



I do hereby certify this to be a complete, accurate, and true copy of the document which is on file or is of record in the offices of the Texas Board of Nursing.
Katherine A. Thomas
Executive Director of the Board

BEFORE THE TEXAS BOARD OF NURSING

In the Matter of Registered Nurse § AGREED
License Number 720333 §
issued to WILLIAM HART MCCARTHY, JR. § ORDER

On this day the Texas Board of Nursing, hereinafter referred to as the Board, considered the matter of WILLIAM HART MCCARTHY, JR., Registered Nurse License Number 720333, hereinafter referred to as Respondent.

Information received by the Board produced evidence that Respondent may have violated Section 301.452(b)(1), (9) and (10), Texas Occupations Code. Respondent waived informal proceedings, notice and hearing, and agreed to the entry of this Order offered 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 informal proceedings, notice and hearing, and agreed to the entry of this Order.
3. Respondent is currently licensed to practice professional nursing in the State of Texas.
4. Respondent received a Baccalaureate Degree in Nursing from The University Texas Health Science Center, San Antonio, Texas, on December 11, 2002. Respondent was licensed to practice professional nursing in the State of Texas on August 30, 2005.

5. Respondent's professional nursing employment history includes:

11/05 - 3/07	Staff Nurse	Baptist Medical Center San Antonio, Texas
4/07 - present	Staff Nurse	St. Luke's Baptist Hospital San Antonio, Texas

6. On October 26, 2004, Respondent received an Order of Conditional Eligibility by the Board of Nurse Examiners for the State of Texas. A copy of the October 26, 2004, Order, Findings of Fact, and Conclusions of Law is attached and incorporated, by reference, as part of this Order.
7. On or about February 28, 2008, while employed with St. Luke's Baptist Hospital, San Antonio, Texas, Respondent engaged in the intemperate use of Marijuana in that he produced a specimen for a drug screen which resulted positive for Marijuana. Possession of Marijuana is prohibited by Chapter 481 of the Texas Health & Safety Code (Controlled Substances Act). The use of Marijuana by a Registered Nurse, while subject to call or duty, could impair the nurse's ability to recognize subtle signs, symptoms or changes in the patient's condition, and could impair the nurse's ability to make rational, accurate, and appropriate assessments, judgments, and decisions regarding patient care, thereby placing the patient in potential danger.
8. On or about February 28, 2008, while employed with St. Luke's Baptist Hospital, San Antonio, Texas, Respondent failed to comply with the Order of Conditional Eligibility issued to him on October 26, 2004, by the Board of Nurse Examiners for the State of Texas. Noncompliance is the result of his failure to comply with Stipulation Number Five (5) of the Order which states, in pertinent part:
- (5) PETITIONER SHALL abstain from the consumption of alcohol, Nubain, Stadol, Dalgan, Ultram, or other synthetic opiates, and/or the use of controlled substances, except as prescribed by a licensed practitioner for a legitimate purpose....
9. Respondent states while on vacation in Flagstaff, Arizona, on or about February 14, 2008, he admits to sharing a marijuana cigarette with his former girlfriend. Petitioner was not on duty and was not scheduled to be on duty, or subject to call or duty when this occurred.
10. The Board finds that there exists serious risks to public health and safety as a result of impaired nursing care due to intemperate use of controlled substances or chemical dependency.

11. Formal Charges were filed on October 2, 2008.
12. Formal Charges were mailed to Respondent on October 6, 2008.

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 violations of Section 301.452(b)(1), (9) and (10), Texas Occupations Code, and 22 TEX. ADMIN. CODE §217.12(10)(D) and (11)(B).
4. The evidence received is sufficient cause pursuant to Section 301.452(b), Texas Occupations Code, to take disciplinary action against Registered Nurse License Number 720333, heretofore issued to WILLIAM HART MCCARTHY, JR., including revocation of Respondent's license to practice professional nursing in the State of Texas.

ORDER

IT IS THEREFORE AGREED and ORDERED, subject to ratification by the Texas Board of Nursing, that RESPONDENT SHALL receive the sanction of a REPRIMAND WITH STIPULATIONS, and RESPONDENT SHALL comply in all respects with the Nursing Practice Act, Texas Occupations Code, §§301.001 *et seq.*, the Rules and Regulations Relating to Nurse Education, Licensure and Practice, 22 TEX. ADMIN. CODE §211.1 *et seq.* and this Order.

IT IS FURTHER AGREED and ORDERED that this Order SHALL be applicable to Respondent's multistate licensure privilege, if any, to practice nursing in compact states.

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

IT IS FURTHER AGREED that:

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

(2) RESPONDENT SHALL pay a monetary fine in the amount of five hundred (\$500.00) dollars. RESPONDENT SHALL pay this fine within forty-five (45) days of entry of this Order. 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.

(3) RESPONDENT SHALL, within one (1) year of entry of this Order, successfully complete a course in Texas 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) hours in length. The course's content shall include the Nursing Practice Act, standards of practice, documentation of care, principles of nursing ethics, confidentiality, professional boundaries, and the Board's Disciplinary Sanction Policies regarding: Sexual Misconduct; Fraud, Theft and Deception; Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder; and Lying and Falsification. Courses focusing on malpractice issues will not be accepted. 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 may be found at the following Board website address:*
<http://www.bon.state.tx.us/disciplinaryaction/stipscourses.html>

IT IS FURTHER AGREED, SHOULD RESPONDENT PRACTICE AS A NURSE IN THE STATE OF TEXAS, RESPONDENT WILL PROVIDE DIRECT PATIENT CARE AND PRACTICE IN A HOSPITAL, NURSING HOME, OR OTHER CLINICAL SETTING AND RESPONDENT MUST WORK IN SUCH SETTING A MINIMUM OF SIXTY-FOUR (64) HOURS PER MONTH UNDER THE FOLLOWING STIPULATIONS FOR ONE (1) YEAR OF EMPLOYMENT. THE LENGTH OF THE STIPULATION PERIOD WILL BE EXTENDED UNTIL SUCH TWELVE (12) MONTHS HAVE ELAPSED. PERIODS OF UNEMPLOYMENT OR OF EMPLOYMENT THAT DO NOT REQUIRE THE USE OF A REGISTERED NURSE (RN) LICENSE WILL NOT APPLY TO THIS STIPULATION PERIOD:

(4) RESPONDENT SHALL notify each present employer in nursing of this Order of the Board and the stipulations 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 present employer within five (5) days of receipt of this Order. During the duration of this Order, RESPONDENT SHALL notify all future employers in nursing of this Order of the Board and the stipulations on RESPONDENT's license. During the duration of this Order, 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.

(5) 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.

(6) RESPONDENT SHALL be supervised by a Registered 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.

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

(8) 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.

(9) RESPONDENT SHALL submit to random periodic screens for controlled substances, tramadol hydrochloride (Ultram), and alcohol on a quarterly basis for the duration of this Order. 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 stipulation 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 stipulation 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.

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 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.

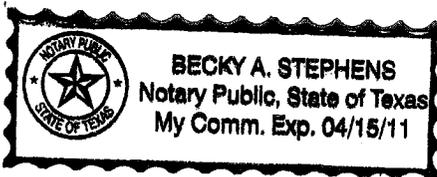
I have reviewed this Order. I neither admit nor deny the violations alleged herein. By my signature on this Order, I agree to the Findings of Fact, Conclusions of Law, Order, and any conditions of said Order, to avoid further disciplinary action in this matter. I waive judicial review of this Order. 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 professional nursing in the State of Texas, as a consequence of my noncompliance.

Signed this 26th day of June, 2009.

William H. McCarthy, Jr.
WILLIAM HART MCCARTHY, JR., Respondent

Sworn to and subscribed before me this 26th day of June, 2009.

SEAL



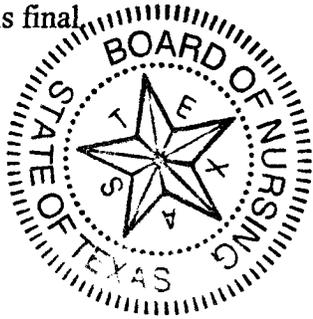
Becky A. Stephens
Notary Public in and for the State of Texas

Approved as to form and substance.

Lawrence A. Beauchamp
LAWRENCE A. BEAUCHAMP, Attorney for Respondent

Signed this 26 day of June, 2009

WHEREFORE, PREMISES CONSIDERED, the Texas Board of Nursing does hereby ratify and adopt the Agreed Order that was signed on the 26th day of June, 2009, by WILLIAM HART MCCARTHY, JR., Registered Nurse License Number 720333, and said Order is final.



Effective this 18th day of August, 2009.


