DOCKET NUMBER 507-11-0890

IN THE MATTER OF	§	BEFORE THE STATE OFFICE
PERMANENT CERTIFICATE	§	
NUMBER 134817	§	OF
ISSUED TO	§	
RHONDA MARLENE RAMOS	§	ADMINISTRATIVE HEARINGS

TEXAS BOARD OF NURSING
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.
Executive Director of the Board

OPINION AND ORDER OF THE BOARD

TO: RHONDA MARLENE RAMOS
PO BOX 58
BOLING, TX 77420

RENEE M. RUSCH
ADMINISTRATIVE LAW JUDGE
300 WEST 15TH STREET
AUSTIN, TEXAS 78701

At the regularly scheduled public meeting on April 28-29, 2011, 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 Rhonda Marlene Ramos with 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, except for Conclusion of Law Number 8, which is not

adopted by the Board and is hereby re-designated as a recommendation. All proposed findings of fact and conclusions of law filed by any party not specifically adopted herein are hereby denied.

Conclusion of Law Number 8

The Board declines to adopt Conclusion of Law Number 8 because it is a recommended sanction and not a proper conclusion of law. The Government Code §2001.058(e) authorizes the Board to change a finding of fact or conclusion of law made by the ALJ, or to vacate or modify an order issued by the ALJ if the Board determines that the ALJ did not properly apply or interpret applicable law, agency rules, written policies, or prior administrative decisions. The ALJ did not properly apply or interpret applicable law in this matter when she included her recommended sanction as a conclusion of law. A recommendation for a sanction is not a proper conclusion of law. An agency is the final decision maker regarding the imposition of sanctions. Once it has been determined that a violation of the law has occurred, the sanction is a matter for the agency's discretion. The choice of penalty is vested in the agency, not in the courts. The agency is charged by law with discretion to fix the penalty when it determines that the statute has been violated. Thus, 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. 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. [T]he Board, not the ALJ, is the decision maker concerning sanctions. See Texas State Board of Dental Examiners vs. Brown, 281 S.W. 3d 692 (Tex. App. - Corpus Christi 2009, pet filed); Sears vs. Tex. State Bd. of Dental Exam'rs, 759 S.W.2d 748, 751

(Tex.App.-Austin 1988, no pet); Firemen's & Policemen's Civil Serv. Comm'n vs. Brinkmeyer, 662 S.W.2d 953, 956 (Tex. 1984); Granek vs. Tex. State Bd. of Med. Exam'rs, 172 S.W.3d 761,781 (Tex.App.-Austin 2005, pet denied). Pursuant to applicable law, the Board re-designates Conclusion of Law Number 8 as a recommendation.

IT IS, THEREFORE, ORDERED THAT Permanent Certificate Number 134817, previously issued to RHONDA MARLENE RAMOS, to practice nursing in the State of Texas be, and the same is hereby, REVOKED.

IT IS FURTHER ORDERED that Permanent Certificate Number 134817, previously issued to RHONDA MARLENE RAMOS, upon receipt of this Order, be immediately delivered to the office of the Texas Board of Nursing.

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.

Entered this 28th day of April, 2011,

TEXAS BOARD OF NURSING

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

Attachment: Proposal for Decision; Docket No. 507-11-0890 (November 23, 2010).

State Office of Administrative Hearings

Cathleen Parsley
Chief Administrative Law Judge

November 23, 2010

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. In the Matter of Permanent Certificate Number 134817 Issued to 507-11-0890; Rhonda M. Ramos

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.

Sincerely,

RENEE M. RUSCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

RMR/sb
Enclosures
XC: Lance R. Brenton, 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 2 CDs and Certified Evidentiary Record) – **VIA INTER-AGENCY**
Rhonda Marlene Ramos, P. O. Box 58, Boling, TX 77420 - **VIA REGULAR MAIL**

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DOCKET NO. 507-11-0890

IN THE MATTER OF	§	BEFORE THE STATE OFFICE
	§	
PERMANENT CERTIFICATE	§	
	§	OF
NUMBER 134817 ISSUED TO	§	
	§	
RHONDA MARLENE RAMOS	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Staff of the Texas Board of Nursing (Staff/Board) seeks to revoke the vocational nursing license of Rhonda M. Ramos (Respondent) for failing to comply with the provisions of an Agreed Order, entered on January 11, 2010, requiring that Respondent submit to random drug screening pursuant to a Texas Peer Assistance Program for Nurses (TPAPN) participation agreement. Despite being sent proper notice, Respondent did not appear, nor was she represented at the hearing. Based on Respondent's failure to appear, Staff's allegations were accepted as true, establishing the violations. The Administrative Law Judge (ALJ) agrees with Staff's recommendation that Respondent's license should be revoked.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

A preliminary hearing (probable cause hearing) was held in this matter on November 1, 2010, before ALJ Renee M. Rusch in the William P. Clements Building, 300 West 15th Street, Fourth Floor, Austin, Texas. Despite being sent proper notice, Respondent did not appear, nor was she represented at the hearing. A probable cause order was entered on November 5, 2010, suspending Respondent's license indefinitely.

The hearing on the merits convened on November 22, 2010. Staff was represented by Lance Brenton, who moved for default based on Respondent's failure to appear. Staff offered competent evidence establishing jurisdiction and that appropriate notice of the hearing was provided to Respondent. Those matters are set out in the Findings of Fact and Conclusions of Law.

II. RECOMMENDATION

Based upon the following Findings of Fact and Conclusions of Law and in accordance with 1 TEX. ADMIN. CODE § 155.501, the ALJ granted Staff's motion for default, deems Staff's allegations to be true, and recommends that Respondent's license be revoked.

III. FINDINGS OF FACT

1. Rhonda Marlene Ramos (Respondent) is a Vocational Nurse licensed by the State of Texas, holding license number 134817.

2. On October 18, 2010, Staff of the Texas State Board of Nursing (Staff/Board) filed Formal Charges against Respondent. On that same date, the Board temporarily suspended Respondent's vocational nurse license, on the grounds that her continued practice posed a continuing and imminent threat to the public welfare.

3. A probable cause hearing was held on November 1, 2010, before Administrative Law Judge (ALJ) Renee M. Rusch at the hearing facilities of the State Office of Administrative Hearings (SOAH) in Austin, Texas, to determine whether Respondent's license should remain suspended pending a final hearing.

4. Respondent did not attend the probable cause hearing, nor was she represented at the hearing.

5. A probable cause order indefinitely suspending Respondent's license was issued on November 5, 2010.

6. On November 1, 2010, Staff mailed a copy of its Notice of Hearing, the charges, and the Order of Temporary Suspension to Respondent by certified mail, return receipt requested, to P.O. Box 58, Boling, Texas 77420, her last known address of record on file with the Board. According to the United States Postal Service Track and Confirm results, the notice was received and signed for at that address on November 8, 2010, at 10:31 a.m.

7. 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.

8. The notice of hearing contained the following language in capital letters in 12-point boldface type: "Failure to appear at the hearing in person or by legal representative, regardless of whether an appearance has been entered, will result in the allegations contained in the formal charges being admitted as true and the proposed recommendation of staff shall be granted by default."

9. The hearing convened on November 22, 2010, at SOAH's hearing facilities in Austin, Texas. Lance Brenton, Assistant General Counsel, appeared for Staff. Respondent did not appear, nor was she represented at the hearing.

10. Staff moved for a default, which was granted.

11. Respondent is under an Agreed Order, issued on January 11, 2010, requiring her to participate in the Texas Peer Assistance Program for Nurses (TPAPN).

12. On August 4, 2010, Respondent was dismissed from TPAPN for failing to continue to submit to random drug screening, as required by her TPAPN participation agreement, and she was referred to the Board for noncompliance.

13. Based upon Findings of Fact Nos.11 and 12, Respondent failed to comply with the January 11, 2010 Agreed Order, which requires that Respondent comply with all requirements of the TPAPN participation agreement during its term.

IV. CONCLUSIONS OF LAW

1. The Texas Board of Nursing (Board) has jurisdiction over this matter pursuant to the Nursing Practice Act (Act), TEX. OCC. CODE ch. 301.

2. SOAH has jurisdiction over matters related to the hearing in this matter, including the authority to issue a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ch. 2003.

3. The Board's rules authorize service of notice by sending it to Respondent's last known address as reflected in the Board's records. 22 TEX. ADMIN. CODE § 213.10(a).

4. Proper and timely notice was provided to Respondent pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ch. 2001.

5. The allegations stated in Findings of Fact Nos. 11-13 are deemed admitted, pursuant to 1 TEX. ADMIN. CODE § 155.501.

6. Based upon the foregoing Findings of Fact, Respondent violated TEX. OCC. CODE §§ 301.452(b)(1) and (10) and 22 TEX. ADMIN. CODE § 217.12(9) and (11)(B).

7. The Board is authorized to revoke a person's license for violations of the Act, pursuant to TEX. OCC. CODE §§ 301.452 and 301.453.

8. Based upon the foregoing Findings of Fact and Conclusions of Law, Respondent's license to practice as a vocational nurse should be revoked.

SIGNED November 23, 2010.

RENEE M. RUSCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS