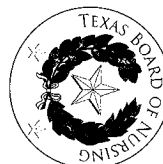


BEFORE THE BOARD OF NURSE EXAMINERS
FOR THE STATE OF TEXAS

In the Matter of §
BEVERLY LILA FISCHER §
PETITIONER for Eligibility for §
Registered Nurse Licensure and §
Vocational License Number 188482 §

ORDER OF
CONDITIONAL ELIGIBILITY



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.
Patricia P. Thomas
 Executive Director of the Board

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 Licensure by Examination and supporting documents filed by BEVERLY LILA FISCHER, 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 *et seq.*, Texas Occupations Code.

A public meeting was held on May 9, 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 BEVERLY LILA FISCHER, 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; Richard Gibbs, LVN; and Brenda Jackson, PhD, RN. Staff present were: Katherine A. Thomas, MN, RN, Executive Director; James W. Johnston, General Counsel; Victoria Cox, Assistant General Counsel; Anthony L. Diggs, Director, Enforcement Division; and Angela Bradford, Legal Assistant.

FINDINGS OF FACT

1. On or about June 9, 2005, Petitioner submitted an Application for 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 an Associate Degree in Nursing from San Antonio College, San Antonio, Texas, in August 2005. Petitioner was licensed to practice Vocational Nursing in the State of Texas on March 21, 2003.
4. Petitioner completed the Application for Licensure by Examination for licensure as a Professional Nurse and answered "no" 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 completed the Application for Licensure by Examination for licensure as a Vocational Nurse and answered "no" to the question that reads as follows: *"Have you been convicted of a misdemeanor other than a minor traffic violation?"*
6. Petitioner failed to disclose the following criminal history, to wit:

On December 12, 1980, Petitioner was charged with the misdemeanor offense of "Contribute to Neglect of a Child" in the Circuit Court, Milwaukee County, State of Wisconsin. Petitioner plead guilty and was sentenced to two (2) years probation. Petitioner was assessed court costs and to cooperate with all counseling. On December 12, 1982, Petitioner was discharged from probation.
7. There is no evidence of any subsequent criminal conduct.
8. In a written statement to the Board, Petitioner states her failure to disclose her conviction to the Board was not deliberate. She truthfully believed that because the charges had been changed to a misdemeanor there was nothing to disclose.
9. On October 20, 2005, Petitioner presented to Matthew L. Ferrara, Ph.D., Clinical and Forensic Psychology, Austin, Texas, to undergo evaluation. The results of the evaluation indicate that Petitioner has not provided the examiner or the Board with sufficient information to evaluate whether she could conform her behavior to the Nursing Practice Act, Board rules and regulations, and generally accepted standards of nursing practice. It is the opinion of the evaluator that Petitioner not be considered for licensure as a nurse in the State of Texas.

On October 20, 2005, Petitioner was administered a polygraph exam by Peter Heller. The polygraph questions were designed to address a key issue: was Petitioner's baby born dead. Based upon the scoring of the polygraph charts, Mr. Heller opined that Petitioner was not being truthful when she responded to the relevant questions. The results of this polygraph exam promote doubt that Petitioner's baby was born dead.

Dr. Ferrara further concludes that should Petitioner want to resolve this matter, she would need to provide information about her baby's status at the time of her baby's birth. If Petitioner's baby was born alive, Petitioner's actions or failure to act would likely be pivotal in the baby's death. If Petitioner's baby was born dead, her failure to act in such a manner to preserve life is different than failing to act when the baby is born dead. At this time, it is unclear whether Petitioner's baby was born dead or alive. This matter needs to be resolved, so the Board can make a determination about Petitioner's licensure based upon complete information.

10. The Board received letters of support/recommendation for Petitioner from the following:
 - Letters of reference dated November 14, 2005, and November 18, 2005, were submitted to the Board on behalf of Petitioner by Susan Getzin, Greenfield, Wisconsin.
 - Letters of reference dated November 16, 2005, and November 18, 2005, were submitted to the Board on behalf of Petitioner by Judith Anderson, Greenfield, Wisconsin.
 - Letters of reference dated November 16, 2005, and November 20, 2005, were submitted to the Board on behalf of Petitioner by Barbara Anderson, Greenfield, Wisconsin.
 - A letter of reference was submitted to the Board on behalf of Petitioner by Lori Gesell, Center Point, Texas.
 - A letter of reference dated November 28, 2005, was submitted to the Board on behalf of Petitioner by Judith Kuyper, NM, Sid Peterson Memorial Hospital, Kerrville, Texas.
11. Licensure of Petitioner poses no direct threat to the health and safety of patients or the public, provided Petitioner complies with the stipulations outlined in this Order.
12. The Committee's review of the grounds for potential ineligibility has been made on the basis of the information provided by Petitioner.
13. Petitioner has sworn that her past behavior conforms to the Board's professional character requirements. Petitioner presented no evidence of subsequent behavior which is inconsistent with good professional character.

14. Petitioner has been advised that any information found to be incomplete, incorrect, or misleading will be considered and may result in an ultimate determination of ineligibility or the later revocation of a license obtained through misrepresentation.
15. On May 9, 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.

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 *et seq.*, Texas Occupations Code.
3. Petitioner's criminal history reflects criminal conduct which is grounds for denial of a license under Section 301.452 *et seq.*, Texas Occupations Code.
4. 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.
5. The Board may license an individual who has been previously convicted, adjudged guilty by a court, pled guilty or pled nolo contendere to any crime whether or not a sentence was imposed upon consideration of the factors set out in 22 Texas Administrative Code §213.28 and evaluating the direct relationship to nursing according to Chapter 53, Section 53.001 *et seq.*, Texas Occupations Code.
6. The Board may license an individual with prior behaviors inconsistent with the Board's character requirements if, upon evaluation of the factors in 22 Texas Administrative Code §213.27, the Board is satisfied that the individual is able to consistently conform her conduct to the requirements of the Nursing Practice Act, the Board's Rules and Regulations, and generally accepted standards of nursing practice.

ORDER

NOW, THEREFORE, IT IS ORDERED that upon meeting the requirements for graduation and payment of any required fees, BEVERLY LILA FISCHER, PETITIONER, Vocational License Number 188482, 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 AGREED and ORDERED that this Order SHALL be applicable to PETITIONER's multistate licensure privilege, if any, to practice nursing in the State of Texas.

IT IS FURTHER AGREED and ORDERED that while PETITIONER's license's are encumbered by this Order the 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 ORDERED that PETITIONER, upon attaining a passing grade on the NCLEX-RN®, shall be issued a license to practice professional 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 only if the course is not being offered by a pre-approved provider. 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 only if the course is not being offered by a pre-approved provider. 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).*

(3) PETITIONER SHALL pay a monetary fine in the amount of seven hundred and fifty dollars (\$750.00). PETITIONER SHALL pay this fine within forty-five (45) days of initial licensure. Payment is to be made directly to the Board of Nurse Examiners in the form of cashier's check or U.S. money order. Partial payments will not be accepted.

IT IS FURTHER AGREED, SHOULD PETITIONER PRACTICE AS A NURSE IN THE STATE OF TEXAS, PETITIONER WILL PROVIDE DIRECT PATIENT CARE AND PRACTICE IN A HOSPITAL, NURSING HOME, OR OTHER CLINICAL SETTING AND PETITIONER MUST WORK IN SUCH SETTING A MINIMUM OF SIXTY-FOUR (64) HOURS PER MONTH UNDER THE FOLLOWING STIPULATIONS FOR ONE (1) YEAR OF EMPLOYMENT. THE LENGTH OF THE STIPULATION PERIOD WILL BE EXTENDED UNTIL SUCH TWELVE (12) MONTHS HAVE ELAPSED. PERIODS OF UNEMPLOYMENT OR OF EMPLOYMENT THAT DO NOT REQUIRE THE USE OF A REGISTERED NURSE (RN) LICENSE WILL NOT APPLY TO THIS STIPULATION PERIOD:

(4) PETITIONER SHALL notify each present employer in nursing of this Order of the Board and the stipulation conditions on PETITIONER's license. PETITIONER SHALL present a complete copy of this Order to each present employer within five (5) days of receipt of this Order. PETITIONER SHALL notify all future employers in nursing of this Order of the Board and the stipulation condition on PETITIONER's license. PETITIONER SHALL present a complete copy of this Order to each future employer prior to accepting an offer of employment.

(5) PETITIONER SHALL CAUSE each present employer in nursing to submit the Notification of Employment form, which is provided to the Petitioner by the Board, to the Board's office within ten (10) days of receipt of this Order. PETITIONER SHALL CAUSE each future employer to submit the Notification of Employment form, which is provided to the Petitioner by the Board, to the Board's office within five (5) days of employment as a nurse.

(6) PETITIONER SHALL CAUSE each employer to submit, on forms provided to the Petitioner by the Board, periodic reports as to PETITIONER's capability to practice nursing. These reports shall be completed by the Registered Nurse who supervises the PETITIONER. These reports shall be submitted by the supervising nurse to the office of the Board at the end of each three (3) months for one (1) year of employment as a nurse.

IT IS FURTHER AGREED, that upon full compliance with the terms of this Order, PETITIONER SHALL be issued unencumbered licenses and multistate licensure privileges, if any, to practice 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 of my past criminal conduct, and I have caused a complete and accurate criminal history to be submitted to the Board of Nurse Examiners from each jurisdiction in which I have been adjudged guilty by way of conviction or deferred order. 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 as 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 12 day of July, 2006.

Beverly Lila Fischer

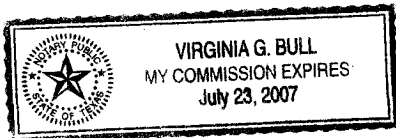
BEVERLY LILA FISCHER, PETITIONER

Sworn to and subscribed before me this 12 day of July, 2006

Virginia G Bull

Notary Public in and for the State of TEXAS

SEAL



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 12th day of July, 2006, by BEVERLY LILA FISCHER, PETITIONER, for Application for Licensure by Examination and Licensed Vocational Number 188482, and said Order is final.

Entered this 31st day of July, 2006.

BOARD OF NURSE EXAMINERS
FOR THE STATE OF TEXAS



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