### BEFORE THE TEXAS BOARD OF NURSING



On this day came to be considered by the Texas Board of Nursing, hereinafter referr the Board, the Petition for Reinstatement of Vocational Nurse License Number 177351, held by MONGAN JEANETTE HAWLEY, aka MORGAN JEANETTE STERLING, hereinafter referred to as Petitioner.

An informal conference was held on September 2, 2014, at the office of the Texas Board of Nursing, in accordance with Section 301.464, Texas Occupations Code.

Petitioner appeared in person. Petitioner was represented by Nancy Roper Willson, Attorney at Law. In attendance were Kristin Benton, MSN, RN, Director of Nursing; John Vanderford, Assistant General Counsel; Anthony L. Diggs, MSCJ, Director, Enforcement Division; Robert Rodriguez, Investigator; and Carolyn Hudson, Investigator.

### FINDINGS OF FACT

- 1. Prior to institution of Agency proceedings, notice of the matters specified below in these Findings of Fact was served on Petitioner and Petitioner was given an opportunity to show compliance with all requirements of the law for retention of the license(s).
- 2. Petitioner waived notice and hearing, and consented to the entry of this Order.
- 3. Petitioner received a Certificate in Vocational Nursing from Lamar State College, Port Arthur, Texas, on December 18, 1998. Petitioner was originally licensed to practice vocational nursing in the State of Texas on September 27, 2000.

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4. Petitioner's vocational nursing employment history includes:

1999 - 2001	LVN Floor Nurse	Oakwood Manor Beaumont, Texas
2002 - 2004	LVN Floor Nurse	Cypress Glen Port Arthur, Texas
2006 - 2007	LVN Treatment Nurse	The Clairmont Beaumont, Texas
03/11 - 01/13	LVN Charge Nurse MDS Assessment	Jefferson Nursing Beaumont, Texas

- 5. On September 9, 2008, Petitioner's license to practice vocational nursing in the State of Texas was Suspended by the Texas Board of Nursing. The suspension was stayed, and Petitioner was placed on probation for three (3) years. A copy of the September 9, 2008, Order, Findings of Fact, and Conclusions of Law, is attached and incorporated, by reference, as a part of this Order.
- 6. On January 18, 2013, Petitioner's license to practice vocational nursing in the State of Texas was revoked by the Texas Board of Nursing. A copy of the January 18, 2013, Proposal for Decision and Order of the Board, Findings of Fact, and Conclusions of Law, is attached and incorporated, by reference, as a part of this Order.
- 7. On or about January 29, 2014, Petitioner submitted a Petition for Reinstatement of License to practice vocational nursing in the State of Texas.
- 8. Petitioner presented the following in support of her petition:
  - 8.1. Letter of support, dated December 20, 2013, from Jules Broussard, LNFA, Administrator, Jefferson Nursing and Rehabilitation Center, Beaumont, Texas. Mr. Broussard states that on March 3, 2011, Petitioner joined the staff as an LVN, and her reliability, personal integrity, and concern for the well being of their residents, resulted in additional responsibilities and training. Mr. Broussard states that Petitioner was an asset to the facility, and her employment was continued in non-nursing roles following the revocation of her license. Petitioner consistently demonstrated responsibility and commitment. Mr. Broussard recommends reinstatement of Petitioner's nursing license.
  - 8.2. Letter or support from Kathy Maurich, RN, Jefferson Nursing and Rehabilitation Center, Beaumont, Texas, states that Petitioner has worked with her for six years. Petitioner has a great attitude, and she is willing to learn. Ms. Maurich states that Petitioner has taken numerous classes to further her nursing career and education.

- 8.3. Letter of support, dated November 19, 2013, from Bodo Brauer, MD, Facility Medical Director, Jefferson Nursing and Rehabilitation Center, Beaumont, Texas, states that he worked with Petitioner while she was active in a nursing role and during the period her license was revoked. Petitioner demonstrated the qualities most needed in nurses: integrity, enthusiasm for her duties, attention to detail, and sincere concern for those she serves. Dr. Brauer supports reinstatement of Petitioner's nursing license.
- 8.4. Letter of support, dated April 2, 2012, from Gerald Dutton, MS, LNHA, Administrator, Jefferson Nursing and Rehabilitation Center, Beaumont, Texas, states that he observed Petitioner's behavior and her reaction to stressful situations, and her work performance was above average. Mr. Dutton supports reinstatement of Petitioner's nursing license.
- 8.5. Letter of support, dated September 30, 2012, from Rebecca Huffman, Regional Nurse Consultant, K&L Consulting Services, Hallettsville, Texas, states that she has known Petitioner for the past two years in both a professional and personal setting. Petitioner is an outgoing, charismatic, and genuine person. Ms. Huffman states that Petitioner was an exceptional role model to new hires, a valuable asset to the nursing staff, and an integral part of the entire nursing team. Ms. Huffman states that Petitioner exemplifies the standards and qualities that are expected of all nurses.
- 8.6. Verification of successful completion of twenty (20) Type I Continuing Education Contact Hours.
- 8.7. Documentation of negative drug screens from March 25, 2011, through August 11, 2014.
- 8.8. Documentation of support group meeting attendance from March 16, 2011, through August 17, 2014.
- 8.9. Verification of successful completion of twenty (20) Type I Continuing Education Contact Hours.
- 9. Petitioner gives January 31, 2008, as her date of sobriety.

### CONCLUSIONS OF LAW

- 1. Pursuant to Texas Occupations Code, Sections 301.451-301.555, the Board has jurisdiction over this matter.
- 2. The Board finds that there exists serious risks to public health and safety as a result of impaired nursing care due to intemperate use of controlled substances or chemical dependency.
- 3. Pursuant to Section 301.467, Texas Occupations Code, the Board may refuse to issue or renew a license, and may set a reasonable period that must lapse before reapplication. Pursuant to 22 TEX. ADMIN. CODE §213.26, the Board may impose reasonable conditions that a Petitioner must satisfy before reissuance of an unrestricted license.

#### **ORDER**

IT IS THEREFORE AGREED, subject to ratification by the Texas Board of Nursing, that the petition of MORGAN JEANETTE HAWLEY, aka MORGAN JEANETTE STERLING, Vocational Nurse License Number 177351, to practice nursing in the state of Texas, be and the same is hereby GRANTED, AND SUBJECT TO THE FOLLOWING STIPULATIONS SO LONG AS THE PETITIONER complies in all respects with the Nursing Practice Act, Texas Occupations Code, §301.001 et seq., the Rules and Regulations Relating to Nurse Education, Licensure and Practice, 22 TEX. ADMIN. CODE §211.1 et. seq. and the stipulations contained in this Order:

IT IS FURTHER AGREED and ORDERED that, while under the terms of this Order, this Order SHALL apply to any and all future licenses issued to Petitioner to practice nursing in the State of Texas.

IT IS FURTHER AGREED and ORDERED that this Order SHALL be applicable to Petitioner's nurse licensure compact privileges, if any, to practice nursing in the State of Texas.

IT IS FURTHER AGREED and ORDERED that while Petitioner's license(s) is/are encumbered by this Order, Petitioner may not work outside the State of Texas pursuant to a nurse licensure compact privilege without the written permission of the State of Texas and the Board of Nursing in the party state where Petitioner wishes to work.

- (1) PETITIONER SHALL NOT seek employment or practice nursing for compensation until she has completed the following pre-licensure conditions and obtained a license to practice vocational nursing from the Board.
- (2) PETITIONER SHALL pay all re-registration fees and be issued a license to practice vocational nursing in the State of Texas, which shall bear the appropriate notation. Said license issued to MORGAN JEANETTE HAWLEY, shall be subject to the following agreed post-licensure probation conditions:

- (3) PETITIONER SHALL pay a monetary fine in the amount of three hundred fifth (\$350.00) dollars. PETITIONER SHALL pay this fine within forty-five (45) days of relicensure. Payment is to be made directly to the Texas Board of Nursing in the form of cashier's check or U.S. money order. Partial payments will not be accepted.
- (4) PETITIONER SHALL, within one (1) year of relicensure, successfully complete a course in Texas nursing jurisprudence and ethics. PETITIONER SHALL obtain Board approval of the course prior to enrollment only if the course is not being offered by a pre-approved provider. Home study courses and video programs will not be approved. In order for the course to be approved, the target audience shall include nurses. It shall be a minimum of six (6) hours in length. The course's content shall include the Nursing Practice Act, standards of practice, documentation of care, principles of nursing ethics, confidentiality, professional boundaries, and the Board's Disciplinary Sanction Policies regarding: Sexual Misconduct; Fraud, Theft and Deception; Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder; and Lying and Falsification. Courses focusing on malpractice issues will not be accepted. PETITIONER SHALL CAUSE the sponsoring institution to submit a Verification of Course Completion form, provided by the Board, to the Office of the Board to verify PETITIONER'S successful completion of the course. This course shall be taken in addition to any other courses stipulated in this Order, if any, and in addition to any continuing education requirements the Board has for relicensure. Board-approved courses may be found at the following Board website address: http://www.bon.texas.gov/disciplinaryaction/stipscourses.html.
- (5) PETITIONER SHALL, within one (1) year of relicensure, successfully complete the course "Sharpening Critical Thinking Skills," a 3.6 contact hour online program provided by the National Council of State Boards of Nursing (NCSBN) Learning Extension. In order to receive credit for completion of this program, PETITIONER SHALL SUBMIT the continuing education certificate of completion for this program to the Board's office, to the attention of Monitoring. This course is to be taken in addition to any

continuing education requirements the Board may have for relicensure. Board-approved courses may be found at the following Board website address: <a href="http://www.bon.texas.gov/disciplinaryaction/stipscourses.html">http://www.bon.texas.gov/disciplinaryaction/stipscourses.html</a>.

IT IS FURTHER AGREED, SHOULD PETITIONER CHOOSE TO WORK AS A NURSE IN TEXAS, PETITIONER WILL PROVIDE DIRECT PATIENT CARE AND PRACTICE IN A HOSPITAL, NURSING HOME, OR OTHER CLINICAL SETTING A MINIMUM OF SIXTY-FOUR (64) HOURS PER MONTH UNDER THE FOLLOWING PROBATION CONDITIONS FOR THREE (3) YEARS OF EMPLOYMENT. THE LENGTH OF THE PROBATION PERIOD WILL BE EXTENDED UNTIL SUCH THIRTY-SIX (36) MONTHS HAVE ELAPSED. PERIODS OF UNEMPLOYMENT OR OF EMPLOYMENT THAT DO NOT REQUIRE THE USE OF A REGISTERED NURSE (RN) OR A VOCATIONAL NURSE (LVN) LICENSE, AS APPROPRIATE, WILL NOT APPLY TO THIS STIPULATION PERIOD:

- (6) PETITIONER SHALL notify all future employers in vocational nursing of this Order of the Board and the stipulations on PETITIONER's license. PETITIONER SHALL present a complete copy of this Order and all Proposals for Decision issued by the Administrative Law Judge, if any, to each future employer prior to accepting an offer of employment.
- (7) PETITIONER SHALL CAUSE each future employer to submit the Notification of Employment form, which is provided to the Petitioner by the Board, to the Board's office within five (5) days of employment as a vocational nurse.
- (8) For the first year of employment as a vocational nurse under this Order, PETITIONER SHALL be directly supervised by a Registered Nurse or a Licensed Vocational Nurse. Direct supervision requires another professional or vocational nurse to be working on the same unit as PETITIONER and immediately available to provide assistance and intervention. PETITIONER SHALL work only on

regularly assigned, identified and predetermined unit(s). The PETITIONER SHALL NOT be employed by a nurse registry, temporary nurse employment agency, hospice, or home health agency. PETITIONER SHALL NOT be self-employed or contract for services. Multiple employers are prohibited.

- (9) For the remainder of the stipulation period, PETITIONER SHALL be supervised by a Registered Nurse or a Licensed Vocational Nurse who is on the premises. The supervising nurse is not required to be on the same unit or ward as PETITIONER, but should be on the facility grounds and readily available to provide assistance and intervention if necessary. The supervising nurse shall have a minimum of two (2) years experience in the same or similar practice setting to which the Petitioner is currently working. PETITIONER SHALL work only regularly assigned, identified and predetermined unit(s). PETITIONER SHALL NOT be employed by a nurse registry, temporary nurse employment agency, hospice, or home health agency. PETITIONER SHALL NOT be self-employed or contract for services. Multiple employers are prohibited.
- (10) PETITIONER SHALL NOT practice as a vocational nurse on the night shift, rotate shifts, work overtime, accept on-call assignments, or be used for coverage on any unit other than the identified, predetermined unit(s) to which Petitioner is regularly assigned for one (1) year of employment as a vocational nurse.
- (11) PETITIONER SHALL NOT practice as a vocational nurse in any critical care area for one (1) year of employment as a vocational nurse. Critical care areas include, but are not limited to, intensive care units, emergency rooms, operating rooms, telemetry units, recovery rooms, and labor and delivery units.
- (12) PETITIONER SHALL NOT administer or have any contact with controlled substances, Nubain, Stadol, Dalgan, Ultram, or other synthetic opiates for one (1) year of employment as a vocational nurse.

- (13) PETITIONER SHALL CAUSE each employer to submit, on forms provided to the Petitioner by the Board, periodic reports as to Petitioner's capability to practice vocational nursing. These reports shall be completed by the Registered Nurse or Licensed Vocational Nurse who supervises the PETITIONER. These reports shall be submitted by the supervising nurse to the office of the Board at the end of each three (3) months for three (3) years of employment as a vocational nurse.
- (14) PETITIONER SHALL abstain from the consumption of alcohol, Nubain, Stadol, Dalgan, Ultram, or other synthetic opiates, and/or the use of controlled substances, except as prescribed by a licensed practitioner for a legitimate purpose. If prescribed, PETITIONER SHALL CAUSE the licensed practitioner to submit a written report identifying the medication, dosage and the date the medication was prescribed. The report shall be submitted directly to the office of the Board by the prescribing practitioner, within ten (10) days of the date of the prescription. In the event that prescriptions for controlled substances are required for periods of two (2) weeks or longer, the Board may require and PETITIONER SHALL submit to an evaluation by a Board approved physician specializing in Pain Management or Psychiatry. The performing evaluator will submit a written report to the Board's office, including results of the evaluation, clinical indications for the prescriptions, and recommendations for on-going treatment within thirty (30) days from the Board's request.
- tramadol hydrochloride (Ultram), and alcohol. For the first three (3) month period, random screens shall be performed at least once per week. For the second three (3) month period, random screens shall be performed at least twice per month. For the next six (6) month period, random screens shall be performed at least once per month. For the remainder of the stipulation period, random screens shall be performed at least once every three (3) months. All random screens SHALL BE conducted through urinalysis. Screens obtained through urinalysis is the sole method accepted by the Board.

