



# 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

February 7, 2006

Certified Mail No. 7004 2890 0001 8856 8730

Return Receipt Requested

David William Lee  
3307 Williamsburg Ln.  
Texarkana, TX 75503

Dear Mr. Lee:

Please find enclosed your *Order of Conditional Eligibility*, ratified February 6, 2006, regarding the Petition for Declaratory Order 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 Registered Nurses (NCLEX-RN® Examination) upon completion of the requirements for graduation and payment of any required fees. Your eligibility to take the NCLEX-RN® 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 the Examination Department at (512) 305-6819.

Sincerely,

Katherine A. Thomas, MN, RN  
Executive Director

KAT/phr

R02/1299

Enclosures: Conditional Eligibility Order

### Members of the Board

|                                 |                                       |  |  |   |
|---------------------------------|---------------------------------------|--|--|---|
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BEFORE THE BOARD OF NURSE EXAMINERS  
FOR THE STATE OF TEXAS

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|                                |   |                         |
|--------------------------------|---|-------------------------|
| In the Matter of               | § |                         |
| DAVID WILLIAM LEE              | § | 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 Petition for Declaratory Order and supporting documents filed by DAVID WILLIAM LEE, 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 December 31, 2005, by Katherine A. Thomas, MN, RN, Executive Director.

FINDINGS OF FACT

1. On or about July 29, 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 is currently enrolled in an Associate Degree Nursing Program, at Texarkana College, Texarkana, Texas, with an anticipated graduation date of May 2006.
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, pled 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 adjudication 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 January 22, 1986, Petitioner was charged with the misdemeanor offense of Driving While Intoxicated in the District Court of Bowie County, Texas. Petitioner plead "no contest" and was sentenced to two (2) years probation and assessed a fine and court costs in the amount of four hundred fifty dollars (\$450.00). Petitioner fell behind on paying the fine and probation fees and wasn't released from probation until August 22, 1995.
- B. On July 15, 1986, Petitioner was charged with the misdemeanor offense of Driving While Intoxicated-2nd in the County Criminal Court No. 4 of Tarrant County, Texas. Petitioner plead guilty and was sentenced to two (2) years probation and assessed a fine and court costs in the amount of four hundred thirty-eight dollars (\$438.00). On May 5, 1993, the balance of the monies owed by Petitioner were waived and the case was closed.
- C. On February 7, 1991, Petitioner was charged with the felony offense of Driving While Intoxicated in the 102nd Judicial District Court of Bowie County, Texas. Petitioner plead guilty and was placed on probation for ten (10) years. Petitioner was assessed a fine in the amount of one thousand dollars (\$1,000.00).
- D. On April 19, 1991, Petitioner was charged with the misdemeanor offense of Driving While Intoxicated in the 202nd Judicial District Court of Bowie County, Texas. Petitioner plead guilty and was assessed a fine of one thousand dollars (\$1000.00) and court costs of one hundred thirty dollars (\$130.00). Petitioner was placed on two (2) years probation to run concurrent with the ten (10) years probation he was already serving for his felony DWI conviction.
- E. In 1995, a warrant was issued for Petitioner's arrest for violation of his probation by not paying his probation fees and not reporting to his probation officer. In April 1997, Petitioner was placed in the Northeast Texas Restitution Center to pay his fines and probation fees. In May 1998, Petitioner was released on regular probation and paid his remaining probation fees. On February 16, 2001, Petitioner was released from probation.

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

7. On August 26, 2005, Petitioner was requested to undergo a forensic psychological evaluation to include a chemical dependency component and a polygraph exam to determine eligibility. On October 5, 2005, Petitioner presented to Rafael F. Otero, Ph.D., Texarkana, Texas, to undergo evaluation. The results of the evaluation indicate that Petitioner will be able to consistently behave in accordance with the requirements of Rules 213.27-213.29 at 22 TAC, as well as the minimum standards set by the Board's Rules 217.11 at 22 TAC and generally accepted nursing standards. Petitioner will be able to consistently avoid behaviors identified by the Board as constituting unprofessional conduct. The results of Petitioner's polygraph exam indicated that he answered truthfully and without deception of not being intoxicated in the last year, but that Petitioner did disclose that he had consumed alcohol during the last year, but not to the point of intoxication. Dr. Otero states that Petitioner's control mechanisms may not work as effectively as needed for optimal anger control and awareness and he may not always manage anger very effectively.
8. The Board received letters of support/recommendation for Petitioner from the following:
  - A letter of recommendation dated December 16, 2004, was submitted to the Board on behalf of Petitioner by Chris E. Patterson, MSN, RN, Texarkana College, Texarkana, Texas.
  - A letter of recommendation dated March 24, 2004, was submitted to the Board on behalf of Petitioner by Jerry Voss, Assistant Professor, Texarkana College, Texarkana, 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 December 31, 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.

14. 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 Registered Nurses.
15. 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 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, DAVID WILLIAM LEE, 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 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.

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 five hundred dollars (\$500.00) 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 professional 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 professional 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 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.

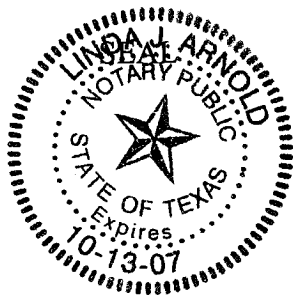
I understand that I can be represented by an attorney in this matter. I waive representation, notice, administrative hearing, and judicial review of this Order and request that the Executive Director of the Board of Nurse Examiners enter this Order.

Signed this 30 day of January, 2006.

David William Lee  
DAVID WILLIAM LEE, PETITIONER

Sworn to and subscribed before me this 30th day of January, 2006.

Linda J. Arnold  
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 30th day of January, 2006, by DAVID WILLIAM LEE, PETITIONER, for Petition for Declaratory Order, and said Order is final.

Entered and effective this 6th day of February, 2006.



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