Katherine A. Thomas, MN, RN
Executive Director

Board of Nurse Examiners For the State of Texas

Lind:
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

June 14, 2004

Certified Mail No.7002 0860 0007 8853 5160
Return Receipt Requested

Yolanda Patres Davis
721 Delano Avenue
Waco, Texas 76704

Dear Ms. Davis:

Your Petition for Declaratory Order was considered by the Executive Director of the Board on May 24, 2004. The Executive Director reviewed your case based on your petition as a professional nurse in the State of Texas pursuant to Article 4519, Revised Civil Statutes of Texas, as amended.

Based on the review of your file, the Executive Director of the Board finds you ineligible for licensure as a professinal nurse in the State of Texas on the grounds discussed below:

- On June 2, 1995, Petitioner was arrested for the misdemeanor offense of Theft by Check. On June 5, 1995, the charge was dismissed after full restitution was made.

- On December 28, 1995, Petitioner was charged with the misdemeanor offense of Failure to Identify in the County Court at Law of McLennan County, Texas. Petitioner entered a plea of Nolo Contendere and proceedings were deferred without adjudication of guilt and Petitioner was sentenced to six (6) months probation. On June 27, 1995, Petitioner was issued and Order discharging her from probation.

- On November 4, 1999, Petitioner was charged with the misdemeanor offense of Failure to Identify in the County Court at Law of McLennan County, Texas. Petitioner entered a plea of guilty and was sentenced to twelve (12) months probation. On July 16, 2001, Petitioner was discharged from probation.

- On June 27, 2001, Petitioner was charged with the felony offense of Tampering with Government Records in the 54th District Court of McLennan County, Texas. Petitioner entered a plea of guilty and proceedings were deferred without adjudication of guilt and Petitioner was sentenced to ten (10) years probation. Petitioner is expected to end probation in 2011.

1. The Board of Nurse Examiners requires that petitioners demonstrate the ability to place the interest of patients, clients and the public foremost and to abide by the standards of practice and unprofessional conduct rules. Your past conduct, to wit: failure to conform your behavior to the requirements of the law which resulted in your conviction is inconsistent with the minimal qualifications required of professional nurses.

Section 301.452, Texas Occupations code, provides in pertinent part that:

(a) The board may refuse to admit a person to a licensing examination for a ground described under Subsection (b).

(b)
- (1) a violation of this chapter or a rule or order issued under this chapter;
- (2) fraud or deceit in procuring or attempting to procure a license to practice professional nursing;
- (3) a conviction for a felony or for a misdemeanor involving moral turpitude;
- (4) conduct that results in the revocation of probation imposed because of conviction for a felony or for a misdemeanor involving moral turpitude;
- (5) use of a nursing license, diploma, or permit, or the transcript of such a document, that has been fraudulently purchased, issued, counterfeited, or materially altered;
- (6) impersonating or acting as a proxy for another person in the licensing examination required under Section 301.253 or 301.255;
- (7) directly or indirectly aiding or abetting an unlicensed person in connection with the unauthorized practice of professional nursing;
- (8) revocation, suspension, or denial of, or any other action relating to, the person's license to practice nursing in another jurisdiction;
- (9) intemperate use of alcohol or drugs that the board determines endangers or could endanger a patient;
- (10) unprofessional or dishonorable conduct that, in the board's opinion, is likely to deceive, defraud, or injure a patient or the public;
- (11) adjudication of mental incompetency;
- (12) lack of fitness to practice because of a mental or physical health condition that could result in injury to a patient or the public; or
- (13) failure to care adequately for a patient or to conform to the minimum standards of acceptable professional nursing practice in a manner that, in the board's opinion, exposes a patient or other person unnecessarily to risk of harm.

2. Your past conduct, resulting in criminal conviction, demonstrates a lack of judgement and respect for interpersonal boundaries which are necessary to the safe practice of professional nursing.

3. In addition, the above conduct constitutes a violation of §217.11(1) and §217.12(1) Rules and Regulations Relating to Professional Nurse Education, Licensure and Practice, 22 Texas Administrative Code:

§217.11. Standards of Professional Nursing Practice. The responsibility of the Texas Board of Nurse Examiners (board) is to regulate the practice of professional nursing within the State of Texas. The purpose of defining standards of practice is to identify roles and responsibilities of the registered professional nurse (RN) in any health care setting. The standards for professional nursing practice shall establish a minimum acceptable level of professional nursing practice. The RN shall:

(1) know and conform to the Texas Nurse Practice Act and the board's rules and regulations as well as all Federal, State, or local laws, rules or regulations affecting the RN's current area of nursing practice;

§217.12 Unprofessional Conduct. The unprofessional conduct rules are intended to protect clients and the public from incompetent, unethical, or illegal conduct of licensees. The purpose of these rules is to identify unprofessional or dishonorable behaviors of the registered professional nurse (RN) which the board believes are likely to deceive, defraud or injure clients or the public. These behaviors include but are not limited to:

(1) failing to know and conform to the Texas Nursing Practice Act and the board's rules and regulations as well as all federal, state, or local laws, rules or regulations affecting the RN's current area of nursing practice;

4. You have failed to provide sufficient evidence of good professional character as described in the Board's Rule at 22 Texas Administrative Code, §213.27.

§213.27. Good Professional Character.

(a) good professional character is the integrated pattern of personal, academic and occupational behaviors which, in the judgment of the Board, indicates that an individual is able to consistently conform his or her conduct to the requirements of the Nursing Practice Act, the Board's rules and regulations, and generally accepted standards of nursing practice including, but not limited to, behaviors indicating honesty, accountability, trustworthiness, reliability and integrity.

(b) Factors to be used in evaluating good professional character in eligibility and disciplinary matters are:

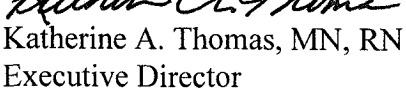
(1) Good professional character is determined through the evaluation of behaviors demonstrated by an individual in his or her personal, academic and occupational history. An individual's age, education and experience necessarily affect the nature and extent of behavioral history; and, therefore shall be considered in each evaluation.

(2) A person who seeks to obtain or retain a license to practice professional nursing shall provide evidence or good professional character which, in the judgment of the Board, is sufficient to insure that the individual can consistently act in the best interest of patients/clients and the public in any practice setting. Such evidence shall establish that person:

(A) is able to distinguish right from wrong;
(B) is able to think and act rationally;
(C) is able to keep promises and honor obligations;
(D) is accountable for his or her own behavior;
(E) is able to practice nursing in an autonomous role with patients/clients, their families and significant others and members of the public who are or how may become physically, emotionally or financially vulnerable;
(F) is able to recognize and honor the interpersonal boundaries appropriate to any therapeutic relationship or health care setting; and
(G) is able to promptly and fully self-disclose facts, circumstances, events, errors and omissions when such disclosure could enhance the health status of patients/clients or the public or could protect patients/clients or the public from unnecessary risk of harm.

If you are dissatisfied with this proposal, you have the right to a public hearing before an Administrative Law Judge with the State Office of Administrative Hearings. Should you decide to appeal this decision, submit a written request for a public hearing, to the attention of Nancy Salemi, Legal Assistant, Office of General Counsel, P.O. Box 430, Austin, Texas, 78767-0430. Your written request to appeal this decision must be received in our office within sixty (60) days of the date of this letter.

Sincerely,



Katherine A. Thomas, MN, RN
Executive Director

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