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

**In the Matter of Permanent License
Number 720333, Issued to
WILLIAM HART MCCARTHY JR, Respondent**

§ **BEFORE THE TEXAS**
§
§ **BOARD OF NURSING**

FORMAL CHARGES

This is a disciplinary proceeding under Section 301.452(b), Texas Occupations Code. Respondent, WILLIAM HART MCCARTHY JR., is a Registered Nurse holding license number 720333, 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 February 28, 2008, while employed with St. Luke's Baptist Hospital, San Antonio, Texas, Respondent engaged in the intemperate use of Marijuana in that he produced a specimen for a drug screen which resulted positive for Marijuana. Possession of Marijuana is prohibited by Chapter 481 of the Texas Health & Safety Code (Controlled Substances Act). The use of Marijuana by a Registered Nurse, while subject to call or duty, could impair the nurse's ability to recognize subtle signs, symptoms or changes in the patient's condition, and could impair the nurse's ability to make rational, accurate, and appropriate assessments, judgments, and decisions regarding patient care, thereby placing the patient in potential danger.

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

CHARGE II.

On or about February 28, 2008, while employed with St. Luke's Baptist Hospital, San Antonio, Texas, Respondent failed to comply with the Order of Conditional Eligibility issued to him on October 26, 2004, by the Texas Board of Nursing. Noncompliance is the result of his failure to comply with Stipulation Number Five (5) of the Order which states, in pertinent part:

(5) 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....

A copy of the October 26, 2004, 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).

NOTICE IS GIVEN that staff will present evidence in support of the recommended disposition of revocation of Respondent's license to practice 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, TEX. OCC. CODE ANN. 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 GIVEN that to the extent applicable, based on the Formal Charges, the Board will rely on Adopted Disciplinary Sanction Policies for Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder which 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: Order of Conditional Eligibility dated October 26, 2004.

Filed this 2nd day of October, 2008.



TEXAS BOARD OF NURSING


James W. Johnston, General Counsel

Board Certified - Administrative Law
Texas Board of Legal Specialization
State Bar No. 10838300

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: Order of Conditional Eligibility dated October 26, 2004.
0999/D

BEFORE THE BOARD OF NURSE EXAMINERS
FOR THE STATE OF TEXAS

In the Matter of	§	
WILLIAM HART MCCARTHY, JR.	§	ORDER OF
PETITIONER for Eligibility for	§	CONDITIONAL ELIGIBILITY
Licensure	§	

On the date entered below, the Board of Nurse Examiners for the State of Texas, hereinafter referred to as the Board, considered the Application for Initial Licensure by Examination and supporting documents filed by WILLIAM HART MCCARTHY, JR., 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 *et seq.*, Texas Occupations Code.

A public meeting was held on February 10, 2004, by the Eligibility and Disciplinary Committee of the Board of Nurse Examiners (Board), at 333 Guadalupe, Tower 3, Suite 460, Austin, Texas, in which the application of WILLIAM HART MCCARTHY, JR., PETITIONER, was considered.

PETITIONER appeared in person. PETITIONER was notified of his right to be represented by legal counsel and elected to waive representation by counsel.

Board Members in attendance were: Deborah Hughes Bell, CLU, ChFC; Thomas Barton, MSN, RN; Virginia Campbell, BSN, RN, CNOR. Staff present were: Katherine A. Thomas, MN, RN, Executive Director; James W. Johnston, General Counsel; Joy Sparks, Assistant General Counsel; Anthony L. Diggs, Director, Enforcement Division; and Patricia Vianes-Cabrera, Legal Assistant.

FINDINGS OF FACT

1. On or about December 18, 2002, Petitioner submitted an Application for Initial Licensure by Examination 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 Baccalaureate Degree in Nursing from The University of Texas Health Science Center at San Antonio, San Antonio, Texas, in December 14, 2002.
4. Petitioner disclosed the following criminal history, to wit:
 - A. On July 8, 1993, Petitioner entered a plea of nolo contendere to the charge of Burglary of a Habitation in the District Court 227th Judicial District of Bexar County, Texas. Proceedings were deferred without adjudication of guilt and Petitioner was placed on ten (10) years probation. On December 19, 1996, Petitioner was successfully terminated from deferred community supervision.
 - B. On September 19, 1999, Petitioner was arrested for the misdemeanor offense of Driving While Intoxicated. On January 31, 2000, in the County Court at Law No. 12 of Bexar County, Texas, Petitioner received a motion to dismiss the charge of Driving While Intoxicated for insufficient evidence of intoxication.
 - C. On July 13, 200~~3~~², Petitioner was charged with the misdemeanor offense of Driving While Intoxicated in the County Court at Law No. 1 of Bexar County, Texas. Petitioner entered a plea of guilty and was placed on one (1) year probation. On January 14, 2004, Petitioner was successfully terminated from probation.
 - D. In addition to the aforementioned, Petitioner has been arrested for the following:
 - 1) On November 29, 1992, Petitioner was arrested for the offense of Resisting Officer, Evading Arrest by the San Antonio Police Department. On December 3, 1992, the charge was rejected without trial.
 - 2) On December 12, 1992, Petitioner was arrested for the offense of Possession of Marijuana in San Antonio, South Bexar County. On April 6, 1993, the charge was dismissed without trial.
5. There is no evidence of any subsequent criminal conduct.
6. On July 10, 2003, Petitioner was seen by John L. Coleman, MA, ADC III, LCDC, CARP, San Antonio, Texas, to undergo a chemical dependency evaluation. The results of the evaluation indicate that Petitioner's profile suggests a low probability of having a substance abuse disorder and there is minimal reason to believe that Petitioner cannot meet the Texas Administrative Code as well as the minimum standards set by the Board's rules and generally accepted nursing standards.

