates the revocation of the Respondent's license. However, for the reasons described herein, the Board rejects the ALJ's conclusion that the Respondent's license was "auto-revoked" effective February 5, 2010, and instead finds the revocation of the Respondent's license to be effective as of the date this Order becomes final.


IT IS, THEREFORE, ORDERED THAT Permanent Certificate Number 177351, previously issued to MORGAN JEANETTE STERLING, 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.

Entered this 18<sup>th</sup> day of January, 2013.

TEXAS BOARD OF NURSING

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

Attachment: Proposal for Decision; Docket No. 507-12-8130 (November 16, 2012).

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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

November 16, 2012

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. 507-12-8130; Texas Board of Nursing v. Morgan Jeanette Sterling

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 black ink, appearing to read "Roy G. Scudday".

Roy G. Scudday  
Administrative Law Judge

RGS/ap  
Enclosures

XC: Nikki Hopkins, Assistant General Counsel, 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 – (with 1 CD; Certified Evidentiary Record) – VIA INTERAGENCY  
Marc M. Meyer, RN, JD, Law Office of Marc Meyer, P.L.L.C., 33300 Egypt Lane, Suite B-200, Magnolia, TX 77354-2739 – VIA REGULAR MAIL

Upload Date: 20121116103011  
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Upload Description: 12-01-2012

**SOAH DOCKET NO. 507-12-8130**

**TEXAS BOARD OF NURSING,**  
**Petitioner**

**V.**

**MORGAN JEANETTE STERLING,**  
**Respondent**

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**BEFORE THE STATE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**PROPOSAL FOR DECISION**

Staff of the Texas Board of Nursing (Staff/Board) brought action against Morgan Jeanette Sterling (Respondent) seeking revocation of her license. This proposal for decision finds that Respondent's license should be revoked.

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

On September 11, 2012, Staff filed a Motion for Summary Disposition. On September 25, 2012, Respondent filed her Response to the Motion. On, September 28, 2012, Staff filed its Reply to Respondent's Response. On October 29, 2012, the Administrative Law Judge (ALJ) issued Order No. 2 Granting Partial Summary Disposition on the issue that Respondent's license was revoked as a matter of law upon her imprisonment for a felony conviction.

The hearing convened November 1, 2012, before ALJ Roy G. Scudday in the William P. Clements Building, 300 West 15<sup>th</sup> Street, Fourth Floor, Austin, Texas. Staff was represented by Nikki R. Hopkins, Assistant General Counsel. Respondent was represented by attorney Marc M. Meyer. The record closed November 5, 2012.

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 Licensed Vocational Nurse (LVN) on September 12, 2000. July 9, 2012, Staff sent Respondent a Notice of Formal Charges filed against her. On September 4, 2012, Staff sent Respondent a Notice of Hearing.

On February 6, 2006, Respondent entered a plea of Guilty to the first degree felony offense of Delivery of a Controlled Substance. As a result of the plea, Respondent received deferred adjudication for a period of ten years. On March 31, 2010, a Judgment Adjudicating Guilt and Revoking Community Supervision was entered and Respondent was sentenced to confinement for a period of five years.

On February 8, 2011, Respondent notified the Board of her conviction and incarceration. On February 15, 2011, the Board renewed Respondent's license.

### B. Evidence

As noted above, on February 6, 2006, Respondent entered a plea of Guilty to the first degree felony offense of Delivery of a Controlled Substance and received deferred adjudication for a period of ten years. On July 15, 2008, Respondent entered into an Agreed Order with Board in which her license would be suspended for a period of three years, but the suspension would be probated. The Board adopted the Agreed Order on September 9, 2008, including a provision that if Respondent were subsequently convicted of the charge in Cause No. 95766 the Board could take additional administrative action including revocation of her license.

When the Court entered the Judgment Adjudicating Guilt and Revoking Community Supervision in Cause No. 95766 On March 31, 2010, Respondent was sentenced to confinement in the Institutional Division of the Texas Department of Criminal Justice (TDCJ) for a period of



five years.<sup>1</sup> The Nunc Pro Tunc Judgment Adjudicating Guilt dated May 11, 2010, indicated several incarceration periods for which Respondent was given credit, beginning with the date of her arrest on April 11, 2005, and ending with the last date of incarceration before her sentencing on March 22, 2010. Respondent was incarcerated in TDCJ on May 5, 2010, with a start date of her sentence on September 23, 2008.<sup>2</sup> On January 11, 2011, Respondent was released on parole until September 23, 2013.

