DOCKET NUMBER 507-10-3574

IN THE MATTER OF	§	**BEFORE THE STATE OFFICE**
PERMANENT CERTIFICATE	§	
NUMBER 215916	§	**OF**
ISSUED TO	§	
MARIAN ALLEN	§	**ADMINISTRATIVE HEARING**

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: MARIAN ALLEN
C/O CLIFF MCCORMACK, ATTORNEY
174 SOUTH GUADALUPE, SUITE 106
SAN MARCOS, TX 78666

MICHAEL J. BORKLAND
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 Marian Allen 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. The Respondent filed a Motion for Rehearing with the State Office of Administrative Hearings on June 14, 2010, and Staff timely filed a Response to Respondent's Motion for Rehearing. The Administrative Law Judge (ALJ) treated the Respondent's Motion for Rehearing as exceptions to the PFD and Staff's Response as a reply to the exceptions, and issued a ruling on June 28, 2010, declining to make any changes to the PFD.

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 215916, previously issued to MARIAN ALLEN, to practice nursing in the State of Texas be, and the same is hereby, REVOKED.

IT IS FURTHER ORDERED that Permanent Certificate Number 215916, previously issued to MARIAN ALLEN, 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. 507-10-3574 (May 26, 2010).

State Office of Administrative Hearings

Cathleen Parsley
Chief Administrative Law Judge

May 26, 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. 507-10-3574; In the Matter of Permanent Certificate No. 215916 Issued to Marian Allen

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,

Michael J. Borkland
Administrative Law Judge

MJB/pp
Enclosures
XC: Nikki R. Hopkins, Staff Attorney, 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 – (No Certified Evidentiary Record to return) – **VIA INTER-AGENCY**
Cliff McCormack, Attorney, 174 South Guadalupe, Suite 106, San Marcos, TX 78666 -**VIA REGULAR MAIL**

DOCKET NO. 507-10-3574

IN THE MATTER OF PERMANENT	§	BEFORE THE STATE OFFICE
	§	
CERTIFICATE NUMBER 215916	§	OF
	§	
ISSUED TO MARIAN ALLEN	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION
DISPOSING OF CASE BY SUMMARY DISPOSITION

Staff of the Texas Board of Nursing (Staff/Board) brought this action against Marian Allen (Respondent), a Licensed Vocational Nurse, for having pled guilty to a state jail felony offense. The Administrative Law Judge (ALJ) recommends that Respondent's license be revoked.

I. REASONS FOR DECISION

Respondent is a Licensed Vocational Nurse, holding permanent certificate number 215916 issued by the Board. On February 26, 2009, Respondent entered a plea of guilty to abandoning a child, a state jail felony offense.[1] Adjudication of the offense was deferred and Respondent was placed on probation for five years. On April 12, 2010, Staff filed a motion for summary disposition, citing Section 301.4535(b) of the Texas Occupations Code as authority for revoking Respondent's license.[2] Respondent replied to Staff's motion on May 3, 2010. Staff provided a certified copy of the judgment showing that Respondent pled guilty to the offense of abandoning a child. The ALJ granted staff's motion for summary disposition on May 14, 2010.[3] Accordingly, the ALJ recommends that Respondent's license be revoked.

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[1] TEX. PEN. CODE § 22.041.

[2] TEX. OCC. CODE § 301.4535 provides:

(a) The board shall suspend a nurse's license or refuse to issue a license to an applicant on proof that the nurse or applicant has been initially convicted of:

(8) intentionally, knowingly, or recklessly abandoning or endangering a child under Section 22.041, Penal Code[.]

(b) On final conviction or a plea of guilty or nolo contendere for an offense listed in Subsection (a), the board, as appropriate, may not issue a license to an applicant, shall refuse to renew a license, or shall revoke a license.

[3] SOAH Rule of Practice and Procedure 1 TEX. ADMIN. CODE § 155.505 provides:

(a) 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.

II. FINDINGS OF FACT

1. Marian Allen (Respondent), a Licensed Vocational Nurse, holds permanent certificate number 215916 issued by the Texas Board of Nursing (Board).

2. In a judgment entered February 26, 2009, in Case No. CR-08-883, in the 22nd District Court of Hays County, Texas, Respondent pled guilty to abandoning a child, a state jail felony offense.

3. On April 7, 2010, by certified mail, Staff mailed notice of hearing to Respondent, in care of Cliff McCormack, Attorney, 174 South Guadalupe, Suite 106, San Marcos, Texas 78666. The notice of hearing was received on April 8, 2010, at 8:59 a.m.

4. The notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.

5. On April 12, 2010, Board Staff filed a motion for summary disposition stating that the materials on file in the case show there is no genuine issue as to any material fact and the Board is entitled to a decision in its favor as a matter of law.

6. On May 3, 2010, Respondent filed her response to the Staff's motion for summary disposition.

7. By issuance of Order No. 1 on May 14, 2010, the Administrative Law Judge granted Staff's motion for summary disposition.

III. CONCLUSIONS OF LAW

1. The Texas Board of Nursing (Board) has jurisdiction over this matter pursuant to the Nursing Practice Act, TEX. OCC. CODE 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 ch. 2003.

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

4. A contested case may be disposed of by summary disposition without 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.

5. Abandoning a child is a state jail felony. TEX. PEN. CODE § 22.041.

6. The Board is required to revoke the license of an individual who pleads guilty to the crime of abandoning a child, pursuant to TEX. OCC. CODE §§ 301.4535(a) and (b).

7. Based upon the foregoing Findings of Fact and Conclusions of Law, Permanent Certificate Number 215916 held by Respondent should be revoked.

SIGNED May 26, 2010.

MICHAEL J. BORKLAND
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS