

accurate, and true copy of the document which is on file or is of record in the offices of the Texas Board of Nursing.

*William C. Thomas*  
Executive Director of the Board

## BEFORE THE TEXAS BOARD OF NURSING

\*\*\*\*\*

In the Matter of § AGREED  
JAME LYNN FORTNER, §  
PETITIONER for Eligibility for Licensure § ELIGIBILITY ORDER

On this day, the Texas Board of Nursing, hereinafter referred to as the Board, considered the Application by Examination, which has been processed as a Petition for Declaratory Order pursuant to 22 TEX. ADMIN. CODE §217.2(b) and §213.30, and supporting documents filed by JAME LYNN FORTNER, hereinafter referred to as PETITIONER, together with any documents and information gathered by staff and Petitioner's Certification contained herein.

Information received by the Board produced evidence that PETITIONER may be ineligible for licensure pursuant to Sections 301.452(b)(3),(10)&(12) and 301.453, Texas Occupations Code.

PETITIONER waived representation by counsel, notice and hearing, and agreed to the entry of this Order offered on February 26, 2011, by Katherine A. Thomas, MN, RN, Executive Director, subject to ratification by the Board.

## FINDINGS OF FACT

1. On or about August 2, 2010, PETITIONER submitted an Application by Examination requesting a determination of eligibility for licensure in compliance with Sections 301.252, 301.253, 301.257 and 301.258, Texas Occupations Code, and the Board's Rules at 22 TEX. ADMIN. CODE §217.2(b) and §213.30.
2. Petitioner waived representation by counsel, informal proceedings, notice and hearing, and consented to the entry of this Order.
3. Petitioner received an Associate Degree in Nursing from Montana Tech of the University of Montana, Butte, Montana, on May 15, 2010.

4. Petitioner completed the Application by Examination and answered "Yes" to the question which reads as follows: *"For any criminal offense, including those pending appeal, have you:*

- A. *been convicted of a misdemeanor?*
- B. *been convicted of a felony?*
- C. *pled nolo contendere, no contest, or guilty?*
- D. *received deferred adjudication?*
- E. *been placed on community supervision or court-ordered probation, whether or not adjudicated guilty?*
- F. *been sentenced to serve jail or prison time? court-ordered confinement?*
- G. *been granted pre-trial diversion?*
- H. *been arrested or have any pending criminal charges?*
- I. *been cited or charged with any violation of the law?*
- J. *been subject of a court-martial; Article 15 violation; or received any form of military judgment/punishment/action?*

*(You may only exclude Class C misdemeanor traffic violations.)"*

5. Petitioner disclosed the following criminal history, to wit:

- A. On or about September 12, 1996, Petitioner entered a plea of Not Guilty and was convicted of ISSUING BAD CHECKS (a misdemeanor offense), in the Justice Court, Anaconda/Deer Lodge County, Montana, under Case No. CR96-6944. As a result of the conviction, Petitioner was ordered to pay a fine and court costs.
- B. On or about September 12, 1996, Petitioner entered a plea of Not Guilty and was convicted of ISSUING BAD CHECKS (a misdemeanor offense), in the Justice Court, Anaconda/Deer Lodge County, Montana, under Case No. CR96-6410. As a result of the conviction, Petitioner was ordered to pay a fine and court costs.
- C. On or about November 4, 1997, Petitioner entered a plea of Guilty and was convicted of ISSUING BAD CHECKS (a misdemeanor offense), in the Justice Court, Anaconda/Deer Lodge County, Montana, under Case No. 97-10717. As a result of the conviction, Petitioner was sentenced to confinement in the County Jail for a period of six (6) months; however, the imposition of sentence of confinement was suspended. Additionally, Petitioner was ordered to pay a fine and court costs.
- D. On or about December 23, 1997, Petitioner entered a plea of Guilty and was convicted of THEFT (a misdemeanor offense committed on November 14, 1997), in the Justice Court, Anaconda/Deer Lodge County, Montana, under Case No. 97-12445. As a result of the conviction, Petitioner was sentenced to confinement in the County Jail for a period of six (6) months; however, the imposition of sentence of confinement was suspended. Additionally, Petitioner was ordered to pay a fine and court costs.

- E. On or about May 26, 1999, Petitioner was found guilty by court of the offense of CONTEMPT/FAILURE TO PAY FINES (a misdemeanor offense committed on April 1999), in the Justice Court, Anaconda/Deer Lodge County, Montana, under Case No. 99-16354. As a result of the conviction, Petitioner was sentenced to confinement in the County Jail for a period of twenty-four (24) hours. Additionally, Petitioner was ordered to pay a fine and court costs.
- F. On or about January 13, 2000, Petitioner entered a plea of Guilty and was convicted of ISSUING A BAD CHECK (a misdemeanor offense committed on December 28, 1999), in the Justice Court, Anaconda/Deer Lodge County, Montana, under Case No. 99-19012. As a result of the conviction, Petitioner was sentenced to confinement in the County Jail for a period of six (6) months; however, all but four (4) days sentence of confinement was suspended. Additionally, Petitioner was ordered to pay a fine and court costs.
- G. On or about November 6, 2000, Petitioner was found guilty of CONTEMPT/FAILURE TO APPEAR ON A SHOW CAUSE ORDER FOR FAILURE TO PAY FINES/FAILURE TO DO JAIL TIME, in the Justice Court of Anaconda, Deer Lodge County, Montana, under Case No. 00-21530.
- H. On or about January 31, 2003, Petitioner entered a plea of Guilty and was convicted of ISSUING A BAD CHECK (a misdemeanor offense committed on June 7, 1999), in the Deer Lodge County Justice Court, Anaconda, Montana, under Case No. CR-1999-0018488. As a result of the conviction, Petitioner was ordered to pay a fine and court costs.
- I. On or about April 26, 2006, Petitioner entered a plea of Guilty to Count I-BURGLARY (a felony offense committed on October 7, 2005) and Count III-THEFT (a misdemeanor offense committed on October 7, 2005), in the Montana Third Judicial District Court, Deer Lodge County, Montana, under Cause No. DC-05-40. As a result of the plea, the proceedings against Petitioner were deferred without entering an adjudication of guilt and Petitioner was placed on probation for a period of two (2) years for Count I and six (6) months for Count III to run concurrent. Additionally, Petitioner was ordered to pay a fine and court costs. Count II-CRIMINAL POSSESSION OF DRUG PARAPHERNALIA (a misdemeanor offense) was dismissed.
- J. On or about June 17, 2008, Petitioner entered a plea of Guilty and was convicted of DISORDERLY CONDUCT (a misdemeanor offense committed on February 16, 2008), in the Deer Lodge County Justice Court, Anaconda, Montana, under Case No. TK-2008-0015445. As a result of the conviction, Petitioner was ordered to pay a fine and court costs.

- K. On or about March 1, 2010, Petitioner entered a plea of Guilty and was convicted of PERMITTING UNAUTHORIZED MINOR TO DRIVE (a misdemeanor offense committed on February 28, 2010), in the Deer Lodge County Justice Court, Anaconda, Montana, under Case No. TK-2010-0019471. As a result of the conviction, Petitioner was ordered to pay a fine and court costs.
6. There is no evidence of any subsequent criminal conduct.
  7. Petitioner completed the Application by Examination and answered "Yes" to the question which reads as follows: *"Within the past five (5) years have you been addicted to and/or treated for the use of alcohol or any other drug?"*
  8. Tracy Oeller, PAC of Lake Worth Family Medicine states she has been treating Petitioner for hypothyroidism, hyperlipidemia and Petitioner was hospitalized in the Montana Chemical Dependency Center, Montana, from January 11, 2006 through February 23, 2006.
  9. Petitioner states: She began using methamphetamines in February 2005, and by October 2005, her addiction led her to make decisions she would never have made clean. She attended and completed her inpatient treatment at Montana Chemical Dependency Center (MCDC) on or about February 2006, and following her treatment, it was recommended that she could continue with recovery on her own. She completed six months outpatient treatment and decided she was ready to assert her new strengths to become a nurse.
  10. The safety of patients and the public requires that all persons licensed to practice nursing be fit, sober, and able to consistently practice nursing in autonomous roles under demanding and stressful conditions.
  11. Petitioner has sworn that, with the exception of matters disclosed in connection with the Application by Examination, her past behavior conforms to the Board's professional character requirements at 22 TEX. ADMIN. CODE §213.27.
  12. Petitioner presented no evidence of behavior which is inconsistent with good professional character.
  13. The Executive Director considered evidence of Petitioner's past behavior in light of the character factors set out in 22 TEX. ADMIN. CODE §213.27 and determined that Petitioner currently demonstrates the criteria required for good professional character.
  14. The Executive Director considered evidence of Petitioner's past criminal conduct in light of the considerations and criteria provided in 22 TEX. ADMIN. CODE §§213.28 & 213.33, and, if applicable, Chapter 53, Section 53.001 *et seq.*, Texas Occupations Code.
  15. The Executive Director considered evidence of Petitioner's substance abuse/chemical dependency, and subsequent rehabilitation as provided in 22 TEX. ADMIN. CODE §213.29 and

in accordance with 22 TEX. ADMIN. CODE §213.33.

16. Licensure of Petitioner poses no direct threat to the health and safety of patients or the public provided Petitioner complies with the stipulations outlined in this Order.
17. The Executive Director's review of the grounds for potential ineligibility has been made on the basis of Petitioner's disclosures.
18. Petitioner has been advised by the Board that any information found to be incomplete, incorrect or misleading to the Board or a subsequent discovery of a basis of ineligibility will be considered by the Board and may result in an ultimate determination of ineligibility or the later revocation of a license obtained through fraud or deceit.
19. Petitioner shall immediately notify the Board of any fact or event that could constitute a ground of ineligibility for licensure under Section 301.452(b), Texas Occupations Code.

#### CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter pursuant to Sections 301.452 and 301.453, Texas Occupations Code.
2. On or about August 2, 2010, PETITIONER submitted an Application by Examination requesting a determination of eligibility for licensure in compliance with Sections 301.252, 301.253, 301.257 and 301.258, Texas Occupations Code, and the Board's Rules at 22 TEX. ADMIN. CODE §217.2(b) and §213.30.
3. Petitioner's history reflects conduct which may constitute grounds for denial of a license under Section 301.452(b)(3),(10)&(12), Texas Occupations Code.
4. The Board may probate the denial of a license under conditions for a specified term pursuant to Section 301.453, Texas Occupations Code.
5. The Board may license an individual who has been previously convicted, adjudged guilty by a court, pled guilty or pled nolo contendere to any crime whether or not a sentence was imposed upon consideration of the factors set out in 22 TEX. ADMIN. CODE §213.28 and evaluating the direct relationship to nursing according to 22 TEX. ADMIN. CODE §213.28 and, if applicable, Chapter 53, Section 53.001 *et seq.*, Texas Occupations Code.
6. The Board may license an individual who has a history of substance abuse and/or chemical dependency after consideration of the criteria set out in 22 TEX. ADMIN. CODE §213.29 if the Board determines the individual does not pose a direct threat to the health and safety of patients or the public.

7. The Board may license an individual with prior behaviors inconsistent with the Board's character requirements if, upon evaluation of the factors in 22 TEX. ADMIN. CODE §213.27, and pursuant to 22 TEX. ADMIN. CODE §213.33, the Board is satisfied that the individual is able to consistently conform her conduct to the requirements of the Nursing Practice Act, the Board's Rules and Regulations, and generally accepted standards of nursing practice.
8. This Order is conditioned upon the accuracy and completeness of Petitioner's disclosures. Any subsequently discovered discrepancies will result in investigation and possible disciplinary action, up to revocation of Petitioner's license(s).

### ORDER

NOW, THEREFORE, IT IS AGREED that, upon meeting the requirements for graduation of an appropriate program in nursing education and payment of any required fees, PETITIONER is ELIGIBLE to sit for the National Council Licensure Examination for Practical Nurses (NCLEX-PN® Examination) and/or the National Council Licensure Examination for Registered Nurses (NCLEX-RN® Examination), as applicable.

IT IS FURTHER AGREED that PETITIONER SHALL NOT be eligible for temporary authorization to practice as a Graduate Vocational Nurse (GVN) and/or as a Graduate Nurse (GN), as applicable, in the State of Texas.

IT IS FURTHER AGREED that, upon payment of any required fees and upon attaining a passing grade on the appropriate National Council Licensure Examination, PETITIONER shall be issued the applicable license to practice nursing in the State of Texas, and all licenses issued to PETITIONER shall be subject to the following stipulations:

PETITIONER SHALL obtain and read the Texas Nursing Practice Act and the Rules and Regulations Relating to Nurse Education, Licensure, and Practice.

PETITIONER SHALL comply in all respects with the Nursing Practice Act, Texas Occupations Code §§301.001 *et seq.*, the Rules and Regulations Relating to Nurse Education,

Licensure and Practice, 22 TEX. ADMIN. CODE §211.1 *et seq.*, and this Order.

IT IS FURTHER AGREED and ORDERED that this Order SHALL be applicable to PETITIONER'S nurse licensure compact privileges, if any, to practice nursing in the State of Texas.

IT IS FURTHER AGREED and ORDERED that while PETITIONER'S license(s) is/are encumbered by this Order, PETITIONER may not work outside the State of Texas pursuant to a nurse licensure compact privilege without the written permission of the Texas Board of Nursing and the Board of Nursing in the party state where PETITIONER wishes to work.

(1) PETITIONER SHALL, within one (1) year of licensure, successfully complete a course in Texas nursing jurisprudence and ethics. PETITIONER SHALL obtain Board approval of the course prior to enrollment only if the course is not being offered by a pre-approved provider. Home study courses and video programs will not be approved. In order for the course to be approved, the target audience shall include nurses. It shall be a minimum of six (6) hours in length. The course's content shall include the Nursing Practice Act, standards of practice, documentation of care, principles of nursing ethics, confidentiality, professional boundaries, and the Board's Disciplinary Sanction Policies regarding: Sexual Misconduct; Fraud, Theft and Deception; Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder; and Lying and Falsification. Courses focusing on malpractice issues will not be accepted. PETITIONER SHALL CAUSE the sponsoring institution to submit a Verification of Course Completion form, provided by the Board, to the Office of the Board to verify PETITIONER'S successful completion of the course. This course shall be taken in addition to any other courses stipulated in this Order, if any, and in addition to any continuing education requirements the Board has for relicensure. *Board-approved courses may be found at the following Board website address:*

<http://www.bon.state.tx.us/disciplinaryaction/stipscourses.html>

**IT IS FURTHER AGREED, SHOULD PETITIONER PRACTICE AS A NURSE IN THE STATE OF TEXAS, PETITIONER WILL PROVIDE DIRECT PATIENT CARE AND PRACTICE IN A HOSPITAL, NURSING HOME, OR OTHER CLINICAL SETTING AND PETITIONER MUST WORK IN SUCH SETTING A MINIMUM OF SIXTY-FOUR (64) HOURS PER MONTH UNDER THE FOLLOWING STIPULATIONS FOR ONE (1) YEAR OF EMPLOYMENT. THE LENGTH OF THE STIPULATION PERIOD WILL BE EXTENDED UNTIL SUCH TWELVE (12) MONTHS HAVE ELAPSED. PERIODS OF UNEMPLOYMENT OR OF EMPLOYMENT THAT DO NOT REQUIRE THE USE OF A REGISTERED NURSE (RN) OR A VOCATIONAL NURSE (LVN) LICENSE, AS APPROPRIATE, WILL NOT APPLY TO THIS STIPULATION PERIOD:**

(2) PETITIONER SHALL notify each present employer in nursing of this Order of the Board and the stipulations on PETITIONER'S license(s). PETITIONER SHALL present a complete copy of this Order and all Proposals for Decision issued by the Administrative Law Judge, if any, to each present employer within five (5) days of receipt of this Order. PETITIONER SHALL notify all future employers in nursing of this Order of the Board and the stipulations on PETITIONER'S license(s). PETITIONER SHALL present a complete copy of this Order and all Proposals for Decision issued by the Administrative Law Judge, if any, to each future employer prior to accepting an offer of employment.

(3) PETITIONER SHALL CAUSE each present employer in nursing to submit the Notification of Employment form, which is provided to the PETITIONER by the Board, to the Board's office within ten (10) days of receipt of this Order. PETITIONER SHALL CAUSE each future employer to submit the Notification of Employment form, which is provided to the



PETITIONER by the Board, to the Board's office within five (5) days of employment as a nurse.

(4) PETITIONER SHALL be supervised by a Registered Nurse, if licensed and practicing as a Registered Nurse, or by a Licensed Vocational Nurse or a Registered Nurse, if licensed and practicing as a Licensed Vocational Nurse, who is on the premises. The supervising Nurse is not required to be on the same unit or ward as PETITIONER, but should be on the facility grounds and readily available to provide assistance and intervention if necessary. The supervising nurse shall have a minimum of two (2) years experience in the same or similar practice setting to which the PETITIONER is currently working. PETITIONER SHALL work only regularly assigned, identified and predetermined unit(s). PETITIONER SHALL NOT be employed by a nurse registry, temporary nurse employment agency, hospice, or home health agency. PETITIONER SHALL NOT be self-employed or contract for services. Multiple employers are prohibited.

(5) PETITIONER SHALL CAUSE each employer to submit, on forms provided to the PETITIONER by the Board, periodic reports as to PETITIONER'S capability to practice nursing. These reports shall be completed by the Nurse who supervises the PETITIONER. These reports shall be submitted by the supervising nurse to the office of the Board at the end of each three (3) month period for one (1) year of employment as a nurse.

(6) PETITIONER SHALL abstain from the consumption of alcohol, Nubain, Stadol, Dalgan, Ultram, or other synthetic opiates, and/or the use of controlled substances, except as prescribed by a licensed practitioner for a legitimate purpose. If prescribed, PETITIONER SHALL CAUSE the licensed practitioner to submit a written report identifying the medication, dosage and the date the medication was prescribed. The report shall be submitted directly to the office of the Board by the prescribing practitioner, within ten (10) days of the date of the prescription. **In the event that prescriptions for controlled substances are required for periods of two (2) weeks or**

longer, the Board may require and PETITIONER SHALL submit to a pain management and/or chemical dependency evaluation by a Board approved evaluator. The performing evaluator must submit a written report meeting the Board's requirements to the Board's office within thirty (30) days from the Board's request.

(7) PETITIONER SHALL submit to random periodic screens for controlled substances, tramadol hydrochloride (Ultram), and alcohol. For the first three (3) month period, random screens shall be performed at least once per week. For the next three (3) month period, random screens shall be performed at least twice per month. For the next six (6) month period, random screens shall be performed at least once per month. All random screens SHALL BE conducted through urinalysis. Screens obtained through urinalysis are the sole method accepted by the Board.

Specimens shall be screened for at least the following substances:

Amphetamines	Meperidine
Barbiturates	Methadone
Benzodiazepines	Methaqualone
Cannabinoids	Opiates
Cocaine	Phencyclidine
Ethanol	Propoxyphene
tramadol hydrochloride (Ultram)	

A Board representative may appear at the PETITIONER'S place of employment at any time during the stipulation period and require PETITIONER to produce a specimen for screening.

All screens shall be properly monitored and produced in accordance with the Board's policy on Random Drug Testing. A complete chain of custody shall be maintained for each specimen obtained and analyzed. PETITIONER SHALL be responsible for the costs of all random drug screening during the stipulation period.

Any positive result for which the nurse does not have a valid prescription or failure

to report for a drug screen, which may be considered the same as a positive result, will be regarded as non-compliance with the terms of this Order and may subject the nurse to further disciplinary action including EMERGENCY SUSPENSION pursuant to Section 301.4551, Texas Occupations Code, or REVOCATION of PETITIONER'S license(s) and nurse licensure compact privileges, if any, to practice nursing in the State of Texas.

(8) PETITIONER SHALL attend at least two (2) support group meetings each week, one of which must be for substance abuse and provided by Alcoholics Anonymous, Narcotics Anonymous, or another comparable recovery program that has been pre-approved by the Board. PETITIONER SHALL provide acceptable evidence of attendance. Acceptable evidence shall consist of a written record of at least: the date of each meeting; the name of each group attended; and the signature and printed name of the chairperson of each group attended by PETITIONER. PETITIONER SHALL submit the required evidence on the forms provided by the Board at the end of every three (3) month period. No duplications, copies, third party signatures, or any other substitutions will be accepted as evidence.

IT IS FURTHER AGREED, that upon full compliance with the terms of this Order, all encumbrances will be removed from PETITIONER'S license(s) to practice nursing in the State of Texas and PETITIONER shall be eligible for nurse licensure compact privileges, if any.

BALANCE OF PAGE INTENTIONALLY LEFT BLANK.

CONTINUED ON NEXT PAGE.

### PETITIONER'S CERTIFICATION

I am the Petitioner in this matter. I have fully and truthfully disclosed all of my past conduct which could constitute grounds for licensure ineligibility, and I have caused a complete and accurate criminal history to be submitted to the Texas Board of Nursing from each jurisdiction in which I have been adjudged guilty by way of conviction or deferred order. I certify that my past behavior, except as disclosed in my application and/or petition, has been in conformity with the Board's character rule. I have provided the Board with complete and accurate documentation of my past conduct in violation of the penal law of any jurisdiction which was disposed of through any procedure short of conviction, such as: conditional discharge, deferred adjudication or dismissal. I have no criminal prosecution pending in any jurisdiction.

In connection with my application and/or petition, I acknowledge that I have read and I understand Sections 301.157(d), 301.252, 301.253, 301.257, 301.258, 301.260, 301.452, and 301.453, Texas Occupations Code, and Chapter 53, Section 53.001 *et seq.*, Texas Occupations Code, and 22 TEX. ADMIN. CODE §§213.27, 213.28, 213.29, and 213.30. I agree with all terms of this Order, including the Findings of Fact and Conclusions of Law and any stipulations as set out in this Order. I acknowledge that this Order is stipulated and I understand that I am not eligible to receive a Temporary Permit to practice nursing. I agree to inform the Board of any other fact or event that could constitute a ground for denial of licensure prior to accepting any license from the Texas Board of Nursing.

I understand that if I fail to comply with all terms and conditions of this Order, I will be subject to investigation and disciplinary sanction, including revocation of my license(s) to practice nursing in the State of Texas, as a consequence of my noncompliance.

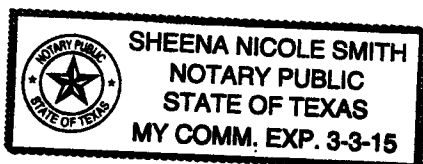
I understand that I can be represented by an attorney in this matter. I waive representation, notice, administrative hearing, and judicial review of this Order and request that the Texas Board of Nursing ratify this Order.

Signed this 9<sup>th</sup> day of May, 2011.

James Lynn Fortner  
JAME LYNN FORTNER, PETITIONER

Sworn to and subscribed before me this 9 day of May, 2011

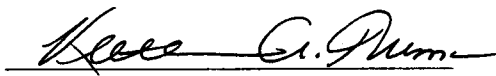
SEAL



Notary Public in and for the State of Texas

WHEREFORE, PREMISES CONSIDERED, the Texas Board of Nursing does hereby ratify and adopt the Agreed Eligibility Order that was signed on the 9th day of May, 2011, by JAME LYNN FORTNER, PETITIONER for Eligibility for Licensure, and said Order is final.

Effective this 14th day of June, 2011.

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

Katherine A. Thomas, MN, RN  
Executive Director on behalf  
of said Board