BEFORE THE BOARD OF NURSE EXAMINERS
FOR THE STATE OF TEXAS
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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	§	
YOLONDA PATRES DAVIS	§	ORDER OF
PETITIONER for Eligibility for	§	CONDITIONAL ELIGIBILITY
Licensure	§	

On the date entered below, the Board of Nurse Examiners for the State of Tex hereinafter referred to as the Board, considered the Petition for Declaratory Order and supporting documents filed by YOLANDA PATRES DAVIS, 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 petition of YOLANDA PATRES DAVIS, PETITIONER, was considered.

PETITIONER appeared in person. PETITIONER was notified of her 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 January 22, 2004, 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 McLennan Community College, Waco, Texas, with an anticipated graduation date of May 2005.

4. Petitioner completed the Petition for Declaratory Order and answered "yes" to Question Number Two (2), 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?"*

5. Petitioner completed the Petition for Declaratory Order and answered "yes" to Question Number Three (3), 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?"*

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

   A. 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.

   B. 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 an Order discharging her from probation.

   C. 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.

   D. 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. On August 17, 2004, Petitioner was discharged from probation and the verdict of conviction was set aside.

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

8. Petitioner completed the Petition for Declaratory Order and answered "yes" to Question Number Six (6), which reads as follows: *"Within the past five (5) years have you been addicted to and/or treated for the use of alcohol or any other drug?"*

9. Petitioner submitted the following certificates of treatment completion:

   1) On October 26, 2001, Petitioner successfully completed treatment at the Women and Children Program at The Freeman Center, Waco, Texas.
   2) On April 27, 2002, Petitioner successfully completed the Outpatient Program at The Freeman Center, Waco, Texas.
   3) From December 5, 2002, through October 20, 2003, Petitioner attended alcoholics anonymous.

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

11. On July 11, 2005, 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 indicated that Petitioner has a high probability of having a substance use disorder. It is likely that Petitioner suffers from Cocaine Dependence but her disorder appears to be in remission. Based upon this evaluation, it appears that Petitioner could conform her behavior to the Nursing Practice Act, Board rules and regulations, and generally accepted standards of nursing practice. Therefore, it is recommended that Petitioner be considered for licensure as a nurse in the State of Texas.

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

   - A letter of reference dated September 9, 2003, was submitted to the Board on behalf of Petitioner by Rev. Jack Watson, Mt. Carmel Baptist Church, Waco, Texas.
   - A letter of reference dated September 15, 2003, was submitted to the Board on behalf of Petitioner by Frances Washington, LCDC, The Freeman Center, Waco, Texas.
   - A letter of reference dated September 17, 2003, was submitted to the Board on behalf of Petitioner by Lewis C. Snell, McLennan Community College, Waco, Texas.
   - A letter of recommendation dated September 26, 2003, was submitted to the Board on behalf of Petitioner by Nettie S. Watkins, Md. Certified School Psychologist.
   - A letter of reference dated October 15, 2003, was submitted to the Board on behalf of Petitioner by Susan Olson, RN, MSN, Associate Degree Nursing, McLennan Community College, Waco, Texas.
   - A letter of reference dated October 22, 2003, was submitted to the Board on behalf of Petitioner by David Johnson, Adult Probation Officer, Waco, Texas.
   - A letter of reference dated October 27, 2003, was submitted to the Board on behalf of Petitioner by Alice Ogden, RN, BSN, Associate Degree Nursing Department, McLennan Community College, Waco, Texas.

- A letter of reference dated October 26, 2005, was submitted to the Board on behalf of Petitioner by Cessley D. Marsellus, MD, Scott and White Pediatrics.
- A letter of reference dated November 7, 2005, was submitted to the Board on behalf of Petitioner by Dr. Nancy Grayson, Rapoport Academy, Waco, Texas.

13. 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.

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

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

16. Petitioner has sworn that, with the exception of matters disclosed in connection with the Petition for Declaratory Order, her 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.

17. 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.

18. 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.

19. 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, YOLONDA PATRES DAVIS, 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 10th day of May, 2006.

Yolanda Patres Davis

YD YOLANDA PATRES DAVIS, PETITIONER

Sworn to and subscribed before me this 10th day of May, 2006.

SEAL

Bobbie D Perkins
My Commission Expires
June 24, 2006
NOTARY PUBLIC STATE OF TEXAS

Bobbie D. Perkins

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 10th day of May, 2006, by YOLONDA PATRES DAVIS, PETITIONER, for Petition for Declaratory Order, and said Order is final.

Entered and effective this 1st day of June, 2006.

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