### III. ANALYSIS

The question in this dispute is on what effective date the Respondent's license was revoked as a matter of law. In that regard, Tex. Occ. Code § 53.021(b) provides as follows:

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 statutory language has been interpreted by two Attorney General Opinions. Attorney General Opinion JM-482 (1986) at p. 6 interpreted this statutory language to "require a license to be revoked when the licensee's felony conviction results in his incarceration, or when his felony probation, parole, or mandatory supervision is revoked." The Opinion further stated that an individual whose license is revoked pursuant to this statutory provision "may seek reinstatement under the procedures of that statute." Attorney General Opinion GA-0064 at p. 8 further interpreted the statutory language that "a licensed felon who is imprisoned or whose community supervision, parole, or mandatory supervision is revoked loses his or her license by operation of law. Although the relevant licensing authority has a duty to revoke the license, as JM-482 makes clear, the fact that the licensing authority does not do so does not alter the revocation."

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<sup>1</sup> Staff Ex. 4, p. 6.

<sup>2</sup> Staff Ex. 6.

Based on the statutory language and the interpretation of the two Attorney General Opinions, Respondent's license was revoked by operation of law at the time of her imprisonment. Opinion GA-0064 at p. 10 further interprets the term "imprisonment" as referring to "confinement in a penitentiary or state jail facility, or the equivalent of either in another jurisdiction."

Staff argues that the time of imprisonment was the Respondent's date of incarceration at TDCJ, May 5, 2010. Respondent argues that time of imprisonment must include the time credited to the sentence because she was incarcerated in state jail in the criminal procedure on numerous instances, which amounts to a total of 786 days.

The most reasonable approach would be to interpret the statute to mean that the revocation of the license by operation of law occurred at the final incarceration for the felony offense, which in Respondent's case would have been the period she spent in jail prior to her sentencing on March 22, 2010, a period of 89 days. As a result, Respondent's time of imprisonment would be 89 days prior to her incarceration in TDCJ or February 5, 2010.

Based on this conclusion, Respondent's license was revoked by operation of law effective February 5, 2010.

#### IV. FINDINGS OF FACT

1. Morgan Jeanette Sterling (Respondent) was licensed in Texas as a Licensed Vocational Nurse (LVN) on September 12, 2000, by the Texas Board of Nursing (Board).
2. On July 9, 2012, Staff sent Respondent a Notice of Formal Charges filed against her.
3. On September 4, 2012, Staff mailed a Notice of Hearing to Respondent.
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. The hearing convened November 1, 2012, in the William P. Clements Building, 300 West 15<sup>th</sup> Street, Austin, Texas. All parties participated in the hearing. The record closed on November 5, 2012.
6. On September 11, 2012, Petitioner filed a Motion for Summary Disposition. On September 25, 2012, Respondent filed her Response to the Motion. On, September 28, 2012, Staff filed its Reply to Respondent's Response. On October 29, 2012, the Administrative Law Judge (ALJ) issued Order No. 2 Granting Partial Summary Disposition.
7. On March 31, 2010, a Judgment Adjudicating Guilt and Revoking Community Supervision was entered for conviction of the first degree felony offense of Delivery of a Controlled Substance in Cause No. 95766, 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 (TDCJ) for a period of five years. The Nunc Pro Tunc Judgment Adjudicating Guilt dated May 11, 2010, indicated several incarceration periods for which Respondent was given credit, beginning with the date of her arrest on April 11, 2005, and ending with the last date of incarceration before her sentencing on March 22, 2010.
8. Respondent was incarcerated in jail prior to her sentencing from December 23, 2009 to March 22, 2010, a period of 89 days. Respondent was incarcerated in TDCJ on May 5, 2010.


#### V. CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter pursuant to 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, pursuant to Tex. Gov't Code 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 §§ 2001.051 and 2001.052.
4. Respondent is subject to disciplinary action by the Board pursuant to Code § 53.021(b).
5. Staff had the burden of proof by a preponderance of the evidence.
6. Based on Finding of Fact No. 7, Respondent's license was revoked by operation of law at the time of her imprisonment pursuant to Code § 53.021(b), Attorney General Opinion JM-482 (1986), and Attorney General Opinion GA-0064.

**VI. RECOMMENDATION**

Based upon the above findings of fact and conclusions of law, the ALJ recommends that Respondent's license be revoked effective February 5, 2010.

**SIGNED November 16, 2012.**

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

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16:21 12/04/12 EST Pg 1-4

## Law Office of Marc Meyer, PLLC

### *Texas Nursing & EMS Lawyer*

Marc M. Meyer, RN, LP, MS, JD

Principal Office, Magnolia, TX

To: Nikki Hopkins, Assistant General Counsel, Texas Board of Nursing  
Docketing, State Office of Administrative Hearings

Re: In the Matter of Licensed Vocational Nursing License Number 177351 Issued to Morgan Jeanette Sterling; Exceptions to the Proposal for Decision

Please see the attached Exceptions to the Proposal for Decision in this matter. If you have any question, please call me at (281) 259-7575.

