



I do hereby certify this to be a complete, accurate, and true copy of the document which is on file or its record in the offices of the Texas Board of Nursing.  
*Patricia A. Johnson*  
Executive Director of the Board

BEFORE THE TEXAS BOARD OF NURSING

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In the Matter of  
Registered Nurse License Number 666296  
issued to AMANDA GAY POYNER

§ REINSTATEMENT  
§  
§ AGREED ORDER

On this day the Texas Board of Nursing, hereinafter referred to as the Board, considered the Petition for Reinstatement of Registered Nurse License Number 666296, held by AMANDA GAY POYNER, hereinafter referred to as Petitioner.

An informal conference was conducted on February 28, 2017, in accordance with Section 301.464, Texas Occupations Code. Petitioner appeared in person. Petitioner was represented by Marc Meyer, RN, Attorney at Law.

FINDINGS OF FACT

1. Prior to the 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 agreed to the entry of this Order.
3. Petitioner received an Associate Degree in Nursing from Tyler Junior College, Tyler, Texas, on December 1, 1999. Petitioner was licensed to practice professional nursing in the State of Texas on February 1, 2000.
4. Petitioner's nursing employment history includes:
 

2000 - 2002	Staff Nurse	Trinity Mother Francis Hospital Tyler, Texas
2002 - 2003	Staff Nurse	Clairmont Nursing Home Tyler, Texas
2003 - 2004	Staff Nurse	Medical Staffing Network Tyler, Texas

Petitioner's nursing employment history continued:

2003 - 2004	Staff Nurse	Excel Staffing Tyler, Texas
2005 - 2006	Staff Nurse	Palestine Regional Hospital Palestine, Texas
2006 - 2007	Charge Nurse	Colonial Manor Nursing Home Van, Texas
2007 - present	Not employed in nursing	

5. On January 22, 2004, Petitioner was issued the sanction of a Warning with Stipulations by the Texas Board of Nursing. A copy of the January 22, 2004, Agreed Order, Findings of Fact, and Conclusions of Law is attached and incorporated, by reference, as part of this Order.
6. On October 27, 2016, Petitioner's license to practice professional nursing was Revoked by the Texas Board of Nursing. A copy of the October 27, 2016, Agreed Order, Findings of Fact, and Conclusions of Law is attached and incorporated, by reference, as part of this Order.
7. Petitioner submitted a Petition for Reinstatement of License to practice professional nursing in the State of Texas.
8. Petitioner presented the following in support of said petition:
  - 8.1. Letter of support, dated September 5, 2015, from Johnette Tannery stating she has known Petitioner for thirty-three (33) years. Petitioner has always been a very determined and passionate person, especially when it comes to nursing. Petitioner is a very caring and compassionate person which makes her one of the most kind, genuine and loving individuals that Ms. Tannery has had the pleasure of knowing. Petitioner has a natural ability to care for people.
  - 8.2. Letter of support from Stacey Hammons stating she and Petitioner worked together on projects for the Texas Hope Literacy program (HOPE) and she is both a leader and a team player. Petitioner was always compassionate and understanding when dealing with both difficult people and situations. Petitioner is the shining example of the positive change that anyone make with the right attitude. She is always willing to put the work in and go above and beyond what is expected and she brings the best of herself to every situation. She is honest and trustworthy and will make a huge contribution to the field of nursing.

- 8.3. Letter of support, dated July 20, 2015, from Aretha Campbell, Tyler, Texas, stating she has known Petitioner since 2000. Ms. Campbell worked with Petitioner at Trinity Mother Francis Hospital for several years. Petitioner was an excellent nurse that was dedicated to taking care of her patients. She always had a positive attitude and was very caring towards her patients and families. She is compassionate, empathetic and selfless. Petitioner has gained wisdom and knowledge that will only help her when she goes back to work.
- 8.4. Letter of support, dated July 21, 2015, from Lucy Smith, MEd, President, Texas Hope Literacy, stating Petitioner entered the HOPE program May 2007 to January 2009. She demonstrated a willingness to learn new teaching strategies. She served as a math coordinator and peer educator for inmates in the program. Petitioner was professional in her approach with both inmates, unit and HOPE staff. She maintained a positive attitude and willingness to help her peers. Her caring personality enabled her students to achieve academically and earn their GED.
- 8.5. Letter of support, dated July 22, 2015, from Beatice Zuniga stating she has known Petitioner for several years. Petitioner is a leader and is able to communicate with people both young and old. She is a positive role model and sociable person. Petitioner has consistently proven herself to be a loyal and dedicated individual in everything she does. She is a hard worker with strong faith and a bright outlook.
- 8.6. Letter of support, dated July 2, 2015, from Jan Evans, Dallas, Texas, stating she has known Petitioner since 2007. Ms. Evans was the Leadership Coach for the HOPE program and found Petitioner to be a gifted leader. She is organized, a good administrator, self-disciplined and self-motivated. Petitioner is caring individual with the ability to inspire and motivate her peers even in the most challenging and difficult situations.
- 8.7. Letter of support, dated July 22, 2015, from Sue Hisle stating she has known Petitioner for the past six (6) years. Petitioner is a wonderful encourager and has always lifted others up with her kindness and caring words. She has a very determined will and does not lack in perseverance. Ms. Hisle always thought Petitioner displayed great initiative, enthusiasm and an eagerness to learn.
- 8.8. Documentation of the required continuing education contact hours.
9. The Executive Director considered evidence of Petitioner's past behavior in light of the character factors set out in 22 Tex. Admin. Code §213.27 and determined that Petitioner currently demonstrates the criteria required for good professional character and relicensure.
10. Relicensure of Petitioner poses no direct threat to the health and safety of patients or the public provided Petitioner complies with the stipulations outlined in this Order.

