

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 § AGREED  
THEODORE BALDERAS DONNELL, JR., §  
PETITIONER for Eligibility for Licensure § ELIGIBILITY ORDER

On this day the Texas Board of Nursing, hereinafter referred to as the Board, considered the Petition for Declaratory Order and supporting documents filed by THEODORE BALDERAS DONNELL, JR., hereinafter referred to as PETITIONER, together with any documents and information gathered by staff and Petitioner's Certification contained herein.

Information received by the Board produced evidence that PETITIONER may be ineligible for licensure pursuant to Sections 301.452(b)(3)&(10) and 301.453, Texas Occupations Code.

PETITIONER waived representation by counsel, notice and hearing, and agreed to the entry of this Order offered on September 21, 2011, by Katherine A. Thomas, MN, RN, Executive Director, subject to ratification by the Board.

FINDINGS OF FACT

1. On or about November 15, 2010, PETITIONER submitted a Petition for Declaratory Order requesting a determination of eligibility for licensure in compliance with Sections 301.252, 301.253, 301.257 and 301.258, Texas Occupations Code, and the Board's Rules at 22 TEX. ADMIN. CODE §213.30.
2. Petitioner waived representation by counsel, informal proceedings, notice and hearing, and consented to the entry of this Order.
3. Petitioner was not enrolled in a Professional 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 have 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?*

*(You may only exclude Class C misdemeanor traffic violations.)"*

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

- A. On or about October 19, 1986, Petitioner was arrested by the San Antonio Police Department, San Antonio, Texas, for DRIVING WHILE INTOXICATED, a misdemeanor offense.

On or about March 30, 1987, Petitioner pled Guilty and was convicted of DRIVING WHILE INTOXICATED (a misdemeanor offense committed on October 19, 1986), entered in the County Court at Law No. 1 of Bexar County, Texas, under Cause No. 377423. As a result of the conviction, Petitioner was sentenced to confinement in the Bexar County Jail for a period of thirty (30) days; however, imposition of the sentence of confinement was suspended and Petitioner was placed on probation for a period of twenty-four (24) months.

On or about August 12, 1988, the probation granted Petitioner, under Cause No. 377423, was Revoked, in the County Court at Law No. 1 of Bexar County, Texas, based on Findings by the Court that Petitioner had violated the terms and conditions of his probation. As a result, Petitioner was sentenced to confinement in the Bexar County Jail for a period of fifteen (15) days.

- B. On or about September 17, 1987, Petitioner was arrested by the San Antonio Police Department, San Antonio, Texas, for DRIVING WHILE INTOXICATED, a misdemeanor offenses.

On or about July 26, 1988, Petitioner pled Guilty and was convicted of OPERATING A MOTOR VEHICLE UPON A PUBLIC HIGHWAY WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR (a misdemeanor offense committed on

September 17, 1987), in the County Court at Law No. 1 of Bexar County, Texas, under Cause No. 402993. As a result of the conviction, Petitioner was sentenced to confinement in the Bexar County Jail for a period of fifteen (15) days.

- C. On or about December 11, 1987, Petitioner was arrested by the San Antonio Police Department, San Antonio, Texas, for TAMPERING WITH GOVERNMENT RECORD HARM DESTROY, a felony offense.

On or about July 25, 1988, Petitioner pled Guilty and was convicted of TAMPERING WITH GOVERNMENT RECORDS (a felony offense committed on July 21, 1987), in the 227<sup>th</sup> Judicial District Court of Bexar County, Texas, under Cause No. 88-CR-1476. As a result of the conviction, Petitioner was sentenced to confinement in the Texas Department of Criminal Justice for a period of ten (10) years; however, imposition of the sentence of confinement was suspended and Petitioner was placed on probation for a period of ten (10) years. On or about August 19, 1998, Petitioner was discharged from probation.

On or about July 25, 1988, Petitioner pled Guilty and was convicted of TAMPERING WITH GOVERNMENT RECORDS (a felony offense committed on September 29, 1987), in the 227<sup>th</sup> Judicial District Court of Bexar County, Texas, under Cause No. 88-CR-1477. As a result of the conviction, Petitioner was sentenced to confinement in the Texas Department of Criminal Justice for a period of ten (10) years; however, imposition of the sentence of confinement was suspended and Petitioner was placed on probation for a period of ten (10) years. On or about August 28, 1998, Petitioner was discharged from probation.

On or about July 25, 1988, Petitioner pled Guilty and was convicted of TAMPERING WITH GOVERNMENT RECORDS (a felony offense committed on July 1, 1987), in the 227<sup>th</sup> Judicial District Court of Bexar County, Texas, under Cause No. 88-CR-1478. As a result of the conviction, Petitioner was sentenced to confinement in the Texas Department of Criminal Justice for a period of ten (10) years; however, imposition of the sentence of confinement was suspended and Petitioner was placed on probation for a period of ten (10) years. On or about August 28, 1998, Petitioner was discharged from probation.

On or about July 25, 1988, Petitioner pled Guilty and was convicted of TAMPERING WITH GOVERNMENT RECORDS (a felony offense committed on September 28, 1987), in the 227<sup>th</sup> Judicial District Court of Bexar County, Texas, under Cause No. 88-CR-1479. As a result of the conviction, Petitioner was sentenced to confinement in the Texas Department of Criminal Justice for a period of ten (10) years; however, the imposition of the sentence of confinement was suspended and Petitioner was placed on probation for a period of ten (10) years. On or about August 28, 1998, Petitioner was discharged from probation.

- D. On or about August 22, 1994, Petitioner was arrested by the San Antonio Police Department, San Antonio, Texas, for DRIVING WHILE INTOXICATED - 2<sup>ND</sup>, a Class A misdemeanor offense.

On or about October 31, 1994, the offense of DRIVING WHILE INTOXICATED - 2<sup>ND</sup>, was dismissed, in the County Court at Law No. 9 of Bexar County, Texas, under Cause No. 584025, and enhanced to a felony offense, under Cause No. 94-CR-6982W.

On or about November 29, 1994, Petitioner pled Guilty and was convicted of DRIVING WHILE INTOXICATED - 3<sup>RD</sup> (a Third Degree felony offense committed on August 22, 1994), in the 227<sup>th</sup> District Court of Bexar County, Texas, under Cause No. 94-CR-6982W. As a result of the conviction, Petitioner was sentenced to confinement in the Texas Department of Criminal Justice for a period of three (3) years; however, imposition of the sentence of confinement was suspended and Petitioner was placed on probation for a period of five (5) years. On or about February 2, 2000, Petitioner was discharged from probation.

- E. On or about June 7, 1995, Petitioner was arrested by the San Antonio Police Department, San Antonio, Texas, for DRIVING WHILE LICENSE SUSPENDED, a Class B misdemeanor offense.

On or about June 29, 1995, Petitioner pled Guilty and was convicted of DRIVING WHILE LICENSE SUSPENDED (a class B misdemeanor offense committed on June 7, 1995), in the County Court at Law No. 1 of Bexar County, Texas, under Cause No. 607564. As a result of the conviction, Petitioner was sentenced to confinement in the Bexar County Jail for a period of sixty (60) days; however, imposition of the sentence of confinement was suspended and Petitioner was placed on probation for a period of six (6) months. On or about January 11, 1996, Petitioner was discharged from probation.

6. There is no evidence of any subsequent criminal conduct.
7. On or about July 25, 2011, Petitioner was seen by Troy Martinez, Psy.D., to undergo a chemical dependency evaluation. Though Petitioner essentially invalidated both psychological instruments administered as part of the evaluation, it is Dr. Martinez's distinct impression that his doing so was a consequence of underlying psycho-pathology that might otherwise be present. With that said, and contingent upon Petitioner's willingness and ability to remain completely abstinent from all substances or potential abuse, especially alcohol, Dr. Martinez offers a positive prognosis with regard to general mental health functioning and would expect Petitioner to be capable and fit to practice nursing with reasonable skill and safety to patients. There is no compelling indication that substance abuse treatment is currently warranted.

8. 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.
9. 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 at 22 TEX. ADMIN. CODE §213.27.
10. Petitioner presented no evidence of behavior which is inconsistent with good professional character.
11. The Executive Director considered evidence of Petitioner's past behavior in light of the character factors set out in 22 TEX. ADMIN. CODE §213.27 and determined that Petitioner currently demonstrates the criteria required for good professional character.
12. The Executive Director considered evidence of Petitioner's past criminal conduct in light of the considerations and criteria provided in 22 TEX. ADMIN. CODE §§213.28 & 213.33, and, if applicable, Chapter 53, Section 53.001 *et seq.*, Texas Occupations Code.
13. The Executive Director considered evidence of Petitioner's substance abuse/chemical dependency, and subsequent rehabilitation as provided in 22 TEX. ADMIN. CODE §213.29 and in accordance with 22 TEX. ADMIN. CODE §213.33.
14. Licensure of Petitioner poses no direct threat to the health and safety of patients or the public provided Petitioner complies with the stipulations outlined in this Order.
15. The Executive Director's review of the grounds for potential ineligibility has been made on the basis of Petitioner's disclosures.
16. Petitioner has been advised by the Board that any information found to be incomplete, incorrect or misleading to the Board or a subsequent discovery of a basis of ineligibility will be considered by the Board and may result in an ultimate determination of ineligibility or the later revocation of a license obtained through fraud or deceit.
17. 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.

#### CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter pursuant to Sections 301.452 and 301.453, Texas Occupations Code.

2. On or about November 15, 2010, PETITIONER submitted a Petition for Declaratory Order requesting a determination of eligibility for licensure in compliance with Sections 301.252, 301.253, 301.257 and 301.258, Texas Occupations Code, and the Board's Rules at 22 TEX. ADMIN. CODE §213.30.
3. Petitioner's history reflects conduct which may constitute grounds for denial of a license under Section 301.452(b)(3)&(10), Texas Occupations Code.
4. The Board may probate the denial of a license under conditions for a specified term pursuant to Section 301.453, 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 TEX. ADMIN. CODE §213.28 and evaluating the direct relationship to nursing according to 22 TEX. ADMIN. CODE §213.28 and, if applicable, Chapter 53, Section 53.001 *et seq.*, Texas Occupations Code.
6. The Board may license an individual who has a history of substance abuse and/or chemical dependency after consideration of the criteria set out in 22 TEX. ADMIN. CODE §213.29 if the Board determines the individual does not pose a direct threat to the health and safety of patients or the public.
7. The Board may license an individual with prior behaviors inconsistent with the Board's character requirements if, upon evaluation of the factors in 22 TEX. ADMIN. CODE §213.27, and pursuant to 22 TEX. ADMIN. CODE §213.33, 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.
8. This Order is conditioned upon the accuracy and completeness of Petitioner's disclosures. Any subsequently discovered discrepancies will result in investigation and possible disciplinary action, up to revocation of Petitioner's license(s).

### ORDER

NOW, THEREFORE, IT IS AGREED that, upon meeting the requirements for graduation of an appropriate program in nursing education and payment of any required fees, PETITIONER is ELIGIBLE to sit for the National Council Licensure Examination for Practical Nurses (NCLEX-PN® Examination) and/or the National Council Licensure Examination for Registered Nurses (NCLEX-RN® Examination), as applicable.

IT IS FURTHER AGREED that PETITIONER SHALL NOT be eligible for temporary authorization to practice as a Graduate Vocational Nurse (GVN) and/or as a Graduate Nurse (GN), as applicable, in the State of Texas.

IT IS FURTHER AGREED that, upon payment of any required fees and upon attaining a passing grade on the appropriate National Council Licensure Examination, PETITIONER shall be issued the applicable license to practice nursing in the State of Texas, and while under the terms of this Order, all licenses issued to PETITIONER shall be subject to the following stipulations:

PETITIONER SHALL obtain and read the Texas Nursing Practice Act and the Rules and Regulations Relating to Nurse Education, Licensure, and Practice.

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 AGREED and ORDERED that this Order SHALL be applicable to PETITIONER'S nurse licensure compact privileges, if any, to practice nursing in the State of Texas.

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

(1) PETITIONER SHALL, within one (1) year of licensure, 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) 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. 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.bon.state.tx.us/disciplinaryaction/stipscourses.html>

**IT IS FURTHER AGREED, SHOULD PETITIONER PRACTICE AS A 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 REGISTERED NURSE (RN) OR A VOCATIONAL NURSE (LVN) LICENSE, AS APPROPRIATE, WILL NOT APPLY TO THIS STIPULATION PERIOD:**

(2) PETITIONER SHALL notify each present employer in nursing of this Order of the Board and the stipulations on PETITIONER'S license(s). PETITIONER SHALL present a



complete copy of this Order and all Proposals for Decision issued by the Administrative Law Judge, if any, to each present employer within five (5) days of receipt of this Order. PETITIONER SHALL notify all future employers in nursing of this Order of the Board and the stipulations on PETITIONER'S license(s). PETITIONER SHALL present a complete copy of this Order and all Proposals for Decision issued by the Administrative Law Judge, if any, to each future employer prior to accepting an offer of employment.

(3) PETITIONER SHALL CAUSE each present employer in nursing to submit the Notification of Employment form, which is provided to the PETITIONER by the Board, to the Board's office within ten (10) days of receipt of this Order. PETITIONER SHALL CAUSE each future employer to submit the Notification of Employment form, which is provided to the PETITIONER by the Board, to the Board's office within five (5) days of employment as a nurse.

(4) PETITIONER SHALL be supervised by a Registered Nurse, if licensed and practicing as a Registered Nurse, or by a Licensed Vocational Nurse or a Registered Nurse, if licensed and practicing as a 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.

(5) 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 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) month period for one (1) year of employment as a nurse.

(6) PETITIONER SHALL abstain from the consumption of alcohol, Nubain, Stadol, Dalgan, Ultram, or other synthetic opiates, and/or the use of controlled substances, except as prescribed by a licensed practitioner for a legitimate purpose. If prescribed, PETITIONER SHALL CAUSE the licensed practitioner to submit a written report identifying the medication, dosage and the date the medication was prescribed. The report shall be submitted directly to the office of the Board by the prescribing practitioner, within ten (10) days of the date of the prescription. **In the event that prescriptions for controlled substances are required for periods of two (2) weeks or longer, the Board may require and PETITIONER SHALL submit to a pain management and/or chemical dependency evaluation by a Board approved evaluator. The performing evaluator must submit a written report meeting the Board's requirements to the Board's office within thirty (30) days from the Board's request.**

(7) PETITIONER SHALL submit to random periodic screens for controlled substances, tramadol hydrochloride (Ultram), and alcohol. For the first three (3) month period, random screens shall be performed at least once per week. For the next three (3) month period, random screens shall be performed at least twice per month. For the next six (6) month period, random screens shall be performed at least once per month. All random screens SHALL BE conducted through urinalysis. Screens obtained through urinalysis are the sole method accepted by the Board.

Specimens shall be screened for at least the following substances:

Amphetamines	Meperidine
Barbiturates	Methadone
Benzodiazepines	Methaqualone
Cannabinoids	Opiates
Cocaine	Phencyclidine

Ethanol  
tramadol hydrochloride (Ultram)

Propoxyphene

A Board representative may appear at the PETITIONER'S place of employment at any time during the stipulation period and require PETITIONER to produce a specimen for screening.

All screens shall be properly monitored and produced in accordance with the Board's policy on Random Drug Testing. A complete chain of custody shall be maintained for each specimen obtained and analyzed. PETITIONER SHALL be responsible for the costs of all random drug screening during the stipulation period.

Any positive result for which the nurse does not have a valid prescription or failure to report for a drug screen, which may be considered the same as a positive result, will be regarded as non-compliance with the terms of this Order and may subject the nurse to further disciplinary action including EMERGENCY SUSPENSION pursuant to Section 301.4551, Texas Occupations Code, or REVOCATION of PETITIONER'S license(s) and nurse licensure compact privileges, if any, to practice nursing in the State of Texas.

IT IS FURTHER AGREED, that upon full compliance with the terms of this Order, all encumbrances will be removed from PETITIONER'S license(s) to practice nursing in the State of Texas and PETITIONER shall be eligible for nurse licensure compact privileges, if any.

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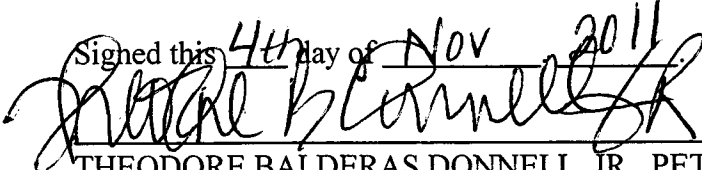
PETITIONER'S CERTIFICATION

I am the Petitioner in this matter. I have fully and truthfully disclosed all of my past conduct which could constitute grounds for licensure ineligibility, 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 application and/or petition, has been in conformity with the Board's character rule. I have provided the Board with complete and accurate documentation of my past conduct 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.

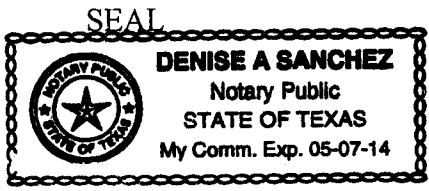
In connection with my application and/or petition, I acknowledge that I have read and I understand Sections 301.157(d), 301.252, 301.253, 301.257, 301.258, 301.260, 301.452, and 301.453, Texas Occupations Code, and Chapter 53, Section 53.001 *et seq.*, Texas Occupations Code, and 22 TEX. ADMIN. CODE §§213.27, 213.28, 213.29, and 213.30. 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 Temporary Permit to practice nursing. I agree to inform the Board of any other fact or event that could constitute a ground for denial of licensure prior to accepting any license from the Texas Board of Nursing.

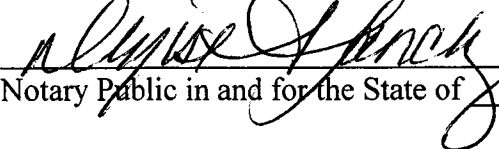
I understand that if I fail to comply with all terms and conditions of this Order, I will be subject to investigation and disciplinary sanction, including revocation of my license(s) to practice nursing in the State of Texas, as a consequence of my noncompliance.

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 Texas Board of Nursing ratify this Order.

Signed this 4th day of Nov 2011  
  
THEODORE BALDERAS DONNELL, JR., PETITIONER

Sworn to and subscribed before me this 4th day of November, 2011



  
Notary Public in and for the State of Texas.

WHEREFORE, PREMISES CONSIDERED, the Texas Board of Nursing does hereby ratify and adopt the Agreed Eligibility Order that was signed on the 4<sup>th</sup> day of November, 2011, by THEODORE BALDERAS DONNELL, JR., PETITIONER for Eligibility for Licensure, and said Order is final.

Effective this 13<sup>th</sup> day of December, 2011.



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