Marc M. Meyer, RN, JD  
Law Office of Marc Meyer, PLLC  
33300 Egypt Lane, Suite B200  
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The sender of this message is licensed to practice law in the State of Texas. Thank you.

**DOCKET NO. 507-12-8130**

<b>IN THE MATTER OF</b>	§	
<b>LICENSED VOCATIONAL NURSE</b>	§	<b>BEFORE THE TEXAS STATE</b>
<b>LICENSE NUMBER 177351</b>	§	
<b>ISSUED TO MORGAN JEANETTE</b>	§	<b>OFFICE OF ADMINISTRATIVE HEARINGS</b>
<b>STERLING, RESPONDENT</b>	§	

**RESPONDENT'S EXCEPTIONS TO THE PROPOSAL FOR DECISION**

**TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:**

**NOW COMES** Respondent, Morgan Jeanette Sterling, pursuant to 1 TEXAS ADMINISTRATIVE CODE §155.505, and files these Exceptions to the Proposal for Decision, and shows the Court:

**EXCEPTIONS**

**Finding of Fact No. Eight (8):** Respondent excepts to the calculation of the date of revocation based on the date of incarceration from the date of confinement in TDCJ, or from May 5<sup>th</sup>, 2010. The ALJ gives the Respondent credit for 89 days of prior incarceration, presumably for the period the Respondent was incarcerated after she was arrested on December 23<sup>rd</sup>, 2009 for violation of her probation.<sup>1</sup> However, this also presupposes that the Respondent was released on or about March 22<sup>nd</sup>, 2010 and did not remain incarcerated until the time she was committed to TDCJ. However, there is no evidence that the Respondent was released from jail and allowed to report to TDCJ on May 5<sup>th</sup>, 2010. Therefore, Respondent asserts that since she was continuously incarcerated continuously from December 23<sup>rd</sup>, 2009 until the time of her confinement in TDCJ, then she was incarcerated in jail for 133 days and that Finding of Fact No. Eight (8) should be changed to reflect this fact

**Recommendation for Sanction:** Respondent excepts to the Recommendation of the ALJ, which recommended Revocation of the Respondent's nursing license to be effective on or about February 5<sup>th</sup>, 2010.<sup>2</sup> Pursuant to the discussion above regarding the calculation of the time, the

<sup>1</sup> See Staff's Exhibit 4, at 12. This arrest was disclosed to the Board in February, 2011, indicating that the Respondent was then jailed in the Jefferson County Jail. Respondent's Response to Staff's Motion for Summary Disposition, Exhibit B, at 14.

<sup>2</sup> Proposal for Decision, at 6.

Respondent asserts that the effective date of the revocation should be December 23<sup>rd</sup>, 2009, or the date the Respondent was jailed pending her incarceration in the TDCJ. No testimony or documentary evidence supports that the Respondent was released from jail between March 22<sup>nd</sup>, 2010 and May 5<sup>th</sup>, 2010. Therefore, the Respondent respectfully requests that the ALJ modify the Proposal for Decision to reflect a Recommendation for an effective date of the Revocation of December 23<sup>rd</sup>, 2009.

**PRAYER**

Respondent, Morgan Jeanette Sterling, prays that the honorable Administrative Law Judge:

1. Change Finding of Fact No. Eight (8) to reflect that the Respondent was incarcerated in jail prior to her confinement in TDCJ for a period of 133 days;
2. Change the Recommendation to reflect Finding of Fact No. Eight (8) and recommend the effective date of the revocation of the Respondents' nursing license is December 23<sup>rd</sup>, 2009; AND
3. Propose to the Texas Board of Nursing in a Decision all relief at law or in equity to which Respondent is entitled.

Respectfully submitted,



By: \_\_\_\_\_

Marc M. Meyer

Texas Bar No. 24070266

33300 Egypt Lane, Suite B200

Magnolia, TX 77354

Tel. (281) 259-7575

Fax. (866) 839-6920

Attorney for Respondent Morgan Jeanette Sterling

**CERTIFICATE OF SERVICE**

This is to certify that on the 4<sup>th</sup> day of December, 2012, a true and correct copy of the above and foregoing document was served on the following individual(s) at the location(s) and in the manner indicated below:

Docketing Division  
State Office of Administrative Hearings  
William P. Clements Building  
300 W. 15<sup>th</sup> Street, Suite 504  
Austin, TX 78701-1649  
VIA FACSIMILE AT 512-322-2061

Nikki Hopkins, Assistant General Counsel  
Texas Board of Nursing  
333 Guadalupe, Suite 3-460  
Austin, TX 78701  
VIA FACSIMILE AT 512-305-8101



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Marc M. Meyer



## DOCKET NUMBER 507-12-8130

TEXAS BOARD OF NURSING,  
Petitioner

vs.

