



Board of Nurse Examiners For the State of Texas

Location Address: William P. Hobby Building, Ste. 3-460, 333 Guadalupe Street, Austin, Texas 78701
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Katherine A. Thomas, MN, RN
Executive Director

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.
Katherine A. Thomas
Executive Director of the Board

November 14, 2005

Certified Mail No. 7004 2890 0001 8856 8013

Return Receipt Requested

Veronica Fernandez
PO Box 1401
Mercedes, TX 78570

Dear Ms. Fernandez:

Your Petition for Declaratory Order was considered by the Executive Director of the Board on October 24, 2005. The Executive Director reviewed your case based on your petition as a vocational nurse in the State of Texas pursuant to Section 301.257, Texas Occupations Code, as amended.

Based on the review of your file, the Executive Director of the Board finds you ineligible for licensure as a vocational nurse in the State of Texas on the grounds discussed below:

- On October 17, 2000, you were indicted by the Grand Jury of Hidalgo County, Texas, for the felony offense of Hindering Apprehension. On March 30, 2001, the criminal action against you was dismissed for the reason "in the interest of Justice."
- On March 9, 2001, you were charged with the misdemeanor Class A offense of Assault in the County Court at Law of Hidalgo County, Texas. You plead guilty and was sentenced to four (4) days confinement in Hidalgo County Jail, with credit for time served. Initially, this was not an offense you disclosed to the Board, with your stated reason for non-disclosure was because it was your "understanding that only felonies were to be expressed. Secondly, I felt a Class A misdemeanor did not carry the same importance as a felony. In addition, I also thought that only major felonies would hinder the pursuit of my degree."
- On March 10, 2003, you were charged with the third degree felony offense of Possession of Marijuana in the District Court of Brooks County, Texas. You plead guilty and proceedings were deferred without adjudication of guilt. You were placed on deferred adjudication community supervision for two (2) years. You were assessed a fine, court costs, and restitution in the amount of nine hundred sixteen dollars (\$916.00). You were required to perform 160 hours of community service. On July 15, 2005, Petitioner was discharged from community supervision.

Members of the Board

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1. The Board of Nurse Examiners requires that petitioners demonstrate the ability to place the interest of patients, clients and the public foremost and to abide by the standards of practice and unprofessional conduct rules. Your past conduct, to wit: failure to conform your behavior to the requirements of the law which resulted in judicial action due to your criminal conduct and therefore inconsistent with the minimal qualifications required of professional or vocational nurses.

Section 301.452, Texas Occupations Code, provides in pertinent part that:

- (b) A person is subject to denial of a license or to disciplinary action under this subchapter for:
 - (1) a violation of this chapter, a rule or regulation not inconsistent with this chapter, or an order issued under this chapter;
 - (2) fraud or deceit in procuring or attempting to procure a license to practice professional nursing or vocational nursing;
 - (3) a conviction for, or placement on deferred adjudication community supervision or deferred disposition for, a felony or for a misdemeanor involving moral turpitude;
 - (4) conduct that results in the revocation of probation imposed because of conviction for a felony or for a misdemeanor involving moral turpitude;
 - (5) use of a nursing license, diploma, or permit, or the transcript of such a document, that has been fraudulently purchased, issued, counterfeited, or materially altered;
 - (6) impersonating or acting as a proxy for another person in the licensing examination required under Section 301.253 or 301.255;
 - (7) directly or indirectly aiding or abetting an unlicensed person in connection with the unauthorized practice of professional nursing;
 - (8) revocation, suspension, or denial of, or any other action relating to, the person's license to practice nursing in another jurisdiction;
 - (9) intemperate use of alcohol or drugs that the board determines endangers or could endanger a patient;
 - (10) unprofessional or dishonorable conduct that, in the board's opinion, is likely to deceive, defraud, or injure a patient or the public;
 - (11) adjudication of mental incompetency;
 - (12) lack of fitness to practice because of a mental or physical health condition that could result in injury to a patient or the public; or
 - (13) failure to care adequately for a patient or to conform to the minimum standards of acceptable nursing practice in a manner that, in the Board's opinion, exposes a patient or other person unnecessarily to risk of harm.
- (c) The Board may refuse to admit a person to a licensing examination for a ground described under Subsection (b).

2. Your past criminal conduct demonstrates a lack of judgment and respect for interpersonal boundaries which are necessary to the safe practice of professional or vocational nursing.

3. In addition, the above conduct constitutes a violation of §217.11(1)(A) and §217.12(13), Rules and Regulations Relating to Nurse Education, Licensure and Practice, 22 Texas Administrative Code:

§217.11. Standards of Nursing Practice. The Texas Board of Nurse Examiners is responsible for regulating the practice of nursing within the State of Texas for Vocational Nurses, Registered Nurses, and Registered Nurses with advanced practice authorization. The standards of practice establish a minimum acceptable level of nursing practice in any setting for each level of nursing licensure or advanced practice authorization. Failure to meet these standards may result in action against the nurse's license even if no actual patient injury resulted.

- (1) Standards Applicable to All Nurses. All vocational nurses, registered nurses and registered nurses with advanced practice authorization shall:
 - (A) Know and conform to the Texas Nursing Practice Act and the board's rules and regulations as well as all federal, state, or local laws, rules or regulations affecting the nurse's current area of nursing practice.

§217.12 Unprofessional Conduct. The unprofessional conduct rules are intended to protect clients and the public from incompetent, unethical, or illegal conduct of licensees. The purpose of these rules is to identify unprofessional or dishonorable behaviors of a nurse which the board believes are likely to deceive, defraud, or injure clients or the public. Actual injury to a client need not be established. These behaviors include but are not limited to:

- (13) Criminal Conduct – including, but not limited to, conviction or probation, with or without an adjudication of guilt, receipt of a judicial order involving a crime or criminal behavior or conduct that could affect the practice of nursing.

4. You have failed to provide sufficient evidence of good professional character as described in the Board's Rule at 22 Texas Administrative Code §213.27.

§213.27. Good Professional Character.

- (a) Good professional character is the integrated pattern of personal, academic and occupational behaviors which, in the judgment of the Board, indicates that an individual is able to consistently conform his or her conduct to the requirements of the Nursing Practice Act, the Board's rules and regulations, and generally accepted standards of nursing practice including, but not limited to, behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity.
- (b) Factors to be used in evaluating good professional character in eligibility and disciplinary matters are:
- (1) Good professional character is determined through the evaluation of behaviors demonstrated by an individual in his or her personal, academic and occupational history. An individual's age, education, and experience necessarily affect the nature and extent of behavioral history and, therefore shall be considered in each evaluation.
- (2) A person who seeks to obtain or retain a license to practice professional or vocational nursing shall provide evidence of good professional character which, in the judgment of the Board, is sufficient to insure that the individual can consistently act in the best interest of patients/clients and the public in any practice setting. Such evidence shall establish that the person:
- (A) is able to distinguish right from wrong;
- (B) is able to think and act rationally;
- (C) is able to keep promises and honor obligations;
- (D) is accountable for his or her own behavior;
- (E) is able to practice nursing in an autonomous role with patients/clients, their families, significant others, and members of the public who are or who may become physically, emotionally or financially vulnerable;
- (F) is able to recognize and honor the interpersonal boundaries appropriate to any therapeutic relationship or health care setting; and
- (G) is able to promptly and fully self-disclose facts, circumstances, events, errors and omissions when such disclosure could enhance the health status of patients/clients or the public or could protect patients/clients or the public from unnecessary risk of harm.
- (3) Any conviction for a felony or for a misdemeanor involving moral turpitude or order of probation with or without an adjudication of guilt for an offense that would be a felony or misdemeanor involving moral turpitude if guilt were adjudicated.
- (4) Any revocation, suspension, or denial of, or any other adverse action relating to, the person's license or privilege to practice nursing in another jurisdiction.
- (c) The following provisions shall govern the determination of present good professional character and fitness of a Petitioner, Applicant, or Licensee who has been convicted of a felony in Texas or placed on probation for a felony with or without an adjudication of guilt in Texas, or who has been convicted or placed on probation with or without an adjudication of guilt in another jurisdiction for a crime which would be a felony in Texas. A Petitioner, Applicant, or Licensee may be found lacking in present good professional character and fitness under this rule based on the underlying facts of a felony conviction or deferred adjudication, as well as based on the conviction or probation through deferred adjudication itself.

