



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

BEFORE THE  
TEXAS BOARD OF NURSING

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In the Matter of §  
KIMBERLY ROCHELLE MCDANIEL § ORDER OF  
PETITIONER for Eligibility for § CONDITIONAL ELIGIBILITY  
Licensure §

On the date entered below, the Texas Board of Nursing, hereinafter referred to as the Board, considered the Petition for Declaratory Order and supporting documents filed by KIMBERLY ROCHELLE MCDANIEL, hereinafter referred to as PETITIONER, together with any documents and information gathered by staff and PETITIONER's Certificate contained herein. Information received by the Board produced evidence that PETITIONER may have violated Section 301.452(b)(3),(10)&(12), Texas Occupations Code.

PETITIONER waived representation by counsel, notice and hearing, and agreed to the entry of this Order offered on June 15, 2009, by Katherine A. Thomas, MN, RN, Executive Director.

FINDINGS OF FACT

1. On or about January 20, 2009, Petitioner submitted a Petition for Declaratory Order requesting a determination of eligibility for licensure in compliance with Section 301.257 of the Texas Occupations Code and the Board's Rule at 22 Texas Administrative Code Section 213.30.
2. Petitioner waived representation, notice, administrative proceedings, and judicial review.
3. Petitioner was not enrolled in a Vocational Nursing Program at the time of this petition.
4. Petitioner completed the Petition for Declaratory Order 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 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?*

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

- A. On September 5, 2002, Petitioner was convicted of the Class C misdemeanor offense of Theft of Property by Check, Cause No. 87761-P, in the County Court at Law of Potter County, Texas. Petitioner was assessed a fine in the amount of one hundred and twenty-five dollars (\$125.00).
- B. On May 12, 2001, Petitioner was arrested for the State Jail felony offense of Theft \$1500 - \$20k. On May 3, 2002, Petitioner entered a plea of guilty to the reduced Class B misdemeanor offense of Theft \$50 - \$500, Cause No. 2001-437324, in the 140<sup>th</sup> District Court of Lubbock County, Texas. Petitioner was sentenced to sixty (60) days confinement.
- C. On April 4, 2002, Petitioner entered a plea of guilty to the Class A misdemeanor offense of Unlawfully Carrying a Weapon, Cause No. 021491-CR-1, in the County Court at Law of McLennan County, Texas. Petitioner was sentenced to one hundred twenty (120) days confinement, which was probated for twelve (12) months. On April 10, 2003, Petitioner completed all terms of the probated sentence.
- D. On November 9, 2007, Petitioner entered a plea of guilty to the State Jail felony offense of Possession of a Controlled Substance, Cause No. 2007-416479, in the 364<sup>th</sup> District Court of Lubbock County, Texas. Petitioner was sentenced to ten (10) days confinement.

6. There is no evidence of any subsequent criminal conduct.

7. Petitioner completed the Petition for Declaratory Order 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. A certificate from the Ranch at Dove Tree was submitted to the Board indicating that Petitioner successfully completed the recovery program on May 31, 2007.

9. A certificate from Amarillo Council on Alcoholism and Drug Abuse was submitted to the Board indicating that Petitioner successfully completed outpatient treatment on September 6, 2007.
10. A letter was submitted by Diann Gilmore, LMSW-AP, Downtown Women's Center, Amarillo, Texas, stating that Petitioner was a resident since June 12, 2008, and graduated in July 2008. Ms. Gilmore states that it is her opinion that Petitioner works a strong recovery program and meets the required responsibilities of living in the Transitional Housing Program. She has passed all drug tests administered since June 12, 2007, and has a clean and sober date of April 2007. Petitioner will continue in the program for the full 2 years offered.
11. Petitioner states she has been clean and sober since April 23, 2007.
12. Petitioner presented evidence of current fitness to practice nursing.
13. 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.
14. The Executive Director considered evidence of Petitioner's substance abuse and subsequent rehabilitation as provided in §213.29, 22 Texas Administrative Code .
15. The Executive Director's review of the grounds for potential ineligibility has been made on the basis of the information provided by Petitioner.
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 which is inconsistent with the Board's character requirements in 22 Texas Administrative Code §213.27.
17. On June 15, 2009, the Executive Director 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.
18. In consideration of Petitioner's past conduct and subsequent evidence of rehabilitation, the Executive Director finds that Petitioner should be declared conditionally eligible to take the National Council Licensure Examination for Vocational Nurses.
19. Petitioner's compliance with the terms of a Board approved peer assistance program should be sufficient to protect patients and the public.

## CONCLUSIONS OF LAW

1. The Texas Board of Nursing has jurisdiction over this matter pursuant to Section 301.453, Texas Occupations Code.
2. Petitioner has submitted a Petition for Declaratory Order requesting a determination of eligibility for licensure in compliance with Section 301.257 of the Texas Occupations Code and the Board's Rule at 22 Texas Administrative Code Section 213.30.
3. 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.
4. The Texas Board of Nursing may license an individual who has a history of substance abuse, after consideration of the criteria set out in 22 Texas Administrative Code §213.29, the Board determines the Petitioner does not currently pose a direct threat to the health and safety of patients or the public.
5. The Board may, in its discretion, order a Petitioner, upon initial licensure as a registered nurse, to participate in a peer assistance program approved by the Board if the nurse would otherwise have been eligible for referral to peer assistance pursuant to Section 301.410, Texas Occupations Code.

## ORDER

NOW, THEREFORE, IT IS ORDERED that upon meeting the requirements for graduation and payment of any required fees, KIMBERLY ROCHELLE MCDANIEL, 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 Nurse in the State of Texas.

IT IS FURTHER ORDERED that 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 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.

IN ADDITION, IT IS THEREFORE FURTHER AGREED and ORDERED that PETITIONER, upon initial licensure, SHALL comply with the following conditions for such a time as is required for PETITIONER to successfully complete the Texas Peer Assistance Program for Nurses (TPAPN):

(1) PETITIONER SHALL, within forty-five (45) days of initial licensure, apply to and be accepted into the TPAPN, which SHALL include payment of a non-refundable participation fee in the amount of three hundred fifty dollars (\$350.00) payable to TPAPN.

(2) Upon acceptance into the TPAPN, PETITIONER SHALL waive confidentiality and provide a copy of the executed TPAPN contract to the Texas Board of Nursing.

(3) PETITIONER SHALL comply with all requirements of the TPAPN contract during its term.

(4) PETITIONER SHALL CAUSE the TPAPN to notify the Texas Board of Nursing of any violation of the TPAPN contract.

IT IS FURTHER AGREED and ORDERED that this Order SHALL be applicable to Petitioner's multistate licensure privileges, 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, 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 AGREED, SHOULD PETITIONER fail to comply with this Order or the terms of the participation agreement with the TPAPN, such noncompliance will result in further disciplinary action including revocation of a PETITIONER's license 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 relevant information in conformity with Rule 213.29 at 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 Chapter 53, Section 53.001 *et seq.*, Texas Occupations Code, and Board Rules 213.27, 213.28, and 213.29 at 22 Texas Administrative Code. I agree with all terms of this Order, including the Findings of Fact and Conclusions of Law and any stipulations set out in this Order. I acknowledge that this Order is stipulated and I understand that I am not eligible to receive a Graduate 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 Texas Board of Nursing.

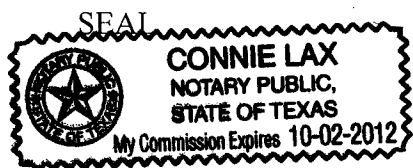
I understand that if I fail to comply with all terms and conditions of this Order, I will be subject to investigation and disciplinary sanction, including revocation of my license to practice vocational nursing in the State of Texas, as a consequence of my noncompliance.

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 Texas Board of Nursing enter this Order.

Signed this 26<sup>th</sup> day of August, 2009.

Kimberly Rochelle McDaniel  
KIMBERLY ROCHELLE MCDANIEL, PETITIONER


Sworn to and subscribed before me this 26<sup>th</sup> day of August, 2009.



Connie Lax  
Notary Public in and for the State of Potter

WHEREFORE, PREMISES CONSIDERED, the Executive Director on behalf of the Texas Board of Nursing does hereby ratify and adopt the Order of Conditional Eligibility that was signed on the 26<sup>th</sup> day of August, 2009, by KIMBERLY ROCHELLE MCDANIEL, PETITIONER, for Declaratory Order, and said Order is final.

Entered and effective this 10<sup>th</sup> day of September, 2009.

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