



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.  
*Patricia P. Thomas*  
Executive Director of the Board

**DOCKET NUMBER 507-12-1758**

**IN THE MATTER OF  
PERMANENT CERTIFICATE  
NUMBER 748022  
ISSUED TO  
RAYMOND VIRGIL GREER**

**§ BEFORE THE STATE OFFICE  
§ OF  
§ ADMINISTRATIVE HEARINGS  
§**

**OPINION AND ORDER OF THE BOARD**

**TO: RAYMOND VIRGIL GREER  
958 THREE FORKS DRIVE  
KATY, TX 77450**

**SUZANNE FORMBY MARSHALL  
ADMINISTRATIVE LAW JUDGE  
300 WEST 15TH STREET  
AUSTIN, TEXAS 78701**

At the regularly scheduled public meeting on April 19-20, 2012, 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 registered nursing license of Raymond Virgil Greer with 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, except for Conclusion of Law Number 8, which is not adopted by the Board and is hereby re-designated as a recommendation. All proposed

findings of fact and conclusions of law filed by any party not specifically adopted herein are hereby denied.

#### Conclusion of Law Number 8

The Board declines to adopt Conclusion of Law Number 8 because it is a recommended sanction and not a proper conclusion of law. The Government Code §2001.058(e) authorizes the Board to change a finding of fact or conclusion of law made by the ALJ, or to vacate or modify an order issued by the ALJ if the Board determines that the ALJ did not properly apply or interpret applicable law, agency rules, written policies, or prior administrative decisions. The ALJ did not properly apply or interpret applicable law in this matter when she included her recommended sanction as a conclusion of law.

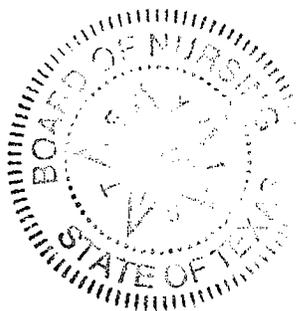
A recommendation for a sanction is not a proper conclusion of law. While it may be appropriate for the ALJ to recommend a sanction, it is ultimately up to the Board to determine what the appropriate sanction should be. Further, the mere labeling of a recommended sanction as a conclusion of law or as a finding of fact does not change the effect of the ALJ's recommendation. Thus, the Board is not required to give presumptively binding effect to an ALJ's recommendation regarding sanctions in the same manner as with other findings of fact and conclusions of law. The Board, not the ALJ, is the final decision maker concerning sanctions. Once it has been determined that a violation of the law has occurred, the sanction is a matter for the agency's discretion. The choice of penalty is vested in the agency, not in the courts. Further, an agency has broad discretion in determining which sanction best serves the statutory policies committed to the agency's oversight. The propriety of a particular disciplinary measure is a matter of internal administration with which the courts should not interfere. See *Texas State Board of Dental Examiners vs. Brown*, 281 S.W. 3d 692 (Tex. App. - Corpus Christi 2009, pet. filed); *Sears vs. Tex. State Bd. of Dental Exam'rs*, 759 S.W.2d 748, 751 (Tex.App. - Austin 1988, no

pet); *Firemen's & Policemen's Civil Serv. Comm'n vs. Brinkmeyer*, 662 S.W.2d 953, 956 (Tex. 1984); *Granek vs. Tex. State Bd. of Med. Exam'rs*, 172 S.W.3d 761, 781 (Tex.App. - Austin 2005, pet. denied); *Fay-Ray Corp. vs. Tex. Alcoholic Beverage Comm'n*, 959 S.W.2d 362, 369 (Tex.App. - Austin 1998, no pet.).

Based upon adopted Findings of Fact Numbers 10 through 14 and Conclusions of Law Numbers 5 through 7, the Board's Disciplinary Matrix, and the Board's rules, including 22 Tex. Admin. Code §213.29 and §213.33, the Board agrees that the Respondent's license should be revoked. Thus, pursuant to applicable law, the Board re-designates Conclusion of Law Number 8 as a recommendation and adopts the ALJ's recommended sanction in this matter.

IT IS THEREFORE ORDERED THAT Permanent Certificate Number 748022, previously issued to RAYMOND VIRGIL GREER, to practice nursing in the State of Texas be, and the same is hereby, REVOKED.

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



Entered this 20<sup>th</sup> day of April, 2012.

TEXAS BOARD OF NURSING

A handwritten signature in black ink, appearing to read "Katherine A. Thomas", is written over a horizontal line.

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

Attachment: Proposal for Decision; Docket No. 507-12-1758 (January 10, 2012).

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

January 10, 2012

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. 507-12-1758; In the Matter of Permanent Certificate  
Number 748022 Issued to Raymond Virgil Greer**

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](http://www.soah.state.tx.us).

Sincerely,

A handwritten signature in cursive script that reads "Suzanne Formby Marshall".

Suzanne Formby Marshall  
Administrative Law Judge

SFM:cm  
Enclosures

XC: Lance Brenton, 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 – (with 1 CD(s); Certified Evidentiary Record) – **VIA INTER-AGENCY**  
Raymond V. Greer, 958 Three Forks Dr., Katy, TX 77450 – **VIA REGULAR MAIL**

DOCKET NO. 507-12-1758

IN THE MATTER OF	§	BEFORE THE STATE OFFICE
	§	
PERMANENT CERTIFICATE	§	
	§	OF
NUMBER 748022 ISSUED TO	§	
	§	
RAYMOND VIRGIL GREER	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Staff of the Texas Board of Nursing (Staff/Board) seeks to revoke the Registered Nurse license of Raymond Virgil Greer (Respondent) for failing to comply with the provisions of an Agreed Order, entered on September 14, 2011. Despite being sent proper notice, Respondent did not appear and was not represented at the hearing. Based on Respondent's failure to appear, Staff's allegations were deemed admitted, establishing the violations. The Administrative Law Judge (ALJ) agrees with Staff's recommendation that Respondent's license should be revoked.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

A probable cause hearing was held in this matter on November 3, 2011, before ALJ Suzanne Formby Marshall at the hearing facilities of the State Office of Administrative Hearings, 300 West 15th Street, Fourth Floor, Austin, Texas. Despite being sent proper notice, Respondent did not appear and was not represented at the probable cause hearing. A probable cause order was entered on November 28, 2011, suspending Respondent's license indefinitely.

The hearing on the merits convened on December 19, 2011. Staff was represented by Lance Brenton, who moved for default based on Respondent's failure to appear. Staff offered competent evidence establishing jurisdiction and that appropriate notice of the hearing was provided to Respondent. Therefore, the ALJ granted Staff's motion for default and deemed Staff's allegations against Respondent as admitted, in accordance with 1 TEX. ADMIN. CODE § 155.501.

## I. RECOMMENDATION

Based upon the following Findings of Fact and Conclusions of Law, the ALJ recommends that the Board revoke Respondent's Registered Nurse license.

## III. FINDINGS OF FACT

1. Raymond Virgil Greer (Respondent) is a Registered Nurse licensed by the State of Texas, holding license number 748022.
2. On October 20, 2011, Staff of the Texas State Board of Nursing (Staff/Board) filed Formal Charges against Respondent. On that same date, the Board temporarily suspended Respondent's Registered Nurse license on the grounds that his continued practice posed a continuing and imminent threat to the public welfare.
3. A probable cause hearing was held on November 3, 2011, before Administrative Law Judge (ALJ) Suzanne Formby Marshall at the hearing facilities of the State Office of Administrative Hearings (SOAH) in Austin, Texas, to determine whether Respondent's license should remain suspended pending a final hearing.
4. Respondent did not attend the probable cause hearing and was not represented at the hearing.
5. A probable cause order suspending indefinitely Respondent's license was issued on November 28, 2011.
6. On November 29, 2011, Staff mailed a copy of its Notice of Hearing, the charges, and the Order of Temporary Suspension to Respondent's last known address of record on file with the Board. According to the United States Postal Service Track and Confirm results, the notice was delivered on December 3, 2011.
7. 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.
8. 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."
9. The hearing on the merits convened on December 19, 2011, at SOAH's hearing facilities in Austin, Texas. Lance Brenton, Assistant General Counsel, appeared for Staff. Respondent did not appear and was not represented at the hearing.

10. Staff moved for a default, which was granted.
11. Respondent is under an Agreed Order, issued on September 14, 2010, requiring him to abstain from alcohol consumption.
12. On July 11, 2011, while employed with Ben Taub General Hospital, Houston, Texas, Respondent submitted a specimen for a "for cause" alcohol drug screen that tested positive for alcohol.
13. The use of alcohol by a registered nurse, while subject to call or duty, could impair the nurse's ability to recognize subtle signs, symptoms or changes in a patient's condition, and could impair the nurse's ability to make rational, accurate, and appropriate assessments, judgments, and decisions regarding patient care, thereby placing a patient in potential danger.
14. Respondent failed to comply with the September 14, 2011, Agreed Order.

#### IV. CONCLUSIONS OF LAW

1. The Texas Board of Nursing (Board) has jurisdiction over this matter pursuant to the Nursing Practice Act (Act), TEX. OCC. CODE ch. 301.
2. SOAH 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. The Board's rules authorize service of notice by sending it to Respondent's last known address as reflected in the Board's records. 22 TEX. ADMIN. CODE § 213.10(a).
4. Proper and timely notice was provided to Respondent pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ch. 2001.
5. The allegations stated in Findings of Fact Nos. 11-14 are deemed admitted, pursuant to 1 TEX. ADMIN. CODE § 155.501.
6. Based upon the foregoing Findings of Fact, Respondent is subject to disciplinary action under TEX. OCC. CODE §§ 301.452(b)(1), (9), and (10) and 22 TEX. ADMIN. CODE § 217.12(5), (10)(A), and (11)(B).
7. The Board is authorized to revoke a person's license for violations of the Act, pursuant to TEX. OCC. CODE §§ 301.452 and 301.453.

8. Based upon the foregoing Findings of Fact and Conclusions of Law, Respondent's license to practice as a Registered Nurse should be revoked.

**SIGNED** January 10, 2012.

  
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**SUZANNE FORMBY MARSHALL**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**