BEFORE THE
TEXAS BOARD OF NURSING
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In the Matter of	§	
MATT ALAN NICHOLS	§	ORDER OF
APPLICANT for Eligibility for	§	CONDITIONAL ELIGIBILITY
Licensure	§	

TEXAS 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

On the date entered below, the Texas Board of Nursing, hereinafter referred to as the Board, considered the Application for Licensure by Examination Order and supporting documents filed by MATT ALAN NICHOLS, hereinafter referred to as APPLICANT, together with any documents and information gathered by staff and APPLICANT's Certificate contained herein. Information received by the Board produced evidence that APPLICANT may be ineligible for licensure pursuant to the Occupations Code 301.452(b)(3),(10)&(12).

APPLICANT waived representation by counsel, notice and hearing, and agreed to the entry of this Order offered on March 10, 2009, by Katherine A. Thomas, MN, RN, Executive Director.

FINDINGS OF FACT

1. On or about March 19, 2008, Applicant submitted an Application for Licensure by Examination requesting a determination of eligibility for licensure in compliance with Section 301.257 of the Texas Occupations Code and the Board's Rule at 22 Texas Administrative Code Section 213.30.

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

3. Applicant graduated with an Associate Degree in Nursing from Victoria College, Victoria, Texas, in May 2008.

4. Applicant completed the Application for Licensure by Examination and answered "yes" to the question which reads: *"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 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?"

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

A. On September 14, 2000, Applicant entered a plea of guilty to the Class A misdemeanor offense of Burglary of a Vehicle, Cause No. 001266, in the County Court at Law No. 1 of Port Lavaca County, Texas. Petitioner was sentenced to three hundred sixty-five (365) days probation.

B. On May 30, 2000, Petitioner was charged with eleven (11) counts of the Class B misdemeanor offense of Criminal Mischief > $50 < $500, in the County Court at Law of Port Lavaca County, Texas. Proceedings were deferred without an adjudication of guilt and Petitioner was placed on probation for six (6) months for each count.

C. On May 30, 2000, Petitioner was charged with the Class A misdemeanor offense of Criminal Mischief >= $500 < $1,500, in the County Court at Law of Port Lavaca County, Texas. Proceedings were deferred without an adjudication of guilt and Petitioner was placed on probation for six (6) months.

D. On September 14, 2000, Petitioner was charged with the Class B misdemeanor offense of Criminal Mischief > $50 < $500, Cause No. 001266, in the County Court at Law No. 1 of Port Lavaca County, Texas. Proceedings were deferred without an adjudication of guilt and Petitioner was placed on probation for three hundred sixty-five (365) days.

E. On April 25, 2003, Applicant entered a plea of guilty to the Class A misdemeanor offense of Criminal Mischief, Cause No. 02-CR-457, in the County Court at Law No. 1 of Calhoun County, Texas. Proceedings were deferred without an adjudication of guilt and Applicant was placed on probation for six (6) months.

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

7. On January 13, 2009, Petitioner was seen by Troy Martinez, Psy.D., to undergo a Forensic Psychological Evaluation and a Polygraph Examination. Current psychological testing failed to identify clinically significant psycho-pathology with the exception of drug use (marijuana) abuse/dependence, though abstinence has been achieved and sustained since April 2008. At this point, Petitioner appears to have arrived at a considerably more mature stage of psychological development. At present, Dr. Martinez considers cannabis abuse/dependence, recently abstained, as the single problematic element within Petitioner's mental health profile. As such, if deemed eligible for licensure, Dr. Martinez would strongly recommend that he be referred to TPAPN for drug counseling, support, monitoring, and testing for a period of at least 2 years. Otherwise, Dr. Martinez contributes his prior criminal activities and reckless behavior to youthful immaturity that he believes has adequately stabilized across the past few years as reflected in pro-social behavior with the exception of periodic marijuana use. With that said and contingent upon complete abstinence from drugs of abuse, Dr. Martinez believes that Petitioner is capable of conducting himself in accordance with the requirements of Rules 213.27-213.29 at 22 TAC, is capable of consistently behaving in accordance with the minimal standards set by the Board Rule 217.11 at 22 TAC, and would be able to consistently behave in accordance with generally accepted nursing standards, and consistently be able to avoid behaviors identified by the Board as constituting unprofessional conduct.

