BEFORE THE BOARD OF NURSE EXAMINERS
FOR THE STATE OF TEXAS
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TEXAS BOARD OF NURSING
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

In the Matter of	§	
MICHAEL HARVEY GUERRA	§	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 MICHAEL HARVEY GUERRA, 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)&(9), Texas Occupations Code.

A public meeting was held on February 14, 2006, 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 MICHAEL HARVEY GUERRA, 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 Bell, CLU, ChFC; George Buchenau, Jr., BSN, RN, MBA; and Rachel Gomez, LVN. Staff present were: Katherine A. Thomas, MN, RN, Executive Director; James W. Johnston, General Counsel; Anthony L. Diggs, Director, Enforcement Division; and Angela Bradford, Legal Assistant.

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FINDINGS OF FACT

1. On or about February 17, 2004, 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 an Associate Degree in Nursing from Del Mar College, Corpus Christi, Texas, in May 2004.

4. Petitioner completed the Petition for Declaratory Order and answered "yes" to Question Number One (1), which reads as follows: *"Have you been arrested in any state, territory, or country, including expunged offenses and deferred adjudication with or without prejudice of guilt for anything other than a minor traffic violation?"* and Question Number Two (2), which reads as follows: *"Have you been convicted, adjudged guilty by a court, pled guilty or pled nolo contendere to any crime whether or not a sentence was imposed?"*

5. Petitioner disclosed the following criminal history, to wit:

   A. On December 11, 1995, Petitioner was charged with the state jail felony offense of Criminal Mischief in the 28th District Court of Nueces County, Texas. Petitioner was granted a pretrial diversion agreement with proceedings being deferred for one (1) year and charges dismissed upon completion.

   B. On February 19, 2001, Petitioner was arrested for the misdemeanor offense of Driving While License Suspended. On July 30, 2001, in the County Court at Law No. 2 of Nueces County, Texas, Petitioner was granted a motion to dismiss the charge as a plea bargain for the charges of Theft and Possession of Marijuana.

   C. On July 30, 2001, Petitioner was charged with the misdemeanor offense of Theft in the County Court at Law No. 2 of Nueces County, Texas. Petitioner entered a plea of nolo contendere and proceedings were deferred without adjudication of guilt and Petitioner was sentenced to nine (9) months probation. On May 2, 2002, Petitioner was discharged from probation.

   D. On July 30, 2001, Petitioner was charged with the misdemeanor offense of Possession of Marijuana in the County Court at Law No. 2 of Nueces County, Texas. Petitioner entered a plea of nolo contendere and proceedings were deferred without adjudication of guilt and Petitioner was sentenced to nine (9) months probation. On May 2, 2002, Petitioner was discharged from probation.

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

7. On July 30, 2004, Petitioner was seen by Antoinette R. Cicerello, Ph.D., Forensic Psychology Associate of Texas, Richardson, Texas, to undergo a forensic psychological evaluation to include a chemical dependency evaluation and polygraph examination. The results of the evaluation indicates that Petitioner currently meets the criteria for alcohol and marijuana abuse, with most recent use a few months ago. Due to Petitioner's current use and criminal conduct, Dr. Cicerello cannot recommend that Petitioner would consistently behave in accordance with the Board's Rules.

   Dr. Cicerello recommends that Petitioner undergo intensive outpatient substance abuse treatment and show that he can maintain avoidance of criminal conduct for a substantial period of time, followed by a repeat forensic psychological evaluation with a chemical dependency component and polygraph examination.

8. To comply with the recommendation made by Dr. Cicerello, a letter was submitted to the Board by James E. Sandoval, MS, LCDC, The Council on Alcohol & Drug Abuse, Coastal Bend, Corpus Christi, Texas stating that on February 8, 2005, Petitioner successfully completed the Intensive Outpatient Access Drug & Alcohol Counseling Program. Mr. Sandoval stated that Petitioner was an asset to the group through consistent attendance, participation and a willingness to work with the staff and other clients in the pursuit of abstinence from all mood altering chemicals.

9. On October 5, 2005, Petitioner was seen by Troy Martinez, Psy.D., Corpus Christi, Texas, to undergo a forensic psychological evaluation to include a chemical dependency component and a polygraph examination. The results of the evaluation found no indications of clinically significant mood disturbances, personality dysfunction, or more severe forms of psychopathology. Petitioner's history is clear for poly-substance abuse, including alcohol, with a preference to marijuana; however, Petitioner indicated no use within the past twelve (12) months, with findings supported through a polygraph examination.

   Dr. Martinez does not see any other meaningful mental health issues contributing to substance use. Further, general stress does not appear to be a significant precipitation trigger to his past substance abuse. Instead, past drug and alcohol abuse seems most clearly reflective of over-learned, socialized behavior. Despite Petitioner's abstinence over the past several months, Dr. Martinez would recommend community substance abuse treatment, random drug screening, and a referral to TPAPN for a reasonable period of time should the Board further consider his eligibility for licensure.

   With Petitioner's willingness and ability to remain abstinent from substances of abuse, Dr. Martinez believes that Petitioner is capable of conducting himself in accordance with the requirements of Rules 213.27 - 213.29 at 22 TAC, consistently behaving in accordance with the minimal standards set by the Board's Rules 217.11 at 22 TAC, staying in accordance with generally accepted nursing standards and avoiding behaviors identified as constituting unprofessional misconduct.

