

**DOCKET NUMBER 507-05-7547**

IN THE MATTER OF	§	BEFORE THE STATE OFFICE
PERMANENT CERTIFICATE	§	
NUMBER 548885	§	OF
ISSUED TO	§	
<b>BRIAN DOUGLAS ZALESKY</b>	§	ADMINISTRATIVE HEARINGS

**ORDER OF THE BOARD**

TO: Brian Douglas Zalesky  
PO Box 387  
Judson, Texas 75660

During 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 that Permanent Certificate Number 548885, previously issued to BRIAN DOUGLAS ZALESKY, to practice professional nursing in the State of Texas be, and the same is hereby, REVOKED.

IT IS FURTHER ORDERED that Permanent Certificate Number 548885, previously issued to BRIAN DOUGLAS ZALESKY, upon receipt of this Order, be immediately delivered to the office of the Board of Nurse Examiners for the State of Texas.

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

Entered this 13th day of December, 2005.

BOARD OF NURSE EXAMINERS  
FOR THE STATE OF TEXAS

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

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

November 2, 2005

Katherine A. Thomas, M.N., R.N.  
Executive Director  
Board of Nurse Examiners for the State of Texas  
333 Guadalupe, Tower III, Suite 460  
Austin, Texas 78701

**HAND DELIVERY**

**RE: Docket No. 507-05-7547; In the Matter of Permanent Certificate  
Number 548885 Issued to Brian Douglas Zelesky, R.N.**

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 § 155.59(c), a SOAH rule which may be found at [www.soah.state.tx.us](http://www.soah.state.tx.us).

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Norman".

James W. Norman  
Administrative Law Judge

JWN/sb  
Enclosures

XC: Docket Clerk, State Office of Administrative Hearings - **VIA HAND DELIVERY**  
Elizabeth Higginbotham, Assistant General Counsel, BNE, 333 Guadalupe, Tower III, Ste. 460, Austin, TX  
78701 - **VIA HAND DELIVERY**  
Ryan Sprott, Legal Assistant, BNE, 333 Guadalupe, Tower III, Ste. 460, Austin, TX 78701 - **VIA HAND  
DELIVERY**  
Brian Douglas Zalesky, P. O. Box 387, Judson, Texas 75660-**VIA REGULAR MAIL**

<b>IN THE MATTER OF</b>	§	<b>BEFORE THE STATE OFFICE</b>
	§	
<b>PERMANENT CERTIFICATE</b>	§	
	§	<b>OF</b>
<b>NUMBER 548885 ISSUED TO</b>	§	
	§	
<b>BRIAN DOUGLAS ZELESKY, R.N.</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

Staff of the Texas State Board of Nurse Examiners (Staff/Board) seeks to discipline Brian Douglas Zelesky (Respondent) in accordance with provisions of the Nursing Practice Act (Act), TEX. OCC. CODE ANN. ch. 301, and the Board's rules. Despite being sent proper notice, Respondent did not appear and was not represented at the hearing. Based on Respondent's failure to appear, the Administrative Law Judge (ALJ) granted Staff's motion for default, resulting in the allegations in the Notice of Hearing (NOH) being deemed admitted. The ALJ agrees with Staff's recommendation that Respondent's license should be revoked.

**I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY**

The hearing convened on October 25, 2005, before ALJ James W. Norman in the William P. Clements Building, 300 West 15<sup>th</sup> Street, Fourth Floor, Austin, Texas. Staff was represented by Elizabeth Higginbotham, Assistant General Counsel.

Staff offered competent evidence showing that appropriate notice of the hearing was provided to Respondent. In compliance with 22 TEX. ADMIN. CODE (TAC) § 213.10, Staff offered evidence<sup>1</sup> that it sent the NOH to Respondent by certified mail, return receipt requested to Respondent's address of record at the time of mailing. Other matters concerning the NOH are set out in the Findings of Fact and Conclusions of Law.

