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| IN THE MATTER OF | § | BEFORE THE ELIGIBILITY |
| | § | |
| PERMANENT CERTIFICATE | § | AND DISCIPLINARY |
| | § | |
| NUMBER 204122 | § | COMMITTEE |
| | § | |
| ISSUED TO | § | OF THE TEXAS |
| | § | |
| FRANK TROY LENHARD | § | BOARD OF NURSING |

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.

Executive Director of the Board

## ORDER OF THE BOARD

TO: FRANK TROY LENHARD
3620 BOB HALL RD
ORANGE, TX 77632

During open meeting held in Austin, Texas, on May 10, 2011, the Eligibility and Disciplinary Committee (hereinafter "Committee") heard the above-styled case, based on the failure of the Respondent to appear as required by 22 TEX. ADMIN. CODE Ch. 213.

The Committee of the Texas Board of Nursing finds that notice of the facts or conduct alleged to warrant disciplinary action has been provided to Respondent in accordance with Texas Government Code § 2001.054(c) and Respondent has been given an opportunity to show compliance with all the requirements of the Nursing Practice Act, Chapter 301 of the Texas Occupations Code, for retention of Respondent's license to practice vocational nursing in the State of Texas.

The Committee finds that the Formal Charges were properly initiated and filed in accordance with section 301.458, Texas Occupations Code.

The Committee finds that after proper and timely Notice regarding the violations alleged in the Formal Charges was given to Respondent in this matter, Respondent has failed to appear in accordance with 22 TEX. ADMIN. CODE Ch. 213.

The Committee finds that the Board is authorized to enter a default order pursuant to Texas Government Code § 2001.056.

The Eligibility and Disciplinary Committee, after review and due consideration, adopts the proposed findings of fact and conclusions of law as stated in the Formal Charges which are attached hereto and incorporated by reference for all purposes and the Staff's recommended sanction of revocation by default. This Order will be properly served on all parties and all parties will be given an opportunity to file a motion for rehearing [22 TEX. ADMIN.CODE § 213.16(j)]. All parties have a right to judicial review of this Order.

All proposed findings of fact and conclusions of law filed by any party not specifically adopted herein are hereby denied.

NOW, THEREFORE, IT IS ORDERED that Permanent Certificate Number 204122, previously issued to FRANK TROY LENHARD, to practice vocational nursing in the State of Texas be, and the same is hereby, REVOKED.

IT IS FURTHER ORDERED that this Order SHALL be applicable to Respondent's nurse licensure compact privileges, if any, to practice vocational nursing in the State of Texas.

Entered this 10th day of May, 2011.

TEXAS BOARD OF NURSING

BY: Katherine A. Thomas

KATHERINE A. THOMAS, MN, RN
EXECUTIVE DIRECTOR ON BEHALF OF SAID BOARD

Attachment: Formal Charge filed December 9, 2010.

Re: Permanent Certificate Number 204122
Issued to FRANK TROY LENHARD
DEFAULT ORDER -REVOKE

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of May, 2011, a true and correct copy of the foregoing DEFAULT ORDER was served by placement in the U.S. Mail via certified mail, and addressed to the following person(s):

FRANK TROY LENHARD
3620 BOB HALL RD
ORANGE, TX 77632

BY: Katherine A. Thomas

KATHERINE A. THOMAS, MN, RN
EXECUTIVE DIRECTOR ON BEHALF OF SAID BOARD

| | | |
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| **In the Matter of Permanent License** | § | **BEFORE THE TEXAS** |
| **Number 204122, Issued to** | § | |
| **FRANK TROY LENHARD, Respondent** | § | **BOARD OF NURSING** |

## FORMAL CHARGES

This is a disciplinary proceeding under Section 301.452(b), Texas Occupations Code. Respondent, FRANK TROY LENHARD, is a Vocational Nurse holding license number 204122, which is in current status at the time of this pleading.

