



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.

Helaine A. Norman
Executive Director of the Board

DOCKET NUMBER 507-92-586

IN THE MATTER OF

JIMMY GRIFFIN

PETITIONER FOR DECLARATORY
ORDER

§
§
§
§
§

BEFORE THE

BOARD OF NURSE EXAMINERS

FOR THE STATE OF TEXAS

ORDER OF THE BOARD

TO: JIMMY GRIFFIN
Route 2, Box 15
Cisco, Texas 76437

During open meeting on May 25, 1993, at Austin, Texas, the Board of Nurse Examiners finds that after proper and timely notice was given, the above-styled case was heard by an Administrative Law Judge who made and filed a proposal for decision containing the Administrative Law Judge's findings of fact and conclusions of law. The proposal for decision was properly served on all parties and all parties were given an opportunity to file exceptions and replies as part of the record herein.

The Board of Nurse Examiners, after review and due consideration of the proposal for decision, and exceptions and replies filed, if any, adopts the findings of fact number one (1) through number twenty-two (22) and conclusions of law number one (1) through six (6) of the Administrative Law Judge as if fully set out and separately stated herein. The Board adds finding of fact number twenty-three (23) conclusions of law number seven (7) and eight (8) as follows:

FINDING OF FACT

Number 23: PETITIONER agreed to waive licensure until successful completion of his TPAPN contract in October, 1994, in return for the Board's agreement to admit him to its examination.

CONCLUSIONS OF LAW

Number 7: Certain individuals with chemical dependency or mental illness may, pursuant to Article 4525a, Section 8, TEX. REV. CIV. STAT. ANN., be reported to a peer assistance program approved by the Board "Texas Peer Assistance Program for Nurses" (TPAPN) in lieu of being reported to the Board.

Number 8: PETITIONER presented sufficient evidence to demonstrate that the Board of Nurse Examiners should issue a declaratory order declaring PETITIONER eligible for admission to its exam; and, conditioned upon the successful completion of PETITIONER's TPAPN contract in October, 1994, declaring PETITIONER eligible for licensure as a professional nurse at such time.

The added finding of fact, number twenty-three (23), and conclusions of law numbers seven (7) and eight (8) are made to reflect the Board's action on PETITIONER's proposal as stated below. All proposed findings of fact and conclusions of law not specifically adopted herein are hereby denied.

PETITIONER appeared at the open meeting with his TPAPN advocate, Ms. Annie Burleson, R.N.

In lieu of the Order recommended by the Administrative Law Judge, PETITIONER proposed that the Board find him eligible to sit for the National Council Licensure Examination for Registered Nurses (NCLEX-RN) examination in return for his agreement to waive the issuance of a license to practice professional nursing upon attaining a passing grade as provided by Article 4519, TEX. REV. CIV. STAT. ANN., until successful completion of his TPAPN contract in October, 1994.

The Board finds PETITIONER's offer to be consistent with protection of the public's interest and accepts his proposal.

NOW, THEREFORE, IT IS ORDERED that JIMMY GRIFFIN, PETITIONER, be, and he is hereby declared eligible to sit for the NCLEX-RN examination upon graduation.

IT IS FURTHER ORDERED, that JIMMY GRIFFIN, PETITIONER, upon attaining a passing grade on the NCLEX-RN, be, and is hereby declared conditionally eligible for licensure as a professional nurse upon successful completion of his TPAPN contract in October, 1994 and satisfaction of the Board's requirements for licensure.

All relief requested which is not expressly granted is DENIED.

Entered this 25th day of May, 1993.

BOARD OF NURSE EXAMINERS
FOR THE STATE OF TEXAS

BY:

Louise Waddill
Louise Waddill, Ph.D., R.N.
Executive Director of behalf
of said Board

IN THE MATTER OF	§	BEFORE THE
JIMMY GRIFFIN,	§	
PETITIONER FOR	§	BOARD OF NURSE EXAMINERS
DECLARATORY ORDER	§	
FOR ELIGIBILITY	§	
FOR LICENSURE	§	FOR THE STATE OF TEXAS

PROPOSAL FOR DECISION

Prepared by David L. Garza, Administrative Law Judge, duly authorized to act herein on behalf of the Board of Nurse Examiners pursuant to TEX. REV. CIV. STAT. ANN. art. 6252-13f §2(b).

STATEMENT OF THE CASE

On or about May 13, 1992, JIMMY GRIFFIN (PETITIONER) submitted a petition for a Declaratory order for eligibility to take the National Council Licensure Examination for Registered Nurses, pursuant to TEX. REV. CIV. STAT. ANN. art. 4519a. The staff of the Board of Nurse Examiners (the Board) reviewed the petition and proposed to find PETITIONER ineligible for licensure as a professional nurse in the State of Texas. PETITIONER subsequently requested a hearing on his petition.

On March 11, 1993, a hearing concerning the allegations was held before David L. Garza, Administrative Law Judge, in the Texas Alcoholic Beverage Commission Building, 5806 Mesa Drive, Austin, Texas. The presentation of evidence was completed on March 11, 1993, and the hearing was recessed to March 25, 1993, to receive letters of support. The Board's staff was represented by Penny Puryear Burt, General Counsel to the Board of Nurse Examiners. PETITIONER, JIMMY GRIFFIN, appeared in person and represented

himself at the hearing.

JURISDICTION

The Board of Nurse Examiners has jurisdiction over this matter pursuant to TEX. REV. CIV. STAT. ANN. art. 4525. The State Office of Administrative Hearings has jurisdiction over this matter pursuant to TEX. REV. CIV. STAT. ANN. art. 6252-13f. Notice of the hearing, dated February 25, 1993, was properly addressed and sent by certified mail, return receipt requested, to PETITIONER at his address of record in San Angelo, Texas, pursuant to TEX. REV. CIV. STAT. ANN. art. 6252-13a, §13.

PROPOSED DECISION

The Administrative Law Judge concurs with the Board Staff and recommends that PETITIONER not be found eligible to sit for the National Council Licensure Examination for Registered Nurses.

REASONS FOR PROPOSED DECISION

Certain individuals may petition the Board of Nurse Examiners for a ruling on their eligibility for licensure pursuant to TEX. REV. CIV. STAT. ANN. art. 4519a, which provides, in pertinent part:

- (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 eligibility...
- (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..."

PETITIONER is currently enrolled in an educational program that prepares students for initial licensure as professional nurses

in the State of Texas. PETITIONER has an expected graduation date of May 13, 1992. PETITIONER had reason to believe that he may be ineligible for licensure as a professional nurse in the State of Texas. On or about May 13, 1992, PETITIONER, JIMMY GRIFFIN, submitted to the Board his Petition for Declaratory Order. On July 27, 1992, the Executive Director of the Board of Nurse Examiners proposed to find PETITIONER ineligible for licensure as a professional nurse in the State of Texas. On or about August 28, 1992, PETITIONER requested that the Board proceed with disciplinary proceedings and asked for a hearing on his petition.

On or about October 16, 1992, the Executive Director provided PETITIONER with the basis for the proposal to find him ineligible to take the National Council Licensure Examination for Registered Nurses: "PETITIONER engaged in the intemperate use of alcohol from February 21, 1978 to February 1992. This action constitutes a violation of Article 4525(a)(8), Revised Civil Statutes of Texas, as amended."

On February 21, 1978, in the County Court at Law of Comal County, Texas, in Cause Number 608, PETITIONER was convicted of the offense of driving while intoxicated. PETITIONER was assessed a fine of \$100.00 and placed on probation for a period of six months. On August 21, 1978, PETITIONER was discharged from probation by the County Court at Law, Comal County, Texas.

On December 3, 1982, in the 91st District Court of Eastland County, Texas, in Cause Number 15,139, PETITIONER was convicted of the offense of driving while intoxicated, committed on November 16,

1982. PETITIONER was assessed a fine of \$300.00 and confinement in the Eastland County Jail for a period of fifteen days.

