



# Board of Nurse Examiners For the State of Texas

Location Address: William P. Hobby Building, Ste. 3-460, 333 Guadalupe Street, Austin, Texas 78701  
Phone: (512) 305-7400 Fax: (512) 305-7401 Web: www.bne.state.tx.us

**Katherine A. Thomas, MN, RN**  
*Executive Director*

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

May 9, 2005

Certified Mail No. 7004 1160 0000 1353 1143

Return Receipt Requested

Dusty George McAlister  
2005 Canal St.  
Vernon, Texas 76384

Dear Mr. McAlister:

Please find enclosed your *Conditional Eligibility Order*, ratified May 9, 2005, regarding the Application for Licensure by Examination you filed with the Board of Nurse Examiners. The disposition will be forwarded to the National Council of State Boards of Nursing, Inc., and to the Healthcare Integrity and Protection Data Bank (HIPDB). The results of any disciplinary action are public information.

You have been granted permission to write the National Council Licensure Examination for Practical Nurses (NCLEX-PN® Examination) upon completion of the requirements for graduation and payment of any required fees. Your eligibility to take the NCLEX-PN® Examination may be affected by any inaccuracies in your petition, and any subsequent violation of the Nursing Practice Act may affect your eligibility to sit for the examination or the later revocation of a license obtained through misrepresentation.

If you have any questions, please contact Examination Department at (512) 305-6818.

Sincerely,

*Katherine A. Thomas*  
Katherine A. Thomas, MN, RN  
Executive Director

KAT/phr

R02/1299

Enclosures: Conditional Eligibility Order

### Members of the Board

Joyce Adams, PhD, RN Houston	Deborah Bell, CIU, ChFC Abilene	George Buchenau, Jr., BSN, RN, MBA Amarillo	Virginia Campbell, BSN, RN, CNOR Mesquite	Blanca Rosa Garcia, PhD, RN Corpus Christi
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BEFORE THE BOARD OF NURSE EXAMINERS  
FOR THE STATE OF TEXAS  
\*\*\*\*\*

In the Matter of	§	
DUSTY GEORGE McALISTER	§	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 Licensure by Examination and supporting documents filed by DUSTY GEORGE McALISTER, 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)(3), Texas Occupations Code.

PETITIONER waived representation by counsel, notice and hearing, and agreed to the entry of this Order offered on April 10, 2005, by Katherine A. Thomas, MN, RN, Executive Director.

FINDINGS OF FACT

1. On or about October 19, 2004, Petitioner submitted an Application for 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 Diploma in Vocational Nursing from Vernon College, Vernon, Texas, in December 2004.
4. Petitioner completed the Application for Initial Licensure by Examination and answered "yes" to Question Number One (1) which reads as follows: *"Have you ever 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 arrest (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 February 6, 1997, Petitioner was charged with the misdemeanor offense of Driving While Intoxicated in the County Criminal Court of Dallas County, Texas. Petitioner plead guilty, was sentenced to six (6) months probation and assessed a fine and court costs in the amount of Nine Hundred Seventy-Seven Dollars (\$977.00). On September 23, 1997, Petitioner's probation was revoked and he was sentenced to jail confinement and assessed a fine in the amount of One Hundred Fifty Dollars (\$150.00). On October 27, 1999, Petitioner was discharged from probation.
  - B. On August 12, 1997, Petitioner was charged with the misdemeanor offense of Theft of Stolen Property in the County Criminal Court of Dallas County, Texas. Petitioner pled guilty, was sentenced to jail time, and assessed a fine and court costs in the amount of Five Hundred Ninety-Seven Dollars (\$597.00).
  - C. On September 24, 1999, Petitioner was arrested for the misdemeanor offense of Driving While Intoxicated by the Duncanville Police Department which was reduced to Public Intoxication.
  - D. On September 13, 2001 and August 29, 2002, Petitioner was charged with the misdemeanor offense of Driving While License Suspended in the County Court at law of Kaufman County, Texas. Petitioner plead nolo contendere to both offense, served jail time, and was assessed fines and costs of court in the amount of One Thousand Two Hundred twenty-Two Dollars (\$1,222.00).
6. On March 21, 2005, Petitioner presented to John Lehman, Ph.D., Richardson, Texas, for a forensic psychological evaluation to include a chemical dependency component and a polygraph examination to determine eligibility to test. The results of the evaluation indicate that Petitioner is recommended for eligibility for licensure only under the following stipulations:
- (i) Petitioner needs to return to AA/NA, attending at least one (1) meeting a week for at least one (1) year after Petitioner has quit drinking.
  - (ii) Petitioner needs to stop drinking alcohol all together. Petitioner needs to refrain from all chemical use, including alcohol.
  - (iii) Petitioner's practice should be at least indirectly supervised to include random drug testing for at last one (1) year after licensing.
  - (iv) Petitioner's practice should not include working in high stress environments such as an ER or possibly an ICU due to his mild cognitive deficits.

With these stipulations, Petitioner could function within the guidelines of the Board of Nurse Examiners and would be safe to practice nursing. Petitioner sincerely wants to move ahead with a clean and sober life, but these changes are needed to insure that Petitioner will do so.

7. Petitioner presented evidence of current fitness to practice professional nursing.
8. The Board received letters of support/recommendation for Petitioner from the following:
  - A letter of reference dated March 26, 2003, was submitted to the Board on behalf of Petitioner by Eleamar B. Goco, R.N., B.S.N., Charge Nurse, Wilbarger General Hospital, Vernon, Texas.
  - A letter of reference dated March 5, 2005, was submitted to the Board on behalf of Petitioner by Stacie Harmon, EMT-B, Electra Memorial Hospital, Electra, Texas.
  - A letter of reference dated March 29, 2003, was submitted to the Board on behalf of Petitioner by Reymie Zuniga, R.N., Charge Nurse, Wilbarger General Hospital, Vernon, Texas.
  - A letter of reference dated April 2, 2003, was submitted to the Board on behalf of Petitioner by Linda Martinez, R.N., B.S.N., Nursing Supervisor, Wilbarger General Hospital, Vernon, Texas.
  - A letter of reference dated April 2, 2003, was submitted to the Board on behalf of Petitioner by Joe Bob Richie, R.N., Director of Nursing Services, Wilbarger General Hospital, Vernon, Texas.
  - A letter of reference dated April 7, 2003, was submitted to the Board on behalf of Petitioner by Margaret Moralez, R.N., Supervisor, Wilbarger General Hospital, Vernon, Texas.
  - A letter of reference dated April 12, 2005, was submitted to the Board on behalf of Petitioner by Leigh Ann Robb, R.N., Charge Nurse, Electra Memorial Hospital, Electra, Texas.
  - A letter of reference dated April 13, 2005, was submitted to the Board on behalf of Petitioner by Kimberly Gilbert, R.N., B.S.N., Director of Nurses, Electra Memorial Hospital, Electra, Texas.
  - A letter of reference was submitted to the Board on behalf of Petitioner by Karen L. Oglesby, R.N., Wilbarger General Hospital, Vernon, Texas.
  - A letter of reference was submitted to the Board on behalf of Petitioner by Anthony Ketchersid, RN.
  - A letter of reference was submitted to the Board on behalf of Petitioner by Larry G. Gillispie, R.N., B.S.N., Wilbarger General Hospital, Vernon, Texas.
  - A letter of reference was submitted to the Board on behalf of Petitioner by Diana Gilley, LVN, Electra Memorial Hospital, Electra, 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's review of the grounds for potential ineligibility has been made on the basis of the information provided by Petitioner.
11. Petitioner has sworn that, with the exception of matters disclosed in connection with the Application for Initial Licensure by Examination, 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.
12. On or about April 10, 2005, 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.
13. In consideration of Petitioner's past conduct and subsequent evidence of rehabilitation, the Executive Director finds that Petitioner should be declared conditionally eligible to take the National Council Licensure Examination for Practical Nurses.
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 an application 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 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 his conduct to the requirements of the Nursing Practice Act, the Board's Rules and Regulations, and generally accepted standards of nursing practice.

6. 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, DUSTY GEORGE McALISTER, PETITIONER, is CONDITIONALLY ELIGIBLE to sit for the National Council Licensure Examination for Vocational Nurses (NCLEX-PN<sup>®</sup> 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<sup>®</sup>, 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 a 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 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 ©), 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.

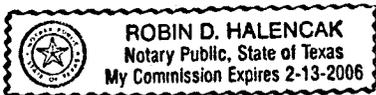
Signed this 05 day of May, 2005.

Dusty George McAlister  
DUSTY GEORGE McALISTER, PETITIONER

Sworn to and subscribed before me this 5 day of May, 2005.

SEAL

Robin D. Halenck  
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 5th day of May, 2005, by DUSTY GEORGE McALISTER, PETITIONER, for Application for Licensure by Examination, and said Order is final.

Entered and effective this 9th day of May, 2005.



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