

FINDINGS OF FACT

1. On or about June 23, 2005, Petitioner submitted an Application for Initial Licensure by Examination in compliance with Section 301.257 *et seq.*, Texas Occupations Code.
2. Petitioner waived representation, notice, administrative hearing, and judicial review.
3. Petitioner graduated with a Certificate in Vocational Nursing from South Texas College, Weslaco, Texas, in August 2005.
4. Petitioner completed the Application for Initial Licensure by Examination and answered "yes" to Question Number One (1), which reads as follows: *"Have you been convicted, adjudged guilty by a court, plead guilty, no contest or nolo contendere to any crime in any state, territory or country, whether or not a sentence was imposed, including any pending criminal charges or unresolved arrest? This includes expunged offenses and deferred adjudications with or without prejudice of guilt."*
5. Petitioner disclosed the following criminal history, to wit:

On or about March 10, 2003, Petitioner pled Guilty to "Possession of Marijuana," a Third Degree Felony, committed on October 1, 2002, in the 79th Judicial District Court of Brooks County, Texas, Cause No. 03-01-08304. As a result of her plea, proceedings were deferred without entering an adjudication of guilt. Petitioner was placed on community supervision for a period of two (2) years, and assessed a fine in the amount of five hundred dollars (\$500.00). On July 15, 2005, Petitioner was successfully discharged from community supervision.
6. Petitioner failed to disclose the following criminal history, to wit:

On or about March 9, 2001, Petitioner was convicted of "Assault," a Class A Misdemeanor, committed on December 26, 1994, in the County Court at Law No. Three of Hidalgo County, Texas, Cause No. 128292-C-95. Petitioner was sentenced to four (4) days confinement in the Hidalgo County Jail.
7. There is no evidence of any subsequent criminal conduct.
8. On November 14, 2005, the Executive Director found the Petitioner ineligible for licensure as a vocational nurse. A copy of the November 14, 2005, Denial Letter is attached and incorporated by reference as part of this Order.
9. On or about January 9, 2007, Petitioner submitted a Petition for Declaratory Order requesting a determination of eligibility for licensure in compliance with Section 301.257 *et seq.*, Texas Occupations Code.

10. Petitioner completed the Petition for Declaratory Order and answered "yes" to Question Number Two (2), which reads as follows: *"Have you ever been convicted, placed on community supervision whether or not adjudicated guilty, sentenced to serve jail or prison time or granted pre-trial diversion, or plead guilty, no contest or nolo contendere to any crime in any state, territory or country, or received a court order whether or not a sentence was imposed, including any pending criminal charges or unresolved arrests whether or not on appeal? This includes expunged offenses and deferred adjudications with or without a finding of guilt."*
11. On April 10, 2007, Petitioner was requested to undergo a forensic psychological evaluation including a chemical dependency component and a polygraph examination. On May 11, 2007, Petitioner submitted to evaluation by Dr. Troy Martinez, Forensic and Clinical Psychology, Corpus Christi, Texas. Dr. Martinez stated that in his professional opinion, the Petitioner "remains vulnerable to and ripe for responding to influences and periods in her life with intermittent decisions and actions that are self-defeating, possibly illegal, and at odds with Board rules." Dr. Martinez believes that the Petitioner needs as least six (6) months of extensive psychotherapy to deal with her dependency needs, assertiveness, etc. and how her behaviors and choices make her vulnerable for future problems. Through the evaluation, Petitioner admitted that she had been involved approximately ten (10) other times in transporting marijuana over the border other than the time she was caught and arrested in October 2002. Petitioner stated that she had not had any other legal problems; however, she later admitted that she had outstanding warrants for unpaid fines totaling about two thousand dollars (\$2,000.00). During the polygraph, Petitioner also admitted to having been stopped at a border crossing in April 2007, while trying to bring three (3) illegal Mexican aliens into the United States. Petitioner was not charged with any crime.
12. Licensure of Petitioner poses no direct threat to the health and safety of patients or the public.
13. The Committee's review of the grounds for potential ineligibility has been made on the basis of the information provided by Petitioner.
14. The Committee's review of the grounds for potential ineligibility has been made on the basis of the information provided by Petitioner.
15. Petitioner has sworn that, with the exception of matters disclosed in connection with the petition, his past behavior conforms to the Board's professional character requirements. Petitioner presented no evidence of behavior which is inconsistent with the Board's character requirements in 22 Texas Administrative Code §213.27.
16. On or about August 14, 2007, the Eligibility and Disciplinary Committee of the Board considered evidence of Petitioner's past behavior in light of the character factors set out in 22 Texas Administrative Code §213.27 and determined that Petitioner currently demonstrates the criteria required for good professional character.

17. In consideration of Petitioner's past conduct and subsequent evidence of rehabilitation, the Board finds that Petitioner should be declared conditionally eligible to take the National Council Licensure Examination for Practical Nurses.
18. Petitioner has been advised by the Board 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 fraud or deceit.

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 *et seq.*, Texas Occupations Code.
3. The action taken by another jurisdiction is grounds for denial of a license under Section 301.452 *et seq.*, Texas Occupations Code.
4. Petitioner shall immediately notify the Board of any fact or event that could constitute a ground of ineligibility for licensure under Section 301.452, Texas Occupations Code.
5. The Board may license an individual with prior behaviors inconsistent with the Board's character requirements 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.
6. 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.

ORDER

NOW, THEREFORE, IT IS ORDERED that upon meeting the requirements for graduation and payment of any required fees, VERONICA FERNANDEZ, PETITIONER, is CONDITIONALLY ELIGIBLE to sit for the National Council Licensure Examination for Practical Nurses (NCLEX-PN® Examination). PETITIONER SHALL NOT be eligible for temporary authorization to practice as a Graduate Vocational Nurse in the State of Texas.

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 Vocational Nurse Education, Licensure and Practice, 22 TEX. ADMIN. CODE §211.01 *et seq.*, and this Order.

IT IS FURTHER AGREED and ORDERED that this Order SHALL be applicable to PETITIONER's multistate licensure privilege, if any, to practice vocational nursing in the State of Texas.

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

IT IS FURTHER ORDERED that PETITIONER, upon attaining a passing grade on the NCLEX-PN®, shall be issued a license to practice nursing in the State of Texas, which shall bear the appropriate notation and PETITIONER SHALL be subject to the following stipulation(s).

(1) PETITIONER SHALL, within one (1) year of initial licensure in the State of Texas, 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) contact 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 Chemical Dependency, 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.bne.state.tx.us/about/stipscourses.html>

IT IS FURTHER AGREED, SHOULD PETITIONER PRACTICE AS A VOCATIONAL 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 TWO (2) YEARS OF EMPLOYMENT. THE LENGTH OF THE STIPULATION PERIOD WILL BE EXTENDED UNTIL SUCH TWENTY-FOUR (24) MONTHS HAVE ELAPSED. PERIODS OF UNEMPLOYMENT OR OF EMPLOYMENT THAT DO NOT REQUIRE THE USE OF A VOCATIONAL NURSE (LVN) LICENSE WILL NOT APPLY TO THIS STIPULATION PERIOD:

(2) PETITIONER SHALL notify all future employers in vocational nursing of this Order of the Board and the stipulations on PETITIONER's license. 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 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 vocational nurse.

(4) For the first year of employment as a Licensed Vocational Nurse under this Order, PETITIONER SHALL be directly supervised by a Registered Nurse or a Licensed Vocational Nurse. Direct supervision requires another professional or vocational nurse to be working on the same unit as PETITIONER and immediately available to provide assistance and intervention. PETITIONER SHALL work only on regularly assigned, identified and predetermined unit(s). The 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) For the remainder of the stipulation period, PETITIONER SHALL be supervised by a Registered Nurse or 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.

(6) 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 Registered Nurse or Vocational 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) months for two (2) years of employment as a nurse.

(7) 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 an evaluation by a Board approved physician specializing in Pain Management or Psychiatry. The performing evaluator will submit a written report to the Board's office, including results of the evaluation, clinical indications for the prescriptions, and recommendations for on-going treatment within thirty (30) days from the Board's request.**

(8) 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. For the remainder of the stipulation period, random screens shall be performed at least once every three (3) months.

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 will be regarded as non-compliance with the terms of this Order and may subject the nurse to further disciplinary action by this Board. Failure to report for a drug screen may be considered the same as a positive result and may result in further disciplinary action by this Board.

(9) 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 vocational 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 two (2) years of employment, or until PETITIONER is dismissed from therapy.

IT IS FURTHER ORDERED that upon full compliance with the terms of this Order, PETITIONER SHALL be issued an unencumbered license and multistate licensure privileges, if any, to practice vocational nursing in the State of Texas.

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PETITIONER'S CERTIFICATION

I am the Petitioner in this matter. I have fully and truthfully disclosed all of my past convictions, and I have caused a complete and accurate criminal history to be submitted to the Board of Nurse Examiners from each jurisdiction in which I have been convicted. 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 Texas Occupations Code, and Board Rules 213.27 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 as set out in this Order. I acknowledge that this Order is stipulated and I understand that I am not eligible to receive a Graduate Vocational Nurse Permit to practice. 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-PN® Examination or accepting any permit or license from the Board of Nurse Examiners.

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 to practice vocational 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 Executive Director of the Board of Nurse Examiners enter this Order.

Signed this 8 day of October, 2007



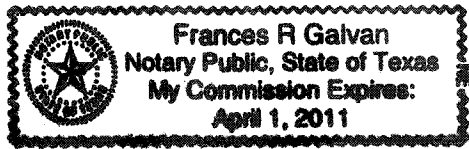
VERONICA FERNANDEZ, PETITIONER

Sworn to and subscribed before me this 8 day of October, 2007

SEAL



Notary Public in and for the State of TEXAS



WHEREFORE, PREMISES CONSIDERED, the Board of Nurse Examiners for the State of Texas does hereby ratify and adopt the Order of Conditional Eligibility that was signed on the 8th day of October, 2007, by VERONICA FERNANDEZ, PETITIONER, for Petition for Declaratory Order, and said Order is final.

Entered this 24th day of October, 2007.

BOARD OF NURSE EXAMINERS
FOR THE STATE OF TEXAS



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



Board of Nurse Examiners For the State of Texas

Location Address: William P. Hobby Building, Ste. 3-460, 333 Guadalupe Street, Austin, Texas 78701
Phone: (512) 305-7400 Fax: (512) 305-7401 Web: www.bne.state.tx.us

Katherine A. Thomas, MN, RN
Executive Director

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

Joyce Adams, PhD, RN Houston	Deborah Bell, CLU, ChFC Abitene	George Buchenau, Jr., BSN, RN, MBA Amarillo	Virginia Campbell, BSN, RN, CNOR Mesquite	Blanca Rosa Garcia, PhD, RN Corpus Christi
Richard Gibbs, LVN Mesquite	Rachel Gomez, LVN Harlingen	Brenda Jackson, PhD, RN San Antonio	Beverley Jean Nutall, LVN Bryan	
Anita Palmer, ME, MA Olney	Phyllis Rawley, CPC Vice-President		Linda Rounds, PhD, FNP, RN President	Frank Sandoval, Jr., J.D. San Antonio

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