Written notice of the facts and conduct alleged to warrant adverse licensure action was sent to Respondent at Respondent's address of record and Respondent was given opportunity to show compliance with all requirements of the law for retention of the license prior to commencement of this proceeding.

## CHARGE I.

On or about June 29, 2009, Respondent failed to comply with the Agreed Order issued to him on May 12, 2009, by the Texas Board of Nursing. Non-compliance is the result of Respondent's failure to comply with Stipulation Number Four (4) of the Order which states, in pertinent part:

> (4) Respondent shall pay a monetary fine in the amount of six hundred dollars ($600.00) within forty-five (45) days of entry of the suspension being stayed....

A copy of the May 12, 2009, Agreed Order, Findings of Fact and Conclusions of Law, is attached and incorporated, by reference, as part of this pleading.

The above action constitutes grounds for disciplinary action in accordance with Section 301.452(b)(1) and (10), Texas Occupations Code, and is a violation of 22 TEX. ADMIN. CODE §217.12(11)(B).

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NOTICE IS GIVEN that staff will present evidence in support of the recommended disposition of up to revocation of Respondent's license to practice vocational nursing in the State of Texas pursuant to the Board's rules, 22 TEX. ADMIN. CODE §§ 213.27 - 213.33. Additionally, staff will seek to impose on Respondent the administrative costs of the proceeding pursuant to § 301.461, Texas Occupations Code. The cost of proceedings shall include, but is not limited to, the cost paid by the board to the State Office of Administrative Hearings and the Office of the Attorney General or other Board counsel for legal and investigative services, the cost of a court reporter and witnesses, reproduction of records, board staff time, travel, and expenses. These shall be in an amount of at least one thousand two hundred dollars ($1200.00).

NOTICE IS GIVEN that all statutes and rules cited in these Charges are incorporated as part of this pleading and can be found at the Board's website, www.bon.state.tx.us.

NOTICE IS ALSO GIVEN that Respondent's past disciplinary history, as set out below and described in the Order which is attached and incorporated by reference as part of these charges, will be offered in support of the disposition recommended by staff: Agreed Order dated May 12, 2009

Filed this 9th day of December, 2010

TEXAS BOARD OF NURSING

R. Kyle Hensley

James W. Johnston, General Counsel
Board Certified - Administrative Law
Texas Board of Legal Specialization
State Bar No. 10838300
Jena Renee Koslan Abel, Assistant General Counsel
State Bar No. 24036103
Lance Robert Brenton, Assistant General Counsel
State Bar No. 24066924
Robert Kyle Hensley, Assistant General Counsel
State Bar No. 50511847
Nikki Hopkins, Assistant General Counsel
State Bar No. 24052269
John F. Legris, Assistant General Counsel
State Bar No. 00785533
TEXAS BOARD OF NURSING
333 Guadalupe, Tower III, Suite 460
Austin, Texas 78701
P: (512) 305-6824
F: (512) 305-8101 or (512)305-7401

Attachments: Agreed Order dated May 12, 2009.

BEFORE THE TEXAS BOARD OF NURSING

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| | | |
|---|---|---|
| In the Matter of Vocational Nurse | § | |
| License Number 204122 | § | AGREED |
| issued to FRANK TROY LENHARD | § | ORDER |

On this day the Texas Board of Nursing, hereinafter referred to as the Board, considered the matter of FRANK TROY LENHARD, Vocational Nurse License Number 204122, hereinafter referred to as Respondent.

Information received by the Board produced evidence that Respondent may have violated Section 301.452(b)(1)&(10), Texas Occupations Code. Respondent waived representation by counsel, informal conference, notice and hearing, and agreed to the entry of this Order offered on March 3, 2009, by Katherine A. Thomas, MN, RN, Executive Director, subject to ratification by the Board.

## FINDINGS OF FACT

1. Prior to the institution of Agency proceedings, notice of the matters specified below in these Findings of Fact was served on Respondent and Respondent was given an opportunity to show compliance with all requirements of the law for retention of the license.

