

**TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN**

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**NO. 03-15-00742-CV**

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**Texas Board of Nursing, Appellant**

**v.**

**Darlene Moriarty, Appellee**

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**FROM THE DISTRICT COURT OF TRAVIS COUNTY, 53RD JUDICIAL DISTRICT  
NO. D-1-GN-14-002410, HONORABLE AMY CLARK MEACHUM, JUDGE PRESIDING**

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**MEMORANDUM OPINION**

Darlene Moriarty, a nurse licensed by the Texas Board of Nursing (the Board), filed a suit for judicial review of the Board's final order in an administrative disciplinary proceeding. The Board found that Moriarty engaged in conduct that warranted the sanction of a reprimand with certain stipulations to her continued practice of nursing and a fine, prompting Moriarty's suit. In response, the Board filed a plea to the jurisdiction asserting that Moriarty's petition was untimely filed and that the district court therefore lacked subject-matter jurisdiction. *See* Tex. Gov't Code § 2001.176 (person initiates judicial review by filing petition not later than thirtieth day after date on which decision appealed is final);<sup>1</sup> *Jones v. State Bd. of Educator Certification*, 315 S.W.3d 237,

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<sup>1</sup> Certain sections of Texas Government Code chapter 2001, the Administrative Procedure Act (APA), were amended by the 84th Legislature, effective September 1, 2015. *See* Act of May 22, 2015, 84th Leg., R.S., ch. 625, 2015 Tex. Gen. Laws 2058. The changes made apply only to an administrative hearing that is set by the State Office of Administrative Hearings, or another state agency conducting an administrative hearing, on or after September 1, 2015. Cases in which the

243 (Tex. App.—Austin 2010, pet. denied) (when petition not filed within thirty-day period, district court had no jurisdiction over suit for judicial review). The district court denied the plea to the jurisdiction. We will reverse the district court’s order and dismiss the case for lack of subject-matter jurisdiction.

## DISCUSSION

After a contested-case hearing before an administrative law judge (ALJ), the ALJ submitted a Proposal for Decision (PFD) to the Board that recommended a reprimand with stipulations for two years.<sup>2</sup> The Board rendered its opinion and order on April 16, 2014. Moriarty’s counsel received a copy of the Board’s opinion and order on April 24, 2014. Moriarty timely filed a motion for rehearing, which the Board did not act on. Consequently, the motion for rehearing was overruled by operation of law on June 8, 2014, forty-five days after counsel received a copy of the Board’s order, making the Board’s order final on that day. *See* Tex. Gov’t Code § 2001.146(c) (if agency fails to act, motion for rehearing is overruled by operation of law forty-five days after date on which party or party’s attorney was notified of agency’s decision or order), .144(a)(2)(B) (if motion for rehearing filed in contested case, decision is final on date motion is overruled by operation of law). The deadline for Moriarty to file a suit for judicial review was July 8, 2014.

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hearing was set before September 1, 2015 are governed by the law in effect when the hearing was set, and the former law is continued in effect for that purpose. Citations in this opinion are to the pre-amendment version of the APA.

<sup>2</sup> The parties are familiar with the facts of the case, the sanction recommended by the ALJ, and the action taken by the Board with respect to Moriarty’s license. Accordingly, we will not recite them here except as necessary to advise the parties of the Court’s decision and the basic reasons for it. *See* Tex. R. App. P. 47.1.

*See id.* § 2001.176. Moriarty did not file her suit until July 18, 2014, and it was therefore untimely. The district court therefore lacked-subject matter jurisdiction over Moriarty’s suit for judicial review and erred by denying the Board’s plea to the jurisdiction. *See Otieno v. Texas Bd. of Nursing*, No. 03-14-00251, 2015 WL 4909766, at \*1 (Tex. App.—Austin Aug. 11, 2015, no pet.) (mem. op.); *Jones*, 315 S.W.3d at 243; *Texas Comm’n on Envtl. Quality v. Kelsoe*, 286 S.W.3d 91, 97 (Tex. App.—Austin 2009, pet. denied) (district court’s subject-matter jurisdiction over suit for judicial review not invoked when party seeking review fails to timely file suit).

On appeal, Moriarty asserts that her motion for rehearing was not overruled by operation of law until forty-five days after the motion was filed. This argument is contradicted by the plain language of the statute, which provides that the motion for rehearing is overruled by operation of law forty-five days after the date on which the party or the party’s attorney is notified of the agency’s decision or order. *See* Tex. Gov’t Code § 2001.146(c); *Otieno*, 2015 WL 4909766, at \*1. Moreover, the case Moriarty relies on in her brief, *AGAP Life Offerings, LLC v. Texas State Securities Board*, includes the following explanation of the requirements for initiating a suit for judicial review pursuant to the APA:

Under the Administrative Procedure Act, a person seeking to initiate judicial review of an agency determination must file a petition no “later than the 30th day after the date on which the decision that is the subject of the complaint is final and appealable.” Tex. Gov’t Code § 2001.176(a). In addition to this requirement, the Administrative Procedure Act sets out the circumstances under which an agency decision is final. *See id.* § 2001.144(a). In relevant part, the Act states that if a timely motion for rehearing is filed, the decision is final when the motion for rehearing is overruled by the agency or when the motion is overruled by operation of law. *See id.* § 2001.144(a)(2). Regarding rulings on motions for rehearing, the Act explains that if an agency does not act on a motion for rehearing, the motion

is overruled by operation of law 45 days *after a party received notice of the order*.  
*See id.* § 2001.146(c).

*AGAP Life Offerings, LLC v. Texas State Secs. Bd.*, No. 03-11-00535-CV, 2013 WL 6464537, at \*1 (Tex. App.—Austin Nov. 26, 2013, no pet.) (mem. op.) (emphasis added). The deadline for filing Moriarty’s suit for judicial review was July 8, 2014. Because she did not file it until July 18, 2014, her suit was untimely, the trial court lacked subject-matter jurisdiction, and the plea to the jurisdiction should have been granted.

### CONCLUSION

For the reasons stated in this opinion, we reverse the trial court’s order denying the Board’s plea to the jurisdiction, grant the plea, and dismiss Moriarty’s suit for lack of subject-matter jurisdiction.

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Scott K. Field, Justice

Before Justices Puryear, Goodwin, and Field

Reversed and Dismissed

Filed: May 24, 2016