

DOCKET NUMBER 507-11-3251

IN THE MATTER OF
PERMANENT CERTIFICATE
NUMBER 90378
ISSUED TO
PATRICIA RIDER

§ BEFORE THE STATE OFFICE
§ OF
§ ADMINISTRATIVE HEARINGS
§

OPINION AND ORDER OF THE BOARD

TO: PATRICIA RIDER
310 E. SECOND STREET
WEATHERFORD, TX 76086

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

At the regularly scheduled public meeting on July 21-22, 2011, 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 vocational nursing license of Patricia Rider 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 11, which is not adopted by the Board and is hereby re-designated as a recommendation. All proposed



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.
Suzanne Marshall
Executive Director of the Board



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

Conclusion of Law Number 11

The Board declines to adopt Conclusion of Law Number 11 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 13 through 15 and Conclusions of Law Numbers 6 through 10, the Board's Disciplinary Matrix for a violation of the Occupations Code §301.452(b)(10), and the Board's rules, including 22 Tex. Admin. Code §213.33(b), (c), and (m), the Board agrees that the Respondent's license should be revoked. Thus, pursuant to applicable law, the Board re-designates Conclusion of Law Number 11 as a recommendation and adopts the ALJ's recommended sanction in this matter.

IT IS, THEREFORE, ORDERED THAT Permanent Certificate Number 90378, previously issued to PATRICIA RIDER, 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 21st day of July, 2011.

TEXAS BOARD OF NURSING



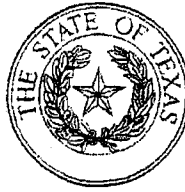
KATHERINE A. THOMAS, MN, RN

EXECUTIVE DIRECTOR FOR THE BOARD

Attachment: Proposal for Decision; Docket No. 507-11-3251 (April 28, 2011).



State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

April 28, 2011

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. 507-11-3251; Patricia Rider

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.

Sincerely,



SUZANNE FORMBY MARSHALL
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

SFM:cm

Enclosures

XC: Lance R. Brenton, 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; Certified Evidentiary Record) – **VIA INTER-AGENCY**

Patricia Rider, 310 E. Second Street, Weatherford, TX 76086 – **VIA REGULAR MAIL**



SOAH DOCKET NO. 507-11-3251

IN THE MATTER OF PERMANENT § BEFORE THE STATE OFFICE
LICENSE NO. 90378 § OF
ISSUED TO PATRICIA C. RIDER § ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

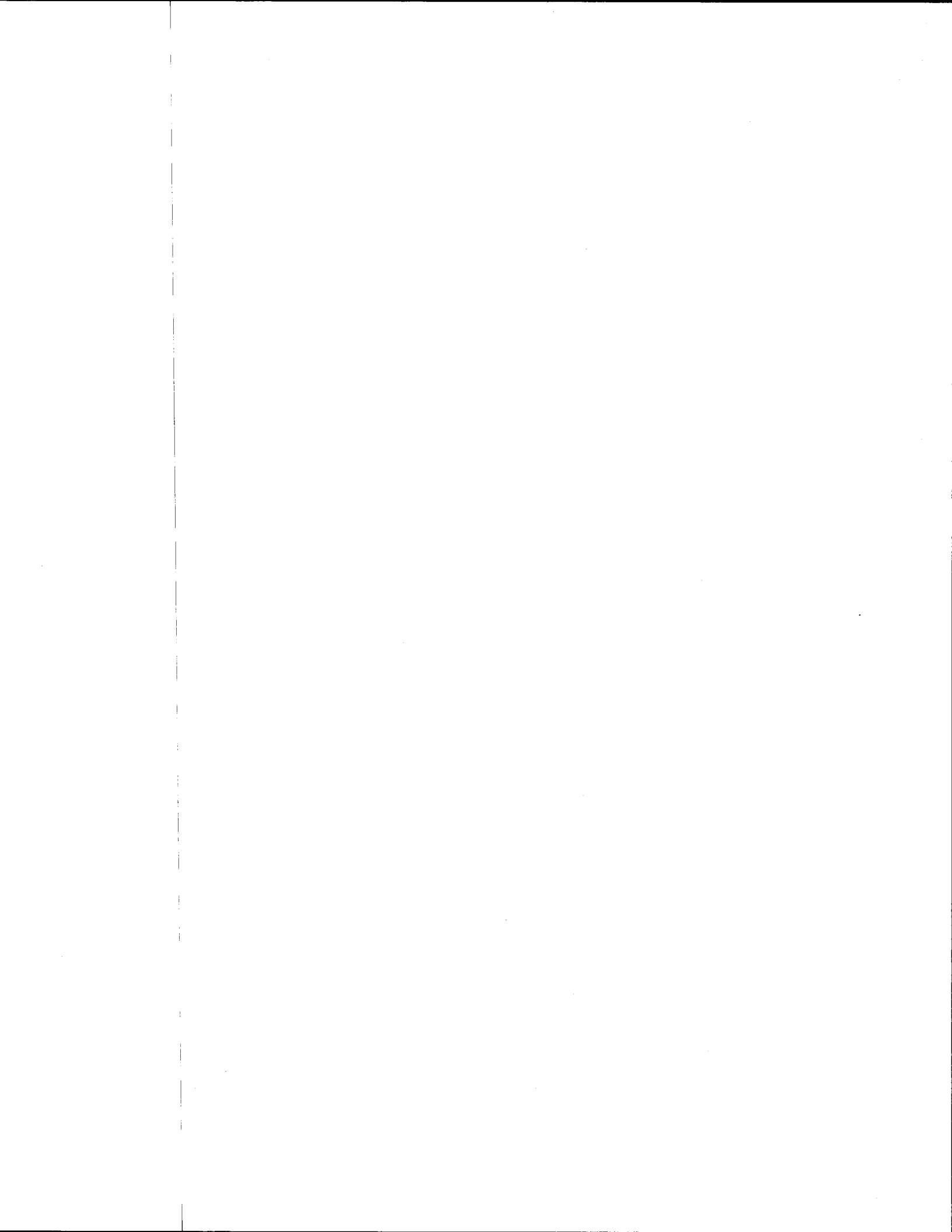
Staff of the Texas Board of Nursing (Board) seeks to revoke the vocational nurse license of Patricia C. Rider (Respondent) based on her criminal history involving convictions of driving while intoxicated. Despite receiving proper notice of the hearing, Respondent failed to appear and Staff moved for entry of a default. The Administrative Law Judge (ALJ) granted Staff's motion for default and recommends that Respondent's license be revoked.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The hearing convened on April 25, 2011, before ALJ Suzanne Formby Marshall, at the hearing facilities of the State Office of Administrative Hearings (SOAH) in Austin, Texas. Lance Breton, Assistant General Counsel, appeared for Staff. Neither Respondent nor anyone acting on her behalf appeared at the hearing.

Previously, Respondent was represented by counsel, David DeBusk, from Fort Worth, Texas. On April 13, 2001, a hearing, originally scheduled as a contested case hearing on the merits, was convened. However, it was converted to a prehearing conference to consider Respondent's counsel's motion to withdraw as counsel. The motion was granted, and the case was re-scheduled for hearing on April 25, 2011. On April 14, 2011, Staff sent Respondent a Second Amended Notice of Hearing and First Amended Formal Charges at her address of record with the Board. That address was also confirmed by Respondent's counsel to be her address.

Staff introduced various documents in evidence, establishing that Staff had sent Respondent proper and timely notice of the hearing and of the allegations against her. The details of jurisdiction and notice are set out in the Findings of Fact and Conclusions of Law.



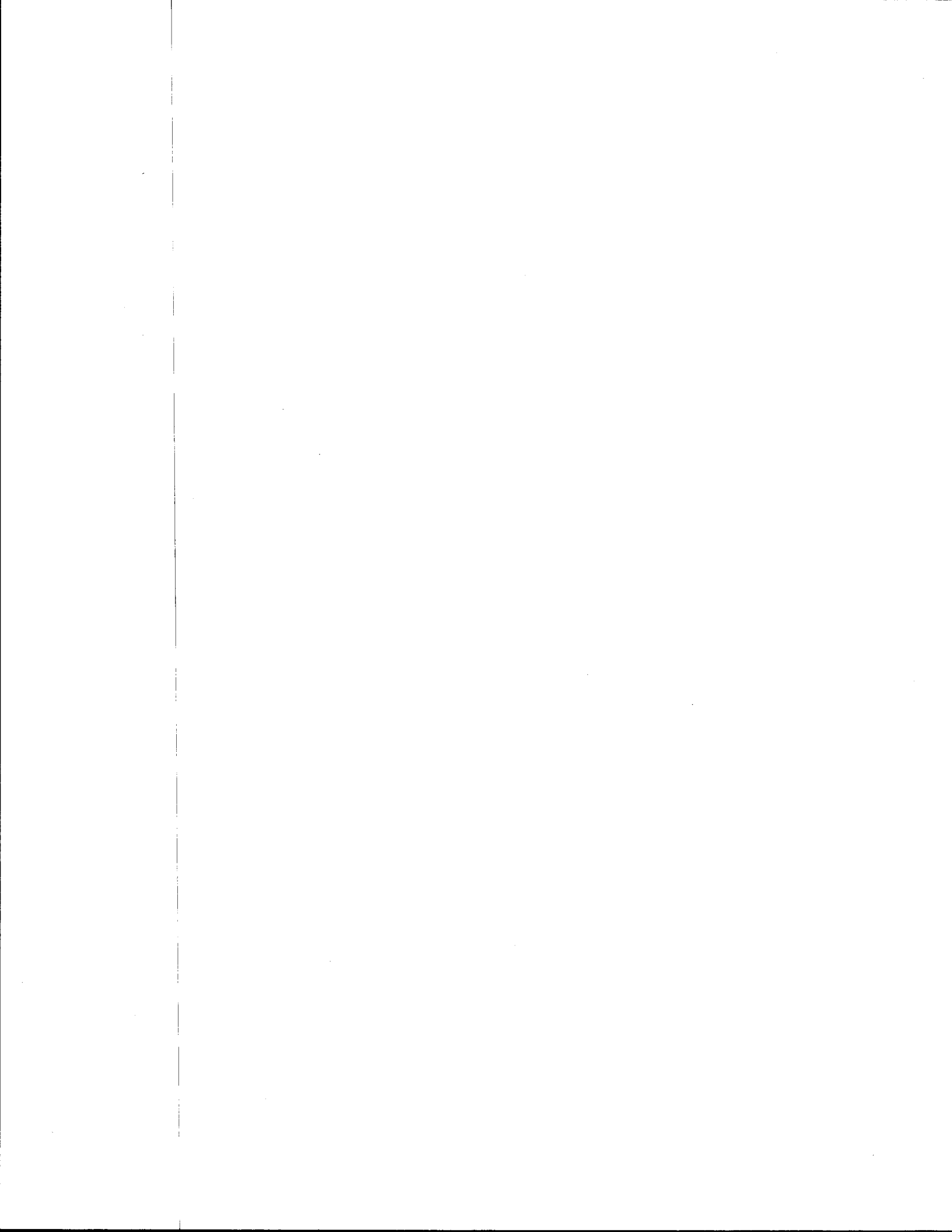
Staff made an oral motion for default due to Respondent's failure to attend the hearing. The motion was granted, resulting in all of Staff's allegations contained in the First Amended Formal Charges being deemed admitted, pursuant to 1 TEX. ADMIN. CODE § 155.501.

II. RECOMMENDATION

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

III. FINDINGS OF FACT

1. Patricia C. Rider (Respondent) is licensed as a vocational nurse, holding License No. 90378 issued by the Texas Board of Nursing (Board).
2. On September 17, 2007, the Board's staff (Staff) notified Respondent by certified mail, return receipt requested, that it was initiating an investigation of charges against her. The notice was sent to Respondent's address of record with the Board: 310 E. Second Street, Weatherford, TX 76086.
3. On March 10, 2009, Staff sent a notice of hearing and formal charges to Respondent by certified mail, return receipt requested, alleging a violation of the Nursing Practice Act and Board rules. The notice and charges were sent to her address of record with the Board, the same address to which the notice of investigation was sent in 2007. The notice advised Respondent that she was required to file a written answer to the formal charges. As evidenced by her signature on the return receipt delivery notice, Respondent received this notice.
4. On February 11, 2011, Staff mailed its notice of hearing by certified mail, return receipt requested, to Respondent through her attorney of record. Staff attached a copy of the formal charges that were previously sent to Respondent to the notice of hearing.
5. On March 30, 2011, Staff sent an amended notice of hearing to Respondent, through her attorney of record. Attached to the amended notice of hearing was a copy of first amended formal charges.
6. On April 13, 2011, a hearing was convened at the State Office of Administrative Hearings. The hearing was converted to a prehearing conference to consider Respondent's counsel's motion to withdraw as counsel.
7. The motion to withdraw as counsel was granted and the case was set for hearing on April 25, 2011.




8. On April 14, 2011, Staff sent a second amended notice of hearing and a copy of the first amended formal charges to Respondent by certified mail, return receipt requested, at her address of record with the Board.
9. 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. The second amended notice of hearing stated the hearing would convene on April 25, 2011.
10. The Notice of Hearing contained the following language in capital letters in at least 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 FIRST AMENDED FORMAL CHARGES BEING ADMITTED AS TRUE AND THE PROPOSED RECOMMENDATION OF STAFF SHALL BE GRANTED BY DEFAULT."
11. The hearing convened on April 25, 2011, before ALJ Suzanne Formby Marshall, at the hearing facilities of the State Office of Administrative Hearings (SOAH) in Austin, Texas. Lance Breton, Assistant General Counsel, appeared for Staff. Neither Respondent nor anyone acting on her behalf appeared at the hearing.
12. Because Respondent did not appear and was not represented at the hearing despite having received proper notice, Staff's oral motion for default was granted.
13. On or about August 10, 1982, in Cause No. 0193025, Respondent was convicted of driving while intoxicated (a Class B misdemeanor offense) in the County Criminal Court No. 2 of Tarrant County, Texas. As a result of the conviction, Respondent was placed on court probation for two years and ordered to pay a fine.
14. On or about November 28, 1984, in Cause No. 30468, Respondent was convicted of driving while intoxicated (a Class A misdemeanor offense) in the County Court of Parker County, Texas. As a result of the conviction, Respondent was placed on court probation for two years and ordered to pay a fine.
15. On or about April 8, 2008, in Cause No. CR07-0470, Respondent was convicted of driving while intoxicated with misdemeanor DWI repetition (a Class A misdemeanor offense committed on June 17, 1007), in the 43rd Judicial District Court of Parker County, Texas. As a result of the conviction, Respondent was sentenced to 180 days in the Parker County Jail on the lesser included misdemeanor offense, with 201 days credit given for time served. Additionally, Respondent was ordered to pay court costs.



IV. CONCLUSIONS OF LAW

1. The Texas Board of Nursing (Board) has jurisdiction over this matter. TEX. OCC. CODE (Code) ch. 301.
2. The State Office of Administrative Hearings has jurisdiction over the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law. TEX. GOV'T CODE ch. 2003.
3. Notice of hearing on the merits was provided to Respondent as required. TEX. GOV'T CODE §§ 2001.051 and 2001.052; 22 TEX. ADMIN. CODE (TAC) § 213.10.
4. The Board had the burden of proving the case by a preponderance of the evidence.
5. The facts alleged in Staff's First Amended Formal Charges, which were attached to and incorporated by reference in the Notice of Hearing, were properly deemed admitted due to Respondent's failure to appear at the hearing. 1 TAC § 155.501.
6. The Board may take disciplinary action against a nurse who engages in unprofessional or dishonorable conduct that, in the board's opinion, is likely to deceive, defraud, or injure a patient or the public. Code § 301.452(b)(10).
7. The Board has determined that unprofessional conduct can be established through criminal conduct, including conviction or probation, with or without an adjudication of guilt, or receipt of a judicial order involving a crime or criminal behavior or conduct that could affect the practice of nursing. 22 TAC § 217.12(13).
8. Based on the above deemed facts, Respondent has been convicted on three occasions of the misdemeanor criminal offense of driving with intoxicated.
9. Respondent's convictions are for conduct that could affect the practice of nursing.
10. Respondent's convictions are for conduct that is likely to deceive, defraud, or injure clients or the public.
11. The Board should revoke Respondent's nursing license for violations of Code § 301.452(b)(10) and 22 TAC § 217.12(13).

SIGNED April 28, 2011.



SUZANNE FORMBY MARSHALL
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

