



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 R. Thomas
Executive Director of the Board

BEFORE THE TEXAS BOARD OF NURSING

In the Matter of Registered Nurse	§	AGREED
License Number 636470	§	
issued to JOE GALLO	§	ORDER

An investigation by the Texas Board of Nursing, hereinafter referred to as the Board, produced evidence indicating that JOE GALLO, hereinafter referred to as Respondent, Registered Nurse License Number 636470, may have violated Section 301.452(b)(10)&(13), Texas Occupations Code.

An informal conference was held on August 19, 2008, at the office of the Texas Board of Nursing, in accordance with Section 301.464, Texas Occupations Code.

Respondent appeared in person. Respondent was represented by James K. McClendon, Attorney at Law. In attendance were Katherine A. Thomas, MN, RN, Executive Director; John F. Legris, Assistant General Counsel; Anthony L. Diggs, MSCJ, Director, Enforcement Division; Jolene Zych, MS, RNC, WHCNP, Advanced Practice Nursing Consultant; Sam Smelser, Investigator; Amy Grissom, RN, Investigator; Jennifer Ellis, RN, Investigator; and Skylar Caddell, RN,C, Lead Investigator.

FINDINGS OF FACT

1. Prior to the institution of Agency proceedings, notice of the matters specified below in these Findings of Fact was served on Respondent and Respondent was given an opportunity to show compliance with all requirements of the law for retention of the license.
2. Respondent waived notice and hearing, and consented to the entry of this Order.
3. Respondent is currently licensed to practice professional nursing in Texas.

4. Respondent received an Associate Degree in Nursing from North Central Texas College, Gainesville, Texas, in December 1996, and received a Certificate from the Women's Health Care Nurse Practitioner Program of The University of Texas Southwestern Medical Center School of Nursing, Dallas, Texas, in July 1998. Respondent was licensed to practice professional nursing in the State of Texas on January 16, 1997; became Board recognized with Prescriptive Authorization on August 13, 1998; and became Board recognized as a Women's Health Care Nurse Practitioner in the State of Texas on August 31, 1998.

5. Respondent's nursing employment history includes:

1/1997 - 3/1999	RN & Nurse Practitioner	Norman Tompkins, MD Gainesville, Texas
6/1999 - 8/2001	Nurse Practitioner	Allen Groff, MD Sanger, Texas
8/2001 - 10/2002	Nurse Practitioner	Kenneth Bereford, MD Sanger, Texas
10/2002 - 12/2006	Nurse Practitioner	Advanced Medical Care Sanger, Texas
12/2006 - 9/2007	Regional Director	Bluebonnet Home Care & Hospice Denton, Texas
9/2007 - Present	Nurse Practitioner	MedOne, Robert Helsten, MD Sanger, Texas
Unknown - Present	Executive Consultant	Comprehensive Healthcare Consultants Grandbury, Texas

6. On or about December 20, 1996, Respondent was issued a Conditional Eligibility Order for registered nurse licensure by the Board. A copy of the Findings of Fact, Conclusions of Law, and Order dated December 20, 1996, is attached and incorporated herein by reference as part of this Order.

7. On or about October 2002 through September 2004, Respondent failed to obtain the minimum necessary contact hours of continuing education, both in his advanced specialty area and in pharmacotherapeutics, as required. On September 24, 2004, Respondent completed an online renewal of his license to practice professional nursing with advanced practice authorization as a Women's Health Care Nurse Practitioner in the State of Texas, and falsely attested that he had met all requirements for relicensure.

8. At the time of the incident in Finding of Fact Number Nine (9), Respondent was employed as a Women's Health Care Nurse Practitioner with Advanced Medical Care, Sanger, Texas, and had been in this position for four (4) months.

9. On or about April 2003 through March 2005, while employed as a Women's Health Care Nurse Practitioner with Advanced Medical Care, Sanger, Texas, Respondent failed to wear identification which clearly identified himself as a Registered Nurse, Women's Health Care Nurse Practitioner, as required.
10. On or about April 2003 through March 2005, while employed as a Women's Health Care Nurse Practitioner with Advanced Medical Care, Sanger, Texas, Respondent failed to maintain inventory control and records for Controlled Substance sample medications, as required, in that no inventory logs were maintained and the Controlled Substances were not stored in a locked and secure location. Respondent's conduct violated Chapter 481 of the Texas Health and Safety Code (Controlled Substances Act).
11. On or about July 6, 2004 through April 2005, while employed as a Women's Health Care Nurse Practitioner with Advanced Medical Care, Sanger, Texas, Respondent submitted his resume for credentialing to Igenix, United Health Group, Eden Prairie, Minnesota, which inappropriately indicated that he had obtained a Baccalaureate Degree in Nursing in 1999 and a Master's Degree in Science in Nursing in 2003 from Strassford University, London, England, which is not an accredited provider of nursing education in the United States.
12. On or about November 13, 2004, through April 6, 2005, while employed as a Women's Health Care Nurse Practitioner with Advanced Medical Care, Sanger, Texas, Respondent exceeded his Board authorized scope of practice by managing emergent medical aspects of male patient care, including stabilizing the patients, prescribing medications, and referring patients to see other medical providers later.
13. On or about March 23, 2005, through June 13, 2006, Respondent was provided notice three (3) times of alleged violations of the Nursing Practice Act by the Board, each of which included that he had been exceeding his authorized scope of practice as a Women's Health Care Nurse Practitioner by managing medical aspects of care of male patients.
14. On or about September 25, 2007, through November 5, 2007, while employed as a Women's Health Care Nurse Practitioner with MedOne, Robert Helsten, MD, Sanger, Texas, and providing patient care at Care Inn of Sanger, Sanger, Texas, Respondent exceeded his Board authorized scope of practice, as follows:
 - September 25, 2007, through November 5, 2007, by signing seven (7) orders for male Patient PS, including orders to extend skilled nursing services, to certify/recertify the patient's Physical and Occupational Therapy, and to administer medications. None of the orders were signed by Dr. Helsten;
 - October 3, 2007, by signing the admission orders to admit male Patient BS to the facility and signing the monthly physician's orders and plans of care of seven (7) male patients, which indicated that the "Care Plan (had been) Reviewed and Approved by (the) Physician." Two (2) months later, Dr. Helsten co-signed the orders with the exception of the orders for Patient PS;

- October 12, 2007, by ordering that male Patient FK have a urinalysis with culture and sensitivity after a staff nurse telephonically notified him that the patient was experiencing lower pelvic pain and burning around his urostomy. Four (4) days later, Dr. Helston co-signed the order.;
- October 19, 2007, by first ordering a chest x-ray for male Patient LW when the staff nurse notified Respondent of the patient's respiratory status, and later that afternoon, by ordering antibiotic therapy for the patient after the chest x-ray results were obtained. Only Respondent's stamped signature appears on both orders in the area for physician signature;
- October 29, 2007, by ordering antibiotic therapy for male Patient BS without documenting in the medical record that he had assessed the patient, communicated his assessment to the physician and received a verbal order from the physician, as required. Although Respondent signed the order in the area indicated for the physician's signature, twenty-nine (29) days later, Dr. Helsten signed above Respondent's signature, denoting the order as a "VO"; and
- October 29, 2007, by ordering that the Lantus Insulin dose of male Patient TC be increased by five (5) units each night, without documenting in the medical that he had assessed the patient, communicated his assessment to the physician and received a verbal order from the physician, as required. Dr. Helsten did not sign the order.

15. In response to the incidents in Findings of Fact Numbers Seven (7) through Fourteen (14), Respondents states as follows:

- Regarding the continuing education, that during the time period he had been hospitalized and did not return to practice until 2004;
- Regarding the failure to wear identification, that the facility had a casual atmosphere and as soon as it was called to his attention, he corrected the practice;
- Regarding the inventory maintenance and security of controlled substance samples, that he was unaware of the requirements and immediately corrected the practice;
- Regarding the Strassford University degrees, that he believed the college had been approved for employees in the United States, that in April 2005, the office manager sent a letter to the credentialing agency offering to correct the matter, that he did not intentionally misrepresent the information, and that he has ceased using the degrees since learning of Strassford's illegal activity;
- Regarding the male patients at Advanced Medical Care, that he provided the care necessary to stabilize the patients and/or prevent complications; and
- Regarding the male patients at Care Inn of Sanger, that he was in the facility 2 - 3 days per week and that Dr. Helsten discussed many of the patients with him because, having been in the facility, he was more familiar with each of the patients. Respondent denies that he managed medical aspects of care for male patients, indicating that he had taken orders from Dr. Helsten and documented them in the medical record as such. Regarding signing the various medical records, Respondent admits that some of the signatures were legitimate mistakes and that he just signed the orders that were given by other providers.

CONCLUSIONS OF LAW

1. Pursuant to Texas Occupations Code, Sections 301.451-301.555, the Board has jurisdiction over this matter.
2. Notice was served in accordance with law.
3. The evidence received is sufficient to prove violations of Section 301.452(b)(10)&(13), Texas Occupations Code, and 22 TEX. ADMIN. CODE §§ 217.11(1)(A), (4)(A)&(4)(B)[*effect. 9/28/04*], 217.12(1)&(22)[*effect. 9/1999 - 9/27/04*], 217.12(6)(G), (6)(H), (11)(B)[*effect. 9/28/04*], 221.8(a)(3), 221.11, 221.12(1), 221.13(b), 222.3(b), 222.4(a)(1)(B) and 222.11(4).
4. The evidence received is sufficient cause pursuant to Section 301.452(b), Texas Occupations Code, to take disciplinary action against Registered Nurse License Number 636470, heretofore issued to JOE GALLO, including revocation of Respondent's license to practice nursing in the State of Texas.

ORDER

IT IS THEREFORE AGREED and ORDERED, subject to ratification by the Texas Board of Nursing, that RESPONDENT SHALL receive the sanction of a LIMITED LICENSE with Stipulations, and RESPONDENT 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 Respondent's multistate licensure privilege, if any, to practice nursing in the State of Texas.

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

IT IS FURTHER AGREED that:

(1) While under the terms of this Order, RESPONDENT SHALL NOT provide direct patient care or practice in any way as an Advanced Practice Nurse (Women's Health Care Nurse Practitioner), including use of any Prescriptive Authorization. For the purposes of this Order, direct patient care involves a personal relationship between the Nurse and the client, and includes, but is not limited to: teaching, counseling, assessing the client's needs and strengths, and providing skilled nursing care.

(2) SHOULD RESPONDENT desire to return to a clinical practice setting, which would require him to provide direct patient care or Advanced Practice Nursing, with or without Prescriptive Authorization, RESPONDENT SHALL petition the Board for such approval. Respondent may file such a petition at any time, if desired, and SHALL BE subject to and satisfy all then existing requirements for re-authorization to provide patient care or engage in Advanced Practice Nursing. For the purposes of this Order, Respondent may remain employed in his current position as an Executive Consultant with Comprehensive Healthcare Consultants, Grandbury, Texas, as long as his position continues to involve no patient care.

(3) RESPONDENT SHALL, within one (1) year of entry of this Order, successfully complete a course in Texas nursing jurisprudence and ethics. RESPONDENT 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 Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder;

and Lying and Falsification. Courses focusing on malpractice issues will not be accepted. RESPONDENT 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 RESPONDENT'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>.

(4) RESPONDENT SHALL pay a monetary fine in the amount of five hundred dollars (\$500.00). RESPONDENT SHALL pay this fine within forty-five (45) days of entry of this Order. Payment is to be made directly to the Texas Board of Nursing in the form of cashier's check or U.S. money order. Partial payments will not be accepted.

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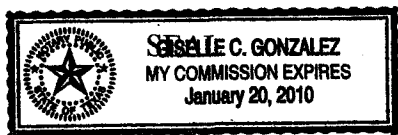
RESPONDENT'S CERTIFICATION

I understand that I have the right to legal counsel prior to signing this Agreed Order. I have reviewed this Order. I neither admit nor deny the violations alleged herein. By my signature on this Order, I agree to the Findings of Fact, Conclusions of Law, Order, and any conditions of said Order, to avoid further disciplinary action in this matter. I waive judicial review of this Order. I understand that this Order is subject to ratification by the Board. When this Order is ratified, the terms of this Order become effective, and a copy will be mailed to me. 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 professional nursing in the State of Texas, as a consequence of my noncompliance.

Signed this 1st day of December, 2008.

Joe Gallo
JOE GALLO, Respondent

Sworn to and subscribed before me this 1st day of December, 2008.



State C. Gonzalez
Notary Public in and for the State of Texas

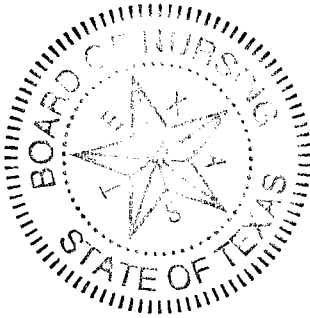
Approved as to form and substance.

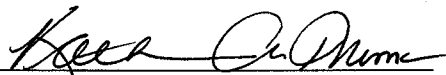
James K. McClendon
James K. McClendon, Attorney for Respondent

Signed this 9th day of December, 2008.

WHEREFORE, PREMISES CONSIDERED, the Texas Board of Nursing does hereby ratify and adopt the Agreed Order that was signed on the 1st day of December, 2008, by JOE GALLO, Registered Nurse License Number 636470, and said Order is final.

Effective this 22nd day of January, 2009.




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

IN THE MATTER OF
JOE PAUL GALLO
PETITIONER FOR ELIGIBILITY
OF INITIAL LICENSURE

§
§
§
§

BEFORE THE BOARD OF
NURSE EXAMINERS
FOR THE
STATE OF TEXAS

CONDITIONAL ELIGIBILITY ORDER

On the date entered below, the Executive Director of the Board of Nurse Examiners, Katherine A. Thomas, MN, RN, considered the Petition for Declaratory Order and supporting documents filed by JOE PAUL GALLO together with any documents and information gathered by staff, the staff summary and Petitioner's certificate contained herein, and makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Joe Paul Gallo (Petitioner) has submitted a petition and supporting documents requesting a determination of eligibility for licensure.
2. Petitioner waived notice, counsel and hearing and agreed with all terms of this Order.
3. Staff's review of the grounds for potential ineligibility has been made on the basis of the information provided by Petitioner.
4. Petitioner disclosed past behavior resulting in convictions to wit:
 - Driving While Under the Influence of Drugs, 1975. Petitioner was 21 at the time of the conviction.
 - Public Intoxication, 1976. Petitioner was 22 at the time of the conviction.
5. Petitioner is 42 years of age.
6. The circumstances surrounding these convictions meet the parameters of youthful indiscretion as defined by the Board at 22 Texas Administrative Code, §213.28 (d) (12) and, therefore, should not present an impediment to licensure.
7. Petitioner has sworn that with the exception of matters disclosed in connection with the Petition for Declaratory Order his past behavior conforms to the Board's professional character requirements. Petitioner presented no evidence of behavior since his convictions in 1975 and 1976 which is inconsistent with good professional character.

8. **Petitioner has been advised that any information later 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 has jurisdiction over this matter pursuant to Article 4525(a), Texas Revised Civil Statutes, Annotated, as amended.**
2. **Petitioner has submitted a petition in accordance with Article 4519a(a), TEX. REV. CIV. STAT. ANN., as amended.**
3. **The Board may license individuals who have been previously convicted of a crime upon consideration of the factors set out in Article 6252-13c(b) TEX. REV. CIV. STAT. ANN., as amended, and 22 Texas Administrative Code, §213.27 and §213.28.**
4. **The Board may license individuals who have been previously convicted of a crime if upon consideration of the factors set out at 22 Texas Administrative Code, §213.28 (f) (12), the evidence provided to the Board is sufficient to establish that the conviction was a result of youthful indiscretion and that Petitioner does not presently represent a direct harm to patients or the public.**

IT IS THEREFORE ORDERED, that:

JOE PAUL GALLO

IS DECLARED CONDITIONALLY ELIGIBLE FOR LICENSURE SUBJECT TO THE RESERVATIONS AND REQUIREMENTS SET OUT BELOW:

1. **Petitioner shall meet requirements for entrance to the National Council Licensure Examination for Registered Nurses (NCLEX-RN) and licensure by the Board.**
2. **Petitioner shall immediately notify the Board of any fact or event that could constitute a ground of ineligibility for licensure under Article 4525, TEX. REV. CIV. STAT. ANN., as amended.**
3. **Petitioner shall comply in all respects with the Nursing Practice Act, Revised Civil Statutes of Texas, as amended, Article 4513 et seq., the Rules and Regulations Relating to Professional Nurse Education, Licensure and Practice, 22 Texas Administrative Code, §211.01 et seq. and this Order.**

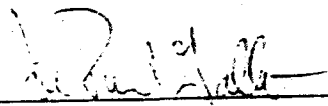
PETITIONER'S CERTIFICATE

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 Article 4519a, and Article 4525(a) and (b), Texas Revised Civil Statutes, Annotated, as amended, and Board Rules at 213.27 and 213.28, 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 grounds for denial of licensure prior to registering for the NCLEX-RN or accepting any permit or license from the Board of Nurse Examiners.

I understand that I can be represented by an attorney in this matter. I waive representation, notice and hearing and request that the Executive Director of the Board of Nurse Examiners enter this Order.

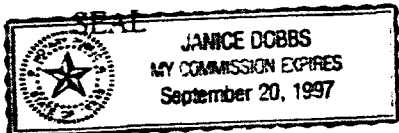
Signed this 13 day of December, 1996.




JOE PAUL GALLO

Sworn to and subscribed before me by the said _____ this _____ day of

December, 1996.




Notary Public in and for the State of
TEXAS

Entered this 20th day of December, 1996.

BOARD OF NURSE EXAMINERS
FOR THE STATE OF TEXAS



By: Katherine A. Thomas, MN, RN
Executive Director

Attachments: [1] Article 4519a, Texas Revised Civil Statutes, Annotated, as amended
[2] Article 4525(a) and (b), Texas Revised Civil Statutes, Annotated, as amended
[3] Rule 213.27, 22 Texas Administrative Code
[4] Rule 213.28, 22 Texas Administrative Code

Article 4519a. DECLARATORY ORDERS OF ELIGIBILITY FOR LICENSE.

- (a) An individual enrolled or planning to enroll in an educational program that prepares an individual for an initial license as a registered nurse who has reason to believe that the individual is ineligible for the license may petition the Board for a declaratory order as to the individual's eligibility. The petition must state the basis for the individual's potential ineligibility. The Board shall have the same powers to investigate the petition and the individual's eligibility that it has to investigate a person applying for a license. The petitioning individual or the Board may amend the petition at any time before a final determination is made to include additional grounds for potential ineligibility.
- (b) If the Board proposes to find the petitioner ineligible for a license, the petitioner is entitled to a hearing before the Board in accordance with Subsection (b), Article 4525, Revised Statutes. The Board's order must set out each basis for potential ineligibility and the Board's determination as to eligibility. In the absence of new evidence known to but not disclosed by the petitioner or not reasonably available to the Board at the time the order is issued, the Board's ruling on the petition determines the individual's eligibility with respect to the basis for potential ineligibility set out in the order.

Article 4525. DISCIPLINARY PROCEEDINGS

(4525. (a)-(c) amended/added by HB 756) (4525. (e) amended/added by HB 2180)

(a) The Board may refuse to admit persons to the licensing examination, to issue or renew a license, or to issue a temporary permit for any of the reasons for which the Board may take disciplinary action against a registered nurse under Subsection (b) of this article. If the Board proposes to refuse to admit a person to the examination, to issue or renew a license, or to issue a temporary permit, the Board shall notify the person of the basis for its decision. A person who is refused admittance to the examination or the renewal or issuance of a license or temporary Permit is entitled to a hearing before an administrative law judge of the State Office of Administrative Hearings.

(b) The Board may take disciplinary action against a registered nurse for any of the following reasons:

(1) The violation of any of the provisions of this law, any rule, regulation not inconsistent with this law, or order issued hereinunder.

(2) Fraud or deceit in procuring or attempting to procure a license to practice professional nursing.

(3) Conviction of a crime of the grade of felony, or a crime of lesser grade which involves moral turpitude, or any conduct resulting in the revocation or probation imposed pursuant to such conviction.

(4) The use of any nursing license, certificate, diploma or permit, or transcript of such license, certificate, diploma or permit, which has been fraudulently purchased, issued, counterfeited, or materially altered.

(5) The impersonation of, or the acting as a proxy for, another in any examination required by law to obtain a license to practice professional nursing.

(6) Aiding or abetting, directly or indirectly, or in any manner whatsoever, any unlicensed person in connection with the unauthorized practice of professional nursing.

(7) Revocation, suspension, or denial of or any other action relating to the license to practice nursing in another jurisdiction. Certified copy of the order of denial, suspension, revocation, or any other action shall be conclusive evidence thereof.

(8) Intemperate use of alcohol or drugs that the Board determines endangers or could endanger patients. Intemperate use includes but is not limited to practicing professional nursing or being on duty or call while under the influence of alcohol or drugs.

(9) Unprofessional conduct which, in the opinion of the Board, is likely to deceive, defraud, or injure patients or the public.

(10) Adjudication of mental incompetency.

(11) Lack of fitness to practice by reason of mental or physical health that could result in injury to patients or the public.

(12) Failing to care adequately for patients or to conform to the minimum standards of acceptable professional nursing practice that, in the opinion of the Board, exposes a patient or other person unnecessarily to risk of harm.

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 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 and 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.

§213.28. Licensure of Persons with Criminal Convictions.

(a) This section sets out the guidelines and criteria on the eligibility of persons with criminal convictions to obtain a license as a registered nurse. The Board may refuse to admit persons to its licensure examinations, may refuse to issue a license or certificate of registration, or may refuse to issue a temporary permit to any individual that has been convicted of a felony, a misdemeanor involving moral turpitude, or engaged in conduct resulting in the revocation of probation imposed pursuant to such conviction.

(b) The practice of nursing involves clients, their families and significant others and the public in diverse settings. The registered nurse practices in an autonomous role with individuals who are physically, emotionally and financially vulnerable. The nurse has access to personal information about all aspects of a person's life, resources and relationships. Therefore criminal behavior, whether violent or non-violent, directed against persons, property or public order and decency is considered by the Board as highly relevant to an individual's fitness to practice nursing.

(c) In considering whether a criminal conviction renders the individual ineligible for licensure as a registered nurse, the Board shall consider:

(1) the knowing or intentional practice of professional nursing without a license issued under the NPA:

(2) any felony or misdemeanor involving moral turpitude;

(3) the nature and seriousness of the crime;

(4) the relationship of the crime to the purposes for requiring a license to engage in professional nursing practice:

(5) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(6) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of professional nursing practice.

(d) In addition to the factors that may be considered under subsection (c) of this section, the Board, in determining the present fitness of a person who has been convicted of a crime, shall consider:

(1) the extent and nature of the person's past criminal activity;

(2) the age of the person at the time of the commission of the crime;

(3) the amount of time that has elapsed since the person's last criminal activity;

(4) the conduct and work activity of the person prior to and following the criminal activity;

(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release; and

(6) other evidence of the person's present fitness, including letters of recommendation from: prosecutorial, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; the sheriff or chief of police in the community where the person resides; and any other persons in contact with the convicted person.

(e) It shall be the responsibility of the applicant, to the extent possible, to secure and provide to the Board the recommendations of the prosecution, law enforcement, and correctional authorities as required under this Act; the applicant shall also furnish proof in such form as may be required by the licensing authority that he or she has maintained a record of steady employment and has supported his or her dependents and has otherwise maintained a record of good conduct and has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which he or she has been convicted.

(f) Behavior that would otherwise bar or impede licensure may be deemed a "Youthful Indiscretion" as determined by an analysis of the behavior using the factors set out in §213.27 of this title (relating to Good Professional Character), subsections (a)-(e) of this section and at least the following criteria:

- (1) age of 22 years or less at the time of the behavior;
- (2) absence of criminal plan or premeditation;
- (3) presence of peer pressure or other contributing influences;
- (4) absence of adult supervision or guidance;
- (5) evidence of immature thought process/judgment at the time of the activity;
- (6) evidence of remorse;
- (7) evidence of restitution to both victim and community;
- (8) evidence of personal accountability following the conduct;
- (9) absence of subsequent undesirable conduct;
- (10) evidence of having learned from past mistakes;
- (11) evidence of current support structures that will prevent future criminal activity;
and
- (12) evidence of currently posing no threat to the public safety if allowed to practice nursing. [(f)Recommended by the Board September 19, 1996 - Published November 18, 1996, in the *Texas Register*.]