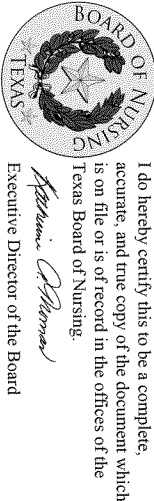


IN THE MATTER OF PERMANENT  
PERMANENT VOCATIONAL NURSE  
LICENSE NUMBER 216971

ISSUED TO BROOKE LEA MORRIS  
RESPONDENT

§ BEFORE THE TEXAS  
§  
§ BOARD OF NURSING  
§  
§ ELIGIBILITY AND  
§  
§ DISCIPLINARY COMMITTEE



**ORDER OF THE BOARD**

TO: BROOKE LEA MORRIS  
663 CR 949 E  
ALVIN, TX 77511

During open meeting held in Austin, Texas, on **December 8, 2015**, the Texas Board of Nursing Eligibility and Disciplinary Committee (hereinafter "Committee") heard the above-styled case, based on the failure of the Respondent to appear as required by 22 TEX. ADMIN. CODE Ch. 213.

The Committee finds that notice of the facts or conduct alleged to warrant disciplinary action has been provided to Respondent in accordance with Texas Government Code § 2001.054(c) and Respondent has been given an opportunity to show compliance with all the requirements of the Nursing Practice Act, Chapter 301 of the Texas Occupations Code, for retention of Respondent's license(s) to practice nursing in the State of Texas.

The Committee finds that the Formal Charges were properly initiated and filed in accordance with section 301.458, Texas Occupations Code.

The Committee finds that after proper and timely Notice regarding the violations alleged in the Formal Charges was given to Respondent in this matter, Respondent has failed to appear in accordance with 22 TEX. ADMIN. CODE Ch. 213.

The Committee finds that the Board is authorized to enter a default order pursuant to Texas Government Code § 2001.056.

The Committee, after review and due consideration, adopts the proposed findings of fact and conclusions of law as stated in the Formal Charges which are attached hereto and incorporated by reference for all purposes and the Staff's recommended sanction of revocation by default. This Order will be properly served on all parties and all parties will be given an opportunity to file a motion for rehearing [22 TEX. ADMIN.CODE § 213.16(j)]. All parties have a right to judicial review of this Order.

All proposed findings of fact and conclusions of law filed by any party not specifically adopted herein are hereby denied.

NOW, THEREFORE, IT IS ORDERED that Permanent Vocational Nurse License Number 216971, previously issued to BROOKE LEA MORRIS, to practice nursing in the State of Texas be, and the same is/are hereby, REVOKED.

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

Entered this **8th day of December, 2015.**

TEXAS BOARD OF NURSING

BY:



---

KATHERINE A. THOMAS, MN, RN, FAAN  
EXECUTIVE DIRECTOR ON BEHALF OF SAID BOARD

Attachment: Formal Charge filed April 10, 2015.

Re: Permanent Vocational Nurse License Number 216971  
Issued to BROOKE LEA MORRIS  
DEFAULT ORDER - REVOKE

CERTIFICATE OF SERVICE

I hereby certify that on the 9 day of December, 20 15, a true and correct copy of the foregoing DEFAULT ORDER was served and addressed to the following person(s), as follows:

Via USPS Certified Mail, Return Receipt Requested

BROOKE LEA MORRIS  
663 CR 949 E  
ALVIN, TX 77511

BY:



KATHERINE A. THOMAS, MN, RN, FAAN  
EXECUTIVE DIRECTOR ON BEHALF OF SAID BOARD

In the Matter of	§	BEFORE THE TEXAS
Permanent Vocational Nurse	§	
License Number 216971	§	
Issued to BROOKE LEA MORRIS	§	BOARD OF NURSING
Respondent	§	

### FORMAL CHARGES

This is a disciplinary proceeding under Section 301.452(b), Texas Occupations Code. Respondent, BROOKE LEA MORRIS, is a Vocational Nurse holding License Number 216971, which is in current status at the time of this pleading.

Written notice of the facts and conduct alleged to warrant adverse licensure action was sent to Respondent at Respondent's address of record and Respondent was given opportunity to show compliance with all requirements of the law for retention of the license prior to commencement of this proceeding.

#### CHARGE I.

On or about January 15, 2013, April 15, 2013, July 15, 2013, and October 15, 2013, while employed with Friendship Haven, Friendswood, Texas, Respondent failed to comply with the Order of the Board issued to her on July 19, 2012, by the Texas Board of Nursing. Noncompliance is the result of Respondent's failure to comply with Stipulation Number Six (6) of the Agreed Order which states, in pertinent part:

(6) RESPONDENT SHALL CAUSE each employer to submit, on forms provided to the Respondent by the Board, period reports as to RESPONDENT's capability to practice nursing....

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A copy of the July 19, 2012, Agreed Order, Findings of Fact and Conclusions of Law, is attached and incorporated, by reference, as part of this pleading.

The above action constitutes grounds for disciplinary action in accordance with Section 301.452(b)(1)&(10), Texas Occupation Code, and is a violation of 22 TEX. ADMIN. CODE §217.12 (11)(B).

#### CHARGE II.

On or about January 15, 2013, April 15, 2013, July 15, 2013, and October 15, 2013, while employed with Friendship Haven Skilled Nursing Facility, Friendswood, Texas, Respondent failed to comply with the Order of the Board issued to her on July 19, 2012, by the Texas Board of Nursing. Noncompliance is the result of Respondent's failure to comply with Stipulation Number Nine (9) of the Agreed Order which states, in pertinent part:

(9) RESPONDENT SHALL attend at least two (2) support group meetings each week,....RESPONDENT SHALL provide acceptable evidence of attendance....

The above action constitutes grounds for disciplinary action in accordance with Section 301.452(b)(1)&(10), Texas Occupation Code, and is a violation of 22 TEX. ADMIN. CODE §217.12 (11)(B).

### CHARGE III.

On or about January 15, 2013, April 15, 2013, July 15, 2013, and October 15, 2013, while employed with Friendship Haven Skilled Nursing Facility, Friendswood, Texas, Respondent failed to comply with the Order of the Board issued to her on July 19, 2012, by the Texas Board of Nursing. Noncompliance is the result of Respondent's failure to comply with Stipulation Number Ten (10) of the Agreed Order which states, in pertinent part:

(10) 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 above action constitutes grounds for disciplinary action in accordance with Section 301.452(b)(1)&(10), Texas Occupation Code, and is a violation of 22 TEX. ADMIN. CODE §217.12 (11)(B).

### CHARGE IV.

On or about April 23, 2013, July 31, 2013, and August 28, 2013, while employed as a Licensed Vocational Nurse with Friendship Haven Skilled Nursing Facility, Friendswood, Texas, Respondent failed to comply with the Agreed Board Order issued to her on July 19, 2012, by the Texas Board of Nursing. Noncompliance is the result of Respondent's failure to comply with Stipulation Number Eight (8) which states, in pertinent part:

(8) RESPONDENT SHALL submit to random periodic screens for controlled substances, tramadol hydrochloride (Ultram), and alcohol....

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The above action constitutes grounds for disciplinary action in accordance with Section 301.452(b)(1)&(10), Texas Occupation Code, and is a violation of 22 TEX. ADMIN. CODE §217.12 (11)(B).

NOTICE IS GIVEN that staff will present evidence in support of the recommended disposition of up to, and including, revocation of Respondent's license/s to practice nursing in the State of Texas pursuant to the Nursing Practice Act, Chapter 301, Texas Occupations Code and the Board's rules, 22 Tex. Admin. Code §§ 213.27 - 213.33. Additionally, staff will seek to impose on Respondent the administrative costs of the proceeding pursuant to Section 301.461, Texas Occupations Code. The cost of proceedings shall include, but is not limited to, the cost paid by the Board to the State Office of Administrative Hearings and the Office of the Attorney General or other Board counsel for legal and investigative services, the cost of a court reporter and witnesses, reproduction of records, Board staff time, travel, and expenses. These shall be in an amount of at least one thousand two hundred dollars (\$1200.00).

NOTICE IS GIVEN that all statutes and rules cited in these Charges are incorporated as part of this pleading and can be found at the Board's website, [www.bon.texas.gov](http://www.bon.texas.gov).

NOTICE IS GIVEN that to the extent applicable, based on the Formal Charges, the Board will rely on Adopted Disciplinary Sanction Policies for Nurses with Substance Abuse, Misuse, Substance Dependency, or othim Substance Use Disorder, which can be found at the Board's website, [www.bon.texas.gov](http://www.bon.texas.gov).

NOTICE IS GIVEN that, based on the Formal Charges, the Board will rely on the Disciplinary Matrix, which can be found at [www.bon.texas.gov/disciplinaryaction/discp-matrix.html](http://www.bon.texas.gov/disciplinaryaction/discp-matrix.html).

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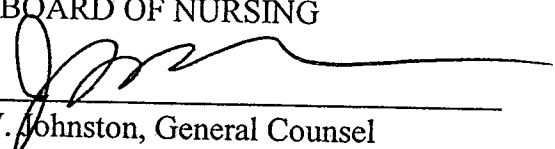
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NOTICE IS ALSO GIVEN that Respondent's past disciplinary history, as set out below and described in the Order(s) which is/are attached and incorporated by reference as part of these charges, will be offered in support of the disposition recommended by staff: Agreed Order dated July 19, 2012.



10 day of April, 2015.

TEXAS BOARD OF NURSING

  
James W. Johnston, General Counsel  
Board Certified - Administrative Law  
Texas Board of Legal Specialization  
State Bar No. 10838300

Jena Abel, Assistant General Counsel  
State Bar No. 24036103

Natalie E. Adelaja, Assistant General Counsel  
State Bar No. 24064715

John R. Griffith, Assistant General Counsel  
State Bar No. 24079751

Robert Kyle Hensley, Assistant General Counsel  
State Bar No. 50511847

John F. Legris, Assistant General Counsel  
State Bar No. 00785533

John Vanderford, Assistant General Counsel  
State Bar No. 24086670

333 Guadalupe, Tower III, Suite 460  
Austin, Texas 78701  
P: (512) 305-6811  
F: (512) 305-8101 or (512)305-7401

Attachments: Order of the Board dated July 19, 2012

D/2015.02.24

DOCKET NUMBER 507-11-9387

IN THE MATTER OF  
PERMANENT CERTIFICATE  
NUMBER 216971  
ISSUED TO  
BROOKE LEA MORRIS

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

OPINION AND ORDER OF THE BOARD

TO: BROOKE LEA MORRIS  
c/o MARC MEYER, ATTORNEY  
33300 EGYPT LANE, SUITE B200  
MAGNOLIA, TX 77354

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

At the regularly scheduled public meeting on July 19-20, 2012, the Texas Board of Nursing (Board) considered the following items: (1) The Proposal for Decision (PFD) regarding the above cited matter; (2) Staff's recommendation that the Board adopt the PFD regarding the vocational nursing license of Brooke Lea Morris without changes; and (3) Respondent's recommendation to the Board regarding the PFD and order, if any.

The Board finds that after proper and timely notice was given, the above styled case was heard by an Administrative Law Judge (ALJ) who made and filed a PFD containing the ALJ's findings of facts and conclusions of law. The PFD was properly served on all parties and all parties were given an opportunity to file exceptions and replies as part of the record herein. No exceptions were filed by any party.

The Board, after review and due consideration of the PFD, Staff's recommendations, and Respondent's presentation during the open meeting, if any, adopts all of the findings of fact and conclusions of law of the ALJ contained in the PFD as if fully set out and separately stated herein. All proposed findings of fact and conclusions of law filed by any party not specifically adopted herein are hereby denied.

Sanction

The Board, after weighing the aggravating and mitigating factors in this matter, finds that the appropriate sanction is a probated suspension of the Respondent's license, with probationary stipulations, until the Respondent successfully completes her criminal probationary period.

As described in adopted Finding of Fact Number 6, the Respondent pled guilty and was convicted of the state jail felony offense of Driving While Intoxicated (DWI) with a Child Passenger. For her conviction, the Respondent was placed on three years of community supervision. The Board has adopted Disciplinary Guidelines for Criminal Conduct



(Guidelines)<sup>1</sup> to address the effect of certain criminal offenses on an individual's licensure status. The Guidelines do not specifically address Driving While Intoxicated with a Child Passenger. However, the Guidelines do contain recommendations for Driving While Intoxicated X2 (felony) and Driving While Intoxicated X3 (felony), which contain similar elements as the criminal offense of Driving While Intoxicated with a Child Passenger (felony). For these criminal offenses, the Guidelines collectively include recommendations for participation in the Texas Peer Assistance Program for Nurses, suspension, or revocation of the individual's license if the conviction occurred five or less years ago. As stated in adopted Finding of Fact Number 6, the Respondent's judicial order of conviction occurred in June, 2010, which is within this time frame. Further, as is indicated in adopted Finding of Fact Number 6, Respondent received three community supervision and was ordered to serve 10 days in the Galveston County Jail, pay a fine and court costs, perform 160 hours of community service at the rate of 16 hours per month, attend weekly meetings of Alcoholics Anonymous (AA), and undergo an alcohol abuse assessment evaluation. All of these factors aggravate the appropriate sanction in this matter.

There are, however, some mitigating factors in the Respondent's favor. As described in adopted Findings of Fact Numbers 7 through 9, the Respondent successfully completed the DWI intervention program in February, 2011; the Intensive Outpatient Treatment program in July, 2011; and her community service hours. Further, the Respondent attends AA meetings; has had an ignition interlock on her vehicle since June, 2010, without incident; and has been in compliance with her probation at all times. As stated in adopted Findings of Fact Numbers 8 and 9, the Respondent has expressed shame and regret for her actions and has not had a drink since the night of her arrest. Further, the results of Respondent's random alcohol/drug tests have been negative, no subsequent arrests or new charges have been filed, she reports to her probation officer as required, and has maintained stable employment at Friendship Haven Healthcare and Rehabilitation, where her co-workers attest to her skill and concern for her patients.

After reviewing the aggravating and mitigating factors in this matter, the Board finds that sufficient mitigation is present to justify a probated suspension. However, the Board recognizes that the Respondent's conduct poses a potential risk to the public health and safety, and therefore, pursuant to the Board's Disciplinary Matrix, and the Board's rules, including 22 Tex. Admin. Code §213.29 and §213.33(e), (f), and (g), finds that the Respondent's practice should be subject to probationary monitoring until the Respondent completes her criminal probation. The Board finds that monitoring is necessary to ensure that the Respondent is safe to practice nursing in this state. Further, the Board imposes the probationary conditions herein utilizing its standard and uniform probationary conditions normally imposed in probationary disciplinary orders. The imposition of such conditions is consistent with Board precedent in similar matters involving an individual's history with alcohol and/or drug dependency or substance use disorder, including conditions designed to monitor the Respondent's continuing sobriety.

IT IS THEREFORE ORDERED that Vocational Nurse License Number 216971, previously issued to BROOKE LEA MORRIS, to practice vocational nursing in Texas is hereby SUSPENDED, with the suspension STAYED, and Respondent is hereby

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<sup>1</sup> Approved by the Board and published in the *Texas Register* on March 9, 2007 (32 TexReg 1409) and adopted by reference in 22 Tex. Admin. Code §213.33(g).

placed on PROBATION until such time as RESPONDENT provides the Board with verifiable evidence of successful completion of her court ordered probation in Cause No. 09CR2431 in the 10th Judicial District Court of Galveston County, Texas, but, which in no event shall be sooner than one year from the date of this Order, under the following terms of probation:

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

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

IT IS FURTHER ORDERED that while Respondent's license is encumbered by this order, the Respondent may not work outside the State of Texas pursuant to a nurse licensure compact 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, 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 this Order.

(2) RESPONDENT SHALL, within one (1) year of entry of this Order, 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) 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.texas.gov/disciplinaryaction/stipscourses.html>.*

**IT IS FURTHER ORDERED, 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 ONE (1) YEAR OF EMPLOYMENT. THE LENGTH OF THE PROBATIONARY PERIOD WILL**

BE EXTENDED UNTIL SUCH TWELVE (12) 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:

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

(4) 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.

(5) RESPONDENT SHALL be supervised by a Registered Nurse, if licensed as a Registered Nurse, or by a Licensed Vocational Nurse or a Registered Nurse, if licensed as 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 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.

(6) 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 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) month period for one (1) year of employment as a nurse.

(7) RESPONDENT 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, 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 a pain management and/or chemical dependency evaluation by a Board approved evaluator. The performing evaluator must submit a written report meeting the Board's requirements to the Board's office within thirty (30) days from the Board's request.

(8) 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. All random screens SHALL BE conducted through urinalysis. Screens obtained through urinalysis are 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 RESPONDENT'S place of employment at any time during the probation period and require RESPONDENT 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. RESPONDENT SHALL be responsible for the costs of all random drug screening during the probation period.

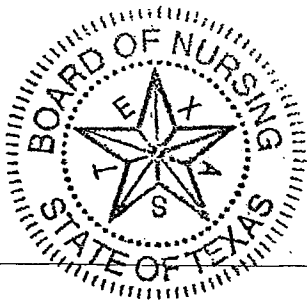
Any positive result for which the nurse does not have a valid prescription or failure to report for a drug screen, which may be considered the same as a positive result, will be regarded as non-compliance with the terms of this Order and may subject the nurse to further disciplinary action including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

(9) RESPONDENT 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. 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) month period. No duplications, copies, third party signatures, or any other substitutions will be accepted as evidence.

(10) 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.

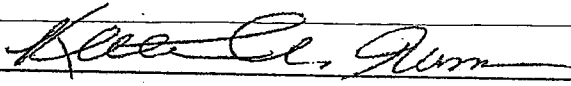
IT IS FURTHER ORDERED that if during the period of probation, an additional allegation, accusation, or petition is reported or filed against the Respondent's license(s), the probationary period shall not expire and shall automatically be extended until the allegation, accusation, or petition has been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

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

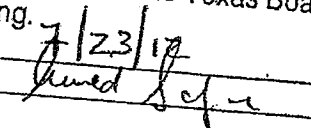


Entered this 19th day of July, 2012.

TEXAS BOARD OF NURSING

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

Attachment: Proposal for Decision; Docket No. 507-11-9387 (February 28, 2012).

I certify this to be a true copy of the  
records on file with the Texas Board  
of Nursing.  
Date: 7/23/12  
Signed: 

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

February 28, 2012

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

VIA INTER-AGENCY

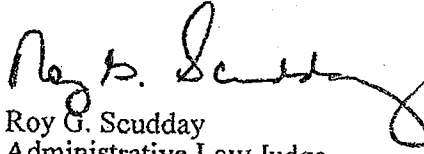
RE: Docket No. 507-11-9387; In the Matter of Permanent Certificate  
Number 216971 Issued to Brooke Lea Morris

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,

  
Roy G. Scudday  
Administrative Law Judge

RGS/ap-  
Enclosures

XC: R. Kyle Hensley, Assistant General Counsel, TBN, 333 Guadalupe, Tower III, Ste. 460, Austin, TX 78701  
– VIA INTER-AGENCY  
Dina Flores, Legal Assistant TBN, 333 Guadalupe, Tower III, Ste. 460, Austin, TX 78701 – (with 1 CD) –  
VIA INTER-AGENCY  
Marc M. Meyer, RN, JD, Law Office of Marc Meyer, PLLC, 33300 Egypt Lane, Suite B200,  
Magnolia, TX 77354-2739 – VIA REGULAR MAIL

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SOAH DOCKET NO. 507-11-9387

IN THE MATTER OF  
PERMANENT CERTIFICATE  
NO. 216971 ISSUED TO

BROOKE LEA MORRIS,  
Respondent

§  
§  
§  
§  
§  
§  
§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

Staff of the Texas Board of Nursing (Staff/Board) brought action against Brooke Lea Morris (Respondent) based on Respondent's criminal history, specifically her felony conviction for Driving While Intoxicated with a Child Passenger. This proposal for decision finds that Respondent's Licensed Vocational Nurse (LVN) license should be suspended for the remaining period of her felony probation, but that the suspension should be fully probated.

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

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The hearing convened February 6, 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 R. Kyle Hensley, Assistant General Counsel. Respondent was represented by attorney Marc M. Meyer. The record was held open until February 21, 2012, to allow Respondent to provide additional evidence, which she did and which evidence was admitted.

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 has been licensed in Texas as an LVN since 2008. On September 10, 2010, Staff sent Respondent a Notice of Formal Charges filed against her. On August 24, 2011, Staff sent Respondent a Notice of Hearing.

### B. Staff's Allegations

Staff originally made two allegations but did not provide any evidence regarding the first allegation, which is apparently now moot. Staff's second allegation is:

On or about June 4, 2010, Respondent entered a plea of "Guilty" and was convicted of Driving While Intoxicated With A Child Passenger (a State Jail Felony offense). As a result of the conviction, Respondent was placed on probation for a period of three (3) years and ordered to pay a fine and court costs. This action constitutes grounds for disciplinary action in accordance with TEX. OCC. CODE (Code) § 301.452(b)(3) & (10), and is a violation of 22 TEX. ADMIN. CODE (TAC) § 217.12(13).

### C. Evidence

#### 1. Undisputed Facts

Respondent, who is 32 years old, has been an LVN since 2008.

On August 22, 2009, Respondent attended a party with her 10-year-old son at which she consumed seven to eight beers. Despite her condition, she insisted on leaving the party in her car, at which time she ran off the road and her son fled from the car.

On June 4, 2010, in Cause No. 09CR2431 in the 10<sup>th</sup> Judicial District Court of Galveston County, Texas, Respondent entered a plea of Guilty to the State Jail felony offense of Driving While Intoxicated (DWI) with a Child Passenger. Respondent was sentenced to two (2) years'



confinement in the State Jail Division of the Texas Department of Criminal Justice, but the sentence was suspended and Respondent was placed on community supervision for a period of three (3) years, and ordered to pay a \$200 fine and court costs. Included in the terms of her community supervision were that Respondent serve 10 days in Galveston County Jail, perform 160 hours community service at the rate of 16 hours per month, attend weekly meetings of Alcoholics Anonymous (AA), and undergo an alcohol abuse assessment evaluation.<sup>1</sup>

## 2. Respondent's Testimony

Respondent expressed shame and regret for her actions on the night of the incident and accepted full responsibility for them. She testified that she had not had a drink since that night, has completed the community service hours, regularly attends AA meetings, underwent the alcohol abuse assessment, and attended a Victim Impact Panel Film. She also submitted verification that she has a functioning Smart Start ignition interlock on her car.

Respondent submitted an affidavit from Carolyn Weldon, her probation officer, stating that results of Respondent's random alcohol/drug tests were negative, and that Respondent completed the DWI intervention program on February 8, 2011; completed the Intensive Outpatient Treatment program in July 2011; attends AA meetings weekly; has had the interlock on her vehicle since June 4, 2010, without incident; and has been in compliance with her probation at all times.<sup>2</sup> Respondent works as a nurse at Friendship Haven Healthcare and Rehabilitation. She provided letters of support from the facility administrator and coworkers, all of whom attest to her skills and concern for her patients.

## 3. Bonnie Cone's Testimony

Staff offered the testimony of Bonnie Cone who has been the Board's Nursing Consultant for Practice since 2009. Ms. Cone has been a Registered Nurse for 20 years with experience in

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<sup>1</sup> Bd. Ex. 6.

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

diverse areas including critical care, nurse education, and regulation. As a Nurse Practicing Consultant for the Board, Ms. Cone assists the Enforcement and Legal Divisions with case reviews and testifies as an expert witness in State Office of Administrative Hearings (SOAH) hearings.

Ms. Cone testified that driving while intoxicated with a child passenger is a serious crime that reflects a lack of good professional character, and poses a threat to the public and patients. She testified that, based on the Board's Disciplinary Matrix, the facts surrounding the criminal charges, and the fact that Respondent cannot demonstrate sufficient trustworthiness because she is under threat of imprisonment if she violates her felony probation all support revocation of her license.

#### **D. Analysis**

Code § 301.452(b)(3) provides that a person is subject to disciplinary action for "a conviction for, or placement on deferred adjudication community supervision or deferred disposition for, a felony or for a misdemeanor involving moral turpitude." Code § 301.452(b)(10) provides that a person is subject to disciplinary action for "unprofessional or dishonorable conduct that, in the board's opinion, is likely to deceive, defraud, or injure a patient or the public." The Board rule at 22 TAC § 217.12(13) includes in the definition of "unprofessional or dishonorable conduct" "Criminal Conduct--including, but not limited to, conviction or probation, with or without an adjudication of guilt, or receipt of a judicial order involving a crime or criminal behavior or conduct that could affect the practice of nursing." The rule at 22 TAC § 213.28(b)(5)(A)(ii) lists "Driving While Intoxicated (2 or more counts)" as being an offense that directly relates to and affects the practice of nursing.

The Disciplinary Matrix of the Board found at 22 TAC § 213.33(b) provides that discipline for conviction of a felony pursuant to Code § 301.452(b)(3) will be reviewed under the Board's Disciplinary Guidelines for Criminal Conduct. Those Guidelines provide that, for the crime of Driving While Intoxicated X 2 (which Staff asserts is equivalent to the crime for which Respondent was convicted), the proper sanction is to require the nurse to participate in the Texas

Peer Assistance Program for Nurses (TPAPN). The Matrix provides that discipline for unprofessional or dishonorable conduct pursuant to Code § 301.452(b)(10) will be determined based on the seriousness of the offense. Ms. Cone testified that due to the aggravating factor that a child was endangered, the conviction of Respondent should be considered a Second Tier Offense and that Sanction Level II would be appropriate. That sanction level calls for suspension or revocation.

Ms. Cone reviewed the various aggravating and mitigating factors set forth in the Matrix for Code § 301.452(b)(10) and concluded that the seriousness of the crime, the lack of trustworthiness, the opportunity to commit the same crime again, and the fact that use of alcohol could affect the care of patients all support the harshest sanction of revocation. Respondent pointed out that the mitigating factors of a single incident, good work reports, probation compliance, and abstention from the use of alcohol all support a lesser sanction than revocation.

Respondent has no other history of criminal activities. She has successfully completed the rehabilitation required by the terms of her probation and is fully compliant with the continuing terms. In addition, any failure of Respondent to continue complying with the terms of her probation could result in revocation of her probation that would serve as the basis for immediate revocation of her license. Accordingly, the appropriate sanction would appear to be a probated suspension of her license for a period equal to the remaining term of her felony probation.

### III. FINDINGS OF FACT

1. Brooke Lea Morris (Respondent) has been licensed as a licensed vocational nurse by the Texas Board of Nursing (Staff/Board) since 2008.
2. On September 10, 2010, Staff sent Respondent a Notice of Formal Charges filed against her.
3. On August 24, 2011, 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 February 6, 2012, in the William P. Clements Building, 300 West 15<sup>th</sup> Street, Austin, Texas.
6. On June 4, 2010, in Cause No. 09CR2431 in the 10<sup>th</sup> Judicial District Court of Galveston County, Texas, Respondent entered a plea of Guilty to the State Jail felony offense of Driving While Intoxicated (DWI) with a Child Passenger. Respondent was convicted and sentenced to two (2) years' confinement in the State Jail Division of the Texas Department of Criminal Justice, but the sentence was suspended and Respondent was placed on community supervision for a period of three (3) years, and ordered to pay a \$200 fine and court costs. Included in the terms of her community supervision were that Respondent serve 10 days in Galveston County Jail, perform 160 hours community service at the rate of 16 hours per month, attend weekly meetings of Alcoholics Anonymous (AA), and undergo an alcohol abuse assessment evaluation.
7. Respondent completed the DWI intervention program on February 8, 2011; she completed the Intensive Outpatient Treatment program in July 2011; she has completed the community service hours; she attends AA meetings weekly; she has had an ignition interlock on her vehicle since June 4, 2010, without incident; and she has been in compliance with her probation at all times.
8. Respondent expressed shame and regret for her actions on the night of the incident and accepted full responsibility for them. She has not had a drink since that night.
9. Results of Respondent's random alcohol/drug tests have been negative, no subsequent arrests or new charges have been filed, she reports to her probation officer as scheduled, and she has maintained stable employment at Friendship Haven Healthcare and Rehabilitation, where her coworkers attest to her skills and concern for her patients.

#### IV. CONCLUSIONS OF LAW

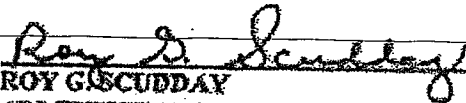
1. The Texas Board of Nursing (Board) has jurisdiction over this matter pursuant to TEX. OCC. CODE ANN. (Code) ch. 301.
2. The State Office of Administrative Hearings has jurisdiction over the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Notice of the hearing on the merits was provided as required by Code § 301.454 and by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.

4. Respondent is subject to disciplinary action by the Board pursuant to Code § 301.452(b)(3) and (10).
5. Staff had the burden of proof by a preponderance of the evidence.
6. Based on Finding of Fact No. 6, Respondent's criminal conviction is unprofessional conduct pursuant to 22 TEX. ADMIN. CODE (TAC) § 213.12(13).
7. Staff has failed to prove that Respondent's previous criminal conduct supports the revocation of her license pursuant to 22 TAC §§ 213.27 and 28, and 213.33(b).

#### V. RECOMMENDATION

Based upon the above findings of fact and conclusions of law, the ALJ recommends that Respondent's licensed vocational nursing license be suspended, but that the suspension be probated subject to such conditions as required by the Board, which conditions should remain in effect for the remainder of the period that Respondent is on felony probation, i.e. until June 2013.

SIGNED February 28, 2012.

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