2. Respondent waived representation by counsel, informal conference, notice and hearing, and agreed to the entry of this Order.

3. Respondent is currently licensed to practice vocational nursing in the State of Texas.

4. Respondent received a Certificate in Vocational Nursing from Lamar University, Orange, Texas, on May 27, 2005. Respondent was licensed to practice vocational nursing in the State of Texas on May 23, 2006.

5. Respondent's complete vocational nursing employment history is unknown.

6. On or about March 17, 2006, Respondent was issued an Order of Conditional Eligibility by the Board of Nurse Examiners for the State of Texas. A copy of the March 17, 2006, Order of Conditional Eligibility, Findings of Fact and Conclusions of Law is attached and incorporated, by reference, as part of this Order.

7. On or about January 24, 2007, May 25, 2007, and June 1, 2007, Respondent failed to comply with the Order issued to him on March 17, 2006, by the Board of Nurse Examiners for the State of Texas. Non-compliance is the result of his failure to comply with Stipulation No. Three (3) of the Order which states, in pertinent part:

> (3) RESPONDENT shall comply with all requirements of the TPAPN contract during its term....

8. Respondent failed to submit to drug screens on January 24, 2007, May 25, 2007, and June 1, 2007.

9. Respondent submitted a letter to the Board stating that on the occasions that he missed calling, he had several difficult events that occurred. Respondent states that he was taking care of his son who was molested by a male cousin. His family has been through a life altering event, and he has spent several hours in family counseling regarding his son. Respondent states that his family issues have been resolved and his son continues with therapy.

## CONCLUSIONS OF LAW

1. Pursuant to Texas Occupations Code, Sections 301.451-301.555, the Board has jurisdiction over this matter.

2. Notice was served in accordance with law.

3. The evidence received is sufficient to prove violation of Section 301.452(b)(1)&(10), Texas Occupations Code, and 22 TEX. ADMIN. CODE §217.12(11) (B).

4. The evidence received is sufficient cause pursuant to Section 301.452(b), Texas Occupations Code, to take disciplinary action against Vocational Nurse License Number 204122, heretofore issued to FRANK TROY LENHARD, including revocation of Respondent's license to practice vocational nursing in the State of Texas.

ORDER

IT IS THEREFORE AGREED and ORDERED, subject to ratification by the Texas Board of Nursing, that License Number 204122, previously issued to FRANK TROY LENHARD, to practice vocational nursing in Texas is hereby SUSPENDED for a period of three (3) years with the suspension stayed and Respondent is hereby placed on PROBATION for three (3) years with the following agreed terms of probation:

IT IS FURTHER AGREED and ORDERED that this Order SHALL be applicable to Respondent's multistate privilege, if any, to practice vocational nursing in the State of Texas.

IT IS FURTHER AGREED and ORDERED that while Respondent's license is encumbered by this order the Respondent may not work outside the State of Texas pursuant to a multistate licensure privilege without the written permission of the State of Texas and the Board of Nursing in the party state where Respondent wishes to work.

(1) RESPONDENT SHALL comply in all respects with the Nursing Practice Act, Revised Civil Statutes of Texas as amended, Texas Occupations Code, §§301.001 *et seq.*, the Rules and Regulations Relating to Vocational Nurse Education, Licensure and Practice, 22 TEX. ADMIN. CODE §211.1 *et seq.* and this Order.

(2) The stipulations outlined and required herein SHALL supercede all previous stipulations required by any Order entered by the Texas Board of Nursing.

(3) RESPONDENT SHALL, within one (1) year of the suspension being stayed, successfully complete a course in nursing jurisprudence and ethics. RESPONDENT SHALL obtain Board approval of the course prior to enrollment only if the course is not being offered by a pre-approved provider. Home study courses and video programs will not be approved. In order for the

course to be approved, the target audience shall include nurses. It shall be a minimum of six (6) contact hours in length. The course's content shall include the Nursing Practice Act, standards of practice, and 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. RESPONDENT 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 RESPONDENT'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 can be found at the following Board's website address:* *http:// www.bon.state.tx.us/about/stipscourses.html.*.

(4) RESPONDENT SHALL pay a monetary fine in the amount of six hundred dollars ($600.00). RESPONDENT SHALL pay this fine within forty-five (45) days of the suspension being stayed. Payment is to be made directly to the Texas Board of Nursing in the form of cashier's check or U.S. money order. Partial payments will not be accepted.

**IT IS FURTHER AGREED, SHOULD RESPONDENT PRACTICE AS A LICENSED VOCATIONAL NURSE IN THE STATE OF TEXAS, RESPONDENT WILL PROVIDE DIRECT PATIENT CARE AND PRACTICE IN A HOSPITAL, NURSING HOME, OR OTHER CLINICAL PRACTICE SETTING AND RESPONDENT MUST WORK IN SUCH SETTING A MINIMUM OF SIXTY-FOUR (64) HOURS PER MONTH UNDER THE FOLLOWING PROBATION CONDITIONS FOR THREE (3) YEARS OF**

**EMPLOYMENT. THE LENGTH OF PROBATION WILL BE EXTENDED UNTIL SUCH THIRTY-SIX (36) MONTHS HAVE ELAPSED. PERIODS OF UNEMPLOYMENT OR OF EMPLOYMENT THAT DO NOT REQUIRE A VOCATIONAL NURSE LICENSE (LVN) WILL NOT APPLY TO THIS PROBATION PERIOD.**

(5) RESPONDENT SHALL notify all future employers in vocational nursing of this Order of the Board and the probation conditions on RESPONDENT's license. RESPONDENT 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.

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

(7) For the first year of employment as a vocational nurse under this Order, RESPONDENT SHALL be directly supervised by a Registered Nurse or a Licensed Vocational Nurse. Direct supervision requires another professional or vocational nurse to be working on the same unit as RESPONDENT and immediately available to provide assistance and intervention. RESPONDENT SHALL work only on regularly assigned, identified and predetermined unit(s). The RESPONDENT SHALL NOT be employed by a nurse registry, temporary nurse employment agency, hospice, or home health agency. RESPONDENT SHALL NOT be self-employed or contract for services. Multiple employers are prohibited.

(8) For the remainder of the probation period, RESPONDENT SHALL be supervised by a Registered Nurse or a Licensed Vocational Nurse who is on the premises. The supervising nurse is not required to be on the same unit or ward as RESPONDENT, 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 RESPONDENT is currently working. RESPONDENT SHALL work only regularly assigned, identified and predetermined unit(s). RESPONDENT SHALL NOT be employed by a nurse registry, temporary nurse employment agency, hospice, or home health agency. RESPONDENT SHALL NOT be self-employed or contract for services. Multiple employers are prohibited.

(9) RESPONDENT SHALL NOT practice as a vocational nurse on the night shift, rotate shifts, work overtime, accept on-call assignments, or be used for coverage on any unit other than the identified, predetermined unit(s) to which Respondent is regularly assigned for one (1) year of employment as a vocational nurse.

(10) RESPONDENT SHALL NOT practice as a vocational nurse in any critical care area for one (1) year of employment as a vocational nurse. Critical care areas include, but are not limited to, intensive care units, emergency rooms, operating rooms, telemetry units, recovery rooms, and labor and delivery units.

(11) RESPONDENT SHALL NOT administer or have any contact with controlled substances, Nubain, Stadol, Dalgan, Ultram, or other synthetic opiates for one (1) year of employment as a vocational nurse.

(12) RESPONDENT SHALL CAUSE each employer to submit, on forms provided to the RESPONDENT by the Board, periodic reports as to RESPONDENT's capability to practice vocational nursing. These reports shall be completed by the Registered Nurse or Licensed Vocational Nurse who supervises the RESPONDENT. These reports shall be submitted by the supervising nurse to the office of the Board at the end of each three (3) months for three (3) years of employment as a vocational nurse.

(13) RESPONDENT 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, RESPONDENT 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 RESPONDENT SHALL submit to an evaluation by a Board approved physician specializing in Pain Management or Psychiatry. The performing evaluator will submit a written report to the Board's office, including results of the evaluation, clinical indications for the prescriptions, and recommendations for on-going treatment within thirty (30) days from the Board's request.**

(14) RESPONDENT 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 second 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. For the remainder of the probation period, random screens shall be performed at least once every three (3) months. All random screens SHALL BE conducted through urinalysis. Screens obtained through urinalysis is 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 | Propoxyphene |
| tramadol hydrochloride (Ultram) | |

A Board representative may appear at the RESPONDENT's place of employment at any time during the probation period and require RESPONDENT 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. RESPONDENT SHALL be responsible for the costs of all random drug screening during the probation period.

Any positive result for which the nurse does not have a valid prescription will be regarded as non-compliance with the terms of this Order and may subject the nurse to further disciplinary action by this Board. Failure to report for a drug screen may be considered the same as a positive result and may result in further disciplinary action by this Board.

(15) RESPONDENT SHALL attend at least two (2) support group meetings each week, one of which must be for substance abuse and provided by Alcoholics Anonymous, Narcotics Anonymous, or another comparable recovery program that has been pre-approved by the Board.

RESPONDENT SHALL provide acceptable evidence of attendance. Acceptable evidence shall consist of a written record of at least: the date of each meeting; the name of each group attended; and the signature and printed name of the chairperson of each group attended by RESPONDENT. RESPONDENT SHALL submit the required evidence on the forms provided by the Board at the end of every three (3) months. No duplications, copies, third party signatures, or any other substitutions will be accepted as evidence.

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

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## RESPONDENT'S CERTIFICATION

I understand that I have the right to legal counsel prior to signing this Agreed Order. I waive representation by counsel. I have reviewed this Order. I neither admit nor deny the violations alleged herein. By my signature on this Order, I agree to the Findings of Fact, Conclusions of Law, Order, and any conditions of said Order, to avoid further disciplinary action in this matter. I waive judicial review of this Order. I understand that this Order is subject to ratification by the Board. When this Order is ratified, the terms of this Order become effective, and a copy will be mailed to me. I understand that if I fail to comply with all terms and conditions of this Order, I will be subject to investigation and disciplinary sanction, including revocation of my license to practice vocational nursing in the State of Texas, as a consequence of my noncompliance.

Signed this 8 day of April, 2009.

Frank Troy Lenhard

FRANK TROY LENHARD, Respondent

Sworn to and subscribed before me this 8 day of April, 2009.

SEAL

Linda S Woods

Notary Public in and for the State of 4/5/11

Linda S Woods
Notary Public, State of Texas
My Commission Expires:
April 5, 2011

WHEREFORE, PREMISES CONSIDERED, the Texas Board of Nursing does hereby ratify and adopt the Agreed Order that was signed on the 8th day of April, 2009, by FRANK TROY LENHARD, Vocational Nurse License Number 204122, and said Order is final.

Effective this 12th day of May, 2009.

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

BEFORE THE BOARD OF NURSE EXAMINERS
FOR THE STATE OF TEXAS
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|---|---|---|
| In the Matter of<br>FRANK TROY LENHARD<br>PETITIONER for Eligibility for<br>Licensure | §<br>§<br>§<br>§<br>§ | ORDER OF<br>CONDITIONAL ELIGIBILITY |

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 FRANK TROY LENHARD, 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(b) *et seq.*, Texas Occupations Code.

PETITIONER waived representation by counsel, notice and hearing, and agreed to the entry of this Order offered on January 24, 2006, by Katherine A. Thomas, MN, RN, Executive Director.

## FINDINGS OF FACT

1. On or about September 14, 2005, Petitioner submitted a Petition for Declaratory Order requesting a determination of eligibility for licensure in compliance with Section 301.257 *et seq.*, Texas Occupations Code.

2. Petitioner waived representation, notice, administrative hearing, and judicial review.

3. Petitioner graduated with a Diploma in Vocational Nursing from Lamar State College, Orange, Texas, in December 2004.

4. Petitioner completed the Petition for Declaratory Order and answered "yes" to Question Number Two (2), which reads as follows: *"Have you been convicted, adjudged guilty by a court, plead guilty, no contest or nolo contendere to any crime in any state, territory or country, whether or not a sentence was imposed, including any pending criminal charges or*

*unresolved arrests (excluding minor traffic violations)? This includes expunged offenses and deferred adjudications with or without prejudice of guilt. Please note that DUI's, DWI's, PI's must be reported and are not considered minor traffic violations.* ***(One time minor in possession [MIP] or minor in consumption [MIC] do not need to be disclosed, therefore, you may answer "No". If you have two or more MIP's or MIC's, you must answer "Yes".)***

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

A. On April 19, 2002, Petitioner was charged with the misdemeanor Class B offense of Boating While Intoxicated in the County Court at Law of Orange County, Texas. Petitioner plead Guilty and was assessed a fine and court costs in the amount of seven hundred ninety-five dollars ($795.00). Petitioner was placed on probation for one (1) year. On May 8, 2004, Petitioner's probation expired.

B. On April 19, 2002, Petitioner was charged with the misdemeanor Class B offense of Possession of Marijuana in the County Court at Law of Orange County, Texas. Petitioner was placed on probation for one (1) year and was assessed court costs in the amount of two hundred eighty dollars ($280.00).

C. On April 19, 2002, Petitioner was charged with the misdemeanor Class B offense of Interference with a Public Servant/Peace Officer in the County Court at Law of Orange County, Texas. Petitioner was placed on probation for one (1) year and was assessed court costs in the amount of two hundred eighty dollars ($280.00).

D. On May 8, 2003, Petitioner was charged with the misdemeanor Class A offense of Driving While Intoxicated-2nd in the County Court at Law of Orange County, Texas. Petitioner plead Guilty and was sentenced to six (6) days jail time, assessed a fine and court costs in the amount of six hundred ninety-five dollars ($695.00). Petitioner was placed on probation for eighteen (18) months and was required to install a DWI Interlock system on his vehicle. On November 8, 2004, Petitioner's probation expired.

E. On May 8, 2003, a Motion to Revoke Probation was filed in regard to Petitioner's Boating While Intoxicated case of 2002. Petitioner's probation was amended and extended for three hundred sixty-five (365) days and Petitioner was required to pay court costs in the amount of seventy dollars ($70.00). Petitioner violated the conditions of his probation because of his 2003 Driving While Intoxicated-2nd charge.

F. On May 8, 2003, a Motion to Revoke Probation was filed in Petitioner's Possession of Marijuana case. Petitioner's probation was amended and extended for three hundred sixty-five (365) days. Petitioner was sentenced to six (6) days jail time, to

be served out on weekends. Petitioner violated the conditions of his probation because of his 2003 Driving While Intoxicated-2nd charge.

G. On May 8, 2003, a Motion to Revoke Probation was filed in Petitioner's Interference with a Public Servant/Peace Officer case. Petitioner's probation was amended and extended for three hundred sixty-five (365) days. Petitioner was sentenced to six (6) days jail time, to be served on weekends. Petitioner violated the conditions of his probation because of his 2003 Driving While Intoxicated-2nd charge.

6. There is no evidence of any subsequent criminal conduct.

7. On October 7, 2005, Petitioner was requested to undergo a Forensic Psychological Evaluation to include a Chemical Dependency Component and a Polygraph Exam. On December 6, 2005, Petitioner presented to Rion N. Hart, Ph.D., Clinical and Consulting Psychology, Houston, Texas, to undergo evaluation. Petitioner was referred for a polygraph examination which was conducted on December 10, 2005. The results from the polygraph examination indicate that Petitioner did substantially tell the truth regarding his substance abuse and use. However, the polygraph interview did indicate that Petitioner has driven once while intoxicated since his DWI arrest and has become intoxicated twice while at home. Petitioner also acknowledged having used between ten (10) and twenty (20) pills of Valium and Xanax that were given to him by a friend during a three-month period in 2002. Petitioner currently has a prescription for Xanax and takes that on an average of one time per week. Petitioner stated that his last marijuana usage was on his birthday (September 16) in 2004. Petitioner was seen for a follow- up appointment on December 27, 2005. The results of the evaluation indicate that Petitioner may have addictive tendencies and his prior alcohol and marijuana use would seem to support this. It does appear that Petitioner has been functioning without dependence on substances for the last three (3) years and has maintained his alcohol consumption to an occasional basis and within acceptable boundaries. Dr. Hart states there is nothing in Petitioner's evaluation that would indicate that he would be unable to consistently behave in accordance with Rules 213.27-213.29 and 217.11, or would be unable to consistently avoid unprofessional conduct as stipulated in Rule 217.12. Petitioner was cautioned by the evaluator regarding his addiction potential and how very important it will be for him to be aware of this so that it does not result in some relapse that would ruin his career in nursing.

8. The Board received letters of support/recommendation for Petitioner from the following:

- A letter of recommendation dated September 2, 2005, was submitted to the Board on behalf of Petitioner by Janis Switzer, RN, Vocational Nursing Instructor, Lamar State College, Orange, Texas.
- A letter of recommendation dated September 2, 2005, was submitted to the Board on behalf of Petitioner by Lorrie LeBlanc, RN, BSN, Director Vocational Nursing, Lamar State College, Orange, Texas.

- A letter of recommendation dated September 2, 2005, was submitted to the Board on behalf of Petitioner by Jeff Bell, Pastor, Cove Baptist Church, Orange, Texas.

9. 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.

10. The Executive Director considered evidence of Petitioner's substance abuse as provided in §213.29, 22 Texas Administrative Code.

11. The Executive Director's review of the grounds for potential ineligibility has been made on the basis of the information provided by Petitioner.

12. 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. Petitioner presented no evidence of behavior which is inconsistent with the Board's character requirements in 22 Texas Administrative Code §213.27.

13. On or about January 24, 2006, the Executive Director considered evidence of Petitioner's past behavior in light of the character factors set out in 22 Texas Administrative Code §213.27 and determined that Petitioner currently demonstrates the criteria required for good professional character.

14. Petitioner's compliance with the terms of a Board approved peer assistance program should be sufficient to protect patients and the public.

## 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, Texas Occupations Code.

3. 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.

4. The Board of Nurse Examiners may license an individual who has a history of substance abuse, after consideration of the criteria set out in 22 Texas Administrative Code §213.29, the Board determines the Petitioner does not currently pose a direct threat to the health and safety of patients or the public.

5. The Board may, in its discretion, order a Petitioner, upon initial licensure as a vocational

nurse, to participate in a peer assistance program approved by the Board if the nurse would otherwise have been eligible for referral to peer assistance pursuant to Section 301.410, Texas Occupations Code.

ORDER

NOW, THEREFORE, IT IS ORDERED that upon meeting the requirements for graduation and payment of any required fees, FRANK TROY LENHARD, PETITIONER, is CONDITIONALLY ELIGIBLE to sit for the National Council Licensure Examination for Practical Nurses (NCLEX-PN® Examination). PETITIONER SHALL NOT be eligible for temporary authorization to practice as a Graduate Vocational Nurse in the State of Texas.

