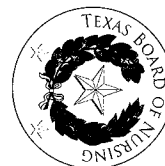


BEFORE THE BOARD OF NURSE EXAMINERS  
FOR THE STATE OF TEXAS

\*\*\*\*\*



I do hereby certify this to be a complete, accurate, and true copy of the document which is on file or is of record in the offices of the Texas Board of Nursing.  
*Patricia Vianes-Cabrera*  
 Executive Director of the Board

In the Matter of	§	
WENDY LYNN TERRY	§	ORDER OF
PETITIONER for Eligibility for	§	CONDITIONAL ELIGIBILITY
Licensure	§	

On the date entered below, the Board of Nurse Examiners for the State of Texas hereinafter referred to as the Board, considered the Petition for Declaratory Order and supporting documents filed by WENDY LYNN TERRY, 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.

A public meeting was held on December 11, 2001, by the Eligibility and Disciplinary Committee of the Board of Nurse Examiners (Board), at 333 Guadalupe, Tower 3, Suite 460, Austin, Texas, in which the petition of WENDY LYNN TERRY, PETITIONER, was considered.

PETITIONER appeared in person. PETITIONER was notified of her right to be represented by legal counsel and elected to waive representation by counsel.

Board Members in attendance were: Marcelo Laijas Jr., Consumer Member; Sue McGee, MSN, RN, ADN Programs; and Elizabeth C. Poster, PhD, RN, BSN Programs. Staff present were: Katherine A. Thomas, MN, RN, Executive Director; James W. Johnston, General Counsel; Joy Sparks, Assistant General Counsel; Anthony L. Diggs, Director, Enforcement Division; Jonathan Artist, Petitioner's fiancé; and Patricia Vianes-Cabrera, Legal Assistant.

## FINDINGS OF FACT

1. On or about September 4, 2001, Petitioner submitted a Petition for Declaratory Order in compliance with section 301.257 *et seq.*, Texas Occupations Code.
2. Petitioner waived representation, notice, administrative hearing, and judicial review.
3. Petitioner is currently enrolled in an Associate Degree Nursing Program at Tyler Junior College, Tyler, Texas, with an anticipated graduation date of December 2002.
4. Petitioner disclosed the following criminal history, to wit:
  - A. On December 31, 1985, Petitioner was arrested and charged with Possession of Marijuana by the Tyler Police Department, Tyler, Texas. Petitioner was sentenced to six (6) months deferred adjudication probation.
  - B. On May 2, 1986, Petitioner was arrested and charged with Possession of Marijuana by the Tyler Police Department, Tyler, Texas. Disposition is not available.
  - C. On August 5, 1991, Petitioner was arrested and charged with Theft by Check by the Tyler Police Department, Tyler, Texas. Petitioner was found guilty and sentenced to thirty (30) days confinement.
  - D. On August 7, 1992, Petitioner was arrested and charged with Possession of Cocaine by the Tyler Police Department, Tyler, Texas. Petitioner was found guilty and sentenced to four (4) years probation.
  - E. On December 1, 1993, Petitioner was arrested and charged with Prostitution and Evading Arrest by the Tyler Police Department, Tyler, Texas. Petitioner was found guilty and sentenced to forty-five (45) days confinement, assessed a fine in the amount of one hundred dollars (\$100.00) and court costs of one hundred and sixty-five dollars (\$165.00).
  - F. On September 8, 1994, Petitioner was arrested and charged with Possession of Controlled Substance (crack cocaine) by the Tyler Police Department, Tyler, Texas. Petitioner was found guilty and sentenced to one (1) year confinement in a substance abuse punishment facility. Petitioner was released on May 24, 1995.
5. There is no evidence of any subsequent conviction.
6. The Board received letters of support/recommendation for Petitioner from the following:
  - A letter of reference dated May 11, 2001, from Alice Stjernstrom, MSN, RN, Instructor, Tyler Junior College, Tyler, Texas.

- A letter of recommendation dated September 18, 2001, from Patti Hallman, CBA Coordinator, At Home Healthcare.
  - A letter of reference from Phillip J. Walding, Assistant Manager, Wal-Mart Stores Inc., Tyler, Texas.
7. On December 11, 2001, the Eligibility and Disciplinary Committee of the Board considered the evidence of the conviction and evaluated its direct relationship to nursing according to Chapter 53, Section 53.001 *et seq.*, Texas Occupations Code, and 22 Texas Administrative Code §213.28, including the nature and circumstance of the offenses, and the absence of any subsequent conviction.
  8. On December 11, 2001, the Eligibility and Disciplinary Committee of the Board considered evidence of Petitioner's post-conviction 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.
  9. Licensure of Petitioner poses no direct threat to the health and safety of patients or the public.
  10. The Committee's review of the grounds for potential ineligibility has been made on the basis of Petitioner's disclosures.
  11. 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. Petitioner's criminal history reflects a conviction 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 of a crime 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 her 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, WENDY LYNN TERRY, PETITIONER, is ELIGIBLE to sit for the National Council Licensure Examination for Registered Nurses (NCLEX-RN® Examination). PETITIONER SHALL be eligible for temporary authorization to practice as a Graduate Nurse in the State of Texas.

1. Petitioner shall meet requirements for entrance to the National Council Licensure Examination for Registered Nurses (NCLEX-RN® Examination)
2. Any disclosure by the Petitioner, in the application process, later found to be incomplete or incorrect or any subsequent conduct or condition constituting a basis for ineligibility may result in an ultimate determination of ineligibility or the later revocation of a license obtained through misrepresentation.
3. Petitioner named in this Order 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.

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

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 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, 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 agree to inform the Board of any other fact or event that could constitute a ground for denial of licensure prior to registering for the NCLEX-RN® Examination or accepting any permit or license from the Board of Nurse Examiners.

I 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.

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.

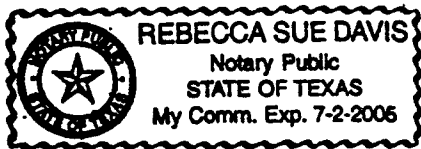
Signed this 4<sup>th</sup> day of March, 2002.

Wendy Lynn Terry  
WENDY LYNN TERRY, PETITIONER

Sworn to and subscribed before me this 4<sup>th</sup> day of March, 2002.

SEAL


Rebecca Sue Davis  
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 4<sup>th</sup> day of March, 2002, by WENDY LYNN TERRY, PETITIONER, for Petition for Declaratory Order, and said Order is final.

Entered this 8<sup>th</sup> day of March, 2002.

BOARD OF NURSE EXAMINERS  
FOR THE STATE OF TEXAS

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

Attachments: Section 301.257, Texas Occupations Code  
Section 301.452(a),(b) and (c), Texas Occupations Code  
Chapter 53, Sec. 53.001 *et seq.*, Texas Occupations Code  
Rule 213.27, 22 Texas Administrative Code  
Rule 213.28, 22 Texas Administrative Code  
Rule 213.29, 22 Texas Administrative Code  
Section 301.453, Texas Occupations Code

**Sec. 301.257. Declaratory Order of License Eligibility.**

- (a) A person may petition the board for a declaratory order as to the person's eligibility for a license under this chapter if the person:
  - (1) is enrolled or planning to enroll in an educational program that prepares a person for an initial license as a registered nurse; and
  - (2) has reason to believe that the person is ineligible for the license.
- (b) The petition must state the basis for the person's potential ineligibility.
- (c) The board has the same powers to investigate the petition and the person's eligibility that it has to investigate a person applying for a license.
- (d) The petitioner or the board may amend the petition to include additional grounds for potential ineligibility at any time before a final determination is made.
- (e) If the board proposes to find that the petitioner is ineligible for a license, the petitioner is entitled to a hearing before the State Office of Administrative Hearings.
- (f) 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 person's eligibility with respect to the grounds for potential ineligibility set out in the order.
- (g) The board may require an individual accepted for enrollment or enrolled in an educational program preparing a student for initial licensure as a registered nurse to submit information to the board to permit the board to determine whether the person is aware of the conditions that may disqualify the person from licensure as a registered nurse on graduation and of the person's right to petition the board for a declaratory order under this section. Instead of requiring the person to submit the information, the board may require the educational program to collect and submit the information on each person accepted for enrollment or enrolled in the program.
- (h) The information required under Subsection (g) must be submitted in a form approved by the board.
- (i) If, as a result of information provided under Subsection (g), the board determines that a person may not be eligible for a license on graduation, the board shall notify the educational program of its determination.

(formerly V.A.C.S. Art. 4519a.)

effec 09/01/99(301257.099)

**Sec. 301.452. Grounds for Disciplinary Action.**

(a) In this section, "intemperate use" includes practicing professional nursing or being on duty or on call while under the influence of alcohol or drugs.

(b) A person is subject to denial of a license or to disciplinary action under this subchapter for:

- (1) a violation of this chapter or a rule or order issued under this chapter;
- (2) fraud or deceit in procuring or attempting to procure a license to practice professional nursing;
- (3) a conviction 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 professional 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).

(formerly V.A.C.S. Art. 4525, Subsecs. (a) (part), as amended Acts 73rd Leg., R.S., Ch. 436, (a) (part), as amended Acts 73rd Leg., R.S., Ch. 840, (b), as amended Acts 73rd Leg., R.S., Ch. 840.) effec 09/01/99(301452ac.099)



**CHAPTER 53. CONSEQUENCES OF CRIMINAL CONVICTION**  
**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 53.001. **APPLICABILITY OF CERTAIN DEFINITIONS.** The definitions provided by Chapter 2001, Government Code, apply to this chapter. (V.A.C.S. Art. 6252-13c, Sec. 1.)

Sec. 53.002. **APPLICABILITY OF CHAPTER.** This chapter does not apply to:

(1) the Supreme Court of Texas, a person licensed under the court's authority on behalf of the judicial department of government, or an applicant for a license issued under the court's authority on behalf of the judicial department of government;

(2) a peace officer or an applicant for a license as a peace officer described by Article 2.12, Code of Criminal Procedure; or

(3) a person who:

(A) is licensed by the Texas State Board of Medical Examiners, the Texas State Board of Pharmacy, the State Board of Dental Examiners, or the State Board of Veterinary Medical Examiners; and

(B) has been convicted of a felony under Chapter 481 or 483 or Section 485.033, Health and Safety Code. (V.A.C.S. Art. 6252-13c, Sec. 2; Art. 6252-13d, Sec. 5.)

[Sections 53.003-53.020 reserved for expansion]

**SUBCHAPTER B. INELIGIBILITY FOR LICENSE**

Sec. 53.021. **AUTHORITY TO REVOKE, SUSPEND, OR DENY LICENSE.** (a) A licensing authority may suspend or revoke a license, disqualify a person from receiving a license, or deny to a person the opportunity to take a licensing examination on the grounds that the person has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of the licensed occupation.

(b) A license holder's license shall be revoked on the license holder's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision. (V.A.C.S. Art. 6252-13c, Secs. 4(a), (e).)

Sec. 53.022. **FACTORS IN DETERMINING WHETHER CONVICTION RELATES TO OCCUPATION.** In determining whether a criminal conviction directly relates to an occupation, the licensing authority shall consider:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

(3) 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

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation. (V.A.C.S. Art. 6252-13c, Sec. 4(b).)

Sec. 53.023. **ADDITIONAL FACTORS FOR LICENSING AUTHORITY TO CONSIDER.** (a) In determining the fitness to perform the duties and discharge the responsibilities of the licensed occupation of a person who has been convicted of a crime, the licensing authority shall consider, in addition to the factors listed in Section 53.022:

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

(2) the age of the person when the crime was committed;

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

(4) the conduct and work activity of the person before and after the criminal activity;

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

(6) other evidence of the person's fitness, including letters of recommendation from:

(A) prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;

(B) the sheriff or chief of police in the community where the person resides; and

(C) any other person in contact with the convicted person.

(b) The applicant has the responsibility, to the extent possible, to obtain and provide to the licensing authority the recommendations of the prosecution, law enforcement, and correctional authorities as required by Subsection (a)(6).

(c) In addition to fulfilling the requirements of Subsection (b), the applicant shall furnish proof in the form required by the licensing authority that the applicant has:

(1) maintained a record of steady employment;

(2) supported the applicant's dependents;

(3) maintained a record of good conduct; and

(4) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted. (V.A.C.S. Art. 6252-13c, Sec. 4(c).)

Sec. 53.024. **PROCEEDINGS GOVERNED BY ADMINISTRATIVE PROCEDURE ACT.** A proceeding before a licensing authority to establish factors required to be considered under this subchapter is governed by Chapter 2001, Government Code. (V.A.C.S. Art. 6252-13c, Sec. 4(d).)

Sec. 53.025. **GUIDELINES.** (a) Each licensing authority shall issue guidelines relating to the practice of the licensing authority under this chapter. The guidelines must state the reasons a particular crime is considered to relate to a particular license and any other criterion that affects the decisions of the licensing authority.

(b) A state licensing authority that issues guidelines under this section shall file the guidelines with the secretary of state for publication in the Texas Register.

(c) A local or county licensing authority that issues guidelines under this section shall post the guidelines at the courthouse for the county in which the licensing authority is located or publish the guidelines in a newspaper having countywide circulation in that county.

(d) Amendments to the guidelines, if any, shall be issued annually. (V.A.C.S. Art. 6252-13d, Sec. 4.)

**SUBCHAPTER C. NOTICE AND REVIEW OF SUSPENSION, REVOCATION, OR DENIAL OF LICENSE**

Sec. 53.051. **NOTICE.** A licensing authority that suspends or revokes a license or denies a person a license or the opportunity to be examined for a license because of the person's prior conviction of a crime and the relationship of the crime to the license shall notify the person in writing of:

(1) the reason for the suspension, revocation, denial, or disqualification;

(2) the review procedure provided by Section 53.052; and

(3) the earliest date the person may appeal the action of the licensing authority. (V.A.C.S. Art. 6252-13d, Sec. 2.)

Sec. 53.052. **JUDICIAL REVIEW.** (a) A person whose license has been suspended or revoked or who has been denied a license or the opportunity to take an examination under Section 53.021 and who has exhausted the person's administrative appeals may file an action in the district court in the county in which the licensing authority is located for review of the evidence presented to the licensing authority and the decision of the licensing authority.

(b) The petition for an action under Subsection (a) must be filed not later than the 30th day after the date the licensing authority's decision is final and appealable. (V.A.C.S. Art. 6252-13d, Sec. 3.)

Chapter 53 Consequences of Criminal Convictions, Texas Occupations Code, 76th Leg., R.S., Ch. 388, §1, 1999 Tex. Gen. Laws 79 (to be codified at Tex. Occ. Code Ann. §§53.001-53.052)      effec. 09/01/99 (53001c53.099)

**BOARD OF NURSE EXAMINERS FOR THE STATE OF TEXAS  
PRACTICE AND PROCEDURE**

**§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.

Repeal and New chapter adopted 6/98 to become effective 9/98. Amended 6/99, effective 7/20/99

(21327.079)

**BOARD OF NURSE EXAMINERS FOR THE STATE OF TEXAS  
PRACTICE AND PROCEDURE**

**§213.28. Licensure of Persons with Criminal Convictions.**

(a) This section sets out the considerations and criteria on the eligibility of persons with criminal convictions to obtain a license as a registered nurse or those already licensed who renew their license. The Board may refuse to approve persons to take the licensure examination, may refuse to issue or renew 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 a conviction.

(b) The practice of nursing involves clients, their families, 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 or renewal of 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 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) If requested by staff, it shall be the responsibility of the individual seeking licensure to ensure that staff is provided with legible, certified copies of all court and law enforcement documentation from all jurisdictions where the individual has resided or practiced as a licensed health care professional. Failure to provide complete, legible and accurate documentation will result in delays prior to licensure or renewal of licensure and possible grounds for ineligibility.

(g) 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 current maturity and personal accountability;
- (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 current ability to practice professional nursing in accordance with the Nursing Practice Act, Board rules and generally accepted standards of professional nursing.

(h) With respect to a request to obtain a license from a person who has a criminal history, the executive director is authorized to close an eligibility file when the applicant has failed to respond to a request for information or to a proposal for denial of eligibility within 60 days thereof. (6/99)

Repeal and New chapter adopted 6/98 to become effective 9/98. Amended 6/99, effective 7/20/99 (21328.079)

**BOARD OF NURSE EXAMINERS FOR THE STATE OF TEXAS  
PRACTICE AND PROCEDURE**

**§213.29. Criteria and Procedure Regarding Intemperate Use and Lack of Fitness in Eligibility and Disciplinary Matters.**

(a) A person desiring to obtain or retain a license to practice professional nursing shall provide evidence of current sobriety and fitness.

(b) Such person shall provide a sworn certificate to the Board stating that he/she has read and understands the requirements for licensure as a registered nurse and that he/she has not:

(1) within the past five years, become addicted to or treated for the use of alcohol or any other drug; or

(2) within the past five years, been diagnosed with, treated or hospitalized for schizophrenia and/or other psychotic disorders, bi-polar disorder, paranoid personality disorder, antisocial personality disorder or borderline personality disorder. (6/99)

(c) Such person, if unable to sign the certification in subsection (b) of this section, shall execute an authorization for release of medical, psychiatric and treatment records in relation to the conditions mentioned in subsection (b) of this section.

(d) Such person shall submit to and pay for an evaluation by a professional approved by the executive director to determine current sobriety and fitness. The evaluation shall be limited to the conditions mentioned in subsection (b) of this section.

(e) Prior intemperate use or mental illness is relevant only so far as it may indicate current intemperate use or lack of fitness.

(f) No license shall be denied under this rule unless it is shown that the person seeking to obtain or retain the license poses a direct threat to the health and safety of patients/clients, their families or significant others or the public.

(g) With respect to chemical dependency in eligibility and disciplinary matters, the executive director is authorized to:

(1) review submissions from a movant, materials and information gathered or prepared by staff, and identify any deficiencies in file information necessary to determine the movant's request;

(2) close any eligibility file in which the movant has failed to respond to a request for information or to a proposal for denial of eligibility within 60 days thereof;

(3) approve eligibility, enter eligibility orders and approve renewals, without board ratification, when the evidence is clearly insufficient to prove a ground for denial of licensure; and

(4) propose conditional orders in eligibility, disciplinary and renewal matters for individuals who have experienced chemical/alcohol dependency within the past five years provided:

(A) the individual presents reliable and verifiable evidence of having functioned in a sober/abstinent manner for twelve consecutive months; and

(B) licensure limitations/stipulations and/or peer assistance program participation can be implemented which will ensure that patients and the public are protected until the individual has attained a five-year term of sobriety/abstinence.

(h) With respect to mental illness in eligibility, disciplinary, and renewal matters, the executive director is authorized to propose conditional orders for individuals who have experienced mental illness within the past five years provided:

(1) the individual presents reliable and verifiable evidence of having functioned in a manner consistent with the behaviors required of nurses under the Nursing Practice Act and Board rules for at least twelve consecutive months; and,

(2) licensure limitations/stipulations and/or peer assistance program participation can be implemented which will ensure that patients and the public are protected until the individual has attained a five-year term of controlled behavior and consistent compliance with the requirements of the Nursing Practice Act and Board rules.

(i) In renewal matters involving chemical dependency or mental illness, the executive director shall consider the following information from the preceding renewal period:

(1) evidence of the licensee's safe practice;

(2) compliance with the NPA and Board rules; and

(3) written verification of compliance with any treatment.

(j) Upon receipt of items (i)(1)-(3) of this section, the executive director may renew the license.

Repeal and New chapter adopted 6/98 to become effective 9/98.  
Amended 6/99, effective 7/20/99 21329.079

**Sec. 301.453. Disciplinary Authority of Board; Methods of Discipline.**

- (a) If the board determines that a person has committed an act listed in Section 301.452(b), the board shall enter an order imposing one or more of the following:
- (1) denial of the person's application for a license, license renewal, or temporary permit;
  - (2) issuance of a written warning;
  - (3) administration of a public reprimand;
  - (4) limitation or restriction of the person's license, including:
    - (A) limiting to or excluding from the person's practice one or more specified activities of professional nursing; or
    - (B) stipulating periodic board review;
  - (5) suspension of the person's license for a period not to exceed five years;
  - (6) revocation of the person's license; or
  - (7) assessment of a fine.
- (b) In addition to or instead of an action under Subsection (a), the board, by order, may require the person to:
- (1) submit to care, counseling, or treatment by a health provider designated by the board as a condition for the issuance or renewal of a license;
  - (2) participate in a program of education or counseling prescribed by the board;
  - (3) practice for a specified period under the direction of a registered nurse designated by the board; or
  - (4) perform public service the board considers appropriate.
- (c) The board may probate any penalty imposed on a registered nurse and may accept the voluntary surrender of a license. The board may not reinstate a surrendered license unless it determines that the person is competent to resume practice.
- (d) If the board suspends, revokes, or accepts surrender of a license, the board may impose conditions for reinstatement that the person must satisfy before the board may issue an unrestricted license.

(formerly V.A.C.S. Art. 4525, Subsec. (a) (part), as amended Acts 73rd Leg., R.S., Ch. 436; Art. 4525.1, Subsecs. (a), (b), (c), (d).) effec 09/01/99(301453.099)