8. Applicant presented evidence of current fitness to practice professional nursing.

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 Applicant's substance abuse and subsequent rehabilitation 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 Applicant.

12. Applicant has sworn that, with the exception of matters disclosed in connection with the Application for Licensure by Examination, his past behavior conforms to the Board's professional character requirements. Applicant presented no evidence of behavior which is inconsistent with the Board's character requirements in 22 Texas Administrative Code §213.27.

13. On March 10, 2009, the Executive Director considered evidence of Applicant's past behavior in light of the character factors set out in 22 Texas Administrative Code §213.27 and determined that Applicant currently demonstrates the criteria required for good professional character.

14. In consideration of Applicant's past conduct and subsequent evidence of rehabilitation, the Executive Director finds that Applicant should be declared conditionally eligible to take the National Council Licensure Examination for Registered Nurses.

15. Applicant'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 Texas Board of Nursing has jurisdiction over this matter pursuant to Section 301.453, Texas Occupations Code.

2. Applicant has submitted an Application for Licensure by Examination requesting a determination of eligibility for licensure in compliance with Section 301.257 of the Texas Occupations Code and the Board's Rule at 22 Texas Administrative Code Section 213.30.

3. Applicant shall immediately notify the Board of any fact or event that could constitute a ground of ineligibility for licensure under Section 301.452(b)(3),(10)&(12), Texas Occupations Code.

4. The Texas Board of Nursing 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 Applicant 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 Applicant, upon initial licensure as a registered 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, MATT ALAN NICHOLS, APPLICANT, is CONDITIONALLY ELIGIBLE to sit for the National Council Licensure Examination for Registered Nurses (NCLEX-RN® Examination). APPLICANT SHALL NOT be eligible for temporary authorization to practice as a Graduate Nurse in the State of Texas.

IT IS FURTHER ORDERED that APPLICANT SHALL comply in all respects with the Nursing Practice Act, Texas Occupations Code §§301.001 *et seq.*, the Rules and Regulations Relating to Professional Nurse Education, Licensure and Practice, 22 TEX. ADMIN. CODE §211.1 *et seq.*, and this Order.

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

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

(1) APPLICANT 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 five hundred dollars ($500.00) payable to TPAPN.

(2) Upon acceptance into the TPAPN, APPLICANT SHALL waive confidentiality and provide a copy of the executed TPAPN contract to the Texas Board of Nursing.

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

(4) APPLICANT SHALL CAUSE the TPAPN to notify the Texas Board of Nursing of any violation of the TPAPN contract.

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

IT IS FURTHER AGREED and ORDERED that while Applicant's license is encumbered by this Order, Applicant 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 Applicant wishes to work.

IT IS FURTHER AGREED, SHOULD APPLICANT 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 EMERGENCY SUSPENSION pursuant to Section 301.4551, Texas Occupations Code, or revocation of a APPLICANT's license and multistate licensure privileges, if any, to practice nursing in the State of Texas.

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APPLICANT'S CERTIFICATION

I am the Applicant 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 Application for Licensure by Examination, 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 application, 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 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-RN® Examination or accepting any permit or 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 to practice professional nursing in the State of Texas, as a consequence of my noncompliance.

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

Signed this 7 day of December, 2009.

Matt Alan Nichols

MATT ALAN NICHOLS, APPLICANT

Sworn to and subscribed before me this 7 day of December, 2009.

Susan Riley

Notary Public in and for the State of Texas

SEAL

NOTARY PUBLIC STATE OF TEXAS
SUSAN RILEY
My Commission Expires
April 18, 2012

WHEREFORE, PREMISES CONSIDERED, the Executive Director on behalf of the Texas Board of Nursing does hereby ratify and adopt the Order of Conditional Eligibility that was signed on the 7th day of December, 2009, by MATT ALAN NICHOLS, APPLICANT, for Licensure by Examination, and said Order is final.

Entered and effective this 30th day of December, 2009.

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