

FINDINGS OF FACT

1. On or about October 3, 2005, 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 received a Certificate in Vocational Nursing from the University of Texas at Brownsville, Brownsville, Texas, in December 2005.
4. Petitioner completed the Application for Initial Licensure by Examination and answered "yes" to Question Number One(1), which reads in part 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? This includes expunged offenses and deferred adjudication with or without prejudice of guilt."*
5. Petitioner disclosed the following criminal history, to wit:
 - A. On July 30, 2000, Petitioner was charged with the misdemeanor offense of Driving Under the Influence of Alcohol by a Minor in the Municipal Court for the City of Brownsville, Texas. The case was dismissed after Petitioner completed deferred adjudication which included twenty (20) hours of community service and a one hundred dollar (\$100.00) fine.
 - B. On May 20, 2001, Petitioner was charged with the misdemeanor offense of Public Intoxication by a Minor in the Municipal Court for the City of Brownsville, Texas. The case was dismissed after Petitioner completed deferred adjudication which included eighty (80) hours of community service and a two hundred fifty dollar (\$250.00) fine.
 - C. On August 25, 2001, Petitioner was charged with the misdemeanor offense of Public Intoxication by a Minor in the Municipal Court for the City of Brownsville, Texas. Petitioner was assessed a fine in the amount of one hundred fifty dollars (\$150.00).
 - D. On November 10, 2001, Petitioner was charged with the misdemeanor offense of Public Intoxication by a Minor in the Municipal Court for the City of Brownsville, Texas. Petitioner was assessed a fine in the amount of one hundred fifty dollars (\$150.00).
 - E. On October 29, 2003, Petitioner was charged with the misdemeanor offense of Driving Under the Influence in the State Court of Cobb County, State of Georgia. Petitioner entered a plea of guilty and was sentenced to one (1) year probation and

was assessed a fine in the amount of three hundred dollars (\$300.00). In October 2004, Petitioner completed probation.

6. There is no evidence of any subsequent criminal conduct.
7. On June 7, 2006, Petitioner was seen by Matthew L. Ferrara, Ph.D., Austin, Texas, to undergo a forensic psychological evaluation to include a chemical dependency component and a polygraph examination. The results of the evaluation indicate that Petitioner would have difficulty conforming his behavior to the Nursing Practice Act, Board rules and regulations, and generally accepted standards of nursing practice. Dr. Ferrara recommends that Petitioner not be considered for licensure as a nurse at this time. Should Petitioner complete a substance abuse treatment program and substantiate complete abstinence from illicit drugs and alcohol for one (1) year, he could be re-evaluated to determine his eligibility for licensure. Based upon Petitioner's SASSI profile, it appears that he has a high probability of having a substance dependence disorder.
8. A polygraph exam was administered by Peter Heller on June 7, 2006, with the results inconclusive. Mr. Heller discussed with Dr. Ferrara that the results were inconclusive because Petitioner withheld information related to a suicide attempt by overdosing on Paxil.
9. Petitioner presented evidence of current fitness to practice professional nursing.
10. The Board received letters of support/recommendation for Petitioner from the following:
 - Letters of reference dated August 26, 2005, and July 10, 2006, were submitted to the Board on behalf of Petitioner by Virginia Maldonado-Maxwell, BSN, RN, Associate Master Technical Instructor, The University of Texas at Brownsville, Brownsville, Texas.
 - A letter of reference dated August 29, 2005, was submitted to the Board on behalf of Petitioner by Ofelia Hess, Assistant Master Technical Instructor, The University of Texas at Brownsville, Texas.
 - A letter of reference dated July 12, 2006, was submitted to the Board on behalf of Petitioner by Karen Fuss-Sommer, BS, RN, Director, The University of Texas at Brownsville, Texas.
 - A letter of reference was submitted to the Board on behalf of Petitioner by Stoerm Anderson, Department of Nursing, The University of Texas at Brownsville, Brownsville, Texas.
11. 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.
12. The Board considered evidence of Petitioner's substance abuse and subsequent rehabilitation as provided in 22 Texas Administrative Code §213.29.

13. The Committee's review of the grounds for potential ineligibility has been made on the basis of the information provided by Petitioner.
14. 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.
15. On August 8, 2006, 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.
16. In consideration of Petitioner's past conduct and subsequent evidence of rehabilitation, the Board finds that Petitioner should be declared conditionally eligible to take the National Council Licensure Examination for Practical Nurses.
17. 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, 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, ERIC ESQUIVEL DELEON, PETITIONER, is CONDITIONALLY ELIGIBLE to sit for the National Council Licensure Examination for Practical Nurses (NCLEX-PN[®] 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 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[®], shall be issued a license to practice nursing in the State of Texas.

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.

(1) PETITIONER SHALL, within one (1) year of initial licensure in the State of Texas, successfully complete a course in Texas nursing jurisprudence. PETITIONER SHALL obtain Board approval of the course prior to enrollment. 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) contact hours in length. The course's content shall include the Nursing Practice Act, standards of practice, and documentation of care. Courses focusing on malpractice issues will not be accepted. PETITIONER 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

PETITIONER'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 on the Board's website, www.bne.state.tx.us (under BNE events).*

(2) PETITIONER SHALL, within one (1) year of initial licensure in the State of Texas, successfully complete a course in nursing ethics. PETITIONER SHALL obtain Board approval of the course prior to enrollment. Home study courses and video programs will not be approved. The course shall be a minimum of six (6) contact hours in length. In order for the course to be approved, the target audience shall include Nurses. The course shall include content on the following: principles of nursing ethics; confidentiality; and professional boundaries. PETITIONER SHALL CAUSE the sponsoring institution to submit a Verification of Course Completion form, provided by the Board, to verify PETITIONER's successful completion of the course. This course is to be taken in addition to any continuing education requirements the Board may have for relicensure. *Board approved courses may be found on the Board's website, www.bne.state.tx.us (under BNE events).*

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 Initial 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-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 19th day of September, 2006

Eric Esquivel De Leon
ERIC ESQUIVEL DELEON, PETITIONER

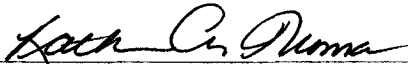
Sworn to and subscribed before me this 19th day of September, 2006

Esthela D. Guerra
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 19th day of September, 2006, by ERIC ESQUIVEL DELEON, PETITIONER, for Application for Initial Licensure by Examination, and said Order is final.

Entered and effective this 5th day of October, 2006.


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