MORGAN JEANETTE STERLING,  
LVN (Lic. #177351), Respondent§  
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§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE

HEARINGS

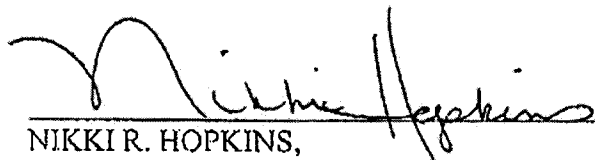
**STAFF'S REPLY TO  
RESPONDENT'S EXCEPTIONS**

COMES NOW, Staff of the Texas Board of Nursing ("Staff" or "the Board"), and files this, its Reply to Respondent's Exceptions.

Staff has argued its position in this matter repeatedly in its briefs, motions and responses in this case. Staff rejects Respondent's and the ALJ's analysis as it pertains to Finding of Fact number eight (8) and Conclusion of Law number six (6) pertaining to the calculation of time in determining when the Respondent's revocation occurred. Staff maintains that Respondent will be revoked upon final action of the Texas Board of Nursing. Staff is baffled by the court's determination that the Respondent was incarcerated for a crime that had not yet been adjudicated. Respondent may very well have been incarcerated for a probation violation while awaiting trial, but Respondent was not convicted of the crime of Delivery of a Controlled Substance until March 22, 2010. Thus, her sentence of incarceration for that crime did not begin until March 22, 2010.

Respectfully submitted,

TEXAS BOARD OF NURSING



NIKKI R. HOPKINS,  
Assistant General Counsel  
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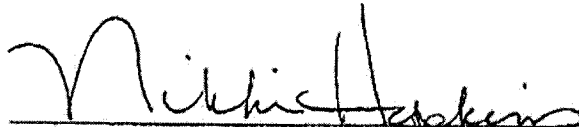
CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *Staff's Reply to Respondent Exceptions* was sent this, the 5<sup>th</sup> day of December, 2012, to:

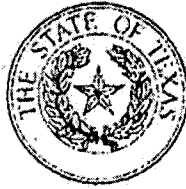
State Office of Administrative Hearings

Via electronic filing

Morgan Jeanette Sterling  
c/o Attorney Marc Meyer  
33300 Egypt Ln., Suite B200  
Magnolia, TX 77354-2739  
Facsimile (866) 839-6920  
[marc@marcmeyerslawfirm.com](mailto:marc@marcmeyerslawfirm.com)

  
Nikki Hopkins, Assistant General Counsel

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

December 7, 2012

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

VIA FACSIMILE NO. 512/305-8101

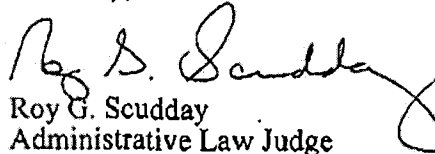
RE: Docket No. 507-12-8130; Texas Board of Nursing v. Morgan Jeanette Sterling

Dear Ms. Thomas:

I have reviewed Respondent's Exceptions filed December 4, 2012, to the Proposal for Decision (PFD) issued in the above-referenced case, as well as the Staff's Reply filed December 5, 2012. I have determined that my interpretation of the statute regarding the time of imprisonment and, therefore, the effective date of revocation is correct.

The Board may modify the Conclusions of Law as it determines necessary. However, for the reasons expressed in the PFD, my recommendation remains unchanged.

Sincerely,

  
Roy G. Scudday  
Administrative Law Judge

RGS/ap

XC: Nikki Hopkins, Assistant General Counsel, Texas Board of Nursing, 333 Guadalupe, Tower III, Ste. 460, Austin, TX 78701 – VIA FACSIMILE NO. 512/305-6870  
Dina Flores, Legal Assistant TBN, 333 Guadalupe, Tower III, Ste. 460, Austin, TX 78701 – VIA FACSIMILE NO. 512/305-8101  
Marc M. Meyer, RN, JD, Law Office of Marc Meyer, P.L.L.C., 33300 Egypt Lane, Suite B-200, Magnolia, TX 77354-2739 – VIA FACSIMILE NO. 866/839-6920

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Ship To 2: c/o Attorney Marc M. Meyer  
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Suite B-200  
  
Magnolia, TX 77354-2739  
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