Specimens shall be screened for at least the following substances:

Amphetamines

Meperidine

**Barbiturates** 

Methadone

Benzodiazepines

Methaqualone

Cannabinoids

**Opiates** 

Cocaine

Phencyclidine

Ethanol

Propoxyphene

tramadol hydrochloride (Ultram)

A Board representative may appear at the PETITIONER's place of employment at any time during the stipulation period and require PETITIONER to produce a specimen for screening.

All screens shall be properly monitored and produced in accordance with the Board's policy on Random Drug Testing. A complete chain of custody shall be maintained for each specimen obtained and analyzed. PETITIONER SHALL be responsible for the costs of all random drug screening during the stipulation period.

Any positive result for which the nurse does not have a valid prescription or failure to report for a drug screen, which may be considered the same as a positive result, will be regarded as non-compliance with the terms of this Order and may subject the nurse to further disciplinary action including EMERGENCY SUSPENSION pursuant to Section 301.4551, Texas Occupations Code, or REVOCATION of Petitioner's license and multistate licensure privileges, if any, to practice nursing in the State of Texas.

(16) PETITIONER SHALL attend at least two (2) support group meetings each week, one of which must be for substance abuse and provided by Alcoholics Anonymous, Narcotics Anonymous, or another comparable recovery program that has been pre-approved by the Board. PETITIONER SHALL provide acceptable evidence of attendance. Acceptable evidence shall consist of a written record of at least: the date of each meeting; the name of each group attended; and the signature and printed name of the

chairperson of each group attended by PETITIONER. PETITIONER SHALL submit the required evidence on the forms provided by the Board at the end of every three (3) month period. No duplications, copies, third party signatures, or any other substitutions will be accepted as evidence.

IT IS FURTHER AGREED, that upon full compliance with the terms of this Order, all encumbrances will be removed from PETITIONER'S license(s) to practice nursing in the State of Texas and PETITIONER may be eligible for nurse licensure compact privileges, if any.

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#### PETITIONER'S CERTIFICATION

I understand that I have the right to legal counsel prior to signing this Reinstatement Agreed Order. I certify that my past behavior, except as disclosed in my Petition for Reinstatement of Licensure, has been in conformity with the Board's professional character rule. I have provided the Board with complete and accurate documentation of my past behavior in violation of the penal law of any jurisdiction which was disposed of through any procedure short of convictions, such as: conditional discharge, deferred adjudication or dismissal. I have no criminal prosecution pending in any jurisdiction.

I have reviewed this Order. By my signature on this Order, I agree to the Findings of Fact, Conclusions of Law, Order, and any conditions of said Order. I waive judicial review of this Order. I understand that this Order is subject to ratification by the Board. When this Order is ratified, the terms of this Order become effective, and a copy will be mailed to me. I agree to inform the Board of any other fact or event that could constitute a ground for denial of licensure prior to reinstating my license to practice vocational nursing in the state of Texas. I understand that if I fail to comply with all terms and conditions of this Order, my license(s) to practice nursing in the State of Texas will be revoked, as a consequence of my noncompliance.

Signed this 18th day of September 2014.

MORGAN JEANETTE HAWLEY, Politioner

Sworn to and subscribed before me this 100 de

day of September 2

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Notary Public in and for the State of Approved as to form and substant

ANGELIQUE MICHELE WISE Notary Fublic, State of Texas My Commission Expires January 16, 2017

Nancy Roper Willson, Amorney for Petitioner

Signed this 26 day of \_\_\_\_\_\_ 20 14

WHEREFORE, PREMISES CONSIDERED, the Texas Board of Nursing does hereby ratify and adopt the Reinstatement Agreed Order that was signed on the <u>18</u> day of <u>September</u>, <u>2014</u>, by MORGAN JEANETTE HAWLEY, aka MORGAN JEANETTE STERLING, Vocational Nurse License Number 177351, and said Order is final.

Effective this 23 day of October , 2014.