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<sup>1</sup> Exs. 4 and 4a.

## II. DISCUSSION

The ALJ concludes that Staff sufficiently proved its allegations and its requested disciplinary action. He recommends that Respondent's license be revoked.

When Respondent failed to appear at the hearing, Staff moved for a default under 1 TAC § 155.55. The ALJ granted the motion and the allegations in the NOH were deemed admitted. Pertinent allegations in the NOH include the following: "Respondent's condition may prevent him from delivering safe nursing care" and "Respondent exhibited unusual and bizarre behavior which, included, but [was] not limited to, expressions of grandiose delusions."

The NOH said Respondent was employed as a nurse in Texas at the Rusk State Hospital, utilizing a multi-state compact privilege through his Arizona license. The NOH identified Respondent's "expressions of grandiose delusions" as his claim to have dated several movie stars; claim to have made movies and been a stunt double for well-known movie stars, including Arnold Schwarzenegger; claim to have been Britney Spears' babysitter, that he gave her parents \$10,000, and that he allowed them to stay in his California house; statement that Nicole Simpson was not dead but being held in Northern California by agents of the government; claim that he was paid to make a movie where he shot a policeman, which was later sold to a news agency; claim to own a multi-million dollar mansion in California which he rents to movie stars; claims to have dual citizenship in Russia and the United States, that, in Russia, he shot a man in the face while the man was raping a woman, and that he served five years in a Russian prison for this offense, but was released after one year for good behavior; and claim to have worked in a private psychiatric facility in Austin, Texas, where the Mafia would take away employees there who said anything bad about the facility.

These findings support a conclusion that the Board may take disciplinary action under TEX. OCC. CODE ANN. (the Act) § 401.452(b)(12), which authorizes the board to discipline a licensee for a lack of fitness to practice because of a mental or physical health condition that could result in injury to a patient or to the public and under § 301.452(b)(10) of the Act, which authorizes

disciplinary action for unprofessional conduct that in the Board's opinion, is likely to injure the public. The Board's rules at 22 TAC § 217.12(12), in effect at the time of the alleged acts, defined unprofessional conduct to include accepting an assignment when one's physical or emotional condition prevents the safe and effective delivery of care.

Carol Marshall, a licensed registered nurse employed at the Board as a nursing consultant, testified that Respondent's license should be revoked. She said her duties include interpreting and applying the Nursing Practice Act and the Board's rules with regard to a variety of practice issues. She is familiar with the Board's practice in imposing disciplinary action. She cited § 301.452(b)(8) of the Act, authorizing the Board to discipline a licensee if his or her license to practice nursing has been revoked, suspended, or denied in any other state. Staff tendered into evidence a State of Arizona State Board of Nursing consent agreement in which the Arizona Board suspended Respondent's license for an indefinite time pending completion of a psychiatric examination regarding a determination of safety to practice nursing.<sup>2</sup>

Because of the issue concerning Respondent's mental fitness to hold a nursing license, Ms. Marshall recommended that Respondent's license be revoked. She indicated that Respondent could petition for his license to be reissued when his Arizona license is reinstated.

Ms. Marshall testified Respondent's license is inactive because of his failure to pay license and license-renewal fees. The Board tendered evidence showing Respondent's license status as "Delinquent."<sup>3</sup> A delinquent license holder may bring his or her license up-to-date by completing forms and certain continuing education requirements, paying current and late fees, and paying any applicable fines.<sup>4</sup>

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<sup>2</sup> Ex. 5.

<sup>3</sup> Ex. 1.

<sup>4</sup> Section 301.301 of the Act; 22 TAC § 217.6.

The ALJ agrees with Ms. Marshall's testimony that Respondent should not be licensed at this time because of issues concerning his ability to safely provide nursing services. He therefore agrees that Respondent's delinquent license should be revoked.