11. The Executive Director's review of Petitioner's eligibility for relicensure has been made on the basis of Petitioner's disclosures.

### CONCLUSIONS OF LAW

1. Pursuant to Texas Occupations Code, Sections 301.451-301.555, the Board has jurisdiction over this matter.
2. 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.
3. The Board may license an individual with prior behaviors inconsistent with the Board's character requirements if, upon evaluation of the factors in 22 Tex. Admin. Code §213.27, and pursuant to 22 Tex. Admin. Code §213.33, the Board is satisfied that the individual is able to consistently conform her conduct to the requirements of the Nursing Practice Act, the Board's Rules and Regulations, and generally accepted standards of nursing practice.
4. This Order is conditioned upon the accuracy and completeness of Petitioner's disclosures. Any subsequently discovered discrepancies will result in investigation and possible disciplinary action, up to revocation of Petitioner's license(s).

### TERMS OF ORDER

#### I. REINSTATEMENT OF LICENSURE

IT IS THEREFORE AGREED and ORDERED, subject to ratification by the Texas Board of Nursing, that the petition of AMANDA GAY POYNER for reinstatement of license to practice nursing in the state of Texas be **GRANTED** and Registered Nurse License Number 666296 is hereby **REINSTATED** in accordance with the terms of this Order.

#### II. COMPLIANCE WITH LAW AND APPLICABILITY

While under the terms of this Order, PETITIONER agrees to obtain, read, and 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.

- A. This Order SHALL be applicable to PETITIONER's nurse licensure compact privileges, if any, to practice nursing in the State of Texas.
- B. PETITIONER may not work outside the State of Texas in another nurse licensure compact party state without first obtaining the written permission of the Texas Board of Nursing and the Board of Nursing in the nurse licensure compact party state where PETITIONER wishes to work.

**III. REQUIREMENTS FOR REFRESHER COURSE, EXTENSIVE ORIENTATION, OR NURSING PROGRAM OF STUDY IN PROFESSIONAL REGISTERED NURSING**

**Prior to practicing as an registered nurse in the State of Texas, PETITIONER**

**SHALL:**

- A. **Apply for a Six Month Temporary Permit to Complete Refresher Course, Extensive Orientation, or Nursing Program of Study in Professional Registered Nursing** for the limited purpose of completing a refresher course, extensive orientation, or nursing program of study in professional registered nursing. The application for the Six Month Temporary Permit is available on the Board's website ([www.bon.texas.gov](http://www.bon.texas.gov)) under Forms / Applications / Six Month Permits. PETITIONER SHALL NOT, in any way, attempt to use the temporary permit for any purpose other than completing the refresher course, extensive orientation, or nursing program of study in professional registered nursing.
- B. **Successfully complete a Board approved refresher course, extensive orientation, or nursing program of study for professional registered nursing.** Petitioner MUST obtain Board approval of the nursing refresher course, extensive orientation, or nursing program, as applicable, prior to enrollment. In order for the course to be approved, the target audience shall include registered nurses and the course's content shall, at a minimum, include: 1) Review of NPA, Rules, Position Statements; 2) Determination of Individual Scope of Practice and role in patient safety; 3) Review of the nursing process to include assessment, planning, implementation, and evaluation; 4) Pharmacology review; 5) Medication administration; 6) Documentation, quality assurance, and legal implication for nursing practice; and, 7) Documentation of current CPR certification prior to beginning

precepted clinical learning experience. The course must contain no less than a total of 80 hours of clinical practice providing direct patient care supervised by a qualified registered nurse instructor who meets or exceeds the Board's minimum criteria for eligibility as an instructor. Home study courses and video programs will not be approved.

- C. **Upon completion of the refresher course, extensive orientation, or nursing program of study for professional registered nursing,** PETITIONER SHALL return the temporary permit to the Board's office and PETITIONER SHALL CAUSE the sponsoring institution to notify the Board, on a form provided by the Board, of Petitioner's successful completion of the refresher course, including the required 80 hours of supervised practice.
- D. **Upon verification of successful completion of the conditions** as set out in Paragraphs A through C of this Section, PETITIONER SHALL submit a completed License Reactivation Form for Registered Nurses, which is available on the Board's website ([www.bon.texas.gov](http://www.bon.texas.gov)) under Forms / Applications / Renewals / Reactivation Renewal. PETITIONER shall pay all re-registration fees and, subject to meeting all other requirements for licensure in Texas, shall be issued the applicable license to practice registered nursing in the State of Texas, which shall be subject to the terms of this Order.

#### IV. **REMEDIAL EDUCATION COURSE(S)**

In addition to any continuing education requirements the Board may require for licensure renewal, Petitioner SHALL successfully complete the following remedial education course(s) **within one (1) year of relicensure, unless otherwise specifically indicated:**

- A. **A Board-approved course in Texas nursing jurisprudence and ethics** that 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. Home study courses and video programs will not be approved.