7. The Board received letters of support/recommendation for Petitioner from the following:
- A letter of reference dated October 22, 2002, was submitted on behalf of Petitioner by Martha Tuller, MSN, MBA, RN, Clinical Instructor, The University of Texas, Health Science Center at San Antonio, San Antonio, Texas.
 - A letter of recommendation dated December 2, 2002, was submitted on behalf of Petitioner by Laurie J. Singel, MSN, RNC, Clinical Instructor, The University of Texas, Health Science Center at San Antonio, San Antonio, Texas.
 - A letter of recommendation dated January 20, 2004, was submitted on behalf of Petitioner by Joyce Beauchamp, RN, BS, MSN, Director of In-service Education, San Antonio, Texas.
 - A letter of recommendation dated January 21, 2004, was submitted on behalf of Petitioner by Roche Lemler-Clark, Lemler & Associates, Attorneys at Law, San Antonio, Texas.
 - A letter of recommendation dated January 22, 2004, was submitted on behalf of Petitioner by Rinaldo J. Gonzalez, P.C., Law Offices of Rinaldo J. Gonzalez, P.C., San Antonio, Texas.
 - A letter of reference dated January 22, 2004, was submitted on behalf of Petitioner by Lois McCarthy, San Antonio, Texas.
 - A letter of reference dated January 22, 2004, was submitted on behalf of Petitioner by Mary Stigent, Cardiac Research Nurse Coordinator, The University of Texas Health Science Center at San Antonio, San Antonio, Texas.
 - A letter of support was submitted on behalf of Petitioner by Beverly W. McCarthy, Mathematics Department Chairman, Health Career High School, San Antonio, Texas.
 - A letter of reference was submitted on behalf of Petitioner by William G. Lewis, Central Texas Hospitality House, Gatesville, Texas.
 - A letter of reference was submitted on behalf of Petitioner by Milton Hope.
8. Licensure of Petitioner poses no direct threat to the health and safety of patients or the public, provided Petitioner complies with the stipulations outlined in this Order.
9. The Committee's review of the grounds for potential ineligibility has been made on the basis of the information provided by Petitioner.

10. Petitioner has sworn that his past behavior conforms to the Board's professional character requirements. Petitioner presented no evidence of behavior which is inconsistent with good professional character.
11. Petitioner has been advised that any information found to be incomplete, incorrect, or misleading will be considered and may result in an ultimate determination of ineligibility or the later revocation of a license obtained through misrepresentation.
12. On February 10, 2004, the Eligibility and Disciplinary Committee of the Board 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.

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 *et seq.*, Texas Occupations Code.
3. Petitioner's criminal history reflects criminal conduct which is grounds for denial of a license under Section 301.452 *et seq.*, Texas Occupations Code.
4. 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.
5. The Board may license an individual who has been previously convicted, adjudged guilty by a court, pled guilty or pled nolo contendere to any crime whether or not a sentence was imposed upon consideration of the factors set out in 22 Texas Administrative Code §213.28 and evaluating the direct relationship to nursing according to Chapter 53, Section 53.001 *et seq.*, Texas Occupations Code.
6. 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.

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ORDER

NOW, THEREFORE, IT IS ORDERED that upon meeting the requirements for graduation and payment of any required fees, WILLIAM HART MCCARTHY, JR., PETITIONER, is CONDITIONALLY ELIGIBLE to sit for the National Council Licensure Examination for Registered Nurses (NCLEX-RN® Examination). PETITIONER SHALL NOT be eligible for temporary authorization to practice as a Graduate 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 Professional Nurse Education, Licensure and Practice, 22 TEX. ADMIN. CODE §211.01 *et seq.*, and this Order.

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

IT IS FURTHER AGREED and ORDERED that while PETITIONER's license is encumbered by this Order the 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 ORDERED that PETITIONER, upon attaining a passing grade on the NCLEX-RN®, shall be issued a license to practice nursing in the State of Texas which shall bear the appropriate notation and PETITIONER SHALL be subject to the following stipulations.