### III. FINDINGS OF FACT

1. Brian Douglas Zalesky (Respondent), a registered nurse licensed by the State of Texas, holds a delinquent license under permanent certificate number 548885.
2. Staff of the Texas State Board of Nurse Examiners (Staff/Board) filed its Formal Charges against Respondent on November 19, 2004.
3. On July 11, 2005, and October 10, 2005, Staff mailed a copy of its Notice of Hearing and the charges to Respondent by certified mail, return receipt requested, to Respondent's address of record at the time of mailing.
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. The Notice of Hearing contained the following language in capital letters in 12-point or greater 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."
6. Respondent did not appear and was not represented at the hearing.
7. Respondent exhibited unusual and bizarre behavior while employed at the Rusk State Hospital which included, but was not limited to, expressions of grandiose delusions.
  - a. He made claims that he dated several movie stars.
  - b. He claimed to have made movies and been a stunt double for well-known movie stars, including Arnold Schwarzenegger.
  - c. He claimed to have been Britney Spears' babysitter and that he gave her parents \$10,000 and allowed them to stay in his California house.

- d. He stated that Nicole Simpson was not dead but being held in Northern California by agents of the government.
  - e. He claimed he was paid to make a movie where he shot a policeman, which was later sold to a news agency.
  - f. He claimed to own a multi-million dollar mansion in California which he rents to movie stars.
  - g. He claimed to have dual citizenship in Russia and the United States, that, in Russia, he shot a man in the face while the man was raping a woman, and that he served five years in a Russian prison for this offense, but was released after one year for good behavior.
  - h. He claimed to have worked in a private psychiatric facility in Austin, and that the Mafia would take away employees there who said anything bad about the facility.
8. Respondent's condition may prevent him from delivering safe nursing care.
  9. Respondent entered into a consent agreement with the State of Arizona State Board of Nursing, pursuant to which the Arizona Board suspended Respondent's license for an indefinite time pending completion of a psychiatric examination with a determination of safety to practice.
  10. Respondent is not presently fit to practice nursing because of a mental health condition that could result in injury to a patient.
  11. Respondent accepted an assignment when his emotional condition prevented the safe and effective delivery of care.

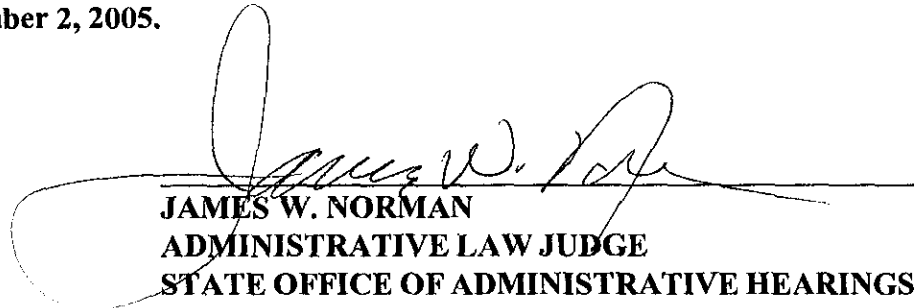
#### IV. CONCLUSIONS OF LAW

1. The Texas State Board of Nurse Examiners (Board) has jurisdiction over this matter pursuant to the Nursing Practice Act, 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 and TEX. OCC. CODE ANN. § 301.454.



3. Proper and timely notice was effected upon the Respondent pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 and 22 TEX. ADMIN. CODE (TAC) §§ 213.10 and 213.22.
4. The Board is authorized to revoke a person's license for violations of the Nursing Practice Act or Board rules pursuant to TEX. OCC. CODE ANN. § 301.453.
5. Based on Findings of Fact Nos. 11, and 12, the Board is authorized to revoke Respondent's delinquent license. TEX. OCC. CODE ANN. § 301.452(b)(10) and (12); 22 TAC § 217.12(12).
6. Based on the foregoing findings of fact and conclusions of law, Respondent's delinquent license should be revoked.

**SIGNED November 2, 2005.**



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