Katherine A. Thomas, MN, RN, FAAN

Executive Director on behalf

of said Board

# BEFORE THE TEXAS BOARD OF NURSING



In the Matter of Vocational Nurse

License Number 177351

issued to MORGAN JEANETTE STERLING

AGREED

§ ORDER

On this day the Texas Board of Nursing, hereinafter referred to as the Bc considered the matter of MORGAN JEANETTE STERLING, Vocational Nurse License Nun 177351, hereinafter referred to as Respondent.

Information received by the Board produced evidence that Respondent may have violated Section 301.452(b)(2),(3)&(10), Texas Occupations Code. Respondent waived informal conference, notice and hearing, and agreed to the entry of this Order offered on May 23, 2008, by Katherine A. Thomas, MN, RN, Executive Director, subject to ratification by the Board.

## **FINDINGS OF FACT**

- Prior to the institution of Agency proceedings, notice of the matters specified below in these
  Findings of Fact was served on Respondent and Respondent was given an opportunity to
  show compliance with all requirements of the law for retention of the license.
- Respondent waived informal conference, notice and hearing, and agreed to the entry of this Order.
- Respondent is currently licensed to practice vocational nursing in the State of Texas.
- Respondent received a Certificate in Vocational Nursing from Lamar University-Port Arthur, Port Arthur, Texas, on December 18, 1998. Respondent was licensed to practice vocational nursing in the State of Texas on September 27, 2000.
- Respondent's complete vocational nursing employment history is unknown.
- 6. On or about August 14, 2004, Respondent was arrested by the Beaumont Police Department for the State Jail Felony offense of POSSESSION OF A CONTROLLED SUBSTANCE (COCAINE). Then, on or about February 6, 2006, the proceedings against Respondent were dismissed in the Criminal District Court of Jefferson County, Texas, under Cause No. 93568, because Respondent was convicted in Cause Numbers 95766 and 96015 as subsequently outlined in Finding of Fact Number Ten (10).

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- 7. On or about September 7, 2004, Respondent was convicted of CRIMINAL TRESPASSING, (a class B Misdemeanor offense committed on August 14, 2004), in the County Court at Law No. 2, Beaumont, Texas, under Cause No. 245870. As a result of the conviction, Respondent was ordered to pay a fine and court costs.
- 8. On or about November 7, 2004, Respondent was arrested by the Beaumont Police Department for the Class B Misdemeanor offense of CRIMINAL TRESPASSING. Then, on or about February 8, 2006, the proceedings against Respondent were dismissed in the County Court at Law #2 of Jefferson County, Texas, under Cause No. 248132 because Respondent entered a plea to Cause Numbers 95766 and 96015 as subsequently outlined in Finding of Fact Number Ten (10).
- On or about February 22, 2005, Respondent submitted her Texas Online Renewal Document to the Board of Nurse Examiners for the State of Texas, and provided false, deceptive and/or misleading information in that she answered "No" to the following question:

"Have you been convicted, adjudged guilty by a court, plead guilty, no contest or nolo contendere to any crime in any state, territory or country, whether or not a sentence was imposed, including any pending criminal charges or unresolved arrests (excluding minor traffic violations) since the last renewal? This includes expunged offenses and deferred adjudications with or without prejudice of guilt. Please note that DUI's, DWI's, PI's must be reported and are not considered minor traffic violations. (One time minor in possession [MIP] or minor in consumption [MIC] do not need to be disclosed, therefore, you may answer "No." If you have two or more MIP's or MIC's, you must answer "Yes.")"

On or about September 7, 2004, Respondent was convicted of CRIMINAL TRESPASSING, (a class B Misdemeanor offense committed on August 14, 2004), in the County Court at Law No. 2, Beaumont, Texas, under Cause No. 245870.

10. On or about February 6, 2006, Respondent entered a plea of guilty to MANUFACTURE/DELIVERY OF A CONTROLLED SUBSTANCE (COCAINE), (a 1st Degree Felony offense committed on April 11, 2005), in the Drug Impact Court of Jefferson County, Texas, under Cause No. 95766. Additionally, Respondent entered a plea of guilty to MANUFACTURE/DELIVERY OF A CONTROLLED SUBSTANCE (COCAINE), (a 2nd Degree Felony offense committed on April 6, 2005), in the Drug Impact Court of Jefferson County, Texas, under Cause No. 96015. As a result of the guilty pleas, the proceedings against Respondent were deferred, without entering an adjudication of guilt, and Respondent was placed on Community Supervision for a period of ten (10) years. Furthermore, as a condition of probation, Respondent was placed in a substance abuse felony punishment facility, and she was ordered to pay two (2) fines and court costs.

On or about October 27, 2006, the 252nd District Court of Jefferson County, Texas ordered that Respondent be released from the Substance Abuse Felony Punishment facility on or before January 17, 2007 into the custody of a duly-authorized Brazos Valley/Trinity Living Center representative.

