

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

February 14, 2001

Katherine A. Thomas
Executive Director
333 Guadalupe, Tower III, Suite 460
Austin, Texas 78701

HAND DELIVERY


RE: Docket No. 507-01-0762; In the Matter of Permanent Certificate No. Darrah A. Buitron

Dear Ms. Thomas:

Enclosed please find a Proposal for Decision and a proposed Order in the above-referenced cause for the consideration of the Board of Nurse Examiners. Copies of the Proposal and Proposed Order are being sent to James Johnston, General Counsel, Phong Phan, Assistant General Counsel and Darrah A. Buitron. For reasons discussed in the Proposal, I have recommended Respondent's nursing license be suspended and that renewal be denied until Respondent pays a fine previously imposed by Board Order and successfully completes a course in nursing jurisprudence.

Pursuant to the Administrative Procedure Act, each party has the right to file exceptions to the Proposal, accompanied by supporting briefs. Exceptions, replies to the exceptions, and supporting briefs must be filed with the Board according to the agency's rules, with a copy to the State Office of Administrative Hearings. A party filing exceptions, replies, and briefs must serve a copy on the other party hereto.

Sincerely,


James W. Norman
Administrative Law Judge

JWN/dc

Enclosures

xc: James Johnston, General Counsel, and Phong Phan, Assistant General Counsel, General Counsel, Board of Nurse Examiners, 333 Guadalupe, Tower III, Suite 450, Austin, Texas 78701 - **HAND DELIVERY**
Darrah A. Buitron, 4808 Brushy Ridge, Austin, Texas 78744 - **REGULAR U.S. MAIL**
Rommel Corro, Docket Clerk, State Office of Administrative Hearings - **HAND DELIVERY**

William P. Clements Building
Post Office Box 13025 ♦ 300 West 15th Street, Suite 502 ♦ Austin Texas 78711-3025
(512) 475-4993 Docket (512) 475-3445 Fax (512) 475-4994

SOAH DOCKET NO. 507-01-0762

IN THE MATTER OF	§	BEFORE THE STATE OFFICE
PERMANENT CERTIFICATE	§	
NUMBER 614248	§	OF
ISSUED TO	§	
DARRAH A. BUITRON	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Staff of the Texas State Board of Nurse Examiners (Board) seeks discipline against Darrah A. Buitron (Respondent) for violating certain provisions of the Nursing Practice Act (Act), TEX. OCC. CODE ANN. ch. 301,¹ and the Board's rules. 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, and established the violation. The Administrative Law Judge (ALJ) agreed with Staff's final recommendation that Respondent's nursing license be suspended and that renewal be denied until Respondent pays a fine previously imposed by Board Order and successfully completes a course in nursing jurisprudence.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The hearing convened December 14, 2000, before ALJ James W. Norman in the Stephen F. Austin Building, 1700 N. Congress Ave., Suite 1100, Austin, Texas. General Counsel James W. Johnston and Assistant General Counsel Phong Phan represented Staff. The hearing was recessed to and concluded on December 27, 2000. Staff moved for a default based on Respondent's failure to appear.

There are no contested issues of jurisdiction or notice in this proceeding, and the Staff offered competent evidence establishing that appropriate notice of the charges and of the hearing were 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 § 155.55, the ALJ recommends that Staff's motion for default be granted and that Respondent's license to practice professional nursing be suspended and that she be denied renewal until such time as she pays a \$250 fine previously imposed by Board Order and successfully completes a course in nursing jurisprudence.

¹ The Nursing Practice Act was formerly found at TEX. REV. CIV. STAT. ANN. art. 4525. It is now codified in the TEX. OCC. CODE ANN. ch. 301, effective September 1, 1999. The codification made no substantive changes to the Act, and all citations to the Act will be to the Occupations Code, even if the violation(s) occurred prior to the codification.

III. FINDINGS OF FACT

1. Darrah A. Buitron (Respondent), a nurse licensed by the State of Texas, holds permanent certificate number 614248.
2. The Board filed formal charges against Respondent on September 20, 2000.
3. On September 27, 2000, the Board mailed a copy of the charges to Respondent by certified mail, return receipt requested, at her address of record: 4808 Brushy Ridge, Austin, TX 78744. Respondent was given an opportunity to show compliance with all requirements of law.
4. On November 9, 2000, the Board mailed notice of the hearing to Respondent by certified mail, return receipt requested, at the address in Finding of Fact No. 3.
5. 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.
6. 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."
7. Respondent did not appear and was not represented at the hearing.
8. The formal charge, which was set forth in the notice of hearing, contained the following allegation:

CHARGE I.

