



I do hereby certify this to be a complete, accurate, and true copy of the document which is on file or is of record in the offices of the Texas Board of Nursing.
William O'Hanrahan
Executive Director of the Board

DOCKET NUMBER 507-16-1444

IN THE MATTER OF
PERMANENT CERTIFICATE
NUMBER 191292
ISSUED TO
TINA GAIL MAREK

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BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

OPINION AND ORDER OF THE BOARD

TO: TINA GAIL MAREK
120 WINDING WAY DR.
VICTORIA, TX 77905

SARAH STARNES
ADMINISTRATIVE LAW JUDGE
300 WEST 15TH STREET
AUSTIN, TEXAS 78701

At the regularly scheduled public meeting on April 21-22, 2016, 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 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 the presentation by the Respondent during the open meeting, if any, adopts all of the findings of fact and conclusions of law of the ALJ contained in the PFD as if fully set out and separately stated herein. All proposed findings of fact and conclusions of law filed by any party not specifically adopted herein are hereby denied.

Recommendation for Sanction

Although the Board is not required to give presumptively binding effect to an ALJ's recommendation regarding sanctions in the same manner as with other findings of fact or conclusions of law¹, the Board agrees with the ALJ that revocation of the Respondent's

¹ The Board, not the ALJ, is the final decision maker concerning sanctions. Once it has been determined that a violation of the law has occurred, the sanction is a matter for the agency's discretion. Further, the mere labeling of a recommended sanction as a conclusion of law or as a finding of fact does not change the effect of the ALJ's recommendation. As such, the Board is not required to give presumptively binding effect to an ALJ's recommendation regarding sanctions in the same manner as with other findings of fact and conclusions of law. The choice of penalty is vested in the agency, not in the courts. An agency has broad discretion in determining which sanction best serves the statutory policies committed to the agency's oversight. The propriety of a particular disciplinary measure is a matter of internal administration with which the courts should not interfere. See *Texas State*

vocational nursing license is required by law.

IT IS, THEREFORE, ORDERED THAT Permanent Certificate Number 191292, previously issued to TINA GAIL MAREK, 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 §301.4535(c), RESPONDENT is not eligible to petition for reinstatement of licensure until at least five (5) years have elapsed from the date the Respondent successfully completes and is dismissed from community supervision or parole.

FURTHER, upon petitioning for reinstatement, RESPONDENT must satisfy all then existing requirements for relicensure.

Entered this 21st day of April, 2016.

TEXAS BOARD OF NURSING


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

Attachment: Proposal for Decision; Docket No. 507-16-1444 (January 21, 2016)

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

January 21, 2016

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. 507-16-1444; In The Matter Of Permanent Certificate
Number LVN 191292 Issued To Tina Gail Marek**

Dear Ms. Thomas:

Please find enclosed a Proposal for Decision On Summary Disposition in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 Tex. Admin. Code § 155.507(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

A handwritten signature in cursive script that reads "Sarah Starnes".

Sarah Starnes
Administrative Law Judge

SS/Ls
Enclosures

xc: Jena Abel, Assistant General Counsel, Texas Board of Nursing, 333 Guadalupe, Tower III, Ste. 460, Austin, TX 78701 – **VIA INTERAGENCY**
Kathy A. Hoffman, Legal Assistant Supervisor, Texas Board of Nursing, 333 Guadalupe, Tower III, Ste. 460, Austin, TX 78701 (with no CD; Certified Evidentiary Record) – **VIA INTERAGENCY**
Tina Gail Marek, TDCJ Inmate No. 02017104; Marlin Transfer Facility, TDCJ-CID, 2893 State Highway 6, Marlin, TX 76661 – **VIA REGULAR MAIL**

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www.soah.state.tx.us

TEXAS BOARD OF NURSING,
Petitioner

v.

TINA GAIL MAREK,
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION ON SUMMARY DISPOSITION

The staff (Staff) of the Texas Board of Nursing (Board) seeks to revoke the license of licensed vocational nurse Tina Gail Marek (Respondent) because she is currently incarcerated following felony convictions on charges of aggravated assault and intoxicated assault. Staff filed a Motion for Summary Disposition requesting a decision in its favor as a matter of law. Respondent did not file a response. After considering Staff's motion and evidence and the applicable law, the Administrative Law Judge (ALJ) concludes that the Motion for Summary Disposition should be granted, and recommends that Respondent's license be revoked.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

After filing Formal Charges against Respondent in December 2015, Staff referred this case to the State Office of Administrative Hearings for a contested case hearing. On December 30, 2015, Staff filed and served Respondent with its Motion for Summary Disposition and supporting evidence. Respondent failed to file a response, and the deadline for her to do so has now passed.¹

Staff's evidence established jurisdiction and proper notice to Respondent. Those matters are set out in the Findings of Fact and Conclusions of Law without further discussion.

¹ See Tex. Admin. Code § 155.505(c).

II. SUMMARY DISPOSITION

Staff presented uncontested summary disposition evidence (Staff Exhibits 1-4) establishing the following facts:

- Respondent is a licensed vocational nurse, holding Permanent Certificate Number 191292 in the State of Texas.²
- On June 4, 2015, in Case No. 15-02-28509-A, the 24th Judicial District Court in Victoria County, Texas entered a Judgment of Conviction by Jury finding Respondent guilty of Aggravated Assault, a second-degree felony.³
- The Aggravated Assault judgment specified that the statute for the offense was § 22.02(a)(2) of the Texas Penal Code.⁴
- On June 4, 2015, in Case No. 15-02-28509-A, the 24th Judicial District Court in Victoria County, Texas entered a second Judgment of Conviction by Jury finding Respondent guilty of Intoxicated Assault, a third-degree felony.⁵
- Respondent was sentenced to twenty years' confinement in the institutional division of the Texas Department of Criminal Justice on the Aggravated Assault charge, and ten years' confinement on the Intoxicated Assault charge, with the sentences to be served concurrently.⁶
- Respondent is currently incarcerated following her felony convictions. Her projected release date is in April 2035, and she will become eligible for parole in April 2025.⁷

III. APPLICABLE LAW

Summary disposition of a contested case may be granted, in full or in part, without the necessity of a hearing on the merits if the pleadings, the motion for summary disposition, and the summary disposition evidence show that there is no genuine issue as to any material fact and that

² Staff Ex. 1.

³ Staff Ex. 3.

⁴ Staff Ex. 3.

⁵ Staff Ex. 3.

⁶ Staff Ex. 3.

⁷ Staff Ex. 4.

the moving party is entitled to a decision in its favor as a matter of law on all or some of the issues expressly set out in the motion.⁸

Texas Occupations Code § 53.021(b) states: "A license holder's license shall be revoked on the license holder's imprisonment following a felony conviction" Additionally, Texas Occupations Code § 301.4535 requires the Board to suspend the license of a nurse who has been "initially convicted" of "aggravated assault under Section 22.02, Penal Code."⁹ The statute goes on to provide that, "[o]n final conviction or a plea of guilty or nolo contendere for an offense listed in Subsection (a), the [B]oard, as appropriate, may not issue a license to an applicant, shall refuse to renew a license, or shall revoke a license."¹⁰ The use of the term "shall" in this statute imposes a duty on the Board to take the action specified.¹¹

IV. ANALYSIS AND CONCLUSION

The evidence in the record conclusively shows that Respondent was convicted of two felony offenses, including aggravated assault under Section 22.02 of the Texas Penal Code. The evidence further conclusively shows that she was imprisoned and remains imprisoned as a result of her convictions. These facts establish, as a matter of law, that revocation of Respondent's license is mandatory pursuant to Texas Occupations Code §§ 53.021(b) and 301.4535. Therefore, Staff's motion for summary disposition is **GRANTED**.

V. FINDINGS OF FACT

1. Tina Gail Marek (Respondent) is a licensed vocational nurse holding Permanent Certificate Number 191292 in the State of Texas.
2. On June 4, 2015, in Case No. 15-02-28509-A, the 24th Judicial District Court in Victoria County, Texas entered a Judgment of Conviction by Jury finding Respondent guilty of Aggravated Assault, a second-degree felony.

⁸ 1 Tex. Admin. Code § 155.505(a).

⁹ Tex. Occ. Code § 301.4535(a)(6).

¹⁰ Tex. Occ. Code § 301.4535(b) (emphasis added).

¹¹ Tex. Gov't Code § 311.016(2).

3. The Aggravated Assault judgment specified that the statute for the offense was § 22.02(a)(2) of the Texas Penal Code.
4. On June 4, 2015, in Case No. 15-02-28509-A, the 24th Judicial District Court in Victoria County, Texas entered a second Judgment of Conviction by Jury finding Respondent guilty of Intoxicated Assault, a third-degree felony.
5. Respondent was sentenced to twenty years' confinement in the institutional division of the Texas Department of Criminal Justice on the Aggravated Assault charge, and ten years' confinement on the Intoxicated Assault charge, with the sentences to be served concurrently.
6. Respondent is currently incarcerated following her felony convictions. Her projected release date is in April 2035, and she will become eligible for parole in April 2025.
7. On December 9, 2015, the staff (Staff) of the Texas Board of Nursing sent Respondent a hearing notice that 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.
8. On December 30, 2015, Staff filed and served Respondent with its Motion for Summary Disposition and supporting evidence.
9. Respondent did not file a response to Staff's Motion for Summary Disposition.

VI. CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter. Tex. Occ. Code ch. 301.
2. The State Office of Administrative Hearings has jurisdiction to conduct this contested-case proceeding, including the authority to summarily dispose of facts and issues not disputed by the parties. Tex. Occ. Code § 301.459; Tex. Gov't Code ch. 2003; 22 Tex. Admin. Code 155.505(a).
3. Respondent received proper and timely notice of hearing. Tex. Gov't Code §§ 2001.051-.052.
4. The Board must revoke a nurse's license if the nurse has been finally convicted of aggravated assault under Texas Penal Code § 22.02. Tex. Occ. Code § 301.4535(a)(6), (b).
5. A license holder's license shall be revoked on the license holder's imprisonment following a felony conviction. Tex. Occ. Code § 53.021(b).

6. Because there is no genuine issue as to any material facts, Staff is entitled to a decision in its favor as a matter of law on all of the issues expressly set out in the Motion for Summary Disposition. 1 Tex. Admin. Code § 155.505(a).

VII. RECOMMENDATION

Respondent's license should be revoked due to her convictions and imprisonment described above.

SIGNED January 21, 2016.

Sarah Starnes

**SARAH STARNES
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**