- (1) The record of conviction or order of deferred adjudication is conclusive evidence of guilt.
- (2) An individual guilty of a felony under this rule is conclusively deemed not to have present good professional character and fitness and should not file a Petition for Declaratory Order or Application for Endorsement for a period of three years after the completion of the sentence and/or period of probation.
- (3) In addition to the disciplinary remedies available to the Board pursuant to TEX. OCC. CODE ANN. §301.452(b)(3) and (4), Texas Occupations Code chapter 53, and rule 313.28, a licensee guilty of a felony under this rule is conclusively deemed to have violated TEX. OCC. CODE ANN. §301.452(b)(10) and is subject to appropriate discipline, up to and including revocation.
- (d) The following provisions shall govern the determination of present good professional character and fitness of a Petitioner, Applicant, or Licensee who has been licensed to practice nursing in any jurisdiction and has been disciplined, or allowed to voluntarily surrender in lieu of discipline, in that jurisdiction.
 - (1) A certified copy of the order, judgment of discipline, or order of adverse licensure action from the jurisdiction is prima facie evidence of the matters contained in such order, judgment, or adverse action and is conclusive evidence that the individual in question has committed professional misconduct as alleged in such order of judgment.
 - (2) An individual disciplined for professional misconduct in the course of practicing nursing in any jurisdiction or an individual who resigned in lieu of disciplinary action (disciplined individual) is deemed not to have present good professional character and fitness and is, therefore, ineligible to file an Application for Endorsement to the Texas Board of Nursing during the period of such discipline imposed by such jurisdiction, and in the case of revocation or surrender in lieu of disciplinary action, until the disciplined individual has filed an application for reinstatement in the disciplining jurisdiction and obtained a final determination on that application.
 - (3) The only defenses available to a Petitioner, Applicant, or Licensee under section (d) are outlined below and must be proved by clear and convincing evidence:
 - (A) The procedure followed in the disciplining jurisdiction was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process.
 - (B) There was such an infirmity of proof establishing the misconduct in the other jurisdiction as to give rise to the clear conviction that the Board, consistent with its duty, should not accept as final the conclusion on the evidence reached in the disciplining jurisdiction.
 - (C) The deeming of lack of present good professional character and fitness by the Board during the period required under the provision of section (d) would result in grave injustice.
 - (D) The misconduct for which the individual was disciplined does not constitute professional misconduct in Texas.
- (4) If the Board determines that one or more of the foregoing defenses has been established, it shall render such orders as it deems necessary and appropriate.
- (e) An individual who applies for initial licensure, reinstatement, renewal, or endorsement to practice professional or vocational nursing in Texas after the expiration of the three-year period in ©(2) above and subsection (f) of this rule, or after the completion of the disciplinary period assessed or ineligibility period imposed by any jurisdiction under subsection (d) above shall be required to prove, by a preponderance of the evidence:
 - (1) that the best interest of the public and the profession, as well as the ends of justice, would be served by his or her admission to practice nursing; and
 - (2) That (s)he is of present good professional character and fitness.
- (f) An individual who applies for initial licensure, reinstatement, renewal, or endorsement to practice professional or vocational nursing in Texas after a negative determination based on a felony conviction, felony probation with or without an adjudication of guilt, or professional misconduct, or voluntary surrender in lieu of disciplinary action and whose application or petition is denied and not appealed is not eligible to file another petition or application for licensure until after the expiration of three years from the date of the Board's order denying the preceding petition for licensure.

5. Please note that the board's rules, 22 TEX. ADMIN. CODE §§213.27-213.30 and TEX. OCC. CODE ch. 53, are incorporated herein and can be located on the board's website at www.bne.state.tx.us.

Veronica Fernandez

November 14, 2005

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Due to this denial, you have the right to a public hearing before an Administrative Law Judge with the State Office of Administrative Hearings. Should you decide to appeal this decision, submit a written request for a public hearing, to the attention of Angela Bradford, Legal Assistant, Office of General Counsel, 333 Guadalupe, Suite 3-460, Austin, Texas, 78701. Your written request to appeal this decision must be received in our office within sixty (60) days of the date of this letter.

Sincerely,



Katherine A. Thomas, MN, RN

Executive Director

KAT/phr

Enclosures: Rule 213.28 Licensure of Persons with Criminal Convictions
Rule 213.29 Criteria and Procedure Regarding Intemperate Use and Lack of Fitness in Eligibility and Disciplinary Matters
Rule 213.30 Declaratory Order of Eligibility for Licensure
TEX. OCC. CODE ch. 53 Consequences of Criminal Convictions