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Patricia Thomas
Executive Director of the Board

DOCKET NO. 507-12-0253

**TEXAS NURSING BOARD,
Petitioner**

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BEFORE THE STATE OFFICE

V.

OF

**TIFFANY GEHLHAAR,
PERMANENT LICENSE NO. 646744,
Respondent**

ADMINISTRATIVE HEARINGS

**SOAH ORDER NO. 1
DETERMINING EXISTENCE OF PROBABLE CAUSE**

On September 26, 2011, the administrative law judge (ALJ) for the State Office of Administrative Hearings (SOAH) held a preliminary hearing. Appearing for Staff of the Texas Nursing Board (Staff/Board) was Lance Robert Brenton, Assistant General Counsel. Despite receiving notice of the preliminary hearing, Tiffany Gehlhaar, Respondent, did not appear, did not send a representative, and did not seek a postponement of the preliminary hearing.

The purpose of the preliminary hearing was to determine whether the Board had probable cause to conclude that the actions of Respondent present a continuing and imminent threat to the public welfare. Staff made a motion for entry of a default order, and the ALJ granted the motion.

The Board has jurisdiction to govern the practice of nursing, including the authority to enforce the Board's decisions in matters involving prohibited practices. TEX. OCC. CODE, ch. 301, sub ch. J. Included in the Board's authority is the authority to temporarily suspend a nurse's license for allegedly engaging in improper drug and alcohol use. TEX. OCC. CODE § 301.4551. SOAH has jurisdiction to conduct a preliminary hearing. TEX. OCC. CODE § 301.455(c).

SOAH's procedural rules apply in this case. 1 TEX. ADMIN. CODE (TAC) § 155.3(a) (SOAH Rule 155.3(a)). The rule permits the ALJ to enter a default order against a non-appearing party if: (1) proper notice was received by the defaulting party; (2) the notice included a disclosure in at least 12-point, bold-face type that the factual allegations listed in the notice could be deemed admitted, and the relief sought in the notice of hearing might be granted by default against the party that fails to appear at hearing; and (3) the notice satisfies the requirement of TEX. GOV'T CODE § 2001.051 and §2001.052, and SOAH Rule 155.401. SOAH Rule 155.501(b). If it is not possible for Staff to prove that a

respondent did not actually receive the notice, then Staff may prove notice by evidence that: (1) the referring agency's statute or rules authorize service of the notice of hearing by sending it to the party's last known address as shown by the referring agency's records; and (2) there is credible evidence that the notice of hearing was sent by first class or certified mail to such address. SOAH Rule 155.501(c).

In this case, Staff offered evidence that: (1) it prepared and sent written notice of the facts and conduct in compliance with SOAH Rule 155.501(b); (2) Respondent or someone at her home received the notice at her last known address of record, as reflected on a certified mail return receipt form; and (3) Staff had telephone contact with Respondent that the hearing would be convened at which she would have the opportunity to present evidence to retain her license. Staff Exs. 1 and 4. Under the Board's rules, notice to a licensee is effective and service is complete when sent by certified or registered mail, return receipt requested, to the licensee's address of record at the time of the mailing. 22 TAC § 213.10(a). These facts are sufficient to prove notice under SOAH Rule 155.501(c).

Despite Respondent's receipt of the notice, she did not appear at the preliminary hearing. The evidence is sufficient to support a temporary suspension because she did not refute Staff's preliminary hearing evidence that she engaged in the intemperate use of alcohol while subject to a Board order and failed to comply with the requirements of the Texas Peer Assistance Program for Nurses. Staff Ex. 5. This ruling may not be used as evidence to support a proposal for decision on the hearing on the merits.

SIGNED September 27, 2011.



**PAUL D. KEEPER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

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September 27, 2011 9:14:41 AM CDT

TIME COMPLETED
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JUDGE PAUL D KEEPER

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AGENCY: Nursing, Texas Board of (BNE)

STYLE/CASE: TIFFANY GEHLHAAR

SOAH DOCKET NUMBER: 507-12-0253

REFERRING AGENCY CASE:

**STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**ADMINISTRATIVE LAW JUDGE
ALJ PAUL D. KEEPER**

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