10. Petitioner presented evidence of current fitness to practice professional nursing.

11. The Board received letters of support/recommendation for Petitioner from the following:

- A letter of reference dated September 18, 2002, was submitted to the Board by Petitioner from Richard G. Campbell, Emergency Department, Spohn Hospital, Corpus Christi, Texas.
- A letter of reference dated September 26, 2002, was submitted to the Board by Petitioner from Lyle T. Mathews, RN, Director of Emergency Services, Christus Spohn South Hospital, Corpus Christi, Texas.
- A letter of reference dated October 1, 2002, was submitted to the Board by Petitioner from Mark E. Greenlee, MD, Spohn South Emergency Department, Corpus Christi, Texas.
- A letter of reference dated December 19, 2003, was submitted to the Board by Petitioner from Theresa Morse, Assistant Professor, Del Mar College, Corpus Christi, Texas.
- A letter of recommendation dated February 9, 2004, was submitted to the Board on behalf of Petitioner by Shari Stoops, MSN, RN, Del Mar College, Corpus Christi, Texas.
- A letter of recommendation dated August 3, 2004, was submitted on behalf of Petitioner by J. Wally Fears, RN, CEN, Clinical Educator Emergency Services Department, Christus Spohn South Hospital, Corpus Christi, Texas.
- A letter of reference dated August 3, 2004, was submitted on behalf of Petitioner by Mark S. Renner, RN, Christus Spohn South Hospital, Corpus Christi, Texas.
- A letter of reference dated August 3, 2004, was submitted on behalf of Petitioner by Lynda Guarneri, RN, Christus Spohn South Hospital, Corpus Christi, Texas.
- A letter of reference dated August 4, 2004, was submitted on behalf of Petitioner by Mike Howie, RN.
- A letter of recommendation dated August 5, 2004, was submitted on behalf of Petitioner by Jean Bayabos, RN.
- A letter of reference dated August 8, 2004, was submitted on behalf of Petitioner by Marsha Kossum, RN, BSN, Christus Spohn South Hospital, Corpus Christi, Texas.
- A letter of reference dated August 8, 2004, was submitted on behalf of Petitioner by Tonya Wilson, RN, Christus Spohn South Hospital, Corpus Christi, Texas.
- A letter of recommendation dated August 9, 2004, was submitted on behalf of Petitioner by Linda Snyder, Director, Christus Spohn South Hospital, Corpus Christi, Texas.
- A letter of reference dated August 12, 2004, was submitted on behalf of Petitioner by Matthew A. Levine, CI, The Council on Alcohol and Drug Abuse, Coastal Bend, Corpus Christi, Texas.
- A letter of reference dated August 23, 2004, was submitted on behalf of Petitioner by Mary Delia Linthacum, RN, MS, MSN, Associate Professor, Del Mar College, Corpus Christi, Texas.

- A letter of reference was submitted on behalf of Petitioner by Ben Zuniga, RN, Corpus Christi, Texas.
- A letter of recommendation dated October 14, 2004, was submitted on behalf of Petitioner by Tami Hildreth, RN, CEN.
- A letter of reference dated October 14, 2004, was submitted on behalf of Petitioner by Alma Baghezza, RN, Corpus Christi, Texas.
- A letter of recommendation dated October 15, 2004, was submitted on behalf of Petitioner by Jang Choi, RN, Christus Spohn South Hospital, Corpus Christi, Texas.
- A letter of reference dated October 15, 2004, was submitted on behalf of Petitioner by Lewis E. Hayes, Christus Spohn South Hospital, Corpus Christi, Texas.
- A letter of reference dated October 17, 2004, was submitted on behalf of Petitioner by Lorri L. Elliott, RN, BSN, CCRN, Sandia, Texas.
- A letter of recommendation dated October 17, 2004, was submitted on behalf of Petitioner by Eve Duhart, RN, Sinton, Texas.
- A letter of reference was submitted on behalf of Petitioner by Jeannie Leighfield, RN, Christus Spohn South Hospital, Corpus Christi, Texas.
- A letter of recommendation dated October 17, 2004, was submitted on behalf of Petitioner by Albert Dozier, RN, CEN.
- A letter of recommendation dated October 18, 2004, was submitted on behalf of Petitioner by Robin R. Appleby, RN, CEN, Robstown, Texas.
- A letter of reference dated October 19, 2004, was submitted on behalf of Petitioner by Kathy Rockwell, RN, MSN, CEN, Professor, Del Mar College, Corpus Christi, Texas.

12. 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.

13. The Board considered evidence of Petitioner's substance abuse and subsequent rehabilitation as provided in §213.29, 22 Texas Administrative Code.

14. The Committee's review of the grounds for potential ineligibility has been made on the basis of the information provided by Petitioner.

15. 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.

16. On February 14, 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.

17. 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 Registered Nurses.

18. 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 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, MICHAEL HARVEY GUERRA, 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 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-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 15 day of March, 2006.

Michael H. Guerra

MICHAEL HARVEY GUERRA, PETITIONER

Sworn to and subscribed before me this 15th day of March, 2006.

Julie G. Medrano

Notary Public in and for the State of Texas

SEAL

NOTARY PUBLIC STATE OF TEXAS
JULIE G. MEDRANO
My Commission Expires
February 19, 2008

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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 15th day of March, 2006, by MICHAEL HARVEY GUERRA, PETITIONER, for Application for Initial Licensure by Examination, and said Order is final.

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

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