



# Texas Board of Nursing

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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

October 14, 2011

Certified Mail No. 91 7199 9991 7030 3060 6739

Return Receipt Requested

Ashley Nicole McLemore  
1452 Bobing Drive  
Lewisville, Texas 75067

Dear Ms. McLemore:

Your Application for Licensure by Examination and the supporting information related to your potential ineligibility for licensure under the Nursing Practice Act and the Board's Rules and Regulations Relating to Nurse Education, Licensure and Practice was considered by the Executive Director of the Board on May 16, 2011, pursuant to the Occupations Code §§301.257, 301.452, and 301.453.

Based on the review of your file, you are found to be ineligible for licensure as a nurse in the State of Texas on the grounds discussed below.

- On or about December 2, 2008, Petitioner entered a plea of Guilty and was convicted of VEHICLE INVOLVED IN ACCIDENT/FAILURE TO STOP AND RENDER AID (a 3rd Degree felony offense committed on May 17, 2008), in the 54th District Court of McLennan County, Texas, under Case No. 2008-1758-C2. Petitioner was sentenced to confinement in the Texas Department of Criminal Justice, Institutional Division for a period of five (5) years; however, the imposition of sentence of confinement was suspended, and Petitioner was placed on probation for a period of five (5) years. Additionally, Petitioner was ordered to pay a fine and court costs.
- On or about October 9, 2008, Petitioner entered a plea of Guilty and was convicted of DRIVING WHILE INTOXICATED (a Class B misdemeanor offense committed on May 17, 2008), in the County Court at Law of McLennan County, Texas, under Cause No. 2008-4074-CR2. Petitioner was sentenced to confinement in the McLennan County Jail for a period of one hundred twenty (120) days; however, the imposition of sentence of confinement was suspended, and Petitioner was placed on probation for a period of eighteen (18) months. Additionally, Petitioner was ordered to pay a fine of two thousand (\$2000) dollars and court costs. On April 13, 2010, Petitioner was discharged from probation.

The Occupations Code §301.452(b) provides that a person is subject to denial of a license for:

- (1) a violation of Chapter 301, a rule or regulation not inconsistent with Chapter 301, or an order issued under Chapter 301;
- (3) a conviction for, or placement on deferred adjudication community supervision or deferred

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disposition for, a felony or for a misdemeanor involving moral turpitude;

(10) unprofessional or dishonorable conduct that, in the Board's opinion, is likely to deceive, defraud, or injure a patient or the public;

Further, §301.452(c) provides that the Board may refuse to admit a person to a licensing examination for a ground described under §301.452(b).

The Board requires that petitioners demonstrate their ability to consistently conform to the requirements of the Nursing Practice Act, the Board's Rules and Regulations, and generally accepted standards of nursing practice. Further, petitioners must possess good professional character and pose no threat to the health and safety of patients and the public.

Your past criminal conduct demonstrates lack of judgment and respect for interpersonal boundaries, which is necessary for the safe practice of nursing. Additionally, your past criminal conduct constitutes grounds for ineligibility under §301.452(b)(10) and 22 Tex. Admin. Code §217.11(1)(A) and §217.12(13).

§217.11(1)(A). The Texas Board of Nursing 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(13). 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, or receipt of a judicial order involving a crime or criminal behavior or conduct that could affect the practice of nursing.

You have failed to provide sufficient evidence of good professional character, as is required by 22 Tex. Admin. Code §213.27.

§213.27.

(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) 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 §213.28, 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 provisions 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 subsection (f) of this section, or after the completion of the disciplinary period assessed or ineligibility period imposed by any jurisdiction under subsection (d) of this section 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.

(g) The following disciplinary and eligibility sanction policies and guidelines shall be used by the Executive Director, the State Office of Administrative Hearings (SOAH), or the Board in evaluating good professional character in eligibility and disciplinary matters:

(1) Disciplinary Sanctions for Fraud, Theft and Deception approved by the Board and published on February 22, 2008 in the *Texas Register* (33 TexReg 1646) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(2) Disciplinary Sanctions for Lying and Falsification approved by the Board and published on February 22, 2008 in the *Texas Register* (33 TexReg 1647) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(3) Disciplinary Sanctions for Sexual Misconduct approved by the Board and published on February 22, 2008 in the *Texas Register* (33 TexReg 1649) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(4) Eligibility and Disciplinary Sanctions for Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder and published on February 22, 2008 in the *Texas Register* (33 TexReg 1651) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

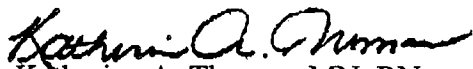
(5) Disciplinary Guidelines for Criminal Conduct approved by the Board and published on March 9, 2007 in the *Texas Register* (32 TexReg 1409) and available on the Board's website at

<http://www.bon.state.tx.us/disciplinaryaction/discp-guide.html>.

Please note that the Board's rules, 22 Tex. Admin. Code §213.27-§213.33 and the Occupations Code Chapter 53, are incorporated herein and can be located on the Board's website at [www.bon.state.tx.us](http://www.bon.state.tx.us).

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 Dina Flores, Supervising 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

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