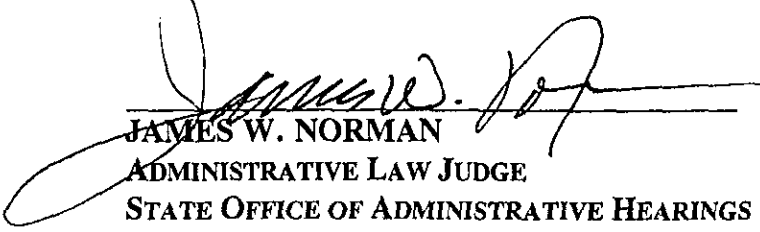
Respondent, on March 27, 1998, failed to comply with the Board Order issued on December February 10, 1998, by the Board of Nurse Examiners for the State of Texas. Non-compliance is the result of Respondent's failure to pay a monetary fine in the amount of \$250.

IV. CONCLUSIONS OF LAW

1. The Texas State Board of Nurse Examiners (Board) has jurisdiction over this matter pursuant to the Nursing Practice Act (the Act), TEX. OCC. CODE ANN. § 301.453 (Vernon 2000).

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 (Vernon 2000) and § 301.454 of the Act.
3. Proper and timely notice was effected upon Respondent pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 (Vernon 2000) and 22 TEX. ADMIN. CODE (TAC) §§ 213.10 and 213.22 (2000).
4. The allegation stated in Finding of Fact No. 8 is deemed admitted. 1 TAC § 155.55.
5. A default should be entered against Respondent pursuant to 1 TAC § 155.55.
6. Respondent is subject to disciplinary action under § 301.452(b)(1) of the Act.
7. Pursuant to § 301.453 of the Act, Respondent's license to practice professional nursing in the State of Texas should be suspended and denied renewal until such time as she pays a \$250 fine and successfully completes a course in nursing jurisprudence.

SIGNED this 13th day of February 2001.



JAMES W. NORMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

DOCKET NUMBER 507-01-0762

IN THE MATTER OF	§	BEFORE THE STATE OFFICE
PERMANENT CERTIFICATE	§	
NUMBER 614248	§	OF
ISSUED TO	§	
DARRAH A. BUITRON	§	ADMINISTRATIVE HEARINGS

ORDER OF THE BOARD

TO: Darrah A. Buitron
4808 Brushy Ridge
Austin, Texas 78744

During an open meeting held in Austin, Texas, the Board of Nurse Examiners finds that after proper and timely notice was given, the above-styled case was heard by an Administrative Law Judge who made and filed a proposal for decision containing the Administrative Law Judge's findings of fact and conclusions of law. The proposal for decision 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 Board of Nurse Examiners, after review and due consideration of the proposal for decision, and exceptions and replies filed, if any, adopts the findings of fact and conclusions of law of the Administrative Law Judge 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.

NOW, THEREFORE, IT IS ORDERED, subject to ratification by the Board of Nurse Examiners, that License Number 614248, previously issued DARRAH A. BUITRON to practice professional nursing in Texas, is hereby SUSPENDED.

IT IS FURTHER AGREED AND ORDERED that 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.

RESPONDENT SHALL deliver the wallet-size license issued to DARRAH A. BUITRON, to the office of the Board of Nurse Examiners within ten (10) days of the date of this Order for appropriate notation.

IT IS FURTHER AGREED and ORDERED that Respondent's license SHALL be Suspended until such time that the following terms and conditions are met in full:

(1) RESPONDENT SHALL pay a monetary fine in the amount of two hundred fifty dollars (\$250.00). Payment SHALL be made directly to the Board of Nurse Examiners in the form of cashier's check or U.S. money order. Partial payments will not be accepted.

(2) RESPONDENT SHALL successfully complete a course in nursing jurisprudence. RESPONDENT SHALL obtain Board approval of the course prior to enrollment. Home study courses and video programs will not be approved. In order for the course to be approved, the target audience must include registered nurses. It must be a minimum of six (6) contact hours in length. The course's content shall include the Nursing Practice Act, standards of practice, and documentation of care. Courses focusing on malpractice issues will not be accepted. RESPONDENT SHALL CAUSE the sponsoring institution to submit a Verification of Course Completion form, provided by the Board, to the Office of the Board to verify RESPONDENT's successful completion of the course. This course is to be taken in addition to any continuing education requirements the Board may have for relicensure.

IT IS FURTHER ORDERED, that upon full compliance with the terms of this Order, RESPONDENT SHALL be issued an unencumbered license to practice professional nursing in the State of Texas.

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

Entered this 13th day of March, 2001.

BOARD OF NURSE EXAMINERS
FOR THE STATE OF TEXAS

BY: *Katherine A. Thomas*
KATHERINE A. THOMAS, MN, RN
EXECUTIVE DIRECTOR ON BEHALF OF SAID BOARD