- B.** 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/these course(s), Petitioner SHALL CAUSE the instructor to submit a Verification of Course Completion form or SHALL submit the continuing education certificate, as applicable, to the attention of Monitoring at the Board's office. Petitioner SHALL first obtain Board approval of any course prior to enrollment if the course is not being offered by a pre-approved provider. *Information about Board-approved courses and Verification of Course Completion forms are available from the Board at [www.bon.texas.gov/compliance](http://www.bon.texas.gov/compliance).*

**V. EMPLOYMENT REQUIREMENTS**

In order to complete the terms of this Order, Petitioner must work as a nurse in the State of Texas, providing direct patient care in a clinical healthcare setting, for a minimum of sixty-four (64) hours per month for four (4) quarterly periods [one (1) year] of employment. This requirement will not be satisfied until four (4) quarterly periods of employment as a nurse have elapsed. Any quarterly period without continuous employment with the same employer for all three (3) months will not count towards completion of this requirement. 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 period and will not count towards completion of this requirement.

- A. Notifying Present and Future Employers:** Petitioner SHALL notify each present employer in nursing and present each with a complete copy of this Order, including all attachments, if any, within five (5) days of receipt of this Order. While under the terms of this Order, Petitioner SHALL notify all future employers in nursing and present each with a complete copy of this Order, including all attachments, if any, prior to accepting an offer of employment.

- B. **Notification of Employment Forms:** Petitioner SHALL CAUSE each present employer in nursing to submit the Board's "Notification of Employment" form to the Board's office within ten (10) days of receipt of this Order. Petitioner SHALL CAUSE each future employer to submit the Board's "Notification of Employment form" to the Board's office within five (5) days of employment as a nurse.
- C. **Indirect Supervision:** Petitioner 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 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.
- D. **No Critical Care:** PETITIONER SHALL NOT practice as a nurse in any critical care area. 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.
- E. **Nursing Performance Evaluations:** 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 nursing. These reports shall be completed by the nurse who supervises the Petitioner and these reports shall be submitted by the supervising nurse to the office of the Board at the end of each three (3) month quarterly period for four (4) quarters [one (1) year] of employment as a nurse.

## VI. THERAPY

While working as a nurse under the terms of this Order, PETITIONER SHALL participate in therapy with a professional counselor approved by the Board. PETITIONER SHALL CAUSE the therapist to submit written reports, on forms provided by the Board, as to the PETITIONER'S progress in therapy, rehabilitation

and capability to safely practice nursing. The report must indicate whether or not the PETITIONER'S stability is sufficient to provide direct patient care safely. For the first three (3) month quarterly period PETITIONER works as a nurse under the terms of this Order, reports are to be submitted to the Board each and every month. If therapy is recommended by the counselor for an additional period of time, the reports shall then be submitted to the Board at the end of each three (3) month quarterly period in which the PETITIONER is working as a nurse under the terms of this Order, for the remainder of the term of the Order, or until PETITIONER is dismissed from therapy, whichever is earlier.

**VII. RESTORATION OF UNENCUMBERED LICENSE(S)**

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

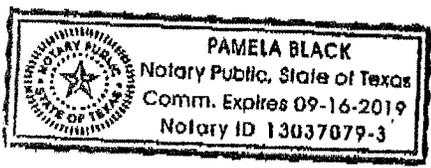
I understand that I have the right to legal counsel prior to signing this Reinstatement Agreed Order. I certify that my past behavior, except as disclosed in my Petition for Reinstatement of Licensure, has been in conformity with the Board's professional character rule. I have provided the Board with 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(s) to practice 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 18<sup>th</sup> day of April, 2017.  
Amanda Gay Poyner  
AMANDA GAY POYNER, Petitioner

Sworn to and subscribed before me this 18<sup>th</sup> day of April, 2017

SEAL.



Pamela Black  
Notary Public in and for the State of Texas

Approved as to form and substance.

Marc M. Meyer  
Marc Meyer, Attorney for Petitioner

Signed this 19<sup>th</sup> day of April, 2017.

WHEREFORE, PREMISES CONSIDERED, the Texas Board of Nursing does hereby ratify and adopt the Reinstatement Agreed Order that was signed on the 18<sup>th</sup> day of April, 20 17, by AMANDA GAY POYNER, Registered Nurse License Number 666296, and said Order is final.

Effective this 20<sup>th</sup> day of July, 20 17.



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Katherine A. Thomas, MN, RN, FAAN  
Executive Director on behalf  
of said Board



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.  
*Stephanie C. Johnson*  
Executive Director of the Board

BEFORE THE TEXAS BOARD OF NURSING

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In the Matter of § AGREED  
Registered Nurse License Number 666296, §  
issued to AMANDA GAY POYNER § ORDER

On this day the Texas Board of Nursing, hereinafter referred to as the Board, considered the matter of AMANDA GAY POYNER, Registered Nurse License Number 666296, hereinafter referred to as Respondent. This action was taken in accordance with Section 301.453(c), Texas Occupations Code.

Respondent waived notice and hearing and agreed to the entry of this Order.

The Board makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. 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(s).
2. Respondent waived notice and hearing, and agreed to the entry of this Order.
3. Respondent's license to practice as a professional nurse in the State of Texas is in delinquent status and has been in that status since October 2008.
4. Respondent received an associate degree from Tyler Junior College, Tyler, Texas, on 12/1/1999. Respondent was licensed to practice professional nursing in the State of Texas on 2/1/2000.
5. A pre-hearing conference was held at the State Office of Administrative Hearings on April 25, 2016, and a Proposal for Decision (PFD) was issued on June 22, 2016. The parties agree that approval and ratification of this Order shall resolve all issues related to, or that could arise from, SOAH Docket Number 507-16-2763. The parties also agree that the Administrative Law Judge's findings, conclusions, and analysis in SOAH Docket Number 507-16-2763 are not adopted by either party to this agreement and are not binding or precedential in any way.
6. On or about March 26, 2007, the Respondent was convicted of three counts of the felony

offense of *Endangering a Child*, in the 241st District Court, Smith County, Texas, for which she was sentenced to confinement in a state jail facility for a period of 24 months. The sentence was executed on March 26, 2007, and on or about January 5, 2009, the Respondent was released from prison.

7. The Respondent's license was revoked under the authority of Tex. Occ. Code §53.021(b) on March 26, 2007.

#### CONCLUSIONS OF LAW

1. Pursuant to Texas Occupations Code, Sections 301.451-301.555, the Board has jurisdiction over this matter.
2. Notice was served in accordance with law.
3. The evidence received is sufficient cause pursuant to Section 53.021(b), Texas Occupations Code, to take disciplinary action against Registered Nurse License Number 666296, heretofore issued to AMANDA GAY POYNER, including revocation of Respondent's license(s) to practice nursing in the State of Texas.
4. Pursuant to Section 301.463(d), Texas Occupations Code, this Agreed Order is a settlement agreement under Rule 408, Texas Rules of Evidence, in civil or criminal litigation.
5. Under Section 301.453(d), Texas Occupations Code, as amended, the Board may impose conditions for reinstatement of licensure.
6. Any subsequent reinstatement of this license will be controlled by Section 301.453(d), Texas Occupations Code, and 22 TEX. ADMIN. CODE §213.26-.29, and any amendments thereof in effect at the time of the reinstatement.

#### TERMS OF ORDER

NOW, THEREFORE, IT IS AGREED and ORDERED that Registered Nurse License Number 666296, heretofore issued to AMANDA GAY POYNER, to practice nursing in the State of Texas, is revoked. In connection with this revocation:

1. RESPONDENT SHALL NOT practice professional/registered nursing, use the title "registered nurse" or the abbreviation "RN" or wear any insignia identifying herself/himself as a registered nurse or use any designation which, directly or indirectly, would lead any person to believe that RESPONDENT is a registered nurse during the period in which the license is revoked.

2. RESPONDENT is immediately eligible to petition for reinstatement of licensure. Upon petitioning for reinstatement, RESPONDENT SHALL satisfy all the existing requirements for re-licensure.

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

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**RESPONDENT'S CERTIFICATION**

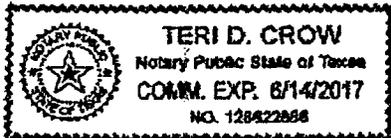
I understand that I have the right to legal counsel prior to signing this Agreed Order. I have reviewed this Order. I neither admit nor deny the violation(s) alleged herein. By my signature on this Order, I agree to the entry of this Order, and any conditions of said Order, to avoid further disciplinary action in this matter. I waive judicial review of this Order. I understand that when this Order becomes final and the terms of this Order become effective, 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 possible revocation of my license(s) to practice nursing in the State of Texas, as a consequence of my noncompliance.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Amanda Gay Poyner  
AMANDA GAY POYNER, Respondent

Sworn to and subscribed before me this 30<sup>th</sup> day of September, 2016.

SEAL



Teri Crow  
Notary Public in and for the State of Texas

Approved as to form and substance.

Marc M Meyer  
Marc M. Meyer, Attorney for Respondent

Signed this 3rd day of October, 2016.

WHEREFORE, PREMISES CONSIDERED, the Texas Board of Nursing does hereby ratify and adopt the Agreed Order that was signed on the 30th day of September, 2016, by AMANDA GAY POYNER, Registered Nurse License Number 666296, and said Order is final.

Effective this 27th day of October, 2016.



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Katherine A. Thomas, MN, RN, FAAN  
Executive Director on behalf  
of said Board

SOAH DOCKET NO. 507-16-2763

<b>TEXAS BOARD OF NURSING,</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>Petitioner</b>	§	
	§	
<b>v.</b>	§	<b>OF</b>
	§	
<b>AMANDA GAY POYNER,</b>	§	
<b>PERMANENT CERT. NO. 666296,</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION  
DISPOSING OF CASE BY SUMMARY DISPOSITION**

The staff (Staff) of the Texas Nursing Board (Board) seeks to revoke the registered nurse license issued to Amanda Gay Poyner (Respondent) because she was incarcerated in March 2007 following her conviction for three felony offenses. Staff filed a Motion for Summary Disposition requesting a decision in its favor as a matter of law. Respondent filed a reply and a counter-petition requesting that the case be converted to a hearing on Respondent's reinstatement. After considering the arguments, evidence, and legal authorities submitted by the parties in support of their positions, the Administrative Law Judge (ALJ) finds that summary disposition is appropriate and recommends the Board find that Respondent's license was revoked by operation of law on March 26, 2007. The ALJ also finds that Respondent's counter-petition for reinstatement should be denied.