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

IT IS FURTHER ORDERED that PETITIONER, upon attaining a passing grade on the NCLEX-PN®, shall be issued a license to practice nursing in the State of Texas.

IN ADDITION, IT IS THEREFORE FURTHER AGREED and ORDERED that PETITIONER, upon initial licensure, SHALL comply with the following conditions for such a time as is required for PETITIONER to successfully complete the Texas Peer Assistance Program for Nurses (TPAPN):

(1) PETITIONER SHALL, within forty-five (45) days of initial licensure, apply to and be accepted into the TPAPN, which SHALL include payment of a non-refundable participation fee in the amount of three hundred fifty dollars ($350.00) payable to TPAPN.

(2) Upon acceptance into the TPAPN, PETITIONER SHALL waive confidentiality and provide a copy of the executed TPAPN contract to the Board of Nurse Examiners.

(3) PETITIONER SHALL comply with all requirements of the TPAPN contract during its term.

(4) PETITIONER SHALL CAUSE the TPAPN to notify the Board of Nurse Examiners of any violation of the TPAPN contract.

IT IS FURTHER AGREED and ORDERED that this Order SHALL be applicable to Petitioner's multistate licensure privileges, if any, to practice vocational nursing in the State of Texas.

IT IS FURTHER AGREED and ORDERED that while Petitioner's license is encumbered by this Order, Petitioner may not work outside the State of Texas pursuant to a multistate licensure privilege without the written permission of the State of Texas and the Board of Nursing in the party State where Petitioner wishes to work.

IT IS FURTHER AGREED, SHOULD PETITIONER fail to comply with this Order or the terms of the participation agreement with the TPAPN, such noncompliance will result in further disciplinary action including revocation of PETITIONER's license to practice vocational nursing in the State of Texas.

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## PETITIONER'S CERTIFICATION

I am the Petitioner in this matter. I have fully and truthfully disclosed all relevant information in conformity with Rule 213.29 at Texas Administrative Code. I certify that my past behavior, except as disclosed in my Petition for Declaratory Order, has been in conformity with the Board's professional character rule. I have provided the Board with complete and accurate documentation of my past behavior in violation of the penal law of any jurisdiction which was disposed of through any procedure short of conviction, such as: conditional discharge, deferred adjudication or dismissal. I have no criminal prosecution pending in any jurisdiction.

In connection with my petition, I acknowledge that I have read and I understand Section 301.257, Texas Occupations Code, Section 301.452 (a), (b) and (c), Texas Occupations Code, and Chapter 53, Section 53.001 *et seq.*, Texas Occupations Code, and Board Rules 213.27, 213.28, and 213.29 at 22 Texas Administrative Code. I agree with all terms of this Order, including the Findings of Fact and Conclusions of Law and any stipulations set out in this Order. I acknowledge that this Order is stipulated and I understand that I am not eligible to receive a Graduate Vocational Nurse Permit to practice. I agree to inform the Board of any other fact or event that could constitute a ground for denial of licensure prior to registering for the NCLEX-PN® Examination or accepting any permit or license from the 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 vocational nursing in the State of Texas, as a consequence of my noncompliance.

I understand that I can be represented by an attorney in this matter. I waive representation, notice, administrative hearing, and judicial review of this Order and request that the Executive Director of the Board of Nurse Examiners enter this Order.

Signed this 28 day of February, 2006.

Frank Troy Lenhard

FRANK TROY LENHARD, PETITIONER

Sworn to and subscribed before me this 28th day of February, 2006.

SEAL

MELISSA D. PERKINS
Notary Public, State of Texas
My Commission Expires
November 30, 2008

Melissa D Perkins

Notary Public in and for the State of Texas

WHEREFORE, PREMISES CONSIDERED, the Executive Director on behalf of 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 28th day of February, 2006, by FRANK TROY LENHARD, PETITIONER, for Petition for Declaratory Order, and said Order is final.

Entered and effective this 17th day of March, 2006.

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