11. The Board finds that there exists serious risks to public health and safety as a result of impaired nursing care due to intemperate use of controlled substances or chemical dependency.

### **CONCLUSIONS OF LAW**

- 1. Pursuant to Texas Occupations Code, Sections 301.451-301.555, the Board has jurisdiction over this matter.
- Notice was served in accordance with law.
- 3. The evidence received is sufficient to prove violations of Section 301.452(b)(2),(3)&(10), Texas Occupations Code, and 22 TEX. ADMIN. CODE §217.12(6)(H)(I),(11)(B)&(13).
- 4. The evidence received is sufficient cause pursuant to Section 301.452(b), Texas Occupations Code, to take disciplinary action against Vocational Nurse License Number 177351, heretofore issued to MORGAN JEANETTE STERLING, including revocation of Respondent's license to practice vocational nursing in the State of Texas.

#### <u>ORDER</u>

IT IS THEREFORE AGREED and ORDERED, subject to ratification by the Texas Board of Nursing, that Vocational Nurse License Number 177351, previously issued to MORGAN JEANETTE STERLING, to practice vocational nursing in Texas is hereby SUSPENDED for a period of three (3) years with the suspension STAYED and Respondent is hereby placed on PROBATION for three (3) years with the following agreed terms of probation:

IT IS FURTHER AGREED and ORDERED that this Order SHALL be applicable to Respondent's multistate privilege, if any, to practice vocational nursing in the State of Texas.

IT IS FURTHER AGREED and ORDERED that while Respondent's license is encumbered by this order the Respondent may not work outside the State of Texas pursuant to a multistate licensure privilege without the written permission of the Texas Board of Nursing and the Board of Nursing in the party state where Respondent wishes to work.

- (1) RESPONDENT SHALL comply in all respects with the Nursing Practice Act, Revised Civil Statutes of Texas as amended, Texas Occupations Code, §§301.001 et seq., the Rules and Regulations Relating to Nurse Education, Licensure and Practice, 22 TEX. ADMIN. CODE §211.01 et seq. and this Order.
- (2) RESPONDENT SHALL deliver the wallet-sized license issued to MORGAN JEANETTE STERLING, to the office of the Texas Board of Nursing within ten (10) days of the date of this Order for appropriate notation.
- (3) RESPONDENT SHALL, within one (1) year of the suspension being stayed, successfully complete a course in Texas nursing jurisprudence and ethics. RESPONDENT SHALL obtain Board approval of the course prior to enrollment only if the course is not being offered by a pre-approved provider. Home study courses and video programs will not be approved. In order for the course to be approved, the target audience shall include nurses. It shall be a minimum of six (6) contact hours in length. The course's content shall include the Nursing Practice Act, standards of practice, documentation of care, principles of nursing ethics, confidentiality, professional boundaries, and the Board's Disciplinary Sanction Policies regarding: Sexual Misconduct; Fraud, Theft and Deception; Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder; and Lying and Falsification. Courses focusing on malpractice issues will not be accepted. RESPONDENT SHALL CAUSE the sponsoring institution to submit a Verification of Course Completion form, provided by the Board, to the Office of the Board to verify RESPONDENT's successful completion of the course. This course shall be taken in addition to any other courses stipulated in this Order, if any, and in addition to any continuing education requirements the Board has for relicensure. Board-approved courses may be found at the following Board website address: http://www.bon.state.tx.us/disciplinary action.

- (\$600). RESPONDENT SHALL pay this fine within forty-five (45) days of the suspension being stayed. Payment is to be made directly to the Texas Board of Nursing in the form of cashier's check or U.S. money order. Partial payments will not be accepted.
- (5) IT IS FURTHER AGREED, SHOULD RESPONDENT be convicted of the offenses as outlined in Finding of Fact Number Ten (10), said judicial action will result in further disciplinary action including Revocation of Respondent's license to practice vocational nursing in the State of Texas.
- (6) RESPONDENT SHALL CAUSE her probation officer to submit written reports on forms provided to the Respondent by the Board. The reports shall indicate the RESPONDENT's compliance with the court ordered probation. The reports shall be furnished each and every three (3) month period until RESPONDENT is released from probation.

IT IS FURTHER AGREED, SHOULD RESPONDENT PRACTICE AS A NURSE IN THE STATE OF TEXAS, RESPONDENT WILL PROVIDE DIRECT PATIENT CARE AND PRACTICE IN A HOSPITAL, NURSING HOME, OR OTHER CLINICAL SETTING AND RESPONDENT MUST WORK IN SUCH SETTING A MINIMUM OF SIXTY-FOUR (64) HOURS PER MONTH UNDER THE FOLLOWING PROBATION CONDITIONS FOR THREE (3) YEAR(S) OF EMPLOYMENT. THE LENGTH OF THE PROBATIONARY PERIOD WILL BE EXTENDED UNTIL SUCH THIRTY-SIX (36) MONTHS HAVE ELAPSED. PERIODS OF UNEMPLOYMENT OR OF EMPLOYMENT THAT DO NOT REQUIRE THE USE OF A VOCATIONAL NURSE (LVN) LICENSE WILL NOT APPLY TO THIS PROBATIONARY PERIOD:

(7) RESPONDENT SHALL notify each present employer in nursing of this Order of the Board and the probation conditions on RESPONDENT's license. RESPONDENT SHALL

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present a complete copy of this Order and all Proposals for Decision issued by the Administrative Law Judge, if any, to each present employer within five (5) days of receipt of this Order. RESPONDENT SHALL notify all future employers in nursing of this Order of the Board and the probation conditions on RESPONDENT's license. RESPONDENT SHALL present a complete copy of this Order and all Proposals for Decision issued by the Administrative Law Judge, if any, to each future employer prior to accepting an offer of employment.

- (8) RESPONDENT SHALL CAUSE each present employer in nursing to submit the Notification of Employment form, which is provided to the Respondent by the Board, to the Board's office within ten (10) days of receipt of this Order. RESPONDENT SHALL CAUSE each future employer to submit the Notification of Employment form, which is provided to the Respondent by the Board, to the Board's office within five (5) days of employment as a nurse.
- (9) For the first year of employment as a Licensed Vocational Nurse under this Order, RESPONDENT SHALL be directly supervised by a Registered Nurse or a Licensed Vocational Nurse. Direct supervision requires another professional or vocational nurse to be working on the same unit as RESPONDENT and immediately available to provide assistance and intervention. RESPONDENT SHALL work only on regularly assigned, identified and predetermined unit(s). The RESPONDENT SHALL NOT be employed by a nurse registry, temporary nurse employment agency, hospice, or home health agency. RESPONDENT SHALL NOT be self-employed or contract for services. Multiple employers are prohibited.
- (10) For the remainder of the probation period, RESPONDENT SHALL be supervised by a Registered Nurse or a Licensed Vocational Nurse who is on the premises. The supervising nurse is not required to be on the same unit or ward as RESPONDENT, but should be on the facility grounds and readily available to provide assistance and intervention if necessary. The supervising nurse shall have a minimum of two (2) years experience in the same or similar practice 177351:119

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setting to which the Respondent is currently working. RESPONDENT SHALL work only regularly assigned, identified and predetermined unit(s). RESPONDENT SHALL NOT be employed by a nurse registry, temporary nurse employment agency, hospice, or home health agency. RESPONDENT SHALL NOT be self-employed or contract for services. Multiple employers are prohibited.

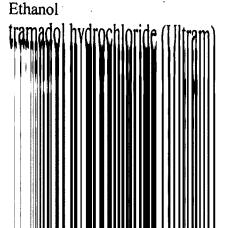
- (11) RESPONDENT SHALL NOT practice as a vocational nurse on the night shift, rotate shifts, work overtime, accept on-call assignments, or be used for coverage on any unit other than the identified, predetermined unit(s) to which Respondent is regularly assigned for one (1) year of employment as a vocational nurse.
- (12) RESPONDENT SHALL NOT practice as a vocational nurse in any critical care area for one (1) year of employment as a vocational nurse. Critical care areas include, but are not limited to, intensive care units, emergency rooms, operating rooms, telemetry units, recovery rooms, and labor and delivery units.
- (13) RESPONDENT SHALL NOT administer or have any contact with controlled substances, Nubain, Stadol, Dalgan, Ultram, or other synthetic opiates for one (1) year of employment as a vocational nurse.
- (14) RESPONDENT SHALL CAUSE each employer to submit, on forms provided to the Respondent by the Board, periodic reports as to RESPONDENT's capability to practice nursing. These reports shall be completed by the Registered Nurse or Licensed Vocational Nurse who supervises the RESPONDENT. These reports shall be submitted by the supervising nurse to the office of the Board at the end of each three (3) months for three (3) years of employment as a nurse.
- (15) RESPONDENT SHALL abstain from the consumption of alcohol, Nubain, Stadol, Dalgan, Ultram, or other synthetic opiates, and/or the use of controlled substances, except -7-

as prescribed by a licensed practitioner for a legitimate purpose. If prescribed, RESPONDENT SHALL CAUSE the licensed practitioner to submit a written report identifying the medication, dosage and the date the medication was prescribed. The report shall be submitted directly to the office of the Board by the prescribing practitioner, within ten (10) days of the date of the prescription. In the event that prescriptions for controlled substances are required for periods of two (2) weeks or longer, the Board may require and RESPONDENT SHALL submit to an evaluation by a Board approved physician specializing in Pain Management or Psychiatry. The performing evaluator will submit a written report to the Board's office, including results of the evaluation, clinical indications for the prescriptions, and recommendations for on-going treatment within thirty (30) days from the Board's request.

(16) RESPONDENT SHALL submit to random periodic screens for controlled substances, tramadol hydrochloride (Ultram), and alcohol. For the first three (3) month period, random screens shall be performed at least once per week. For the next three (3) month period, random screens shall be performed at least twice per month. For the next six (6) month period, random screens shall be performed at least once per month. For the remainder of the probation period, random screens shall be performed at least once every three (3) months.

Specimens shall be screened for at least the following substances:

Amphetamines
Barbiturates
Benzodiazepines
Cannabinoids
Cocaine



Meperidine
Methadone
Methaqualone
Opiates
Phencyclidine
Propoxyphene

policy on Random Drug Testing. A complete chain of custody shall be maintained for each specimen obtained and analyzed. RESPONDENT SHALL be responsible for the costs of all random drug screening during the probation period.

Any positive result for which the nurse does not have a valid prescription will be regarded as non-compliance with the terms of this Order and may subject the nurse to further disciplinary action by this Board. Failure to report for a drug screen may be considered the same as a positive result and may result in further disciplinary action by this Board.

(17) RESPONDENT SHALL attend at least two (2) support group meetings each week, one of which shall be for substance abuse; and RESPONDENT SHALL provide acceptable evidence of attendance. Acceptable evidence shall consist of a written record of at least: the date of each meeting; the name of each group attended; and the signature and printed name of the chairperson of each group attended by RESPONDENT. RESPONDENT SHALL submit the required evidence on the forms provided by the Board at the end of every three (3) months. No duplications, copies, third party signatures, or any other substitutions will be accepted as evidence.

IT IS FURTHER AGREED and ORDERED that if during the period of probation, an additional allegation, accusation, or petition is reported or filed against the Respondent's license, the probationary period shall not expire and shall automatically be extended until the allegation, accusation, or petition has been acted upon by the Board.

IT IS FURTHER AGREED, that upon full compliance with the terms of this Order, RESPONDENT SHALL be issued an unencumbered license and multistate licensure privileges, if any, to practice vocational nursing in the State of Texas.

### RESPONDENT'S CERTIFICATION

I understand that I have the right to legal counsel prior to signing this Agreed Order. I have reviewed this Order. I neither admit nor deny the violations alleged herein. By my signature on this Order, I agree to the Findings of Fact, Conclusions of Law, Order, and any conditions of said Order, to avoid further disciplinary action in this matter. I waive judicial review of this Order. I understand that this Order is subject to ratification by the Board. When this Order is ratified, the terms of this Order become effective, and a copy will be mailed to me. I understand that if I fail to comply with all terms and conditions of this Order, I will be subject to investigation and disciplinary sanction, including revocation of my license to practice vocational nursing in the State of Texas, as a consequence of my noncompliance.

Signed this 15 day of 2014, 2008.

	MORGAN JEANETTE STERLING, Respondent
Sworn to and subscribed before	re me this 15 day of 101y, 2008.
SEAL	Meliona Sainy
	Notary Public in and for the State of
MELISSA SAENZ Notary Public, State of Texas My Commission Expires May 02, 2010	Approved as to form and substance.
	NANCY ROPER WILLSON, Attorney for Respondent
	Signed this 25th day of Olle, 2008

WHEREFORE, PREMISES CONSIDERED, the Texas Board of Nursing does hereby ratify and adopt the Agreed Order that was signed on the 15th day of July, 2008, by MORGAN JEANETTE STERLING, Vocational License Number 177351, and said Order is final.

Effective this 9th day of September, 2008.

Katherine A. Thomas, MN, RN

Executive Director on behalf

of said Board

# **DOCKET NUMBER 507-12-8130**

IN THE MATTER OF PERMANENT CERTIFICATE **NUMBER 177351 ISSUED TO** MORGAN JEANETTE STERLING

BEFORE THE STATE OFFICE တတတတတ

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

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.



### 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>, which requires revocation 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

<sup>&</sup>lt;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.

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 fo 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.

<sup>&</sup>lt;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

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)

<sup>&</sup>lt;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 "autorevoked" 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+1 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).

# 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 <a href="https://www.soah.state.tx.us">www.soah.state.tx.us</a>.

Sincerely,

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

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

TEXAS BOARD OF NURSING, Petitioner	<b>§</b> §	BEFORE THE STATE OFFICE
v.	§ §	OF
MORGAN JEANETTE STERLING, Respondent	<b>6</b> 69 69	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. 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. 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."

Staff Ex. 4, p. 6.

<sup>&</sup>lt;sup>1</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.
- 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 Tune 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.

roy giscudday Administrative law Judge

STATE OFFICE OF ADMINISTRATIVE HEARINGS