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

Staff filed a notice and formal charges against Respondent on March 2, 2016, and referred this case to the State Office of Administrative Hearings (SOAH) for a contested case hearing. On March 15, 2016, Respondent filed an answer and a counter-petition for reinstatement. Staff responded to the counter-petition on March 18, 2016. On March 24, 2016, Staff filed a motion for summary disposition seeking revocation of Respondent's license because she had previously been incarcerated. Respondent replied to Staff's motion on April 7, 2016, and Staff filed its reply on April 12, 2016.

Notice and jurisdiction were not contested, and will be addressed in the findings of facts and conclusions of law.

The ALJ converted the hearing on the merits, scheduled for April 25, 2016, to a telephonic prehearing conference to hear arguments on the motions. Staff attorney Jessica Lance represented Staff. Respondent was represented by attorney Marc Meyer.

## II. DISCUSSION

### A. Summary Disposition Evidence

The underlying facts are undisputed by the parties:

1. The Board issued Permanent Registered Nurse License Number 666296 to Respondent on February 1, 2000.
2. Respondent's license was last renewed on January 8, 2007.
3. On or about March 26, 2007, in the 241st District Court, Smith County, Texas, Respondent was convicted of three counts of the felony offense of Endangering a Child, a violation of Texas Penal Code § 22.041. As a result of the convictions, Respondent was sentenced to confinement in the State Jail Facility for a period of 24 months. The sentence was executed on March 26, 2007.
4. On or about January 5, 2009, Respondent was released from prison.
5. Respondent has not applied for renewal or reinstatement of her nursing license since being released from incarceration.

### B. Applicable Law

An ALJ may grant summary disposition on all or part of a contested case without an evidentiary hearing if the summary disposition evidence shows there is no genuine issue as to any material fact and a party is entitled to a decision in its favor as a matter of law.<sup>1</sup> Staff, as the

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<sup>1</sup> 1 Tex. Admin. Code § 155.505(a).

party moving for summary disposition, had the burden to present sufficient summary disposition evidence to establish that it was entitled to judgement as a matter of law.

Texas Occupations Code § 53.021 authorizes licensing agencies to sanction licensees who have been convicted. For a license holder who is incarcerated following conviction, revocation of the license is mandatory. Texas Occupations Code § 53.021(b) states:

- (b) 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.<sup>2</sup>

A person whose license has been revoked may apply for reinstatement. The petition must be in writing and in the form prescribed by the Board.<sup>3</sup> SOAH does not acquire jurisdiction over a request for reinstatement until a petition has been filed with the Board, denied by the Board, and the person then requests a hearing on the denial at SOAH.<sup>4</sup>

### C. Parties' Arguments and Analysis

While the parties agree that revocation of Respondent's license is mandatory because she was incarcerated following conviction, they disagree as to the effective date of the revocation and the manner in which that revocation occurs.

Staff contends that Respondent's license was not revoked by operation of law upon her incarceration, contrary to the terms of Texas Occupations Code (Code) § 53.021(b), quoted above, as interpreted by a 2003 Texas attorney general's opinion.<sup>5</sup> Rather, Staff argues the revocation may take place only after a due process hearing and on the date the Board takes official action by entering an order revoking Respondent's license. Adoption of the Staff's

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<sup>2</sup> See also the Board's rule at 22 Texas Administrative Code § 213.28(f).

<sup>3</sup> 22 Tex. Admin. Code § 213.26(a), (b); Tex. Occ. Code § 301.467.

<sup>4</sup> 22 Tex. Admin. Code § 213.22(a); Tex. Occ. Code § 301.467.

<sup>5</sup> Tex. Att'y Gen. Op. No. GA-0064 (2003) at 7. ("Section 53.021(b) [of the Texas Occupations Code] revokes a license by operation of law. . . . Although the relevant licensing authority has a duty to revoke the license, as [Attorney General Opinion] JM-482 makes clear, the fact that the licensing authority does not do so does not alter the revocation.").

position in this case would result in the deemed effective date of the revocation occurring over 9 years after the date Respondent was incarcerated and 7 years after she was released from prison. There is no statutory or regulatory basis for such a delay in the effective date of the revocation. Although Respondent in this case did not engage in the practice of nursing after her release from prison, Staff's position, if implemented, could lead to a situation where a license holder practices nursing under a valid license after release from incarceration until the Board acts to revoke the license. In any event, Staff contends that it is entitled to summary disposition because the license must be revoked under Code § 53.021, as the statute does not allow for any discretion on the part of the agency.

In response, Respondent argues that her license had been revoked by operation of law on the date of her incarceration, March 26, 2007. The action or lack of action by the Board, Respondent argues, does not affect the fact that the revocation of the license occurs upon the incarceration of the licensee. Respondent wishes to apply for reinstatement but cannot do so until the issue of the effective date of revocation is determined.<sup>6</sup>

The ALJ finds persuasive the Attorney General's Opinion which holds that, under Texas Occupations Code § 53.021(b), a license is revoked as a matter of law when a person is incarcerated regardless of whether the licensing agency takes any action to revoke it.<sup>7</sup> Therefore, the ALJ finds that Respondent's license was revoked by operation of law on March 26, 2007, and Staff is entitled to a decision in its favor as a matter of law on that issue.

Finally, the ALJ finds that the potential reinstatement of Respondent's license is not properly before SOAH. Respondent must first apply for reinstatement with the Board. If her application for reinstatement is denied, Respondent may then request a contested case hearing at SOAH.

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<sup>6</sup> Respondent was eligible to apply for reinstatement beginning in January 2014. Tex. Occ. Code § 301.4535(a)(8), (c).

<sup>7</sup> Tex. Att'y Gen. Op. No. GA-0064 (2003) at 7.

### III. FINDINGS OF FACT

1. The Texas Board of Nursing (the Board) issued Permanent Registered Nurse License Number 666296 to Amanda G. Poyner (Respondent) on February 1, 2000.
2. Respondent's license was last renewed on January 8, 2007.
3. On or about March 26, 2007, in the 241st District Court, Smith County, Texas, Respondent was convicted of three counts of the felony offense of Endangering a Child, a violation of Texas Penal Code § 22.041. As a result of the conviction, Respondent was sentenced to confinement in the State Jail Facility for a period of 24 months. The sentence was executed on March 26, 2007.
4. On or about January 5, 2009, Respondent was released from prison.
5. Staff filed a notice and formal charges against Respondent on March 2, 2016, and referred this case to the State Office of Administrative Hearings (SOAH) for a contested case hearing. The matter was set for hearing on April 25, 2016.
6. Staff's Notice of Hearing contained a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the applicable rules and statutes; and a short plain statement of the matters asserted.
7. Respondent filed an answer and a counter-petition for reinstatement on March 15, 2016. Staff responded to the counter-petition on March 18, 2016.
8. On March 24, 2016, Staff filed a motion for summary disposition seeking revocation of Respondent's license because she had previously been incarcerated. Respondent replied to Staff's motion on April 7, 2016, and Staff filed its reply on April 12, 2016.
9. A telephonic prehearing conference was held on April 25, 2016, to hear arguments on the pending motions.
10. Respondent has not reapplied for reinstatement of her nursing license.

### IV. CONCLUSIONS OF LAW

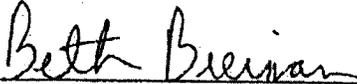
1. The Board has jurisdiction over this matter. Tex. Occ. Code §§ 301.458-.459.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.
3. Notice of the hearing on the merits was provided as required by Texas Government Code §§ 2001.051-.052.

4. A contested case may be disposed of by summary disposition without an evidentiary hearing if the pleadings, affidavits, materials obtained by discovery, admissions, matters officially noticed, stipulations, or evidence of record show there is no genuine issue as to any material fact and that a party is entitled to a decision in its favor as a matter of law. 1 Tex. Admin. Code § 155.505(a).
5. The pleadings and summary disposition evidence provided with Staff's Motion for Summary Disposition show there is no genuine issue as to any material fact and that Staff is entitled to a decision in its favor as a matter of law. 1 Tex. Admin. Code § 155.505(a).
6. 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. Tex. Occ. Code § 53.021(b).
7. Respondent's license was revoked by operation of law on March 26, 2007. Tex. Occ. Code § 53.021(b); Tex. Att'y Gen. Op. No. GA-0064 (2003).
8. A person whose license has been revoked may apply for reinstatement. The petition must be in writing and in the form prescribed by the Board. Tex. Occ. Code § 301.467; 22 Tex. Admin. Code § 213.26(a), (b).

#### V. RECOMMENDATION

Based on the above Findings of Fact and Conclusions of Law, the ALJ recommends that the Board find that Respondent's license to practice nursing in the State of Texas was revoked by operation of law upon her incarceration on March 26, 2007.

SIGNED June 22, 2016.

  
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BETH BIERMAN  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

BEFORE THE BOARD OF NURSE EXAMINERS  
FOR THE STATE OF TEXAS

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In the Matter of License Number 666296  
issued to AMANDA GAY POYNER

§ AGREED  
§ ORDER

On this day the Board of Nurse Examiners for the State of Texas, hereinafter referred to as the Board, considered the matter of AMANDA GAY POYNER, License Number 666296, hereinafter referred to as Respondent.

Information received by the Board produced evidence that Respondent may have violated Section 301.452(b)(10), Texas Occupations Code. Respondent waived representation by counsel, informal conference, notice and hearing, and agreed to the entry of this Order offered on May 2, 2003, by Katherine A. Thomas, MN, RN, Executive Director, subject to ratification by the Board.

FINDINGS OF FACT

1. 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.
2. Respondent waived representation by counsel, informal conference, notice and hearing, and agreed to the entry of this Order.
3. Respondent is currently licensed to practice professional nursing in the State of Texas.
4. Respondent received an Associate Degree in Nursing from Tyler Junior College, Tyler, Texas, on December 1, 1999. Respondent was licensed to practice professional nursing in the State of Texas, on February 1, 2000.

5. Respondent's professional employment history includes:

February 2000 - November 2002

Staff Nurse  
Mother Frances Hospital  
Tyler, Texas

November 2002 - present

Agency Nurse  
Excell Nursing Agency  
Tyler, Texas

6. At the time of the initial incident, Respondent was employed as a Staff Nurse at Mother Frances Hospital, Tyler, Texas, and had been employed in this position for one (1) year and eight (8) months.
7. On or about September 2001, while employed at Mother Frances Hospital, Tyler, Texas, Respondent withdrew four (4) vials of Demerol 25 mg from the Acudose Medication System for patient I.T., documented the administration of one (1) Demerol 25 mg in the medical records of patient I.T., but failed to follow the policy and procedure for the wastage of the remaining three (3) vials of Demerol 25 mg. Respondent's conduct was likely to deceive the hospital pharmacy and placed them in violation of Chapter 481 of the Texas Health and Safety Code (Controlled Substances Act).
8. On or about September 2001, while employed at Mother Frances Hospital, Tyler, Texas, Respondent withdrew medications from the Acudose Medication System for patients but failed to accurately and completely document the administration of the medications in patients' Medication Administration Record, as follows:

Date/Time	Patient	Physician's Order	Narcotic Record (Acudose)	Medication Administration Record	Comments	Waste
9/14/01 @ 7:35 am	L.B.	Vicodin 1-2 tabs q4 hr prn	Hydrocodone 4 tabs	2-tabs given at 7:30 am 2-tabs given at 10:00 am	10:00 am administration was 2 hr 25 min after withdrawal	None
9/14/01 @ 11:17 am	L.B.	Vicodin 1-2 tabs q4 hr prn	Hydrocodone 2 tabs	Not documented	No documentation of waste.	None
9/27/01 @ 12:58 pm	G.M.	Lorcet 10 1 tab PO q4-6 h prn	Hydrocodone 2 tabs	1-tab given at 8:30 am 1-tab given at 1:15 pm	First tab given 4 hr 28 min before withdrawal.	None
9/22/01 @ 1:48 pm	S.G.	Vicodin 1-2 tabs q4 hr prn pain	Hydrocodone 2 tabs	2-tabs given at 8:00 am	Medication given 5 hr 48 min before withdrawal	None
9/22/01 @ 2:24 pm	S.G.	Vicodin 1-2 tabs q4 hr prn pain	Hydrocodone 2 tabs	2-tabs given at 11:30 am	Medication given 2 hr 54 min before withdrawal	None

Date/ Time	Patient	Physician's Order	Narcotic Record (Acudose)	Medication Administration Record	Comments	Waste
9/23/01 @ 9:06 am	I.T.	Darvocet 2 tabs PO q3-4 hr prn	Propoxyphene 8 tabs	2-tabs given at 9:00 am 2-tabs given at 11:15 am 2-tabs given at 1:00 pm	Medication given up to 3 hr 54 min after withdrawal.	1-tab returned at 8:00 pm. One tab not accounted for.

Respondent's conduct above was likely to injure the patients in that subsequent care givers would rely on her documentation to further medicate the patient which could result in an overdose and placed the hospital in violation of Chapter 481 of the Texas Health and Safety Code (Controlled Substances Act).

9. On April 16, 2003. Respondent submitted to a Forensic Psychiatric Evaluation including a Polygraph, conducted by John M. Lehman, Ph.D., Clinical Psychologist. Dr. Lehman states, "The assessment indicates that Ms. Poyner does not have a problem with substance abuse. The situation at Mother Frances appears to be the result of her anxiety, disorganization, lack of foresight and a desire to please everyone rather than to follow rules. She has significant difficulties with foresight of consequences, especially if nervous or anxious and this causes her not to think as clearly and sequentially as necessary. She needs to address these anxiety issues in therapy. If she learns to manage her anxiety problems, it is expected that she would be able to work more consistently and sequentially than she has up to this point. There do not appear to be any indications of depression. Her cognitive skills are adequate when she is in a fairly calm environment, but when anxious her focus and attention declines. These issues pose some risk to patients unless she does something to address these issues. Involvement in a therapy process to address anxiety issues and to help her deal with things in a calmer and more sequential way is recommended. Involvement in therapy should be mandated to address her anxiety issues."

Dr. Lehman recommends the following, "Ms. Poyner is fit to practice as a nurse within a limited scope of work environments. It is recommended that she not practice in high stress areas of nursing such as intensive care, surgery or an emergency room, or others which the BNE might deem high stress. She should function adequately on medical units, in nursing homes, etc. Ms. Poyner needs to involve herself in a course of psychotherapy to address her anxiety issues. She does not appear to be chemically dependent or to abuse chemicals. I do not believe she is a high risk to patients or the public due to any chemical dependency/abuse issues. Her practice should be monitored by BNE for at least a year to assure that she is performing adequately."

10. Respondent took the Nursing Jurisprudence course which would have been a requirement of this Order on November 6, 2003, has already engaged in practices that will prevent the previous concerns from being repeated, and has initiated her counseling therapy sessions.

### CONCLUSIONS OF LAW

1. Pursuant to Texas Occupations Code, Sections 301.451-301.555, the Board has jurisdiction over this matter.
2. Notice was served in accordance with law.
3. The evidence received is sufficient to prove violations of Section 301.452(b)(10), Texas Occupations Code, and 22 TEX. ADMIN. CODE §217.12(4),(12)&(18).
4. The evidence received is sufficient cause pursuant to Section 301.452(b), Texas Occupations Code, to take disciplinary action against License Number 666296, heretofore issued to AMANDA GAY POYNER, including revocation of Respondent's professional license to practice nursing in the State of Texas.

### ORDER

IT IS THEREFORE AGREED and ORDERED, subject to ratification by the Board of Nurse Examiners, that RESPONDENT SHALL receive the sanction of a Warning with Stipulations, and 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 Professional Nurse Education, Licensure and Practice, 22 TEX. ADMIN. CODE §211.01 *et seq.* and this Order.

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

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

IT IS FURTHER AGREED that:

(1) RESPONDENT SHALL deliver the wallet-sized license issued to AMANDA GAY POYNER, to the office of the Board of Nurse Examiners within ten (10) days from date of ratification of this Order for appropriate notation.

(2) RESPONDENT SHALL, within one (1) year of entry of this Order, successfully complete a course in nursing documentation. RESPONDENT SHALL obtain Board approval of the course prior to enrollment. Home study courses and video programs will not be approved. The course shall be a minimum of six (6) hours in length of classroom time. In order for the course to be approved, the target audience shall include Registered Nurses. The course shall include content on the following: nursing standards related to accurate and complete documentation; legal guidelines for recording; methods and processes of recording; methods of alternative record-keeping; and computerized documentation. RESPONDENT SHALL cause the instructor to submit a Verification of Course Completion form, provided by the Board, to the Board's office 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.

**IT IS FURTHER AGREED, SHOULD RESPONDENT PRACTICE AS A REGISTERED NURSE IN THE STATE OF TEXAS, RESPONDENT WILL PROVIDE DIRECT PATIENT CARE AND PRACTICE IN A HOSPITAL, NURSING HOME, OR OTHER CLINICAL SETTING, UNDER THE FOLLOWING STIPULATIONS FOR ONE (1) YEAR OF EMPLOYMENT. PERIODS OF UNEMPLOYMENT OR OF EMPLOYMENT THAT DO NOT REQUIRE THE USE OF A REGISTERED NURSE (RN) LICENSE WILL NOT APPLY TO THIS STIPULATION PERIOD:**

(3) RESPONDENT SHALL notify each present employer in professional nursing of this Order of the Board and the stipulations 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 present employer within five (5) days of receipt of this Order. RESPONDENT SHALL notify all future employers in professional nursing of this Order of the Board and the stipulations 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.

(4) RESPONDENT SHALL CAUSE each present employer in professional 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 professional nurse.

(5) RESPONDENT SHALL be supervised by a Registered Nurse who is on the premises. The supervising RN 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 RN 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 NOT practice as a professional nurse in any critical care area for one (1) year of employment as a professional nurse. Critical care areas include, but are not limited to, intensive care units, emergency rooms, operating rooms, recovery rooms, and labor and delivery units.

(7) 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 professional nursing. These reports shall be completed by the Registered Nurse who supervises the RESPONDENT. These reports shall be submitted by the supervising Registered Nurse to the office of the Board at the end of each three (3) months for one (1) year of employment as a professional nurse.

(8) RESPONDENT SHALL participate in therapy with a "professional counselor" possessing credentials approved by the Board. The therapy shall address her anxiety issues and RESPONDENT SHALL CAUSE the therapist to submit written reports, on forms provided by the Board, as to the RESPONDENT's progress in therapy, rehabilitation and capability to safely practice professional nursing. The report must indicate whether or not the RESPONDENT's stability is sufficient to provide direct patient care safely. Such reports are to be furnished each and every month for three (3) months. If therapy is recommended for beyond three (3) months, the reports shall then be required at the end of each three (3) month period for the duration of the stipulation period, or until RESPONDENT is dismissed from therapy.

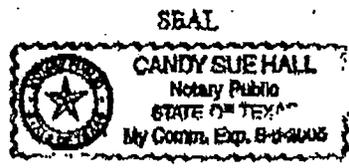
IT IS FURTHER AGREED, that upon full compliance with the terms of this Order, RESPONDENT SHALL be issued an unencumbered license and multistate licensure privileges, if any, to practice professional nursing in the State of Texas.

**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 professional nursing in the State of Texas, as a consequence of my non-compliance.

Signed this 2 day of Jan, 2004  
Amanda Gay Poyner  
AMANDA GAY POYNER, Respondent

Sworn to and subscribed before me this 2 day of Jan, 2004  
Candy Sue Hall  
Notary Public in and for the State of TEXAS

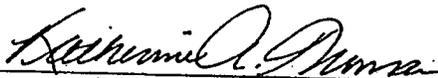


Approved as to form.

Nancy Roper Willson  
NANCY ROPER WILLSON, Attorney for Respondent

WHEREFORE, PREMISES CONSIDERED, the Board of Nurse Examiners for the State of Texas does hereby ratify and adopt the Agreed Order that was signed on the 2<sup>nd</sup> day of January, 20 04, by AMANDA GAY POYNER, License Number 666296, and said Order is final.

Effective this 22<sup>nd</sup> day of January, 20 04.



Katherine A. Thomas, MN, RN  
Executive Director on behalf  
of said Board