



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 BOARD OF NURSE EXAMINERS  
FOR THE STATE OF TEXAS

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In the Matter of  
DIANNA ANN SMITH  
Petitioner for Eligibility for  
Licensure

§  
§  
§  
§

ORDER  
OF ELIGIBILITY

**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 DIANNA ANN SMITH 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. On or about September 5, 1996, Petitioner submitted a Petition for Declaratory Order in compliance with Article 4519a(a), Texas Revised Civil Statutes, Annotated, as amended.
2. Petitioner is currently enrolled in an educational program that prepares her for initial licensure as a professional nurse in the State of Texas. Petitioner expected date of graduation is May of 1997.
3. Petitioner waived notice and hearing.
4. On or about February 26, 1991, in the County Court at Law Number 3, Collin County, Texas, in Cause Number 3-1211-90, Petitioner was convicted of Driving While Intoxicated (DWI). DWI is not a crime of moral turpitude and is not a ground for denial under Article 4525 (b), Tex. Rev. Civ. Stat. Ann. Petitioner met the conditions of the Court on or about January 4, 1993.
5. Petitioner is a licensed vocational nurse in the State of Texas and her license is current until October 31, 1997.
6. Petitioner disclosed that she had disciplinary action taken against her license by the Board of Vocational Nurse Examiners for the State of Texas.

7. On or about September 12, 1995, Petitioner's license to practice vocational nursing was suspended for unprofessional conduct. The suspension was stayed and Petitioner's license was placed on probation with stipulations for one year.

8. The unprofessional conduct which led to the discipline by the Board of Vocational Nurse Examiners is as follows:

*In a smoke-free facility, on or about September 13, 1994, Petitioner had given a nursing home resident a cigarette and lighter. Said resident returned to his room where he was found to have set himself on fire. Subsequently, the resident was transferred to the hospital where he expired.*

9. On or about September 13, 1996, Petitioner successfully completed the terms of her probation with the Board of Vocational Nurse Examiners.

10. The Executive Director considered the evidence of Petitioner's behavior since September 13, 1994, as submitted by Petitioner. In light of Petitioner's successful completion of the terms of her probation with the Board of Vocational Nurse Examiners and the character factors set out in 22 Texas Administrative Code, § 213.27(b), the Executive Director has determined that Petitioner has exhibited an ability to conform her behavior to the requirements the Nursing Practice Act and general nursing standards.

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 prior to licensure or the later revocation of a license deemed to have been obtained through fraud or deceit.

12. The Executive Director finds that Petitioner should be declared conditionally eligible to take the NCLEX-RN.

13. In consideration of the past adverse action by the Board of Vocational Nurse Examiners, the Executive Director further finds that the stipulations hereinafter set forth are necessary to assure that the public will be protected and that Petitioner will continue to conform her conduct to the requirements of the Board's nursing practice standards.

### CONCLUSIONS OF LAW

1. The Board of Nurse Examiners has jurisdiction over this matter pursuant to Texas Revised Civil Statutes, Annotated, as amended, Article 4525(a).
2. Petitioner has submitted a petition in compliance with TEX. REV. CIV. STAT. ANN., as amended, Article 4519a(a).
3. 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 Article 6252-13c(b) TEX. REV. CIV. STAT. ANN., as amended.
4. The action taken by the Board of Vocational Nurse Examiners against Petitioner's license to practice vocational nursing is a potential ground for denial of a license under Article 4525(b)(7), TEX. REV. CIV. STAT. ANN., as amended. If the Board is satisfied that Petitioner is able to meet the requirements of the Nursing Practice Act, the Board's Rules and Regulations, and generally accepted standards of nursing practice, the Board may license an individual who has had disciplinary action taken against her by another licensing agency.
5. 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 including, but not limited to, behaviors indicating: honesty, accountability, trustworthiness, reliability and integrity.

NOW, THEREFORE, IT IS ORDERED that upon meeting the requirements for graduation and payment of necessary fees, DIANNA ANN SMITH is declared conditionally eligible to sit for the National Council Licensure Examination for Registered Nurses subject to the reservations set out above.

IT IS FURTHER ORDERED that upon attaining a passing grade on the NCLEX-RN, Petitioner shall be issued a CODED LICENSE to practice nursing in the State of Texas which is also subject to the reservations set out above and subject to the following STIPULATIONS:

1. Within one year of Petitioner's initial licensure date, Petitioner shall successfully complete a Board approved course in Nursing Jurisprudence.

**Petitioner's license shall be subject to the following stipulations for TWO (2) years. These remaining stipulations [(2) through (5c)] may only be satisfied while Petitioner is employed as a registered nurse in a clinical practice setting.**

2. Petitioner SHALL notify each present employer in professional nursing of this Order of the Board and the stipulations on Petitioner's license. Petitioner SHALL present a copy of this order to each present employer within five (5) days of notification of this Order. Petitioner SHALL notify all potential employers in professional nursing of this Order of the Board and the stipulations on Petitioner's license. Petitioner SHALL present a copy of this Order to each potential employer prior to employment.
3. Petitioner SHALL CAUSE each present employer in professional nursing to submit the Notification of Employment form to the Board's office within ten (10) days of notification of this Order. Petitioner SHALL CAUSE each potential employer to submit the Notification of Employment form to the Board's office within five (5) days of employment as a professional nurse.
4. Petitioner SHALL CAUSE each employer to submit, on forms provided by the Board, periodic reports as to Petitioner's capability to practice professional nursing. These reports shall be completed by the registered nurse who supervises the Petitioner. These reports shall be submitted to the office of the Board at the end of each three (3) months for one (1) year of employment as a professional nurse. For the remaining year of the stipulation period, the reports shall be submitted to the office of the Board at the end of each six (6) months.
- 5a. Petitioner SHALL work only regularly assigned, identified and predetermined unit(s). Petitioner SHALL NOT be employed by a nurse registry, temporary nurse employment agency or home health agency. Petitioner SHALL NOT be self employed or contract for services. Multiple employers are prohibited.
- 5b. For the first year under the Eligibility Order, Petitioner must have the direct supervision of an experienced registered nurse. Direct supervision means an RN is readily available for consultation and assistance.
- 5c. For the remaining year of Petitioner's Board Order, Petitioner SHALL be supervised by a registered nurse who is on the premises.

IT IS FURTHER ORDERED, that 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.

IT IS FURTHER ORDERED, that upon full compliance with the terms of this Order,  
Petitioner may be issued an unencumbered license to practice professional nursing in the State of  
Texas.

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 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.

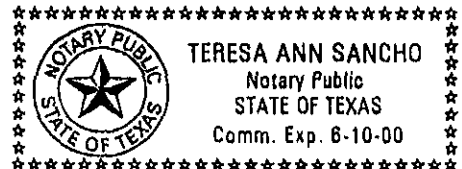
Signed this 13 day of Oct, 1997.

Dianna Ann Smith  
DIANNA ANN SMITH

Sworn to and subscribed before me by the said Dianna Ann Smith this 13 day of Oct, 1997.

SEAL

Teresa Ann Sancho  
Notary Public in and for the State of



Entered this 9th day of December 19 97

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*.]



## BOARD OF NURSE EXAMINERS FOR THE STATE OF TEXAS

Mailing Address:  
POST OFFICE BOX 430  
AUSTIN, TEXAS 78767-0430

WEB SITE: [www.bne.state.tx.us](http://www.bne.state.tx.us)  
333 GUADALUPE, SUITE 3-460  
AUSTIN, TEXAS 78701 • 512/306-7400 • Fax: 512/306-7401

KATHERINE A. THOMAS, MN, RN  
EXECUTIVE DIRECTOR

July 17, 2000

Dianna Smith  
2278 Wright Rd.  
Sherman, TX 75092


Dear Ms. Smith:

This office is in receipt of your final Nursing Performance Evaluation. You are no longer required to submit reports to this office. Our file reflects that all requirements of the Order of the Board entered on June 30, 2000, have been met.

Please return your current wallet-sized license along with a copy of this letter. We will then issue you a license without the stipulated designation.

If you have any questions, please contact me at (512) 305-6834.

Sincerely,

  
Korena Schaaf  
Investigator  
Monitoring

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