



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  
MOSES ONCHONGA NYAKUNDI  
PETITIONER for Eligibility for  
Licensure

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§  
§

ORDER OF  
CONDITIONAL ELIGIBILITY

On the date entered below, the Texas Board of Nursing, hereinafter referred to as Board, considered the Petition for Declaratory Order and supporting documents filed by MOSES ONCHONGA NYAKUNDI, 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 *et seq.*, Texas Occupations Code.

PETITIONER waived representation by counsel, notice and hearing, and agreed to the entry of this Order offered on March 18, 2008, by Katherine A. Thomas, MN, RN, Executive Director, subject to ratification by the Board.

FINDINGS OF FACT

1. On or about October 2, 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.
2. Petitioner waived representation, notice, administrative hearing, and judicial review.
3. Petitioner received a Certificate in Vocational Nursing from Platt College, Dallas, Texas, in October 2007.
4. Petitioner completed the Petition for Declaratory Order and answered "yes" to the question which reads in part 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 adjudication with or without a finding of guilt."*

5. Petitioner disclosed the following criminal history, to wit:
  - A. On September 8, 1995, Petitioner was charged with the misdemeanor offense of Assault Causing Bodily Injury in the County Court at Law of Dallas County, Texas. Petitioner entered a plea of guilty and was sentenced to twelve (12) months probation. On February 1, 1999, Petitioner completed probation.
  - B. On October 13, 1997, Petitioner was charged with the misdemeanor offense of Assault Causing Bodily Injury in the County Court at Law No. 4 of Collin County, Texas. Petitioner entered a plea of guilty and was sentenced to one (1) year probation. On September 12, 1999, Petitioner completed probation.
  - C. On April 13, 1999, Petitioner was convicted of the misdemeanor offense of Failure to Identify in the County Court at Law of Kaufman County, Texas. Petitioner was assessed a fine in the amount of one thousand dollars (\$1,000.00).
  - D. On March 10, 2008, Petitioner was charged with the misdemeanor offense of Theft of Property in the Criminal District Court No. 7 of Dallas County, Texas. Petitioner entered a plea of guilty and proceedings were deferred without adjudication of guilt and Petitioner was placed on six (6) months probation. Petitioner was required to pay a fine of one thousand five hundred dollars (\$1,500.00), court costs of three hundred eighty-one dollars (\$381.00), and restitution to the victim of five thousand four hundred ninety dollars (\$5,490.00).
6. There is no evidence of any subsequent criminal conduct.
7. Licensure of Petitioner poses no direct threat to the health and safety of patients or the public, provided Petitioner complies with the stipulations as outlined in this Order.
8. The Executive Director's review of the grounds for potential ineligibility has been made on the basis of the information provided by Petitioner.
9. Petitioner has sworn that his past behavior conforms to the Board's professional character requirements. Petitioner presented no evidence of behavior which is inconsistent with good professional character.
10. 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.
11. On March 18, 2008, 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.

#### 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 in compliance with Section 301.257 *et seq.*, Texas Occupations Code.
3. Petitioner's criminal history reflects criminal conduct which 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 who has been previously convicted, adjudged guilty by a court, pled guilty or pled nolo contendere to any crime whether or not a sentence was imposed upon consideration of the factors set out in 22 Texas Administrative Code §213.28 and evaluating the direct relationship to nursing according to Chapter 53, Section 53.001 *et seq.*, Texas Occupations Code.
6. 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 his conduct to the requirements of the Nursing Practice Act, the Board's Rules and Regulations, and generally accepted standards of nursing practice.

#### ORDER

NOW, THEREFORE, IT IS ORDERED that upon meeting the requirements for graduation and payment of any required fees, MOSES ONCHONGA NYAKUNDI, 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<sup>®</sup>, shall be issued a license to practice vocational nursing in the State of Texas which shall bear the appropriate notation and PETITIONER SHALL be subject to the following stipulations.

(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>

(2) IT IS FURTHER AGREED, SHOULD PETITIONER be convicted for the offense as outlined in Finding of Fact Number Five-D (5.D.), said judicial action will result in further disciplinary action including Revocation of Petitioner's license to practice vocational nursing in the State of Texas.

**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 ONE (1) YEAR OF EMPLOYMENT. THE LENGTH OF THE STIPULATION PERIOD WILL BE EXTENDED UNTIL SUCH TWELVE (12) MONTHS HAVE ELAPSED. PERIODS OF UNEMPLOYMENT OR OF EMPLOYMENT THAT DO NOT REQUIRE THE USE OF A VOCATIONAL NURSE (LVN) LICENSE WILL NOT APPLY TO THIS**

**STIPULATION PERIOD:**

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

(4) PETITIONER SHALL CAUSE employer to submit the Notification of Employment form, which is provided to the Petitioner by the Board, to the Board's office within five (5) days of employment as a nurse.

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

(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 one (1) year of employment as a nurse.

(7) PETITIONER SHALL CAUSE his probation officer to submit written reports on

forms provided to the Petitioner by the Board. The reports shall indicate the PETITIONER's compliance with the court ordered probation. The reports shall be furnished each and every three (3) month period until PETITIONER is released from probation.

IT IS FURTHER AGREED, 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 criminal conduct, and I have caused a complete and accurate criminal history to be submitted to the Texas Board of Nursing from each jurisdiction in which I have been adjudged guilty by way of conviction or deferred order. I certify that my past behavior, except as disclosed in my 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.

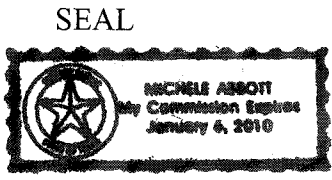
In connection with my petition, I acknowledge that I have read and I understand Section 301.257, Texas Occupations Code, Section 301.452(a), (b) and (c), Texas Occupations Code, and Chapter 53, Section 53.001 *et seq.*, Texas Occupations Code, and Board Rules 213.27, 213.28, and 213.29 at 22 Texas Administrative Code. I agree with all terms of this Order, including the Findings of Fact and Conclusions of Law and any stipulations 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 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 day of April, 2008  
Moses  
MOSES ONCHONGA NYAKUNDI, PETITIONER

Sworn to and subscribed before me this 26 day of April, 2008  
Michelle Abbott  
Notary Public in and for the State of TEXAS






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 April, 2008, by MOSES ONCHONGA NYAKUNDI, PETITIONER, for Petition for Declaratory Order, and said Order is final.

Entered this 10<sup>th</sup> day of June, 2008.

TEXAS BOARD OF NURSING

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