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

DOCKET NUMBER 507-10-3000

IN THE MATTER OF	§	**BEFORE THE STATE OFFICE**
PERMANENT CERTIFICATE	§	
NUMBER 194141	§	**OF**
ISSUED TO	§	
LAVONDA JO HENDERSON	§	**ADMINISTRATIVE HEARINGS**

OPINION AND ORDER OF THE BOARD

TO: LAVONDA JO HENDERSON
P.O. Box 465
CARTHAGE, TX 75633-0465

CATHERINE C. EGAN
ADMINISTRATIVE LAW JUDGE
300 WEST 15TH STREET
AUSTIN, TEXAS 78701

At the regularly scheduled public meeting on October 21-22, 2010, 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 Lavonda Jo Henderson 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.

IT IS, THEREFORE, ORDERED THAT Permanent Certificate Number 194141, previously issued to LAVONDA JO HENDERSON, to practice nursing in the State of Texas be, and the same is hereby, REVOKED.

IT IS FURTHER ORDERED that Permanent Certificate Number194141, previously issued to LAVONDA JO HENDERSON, 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 privilege, if any, to practice nursing in the State of Texas.

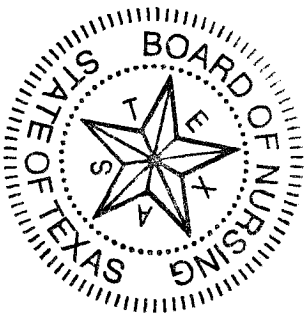
Entered this 22nd day of October, 2010.

TEXAS BOARD OF NURSING

Katherine A. Thomas

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

Attachment: Proposal for Decision; Docket No. 507-10-3000 (July 22, 2010).



State Office of Administrative Hearings

Cathleen Parsley
Chief Administrative Law Judge

July 22, 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. 507-10-3000; Texas Board of Nursing, Petitioner v. Lavonda Jo Henderson, Respondent

Dear Ms. Thomas:

Please find enclosed a Proposal for Decision Disposing of Case by 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,

Catherine C. Egan
Administrative Law Judge

CCE:nl
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 — **VIA INTER-AGENCY**
Lavonda Jo Henderson, P.O. Box 465. Carthage, TX 75633-0465-**VIA REGULAR MAIL**

SOAH DOCKET NO. 507-10-3000
(PERMANENT CERTIFICATE NO. 194141)

TEXAS BOARD OF NURSING,	§	**BEFORE THE STATE OFFICE**
Petitioner	§	
	§	
V.	§	**OF**
	§	
LAVONDA JO HENDERSON,	§	
Respondent	§	**ADMINISTRATIVE HEARINGS**

PROPOSAL FOR DECISION
DISPOSING OF CASE BY SUMMARY DISPOSITION

Staff of the Texas Board of Nursing (Staff/Board) seeks to revoke Lavonda Jo Henderson's (Respondent's) vocational nursing license issued under certificate number 194141 because of her criminal history and her failure to disclose her criminal history on her renewal application. On April 12, 2010, Staff filed a motion for summary disposition (the motion) with the State Office of Administrative Hearings (SOAH) in compliance with SOAH Rule 155.505,[1] asking for a determination in its favor as a matter of law.

On April 16, 2010, Order No. 2 was issued informing Respondent that, pursuant to SOAH Rule 155.505, she had 14 days to respond to Staff's motion. Respondent did not file a response to the motion. On May 28, 2010, the Administrative Law Judge (ALJ) issued Order No. 4, advising the parties that the case would be disposed of by summary disposition. Based on the motion, the attached supporting evidence, and the pleadings, the ALJ recommends that Respondent's license be revoked.

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[1] SOAH Rule of Practice and Procedure 1 TEX. ADMIN. CODE (TAC) § 155.505(a) provides:

Final decision or proposal for decision on summary disposition. The judge may issue a final decision or a proposal for decision on all or part of a contested case without an evidentiary hearing. The evidence must show that 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.

I. REASONS FOR DECISION

A. Notice

The Board licensed Respondent as a vocational nurse on July 27, 2004. By letters dated December 20, 2007, and January 26, 2009, Staff notified Respondent that an investigation had been opened against her and cited the reasons.[2] Respondent filed a written response on January 23, 2008, explaining the circumstances surrounding her criminal history.[3] On August 13, 2009, the Staff filed formal charges against Respondent. Again, Respondent explained the circumstances surrounding her convictions and requested that the Board impose a lesser sanction.[4]

The Department filed a request to docket the case on SOAH's docket on March 3, 2010. On March 26, 2010, Staff amended the formal charges and sent Respondent an amended notice of hearing and amended formal charges by certified mail. Respondent received the documents on March 30, 2010, as indicated by her signature on the green return receipt card.[5]

B. Criminal History

According to the motion and the attached certified documents, Respondent has the following criminal history:

- On August 26, 2005, an Order Granting Community Supervision was entered in Cause No. 04CR-16044, *State of Texas v. Lavonda Davis*, by the 123rd Judicial District Court of Shelby County, placing Respondent on community supervision for five years for the third degree felony offense of fraud. Respondent had knowingly obtained a controlled substance (fastin) by using a physician's Federal Drug Enforcement Administration (DEA) registration number without the physician's authorization.[6]
- On August 7, 2008, Respondent pled guilty of the criminal offense of "forgery," a State Jail felony offense, in Case No. F137812006, *State of Texas v. Lavonda Jo Jeanes*, in the 420th District Court of Nacogdoches, Texas. On August 29, 2008, the Court entered an

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[2] State Exs. 2 and 2a.

[3] State Ex. 5.

[4] State Ex. 5a.

[5] State Exs. 3b and 4a.

[6] State Ex. 6.

Order of Deferred Adjudication placing Respondent on five years' community supervision and requiring her to make restitution in the amount of $2,785 to Michael Jeanes, and imposing a $2,000 fine.[7]

- When Respondent pled guilty to criminal forgery, she violated the probationary terms of the 2005 Shelby County order. On November 6, 2008, the District Court of Shelby County, Texas, issued a Judgment Adjudicating Guilt: Sentenced to Institutional Division sentencing Respondent to two years in the Texas Department of Criminal Justice Institutional Division.

C. License Renewal Application

Respondent filed an on-line renewal application with the Board on April 16, 2006. Respondent answered "No" in response to the following question:

> Have you been convicted, adjudged guilty by a court, plead guilty, no contest or nolo contender to any crime in any state, territory or country, whether or not a sentence was imposed, including any pending criminal charges or unresolved arrest (excluding minor traffic violations) since the last renewal? This includes expunged offenses and deferred adjudications with or without prejudice of guilt. . . .[8]

D. Staff's Position

Staff argues that Respondent's conduct described above violated the Nursing Practice Act, TEX. OCC. CODE (the Act),[9] specifically:

1. Respondent's 2005 plea of guilty for felony fraud and her placement on community supervision for five years in Shelby County, Texas, violated Section 301.453(b)(10) the Act, and 22 TEX. ADMIN. CODE (TAC) § 217.12(13).

2. Respondent's failure to disclose this criminal activity in her 2006 on-line renewal application violated Sections 301.452(b)(2) and (b)(10) of the Act and 22 TAC § 271.12 (6)(H) and 6(I).

3. Respondent's 2008 criminal activity for forgery that resulted with her being placed on five years community supervision in Nacogdoches, Texas violated Section 301.453(b)(10) of the Act, and 22 TEX. ADMIN. CODE (TAC) § 217.12(13).

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[7] State Ex. 6.

[8] State Ex. 7, Question No. 2.

[9] TEX. OCC. CODE §§ 301.001 *et. seq.*

4. Respondent's adjudication of guilty for third degree felony fraud in November 2008 and subsequent imprisonment for two years in the Institutional Division of the Texas Department of Criminal Justice violated Section 301.452(b)(3) and (10) of the Act and 22 TAC § 217.12(13).[10]

Based on Respondent's conduct as described above, Staff requested the revocation of Respondent's vocational nursing license.

E. Respondent's Answer

Although Respondent did not file a response to the motion, she did reply to Staff's formal charges which Staff attached to the motion. Respondent did not dispute the facts presented above, but presented the circumstances surrounding each charge. According to Respondent in 2005, her mother called in the prescription for a controlled substance using a doctor's DEA number without his authorization. Because she was fighting for custody of her children at the time, Respondent took deferred adjudication.[11]

As for the misleading answer regarding her criminal history on her 2006 renewal application, Respondent claimed her husband filled in the form without her assistance. Finally, she explained that the forgery charge happened during her divorce from her husband, and her attorney failed to tell her that she could no longer sign her husband's name to checks.[12]

Respondent admitted that a judgment was entered against her by the 123rd District Court of Shelby County on November 6, 2008, for violating the conditions of her 2005 community supervision order. As a result, she served time in the Texas Department of Criminal Justice Institutional Division. Respondent represented that she was released from prison on August 25, 2009.[13]

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[10] State Ex. 9.

[11] State Ex. 5.

[12] State Ex. 5a.

[13] *Id.*

II. ALJ'S ANALYSIS AND RECOMMENDATION

An ALJ may issue a proposal for decision on all or part of a contested case without an evidentiary hearing under SOAH Rule 155.505 where there is no genuine issue of material fact, and a party is entitled to a decision in its favor as a matter of law. As pointed out by Staff, the Board is subject to the provisions of Chapter 53 of the Texas Occupations Code which sets out how a criminal conviction may affect a licensee. Section 53.021(b) states that "(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."

Staff provided certified copies of Respondent's conviction for felony fraud and the subsequent judgment remanding Respondent to the Institutional Division of the Texas Department of Criminal Justice. Once Respondent was incarcerated for a felony conviction, her vocational nursing license was automatically revoked by operation of law pursuant to TEX. OCC. CODE § 53.021.[14]

As for the other pending charges against Respondent, the ALJ finds that Respondent presented facts that might serve as mitigating factors in an evidentiary hearing. But, because Respondent's vocational license was revoked by operation of law when she was incarcerated, there is no reason to address the remaining charges. Accordingly, the ALJ recommends that Respondent's vocational nursing license be revoked.

III. FINDINGS OF FACT

1. LaVonda Jo Henderson (Respondent) was licensed as a vocational nurse under permanent certificate number 194141 by the Texas Board of Nursing (Board) on July 27, 2004.

2. On August 26, 2005, an Order Granting Community Supervision was entered in Cause No. 04CR-16044, *State of Texas v. Lavonda Davis*, by the District Court of Shelby County, Texas, placing Respondent on community supervision for five years for the third degree felony offense of fraud.

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[14] *See also,* Op. Tex. Att'y Gen. No. GA-0064.

3. On August 29, 2008, an Order of Deferred Adjudication was entered in Case No. F137812006, *State of Texas v. Lavonda Jo Jeanes*, by the 420th District Court of Nacogdoches, Texas, placing Respondent on five years' community supervision for the state jail felony offense of forgery.

4. As a result of being placed on deferred adjudication for forgery, Respondent was in violation of the conditions of her community supervision imposed by the 123rd District Court of Shelby County, Texas, for the third degree felony offense of fraud.

5. On November 6, 2008, in Cause No. 04CR-16044, *State of Texas v. Lavonda Davis*, the District Court of Shelby County, Texas, issued a Judgment Adjudicating Guilt against Respondent for the third degree felony offense of fraud and sentenced her to the Texas Department of Criminal Justice Institutional Division for two years of imprisonment.

6. On March 5, 2010, Staff sent the notice of administrative hearing to Respondent by certified mail.

7. On March 26, 2010, Staff sent Respondent the First Amended Notice of Hearing and the First Amended Formal Charges by certified mail. Respondent received both on March 30, 2010.

8. 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.

9. On April 12, 2010, Staff filed a Motion for Summary Judgment (Staff's motion) asserting that 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.

10. Order No. 2 gave Respondent notice that she needed to file a response to Staff's motion by May 3, 2010, which she failed to do.

11. In Order No. 4, issued on May 28, 2010, the Administrative Law Judge granted Staff's motion for summary disposition and closed the evidentiary record.

12. Respondent was incarcerated for a felony offense in the Texas Department of Criminal Justice Institutional Division.

IV. CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter pursuant to TEX. OCC. CODE ANN. ch. 301.

2. The State Office of Administrative Hearings 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 ANN. ch. 2003.

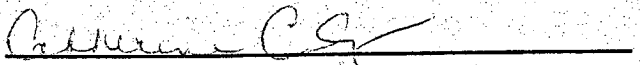
3. Respondent received proper and timely notice of the hearing. TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.

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 office noticed, stipulations, or evidence of record show that 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.

5. Based on the Findings of Fact, Respondent is not entitled to hold a license. TEX. OCC. CODE ANN. § 53.021(b) and Op. Tex. Att'y Gen. No. GA-0064 (2003).

6. Based on the foregoing Findings of Fact and Conclusions of Law, Respondent's vocational nursing license issued under permanent certificate number 194141 should be revoked.

Signed July 22, 2010.



CATHERINE C. EGAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS