

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.
Patricia Vianes-Cabrera
Executive Director of the Board

6649

BEFORE THE BOARD OF NURSE EXAMINERS
FOR THE STATE OF TEXAS

IN THE MATTER OF	§	
KANDACE LEI CUNNINGHAM	§	ORDER
PETITIONER FOR ELIGIBILITY	§	of
FOR LICENSURE	§	CONDITIONAL ELIGIBILITY

A public meeting was held on September 14, 1999, by the Eligibility and Disciplinary Committee of the Board of Nurse Examiners (BNE), at 333 Guadalupe, Tower 3, Suite 460, Austin, Texas, in which the petition of KANDACE LEI CUNNINGHAM, hereinafter referred as Petitioner, was considered.

Board Members in attendance were: Kenneth W. Lowrance, MS, RN, CS, BNE President; Thalia H. Munoz, MS, RN, Nursing Practice; and John Fonteno, Jr., Consumer Member. Staff present were: Katherine A. Thomas, MN, RN, Executive Director; J. Kent Black, General Counsel; Anthony L. Diggs, Director of Enforcement; and Patricia Vianes-Cabrera, Legal Assistant. Petitioner appeared in person and waived representation by legal counsel.

FINDINGS OF FACT

1. On or about January 11, 1999, Petitioner submitted a Petition for Declaratory Order in compliance with Section 301.257, Texas Occupations Code.
2. Petitioner was enrolled in the nursing program at Southwestern Adventist University, Keene, Texas, with a graduation date in May 1999, no verification of graduation has been received.
3. Petitioner waived representation, notice, administrative hearing, and judicial review.
4. On a sworn affidavit dated October 2, 1998, Petitioner provided an affirmative answer to the question authorized by Rule 213.29 (b)(2), 22 Texas Administrative Code.

5. A letter dated June 8, 1998, was submitted by Petitioner's therapist, Rebecca Wilson, LMSW-ACP, LMFT, who first saw Petitioner on March 3, 1995, after a suicide attempt. Petitioner's diagnosis is Borderline Personality Disorder. The therapist concludes that Petitioner is mentally fit to practice nursing.
6. A letter dated November 17, 1998, was submitted by Petitioner's psychiatrist, Elma G. Granada, MD, Diplomate in General Psychiatry, American Board of Psychiatry & Neurology, Johnson County Mental Health Mental Retardation Center, Cleburn, Texas. Petitioner saw Dr. Granada from June 13, 1995 through November 13, 1996 for treatment of Major Depressive Disorder recurrent. Petitioner was discharged in stable condition.
7. A letter dated July 2, 1999, was submitted by Petitioner's psychiatrist, Peter Holm, MD, Psychiatrist, New Life Clinic, Richardson, Texas. Petitioner is currently under Dr. Holm's care for medication management of her depression. He concludes that if Petitioner is compliant with her treatment plan, she should be able to adequately fulfill the responsibilities of nursing.
8. Letters of support for Petitioner were received from the following:
 - Letter dated July 16, 1998, submitted by Catherine Turner, Ph.D., RN, Chair, Nursing Department, Southwestern Adventist University, Keene, Texas.
 - Letter dated July 17, 1998, submitted by Meriam Fabriga, RN, MSN, Assistant Professor, Nursing Department, Southwestern Adventist University, Keene, Texas.
 - Letter dated August 17, 1998, submitted by Holly Gadd, MS, RN, CCRN, CS-FNP, Associate Professor of Nursing, Nursing Department, Southwestern Adventist University, Keene, Texas.
 - Letter dated May 11, 1999, submitted by Debra M. Prow, MD, Director of Oncology, John Peter Smith Hospital, Fort Worth, Texas.
9. The safety of patients and the public requires that all persons licensed to practice nursing be fit and able to consistently practice nursing in autonomous roles under demanding and stressful condition.
10. The practice of nursing involves providing care and support to patients and members of the public who are or who may become physically, financially or emotionally vulnerable.
11. Based on this vulnerability, an individual seeking licensure as a registered nurse in Texas must be able to establish that he or she is both physically and mentally able to perform the essential functions of professional nursing without posing a direct threat to patients or the public.

12. The Eligibility and Disciplinary Committee further finds that the stipulations hereinafter set forth are necessary to assure that the public will be protected and that the Petitioner will continue to conform her conduct to the requirements of the law and the Board's practice standards.
13. Petitioner's compliance with the stipulations set out below will ensure that she remains mentally fit to practice professional nursing.
14. The Eligibility and Disciplinary Committee's review of the grounds for potential ineligibility has been made on the basis of Petitioner's disclosures and professional evaluations.
15. In consideration of Petitioner's past conduct and subsequent evidence of rehabilitation, the Eligibility and Disciplinary Committee finds that Petitioner should be declared conditionally eligible to take the National Council Licensure Examination for Registered Nurses.
16. Petitioner has sworn that, with the exception of matters disclosed in connection with the Petition for Declaratory Order, her past behavior conforms to the Board's professional character requirements. Petitioner presented no evidence of behavior since March 1995, which is inconsistent with the Board's character requirements in 22 Texas Administrative Code §213.27.
17. Petitioner has been advised that any information found to be incomplete, incorrect or misleading will be considered and may result in an ultimate determination of ineligibility or the later revocation of a license obtained through misrepresentation.

CONCLUSIONS OF LAW

1. The Board of Nurse Examiners has jurisdiction over this matter pursuant to Section 301.453, Texas Occupations Code.
2. Petitioner has submitted a petition in compliance with Section 301.257, Texas Occupations Code.
3. Petitioner's diagnosis of major depression and borderline personality disorder illustrates a ground for denial of a license due to lack of mental fitness to practice professional nursing under Article 4525(b)(11), Tex. Rev. Civ. Stat. Ann., as amended.
4. The Board may license an individual who has a history of lack of fitness if, after consideration of the criteria set out in 22 Texas Administrative Code §213.29, the Board determines the individual does not currently pose a direct threat to the health and safety of patients or the public.

5. The Board may license an individual with prior behaviors inconsistent with the Board's character requirements, who has presented an evaluation substantiating current fitness if, upon evaluation of the factors in 22 Texas Administrative Code §213.27, 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.

NOW, THEREFORE, IT IS ORDERED that upon meeting the requirements for graduation and payment of any required fees, KANDACE LEI CUNNINGHAM is CONDITIONALLY ELIGIBLE to sit for the National Council Licensure Examination for Registered Nurses (NCLEX-RN® Examination).

IT IS FURTHER ORDERED that upon attaining a passing grade on the NCLEX-RN® Examination, Petitioner shall be issued a CODED LICENSE to practice nursing in the State of Texas under the following STIPULATIONS:

(1) PETITIONER SHALL, within one (1) year of entry of this Order, successfully complete a course in nursing jurisprudence. PETITIONER SHALL obtain Board approval of the course prior to enrollment. Home study courses and video programs will not be approved. In order for the course to be approved, the target audience must include registered nurses. It must be a minimum of six (6) contact hours in length. The course's content shall include the Nursing Practice Act, standards of practice, and documentation of care. 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 is to be taken in addition to any continuing education requirements the Board may have for relicensure.

IT IS FURTHER ORDERED, SHOULD PETITIONER CHOOSE TO PRACTICE AS A REGISTERED NURSE IN THE STATE OF TEXAS, PETITIONER WILL PROVIDE DIRECT PATIENT CARE AND PRACTICE IN A HOSPITAL, NURSING HOME, OR OTHER CLINICAL SETTING, UNDER THE FOLLOWING STIPULATIONS FOR TWO (2) YEARS OF EMPLOYMENT:

(2) PETITIONER SHALL notify all future employers in professional nursing of this Order of the Board and the stipulations on PETITIONER's license. PETITIONER SHALL present a copy of this Order to each future employer prior to accepting an offer of employment.

(3) PETITIONER SHALL CAUSE each future employer to submit the Notification of Employment form to the Board's office within five (5) days of employment as a professional nurse.

(4) PETITIONER SHALL CAUSE each employer to submit, on forms provided by the Board, periodic reports as to PETITIONER's capability to practice professional nursing. These reports shall be completed by the Registered Nurse who supervises the PETITIONER. These reports shall be submitted to the office of the Board at the end of each three (3) months for two (2) years of employment as a professional nurse.

(5) PETITIONER SHALL participate in therapy with a "professional counselor" possessing credentials approved by the Board. PETITIONER SHALL CAUSE the therapist to submit written reports, on forms provided by the Board, as to the PETITIONER's progress in therapy, rehabilitation and capability to safely practice professional nursing. The report must indicate whether or not the PETITIONER's stability is sufficient to provide direct patient care safely. Such reports are to be furnished each and every month for three (3) months. If therapy is recommended for beyond three (3) months, the reports shall then be required at the end of each three

(3) month period for the duration of the stipulation period, or until PETITIONER is dismissed from therapy.

IT IS FURTHER ORDERED that Petitioner shall comply in all respects with the Nursing Practice Act, Revised Civil Statutes of Texas as amended, Texas Occupations Code §§301.001 *et seq.*, the Rules and Regulations Relating to Professional Nurse Education, Licensure and Practice, 22 TEX. ADMIN. CODE §211.01 *et. seq.* and this Order.

IT IS FURTHER ORDERED that upon full compliance with the terms of this Order, Petitioner shall be issued an unencumbered license to practice professional nursing in the State of Texas.

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PETITIONER'S CERTIFICATE

I am the Petitioner in this matter. I have fully and truthfully disclosed all relevant information in conformity with Rule 213.29 at 22 Texas Administrative Code. I certify that my past behavior, except as disclosed in my Petition for Declaratory Order, has been in conformity with the Board's professional character rule. I have provided the Board with complete and accurate documentation of my past behavior 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 petition, I acknowledge that I have read and I understand Section 301.257, Texas Occupations Code, Section 301.452(a), (b) and (c), Texas Occupations Code, and Board Rules 213.27, 213.28, and 213.29 at 22 Texas Administrative Code, which are incorporated by reference as a part of this Order. I agree with all terms of this Order, including the Findings of Fact and Conclusions of Law and any stipulations. I agree to inform the Board of any other fact or event that could constitute a ground for denial of licensure prior to registering for the NCLEX-RN® Examination or accepting any permit or license from the Board of Nurse Examiners.

I agree to the Findings of Fact and Conclusions of Law set out in this Order. 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 Executive Director of the Board of Nurse Examiners enter this Order.

Signed this 8th day of October, 1999.

Kandace Lei Cunningham
KANDACE LEI CUNNINGHAM

Sworn to and subscribed before me by the said Kandace Lei Cunningham this 8th day of October, 1999.


SEAL



Cherynn Timmons
Notary Public in and for the State of Texas

Entered this 12 day of October, 1999.

BOARD OF NURSE EXAMINERS
FOR THE STATE OF TEXAS

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

Attachments: [1] Section 301.257, Texas Occupations Code
[2] Section 301.452(a), (b) and (c), Texas Occupations Code
[3] Rule 213.27, 22 Texas Administrative Code
[4] Rule 213.28, 22 Texas Administrative Code
[5] Rule 213.29, 22 Texas Administrative Code