IT IS FURTHER AGREED, SHOULD PETITIONER PRACTICE AS A REGISTERED NURSE IN THE STATE OF TEXAS, PETITIONER WILL PROVIDE DIRECT PATIENT CARE AND PRACTICE IN A HOSPITAL, NURSING HOME, OR OTHER CLINICAL SETTING AND PETITIONER MUST WORK IN SUCH SETTING A MINIMUM OF

SIXTY-FOUR (64) HOURS PER MONTH UNDER THE FOLLOWING STIPULATIONS FOR TWO (2) YEARS OF EMPLOYMENT. THE LENGTH OF THE STIPULATION PERIOD WILL BE EXTENDED UNTIL SUCH TWENTY-FOUR (24) MONTHS HAVE ELAPSED. PERIODS OF UNEMPLOYMENT OR OF EMPLOYMENT THAT DO NOT REQUIRE THE USE OF A REGISTERED NURSE (RN) LICENSE WILL NOT APPLY TO THIS STIPULATION PERIOD:

(1) 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 complete copy of this Order to each present employer within five (5) days of receipt of this Order. PETITIONER SHALL notify all future employers, during the twenty-four (24) month of employment monitoring period, in professional nursing of this Order of the Board and the stipulations on PETITIONER's license. PETITIONER SHALL present a complete copy of this Order to each future employer, during the twenty-four (24) month of employment monitoring period, prior to accepting an offer of employment.

(2) PETITIONER SHALL CAUSE each present employer in professional nursing to submit the Notification of Employment form, which is provided to the Petitioner by the Board, to the Board's office within ten (10) days of receipt of this Order. PETITIONER SHALL CAUSE each future employer, during the twenty-four (24) month of employment monitoring period, to submit the Notification of Employment form, which is provided to the Petitioner by the Board, to the Board's office within five (5) days of employment as a professional nurse.

(3) PETITIONER SHALL be supervised by a Registered Nurse who is on the premises. The supervising RN is not required to be on the same unit or ward as PETITIONER, but should be on the facility grounds and readily available to provide assistance and intervention if necessary. The supervising RN shall have a minimum of two (2) years experience in the same or

similar practice setting to which the Petitioner is currently working. PETITIONER SHALL work only regularly assigned, identified and predetermined unit(s). PETITIONER SHALL NOT be employed by a nurse registry, temporary nurse employment agency, hospice, or home health agency. PETITIONER SHALL NOT be self-employed or contract for services. Multiple employers are prohibited.

(4) PETITIONER SHALL CAUSE each employer to submit, on forms provided to the Petitioner by the Board, periodic reports as to PETITIONER's capability to practice professional nursing. These reports shall be completed by the Registered Nurse who supervises the PETITIONER. These reports shall be submitted by the supervising Registered Nurse to the office of the Board at the end of each three (3) months for two (2) years of employment as a professional nurse.

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

(6) PETITIONER SHALL submit to random periodic screens for controlled substances, tramadol hydrochloride (Ultram), and alcohol. For the first six (6) month period, random screens shall be performed at least once per month. For the remainder of the two (2) year stipulation period, random screens shall be performed at least once every three (3) months.

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 PETITIONER's place of employment at any time during the stipulation period and require PETITIONER to produce a specimen for screening.

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

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

IT IS FURTHER AGREED, that upon full compliance with the terms of this Order, PETITIONER SHALL be issued an unencumbered license and multistate licensure privileges, if any, to practice professional nursing in the State of Texas.

BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK.

CONTINUED ON NEXT PAGE.

PETITIONER'S CERTIFICATION

I am the Petitioner in this matter. I have fully and truthfully disclosed all of my past criminal conduct, 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 adjudged guilty by way of conviction or deferred order. 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 as 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 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 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 Board of Nurse Examiners enter this Order.

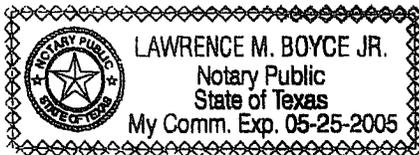
Signed this 14th day of October, 2004.

William H. McCarthy, Jr.
WILLIAM HART MCCARTHY, JR., PETITIONER

Sworn to and subscribed before me this 14 day of October, 2004.

SEAL

[Signature]
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 14th day of October, 2004, by WILLIAM HART MCCARTHY, JR., PETITIONER, for Petition for Declaratory Order, and said Order is final.

Entered this 26th day of October, 2004.

BOARD OF NURSE EXAMINERS
FOR THE STATE OF TEXAS

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