On July 11, 1983, in the Criminal District Court Number One, Tarrant County, Texas, in Cause Number 196983D, PETITIONER received deferred adjudication for the offense of Criminal Mischief Causing Pecuniary Loss of \$200.00 or more but less than \$10,000.00 (reduced to a misdemeanor), committed on August 26, 1982. PETITIONER was assessed a fine of \$200.00 and placed on probation for one year.

On January 26, 1990, in the 91st District Court of Eastland County, Texas, in Cause Number 18,336, PETITIONER was convicted of the offense of Assault (Class A Misdemeanor), committed on July 6, 1989. PETITIONER was assessed a fine of \$200.00 and confinement in the Eastland County Jail for a period of eight days.

PETITIONER testified in his own behalf at the hearing. He testified to a long period of sobriety, from November 5, 1984 to February of 1992. In February of 1992, he began drinking again with his wife in an effort, he testified, to keep her from leaving him. PETITIONER stated that his wife entered an alcohol treatment program on June 30, 1992 and that he has not had a drink since then.

PETITIONER testified that he had practiced successfully as a Licensed Vocational Nurse; that his former employer, Stephens Memorial Hospital, awarded PETITIONER a scholarship to attend Angelo State University's Registered Nurse program; and that Stephens Memorial Hospital had offered PETITIONER a job upon his completion of courses at Angelo State University. Additionally,

PETITIONER offered evidence of attendance at AA and active participation in TPAPN as a licensed vocational nurse.

PETITIONER presented witnesses Molly Allison and Sherry Matthews. Molly Allison, M.S.N., R.N., testified that she is an Assistant Professor of Nursing at Angelo State University, San Angelo, Texas, and that she teaches PETITIONER in her classes. She indicated that PETITIONER is an excellent, high quality student who has good attendance and is very dependable. She testified that PETITIONER had exceeded all expectations for transitional students (LVN going into the RN program). Ms. Allison indicated that she was aware of PETITIONER'S past problems because he had come to her and explained his situation. In her opinion, PETITIONER was handling the stress of school, work, and family in a mature and responsible manner. She testified further that he was practicing^o safely as a licensed vocational nurse and making personal and family decisions that would keep him away from situations that had caused him to drink in the past.

Sherry Matthews, R.N., testified that she is the Director of Nurses at River Crest Hospital, San Angelo, Texas. She indicated that she first met PETITIONER when he came to do his practice rotation at the hospital. Ms. Matthews testified that PETITIONER was always very intuitive and sensitive to the patients. She stated that she hired PETITIONER shortly thereafter, on a PRN (as needed) basis. Ms. Matthews testified that she too was aware of PETITIONER'S past problems and what he was doing in terms of recovery to correct these matters. Ms. Matthews also testified

that, in her opinion, PETITIONER was handling the stress of school, work, and family in a mature and responsible way. She added that PETITIONER was practicing safely as a licensed vocational nurse and making personal and family decisions that would keep him away from situations that had caused him to drink in the past.

PETITIONER presented letters of recommendation from Molly Allison, M.S.N., R.N., Assistant Professor of Nursing, Angelo State University, Rev. Robert B. Hedges, Retired Rector, The Episcopal Church of the Good Shepherd, San Angelo, Texas, Karen Hurford, a fellow employee, and Linda Abel, R.N., Director of Nurses, Stephens Memorial Hospital, Breckenridge, Texas.

PETITIONER also had submitted to the Board a letter from B.J. Bramlett, Family Program Coordinator, Adm. Asst., CDU, River Crest Hospital, San Angelo, Texas, verifying PETITIONER'S completion of the Family/Co-Dependency Program from July 6-10, 1992. PETITIONER additionally had submitted to the Board a letter dated November 25, 1992, from M. Johnston, CADAC-LCDC, San Angelo Council on Alcohol & Drug Abuse, San Angelo, Texas, verifying PETITIONER'S participation in an out-patient treatment program. Finally, PETITIONER had submitted to the Board a letter dated March 9, 1993, from Annie Burlison, BSN, RN, Case Manager, TPAPN, Austin, Texas, verifying PETITIONER'S self referral to the Texas Peer Assistance Program for Nurses (TPAPN), his successful completion of an outpatient program at San Angelo Council of Alcohol and Drug Abuse, his compliance with all requirements of TPAPN, and his negative drug screens; and expressing support for PETITIONER.

The Board staff presented a witness named Dona Oliver, M.S.R.N., Nursing Consultant to the Board of Nurse Examiners for the State of Texas. Ms. Oliver testified that she had reviewed PETITIONER'S case and history and concluded, based on factors including young age at first alcohol use, family history positive for alcoholism, multiple alcohol related criminal offenses, aggressive behavior while under the influence of alcohol, and a short period of sobriety since his last relapse, that she could not recommend approval of PETITIONER'S request at this time. Ms. Oliver testified that additional reasons for her position included the higher level of stress and more stringent standard of care in professional nursing versus that found in vocational nursing and the fact that vocational nurses typically work under the supervision of a registered nurse while registered nurses generally work without supervision or alone.

On cross examination, Ms. Oliver testified that it was not possible to predict any definite period of sobriety which would render PETITIONER safe to practice.

Authority for restricting entry of persons to the ranks of professional nurses is found at TEX. REV. CIV. STAT. ANN. art. 4525, which states, in part:

"(a) The Board of nurse examiners may refuse to admit persons to its examinations, may refuse to issue a license ... for any of the following reasons:

* * *

- (8) Intemperate use of alcohol or drugs that the board determines endangers or could endanger patients ... [and]
- (11) Lack of fitness to practice by reason of mental or physical health that could result in injury to patients or the public."

Based upon the brevity of PETITIONER'S sobriety period since his last relapse, his positive family history for alcoholism, the multiple alcohol related criminal offenses interspersed with periods of sobriety, and the aggressive behavior while under the influence of alcohol, this Administrative Law Judge is of the opinion that PETITIONER should be declared ineligible at this time for licensure as a registered nurse in the State of Texas. Continued sobriety and participation in Alcoholics Anonymous and other similar treatment programs could cause a different recommendation in the future. The Administrative Law Judge received insufficient evidence to conclude at this time that PETITIONER poses no threat to patients or the public. The staff recommended that PETITIONER be declared ineligible at this time.

PROPOSED FINDINGS OF FACT

1. On or about May 13, 1992, PETITIONER, JIMMY GRIFFIN, filed his Petition for a Declaratory Order.
2. The staff of the Board of Nurse Examiners (the Board) reviewed the petition and on October 16, 1992, the staff notified PETITIONER that the Executive Director proposed to find PETITIONER ineligible for licensure as a professional nurse in the State of Texas.
3. PETITIONER is currently enrolled in an educational program that prepares an individual for initial licensure as a professional nurse in the State of Texas. PETITIONER expects to graduate in May of 1993.
4. PETITIONER is a licensed vocational nurse in the State of

Texas.

5. PETITIONER filed a request for a hearing on his petition.
6. On or about February 25, 1993, PETITIONER was notified of the date, time, and location of the hearing on his petition.
7. PETITIONER appeared in person and represented himself at the hearing.
8. On February 21, 1978, in the County Court at Law of Comal County, Texas, in Cause Number 608, PETITIONER was convicted of the offense of driving while intoxicated. PETITIONER was assessed a fine of \$100.00 and placed on probation for a period of six months.
9. On August 21, 1978, PETITIONER was discharged from probation by the County Court at Law, Comal County, Texas.
10. On December 3, 1982, in the 91st District Court of Eastland County, Texas, in Cause Number 15,139, PETITIONER was convicted of the offense of driving while intoxicated, committed on November 16, 1982. PETITIONER was assessed a fine of \$300.00 and confinement in the Eastland County Jail for a period of fifteen days.
11. On July 11, 1983, in the Criminal District Court Number One, Tarrant County, Texas, in Cause Number 196983D, PETITIONER received deferred adjudication for the offense of Criminal Mischief Causing Pecuniary Loss of \$200.00 or more but less than \$10,000.00 (reduced to a misdemeanor),

- committed on August 26, 1982. PETITIONER was assessed a fine of \$200.00 and placed on probation for one year.
12. On January 26, 1990, in the 91st District Court of Eastland County, Texas, in Cause Number 18,336, PETITIONER was convicted of the offense of Assault (Class A Misdemeanor), committed on July 6, 1989. PETITIONER was assessed a fine of \$200.00 and confinement in the Eastland County Jail for a period of eight days.
 13. PETITIONER has a positive family history for alcoholism.
 14. PETITIONER has been sober since June 30, 1992.
 15. PETITIONER is attending the A.D.N. nursing program at Angelo State University as a scholarship recipient of Stephens Memorial Hospital in Breckenridge, Texas.
 16. PETITIONER has a job offer with Stephens Memorial Hospital in Breckenridge, Texas, upon graduation from the A.D.N. program at Angelo State University.
 17. PETITIONER voluntarily referred himself to the Texas Peer Assistance Program for Nurses (TPAPN); successfully completed an outpatient program at San Angelo Council of Alcohol and Drug Abuse; and complied with all requirements of TPAPN.
 18. PETITIONER completed the Family/Co-Dependency Program offered by River Crest Hospital in San Angelo, Texas, from July 6-10, 1992.
 19. PETITIONER successfully participated in an outpatient treatment program offered through the San Angelo Council

on Alcohol & Drug Abuse in San Angelo, Texas.

20. PETITIONER presented letters of support and recommendation from Molly Allison, M.S.N., R.N., Assistant Professor of Nursing, Angelo State University; Karen Hurford, a fellow employee; Rev. Robert B. Hedges, Retired, The Episcopal Church of the Good Shepherd, San Angelo, Texas; Annie Burleson, B.S.N., R.N., Case Manager, TPAPN, Austin, Texas; and Linda Abel, R.N., Director of Nurses, Stephens Memorial Hospital, Breckenridge, Texas.
21. PETITIONER is successfully handling the stress of attending school, working as a vocational nurse, and caring for two young children.
22. The record in this case indicates that Mr. Griffin is likely to encounter a greater level of stress and a more stringent standard of care than is generally found in vocational nursing due to the fact that registered nurses typically work alone or without much supervision.

PROPOSED CONCLUSIONS OF LAW

1. The Board of Nurse Examiners has jurisdiction over this matter pursuant to TEX. REV. CIV. STAT. ANN. arts. 4519a and 4525.
2. Authority for restricting entry of persons to the ranks of professional nurses in the State of Texas is found at TEX. REV. CIV. STAT. ANN. art. 4525 , which states, in part:

"(a) The board of nurse examiners may refuse to admit persons to its examinations, may refuse to issue a license ... for any of the following reasons:

* * *

(8) Intemperate use of alcohol or drugs that the board determines endangers or could endanger patients ... [and]

* * *

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

* * *

3. Certain individuals may petition the Board of Nurse Examiners for a ruling on their eligibility for licensure pursuant to TEX. REV. CIV. STAT. ANN. art. 4519a, which provides, in pertinent part:

(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 eligibility...

(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..."

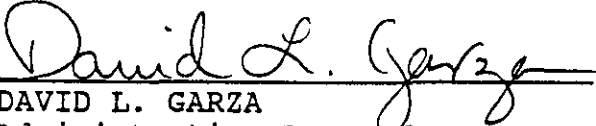
4. PETITIONER has submitted a petition in compliance with TEX. REV. CIV. STAT. ANN. art. 4519a.

5. PETITIONER has a prior history of intemperate use of alcohol as contemplated in TEX. REV. CIV. STAT. ANN. art. 4525(a)(8).

6. PETITIONER presented insufficient evidence of sobriety and good mental health to support a conclusion that he does not pose a threat to patients or the public as contemplated in TEX. REV. CIV. STAT. ANN. art. 4525(a)(8) and (11).

7. PETITIONER presented insufficient evidence to demonstrate that the Board of Nurse Examiners should issue a Declaratory Order declaring PETITIONER eligible for admission to its exam or for licensure as a professional nurse.

Signed and entered this 14th day of April, 1993.



DAVID L. GARZA
Administrative Law Judge
State Office Of
Administrative Hearings