



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 Vianes-Cabrera
Executive Director of the Board

BEFORE THE BOARD OF NURSE EXAMINERS
FOR THE STATE OF TEXAS

In the Matter of
WILLIAM HART MCCARTHY, JR.
PETITIONER for Eligibility for
Licensure

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ORDER OF
CONDITIONAL ELIGIBILITY

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 WILLIAM HART MCCARTHY, JR., 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 February 10, 2004, 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 WILLIAM HART MCCARTHY, JR., 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 Hughes Bell, CLU, ChFC; Thomas Barton, MSN, RN; Virginia Campbell, BSN, RN, CNOR. Staff present were: Katherine A. Thomas, MN, RN, Executive Director; James W. Johnston, General Counsel; Joy Sparks, Assistant General Counsel; Anthony L. Diggs, Director, Enforcement Division; and Patricia Vianes-Cabrera, Legal Assistant.

FINDINGS OF FACT

1. On or about December 18, 2002, 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 a Baccalaureate Degree in Nursing from The University of Texas Health Science Center at San Antonio, San Antonio, Texas, in December 14, 2002.
4. Petitioner disclosed the following criminal history, to wit:
 - A. On July 8, 1993, Petitioner entered a plea of nolo contendere to the charge of Burglary of a Habitation in the District Court 227th Judicial District of Bexar County, Texas. Proceedings were deferred without adjudication of guilt and Petitioner was placed on ten (10) years probation. On December 19, 1996, Petitioner was successfully terminated from deferred community supervision.
 - B. On September 19, 1999, Petitioner was arrested for the misdemeanor offense of Driving While Intoxicated. On January 31, 2000, in the County Court at Law No. 12 of Bexar County, Texas, Petitioner received a motion to dismiss the charge of Driving While Intoxicated for insufficient evidence of intoxication.
 - C. On July 13, 200~~3~~², Petitioner was charged with the misdemeanor offense of Driving While Intoxicated in the County Court at Law No. 1 of Bexar County, Texas. Petitioner entered a plea of guilty and was placed on one (1) year probation. On January 14, 2004, Petitioner was successfully terminated from probation.
 - D. In addition to the aforementioned, Petitioner has been arrested for the following:
 - 1) On November 29, 1992, Petitioner was arrested for the offense of Resisting Officer, Evading Arrest by the San Antonio Police Department. On December 3, 1992, the charge was rejected without trial.
 - 2) On December 12, 1992, Petitioner was arrested for the offense of Possession of Marijuana in San Antonio, South Bexar County. On April 6, 1993, the charge was dismissed without trial.
5. There is no evidence of any subsequent criminal conduct.
6. On July 10, 2003, Petitioner was seen by John L. Coleman, MA, ADC III, LCDC, CARP, San Antonio, Texas, to undergo a chemical dependency evaluation. The results of the evaluation indicate that Petitioner's profile suggests a low probability of having a substance abuse disorder and there is minimal reason to believe that Petitioner cannot meet the Texas Administrative Code as well as the minimum standards set by the Board's rules and generally accepted nursing standards.

7. The Board received letters of support/recommendation for Petitioner from the following:
 - A letter of reference dated October 22, 2002, was submitted on behalf of Petitioner by Martha Tuller, MSN, MBA, RN, Clinical Instructor, The University of Texas, Health Science Center at San Antonio, San Antonio, Texas.
 - A letter of recommendation dated December 2, 2002, was submitted on behalf of Petitioner by Laurie J. Singel, MSN, RNC, Clinical Instructor, The University of Texas, Health Science Center at San Antonio, San Antonio, Texas.
 - A letter of recommendation dated January 20, 2004, was submitted on behalf of Petitioner by Joyce Beauchamp, RN, BS, MSN, Director of In-service Education, San Antonio, Texas.
 - A letter of recommendation dated January 21, 2004, was submitted on behalf of Petitioner by Roche Lemler-Clark, Lemler & Associates, Attorneys at Law, San Antonio, Texas.
 - A letter of recommendation dated January 22, 2004, was submitted on behalf of Petitioner by Rinaldo J. Gonzalez, P.C., Law Offices of Rinaldo J. Gonzalez, P.C., San Antonio, Texas.
 - A letter of reference dated January 22, 2004, was submitted on behalf of Petitioner by Lois McCarthy, San Antonio, Texas.
 - A letter of reference dated January 22, 2004, was submitted on behalf of Petitioner by Mary Stigent, Cardiac Research Nurse Coordinator, The University of Texas Health Science Center at San Antonio, San Antonio, Texas.
 - A letter of support was submitted on behalf of Petitioner by Beverly W. McCarthy, Mathematics Department Chairman, Health Career High School, San Antonio, Texas.
 - A letter of reference was submitted on behalf of Petitioner by William G. Lewis, Central Texas Hospitality House, Gatesville, Texas.
 - A letter of reference was submitted on behalf of Petitioner by Milton Hope.
8. 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.
9. The Committee's review of the grounds for potential ineligibility has been made on the basis of the information provided by Petitioner.

10. Petitioner has sworn that his past behavior conforms to the Board's professional character requirements. Petitioner presented no evidence of behavior which is inconsistent with good professional character.
11. 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.
12. On February 10, 2004, 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.

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ORDER

NOW, THEREFORE, IT IS ORDERED that upon meeting the requirements for graduation and payment of any required fees, WILLIAM HART MCCARTHY, JR., 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 AGREED and ORDERED that this Order SHALL be applicable to PETITIONER's multistate licensure privilege, 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 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 nursing in the State of Texas which shall bear the appropriate notation and PETITIONER SHALL be subject to the following stipulations.

IT IS FURTHER AGREED, SHOULD PETITIONER PRACTICE AS A REGISTERED 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 TWO (2) YEARS OF EMPLOYMENT. THE LENGTH OF THE STIPULATION PERIOD WILL BE EXTENDED UNTIL SUCH TWENTY-FOUR (24) 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:

(1) PETITIONER SHALL notify each present employer in professional nursing of this Order of the Board and the stipulations 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, during the twenty-four (24) month of employment monitoring period, in professional nursing of this Order of the Board and the stipulations on PETITIONER's license. PETITIONER SHALL present a complete copy of this Order to each future employer, during the twenty-four (24) month of employment monitoring period, prior to accepting an offer of employment.

(2) PETITIONER SHALL CAUSE each present employer in professional 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, during the twenty-four (24) month of employment monitoring period, 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 professional nurse.

(3) PETITIONER SHALL be supervised by a Registered Nurse who is on the premises. The supervising RN is not required to be on the same unit or ward as PETITIONER, but should be on the facility grounds and readily available to provide assistance and intervention if necessary. The supervising RN shall have a minimum of two (2) years experience in the same or

similar practice setting to which the Petitioner is currently working. PETITIONER SHALL work only regularly assigned, identified and predetermined unit(s). PETITIONER SHALL NOT be employed by a nurse registry, temporary nurse employment agency, hospice, or home health agency. PETITIONER SHALL NOT be self-employed or contract for services. Multiple employers are prohibited.

(4) 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 professional nursing. These reports shall be completed by the Registered Nurse who supervises the PETITIONER. These reports shall be submitted by the supervising Registered Nurse to the office of the Board at the end of each three (3) months for two (2) years of employment as a professional nurse.

(5) PETITIONER SHALL abstain from the consumption of alcohol, Nubain, Stadol, Dalgan, Ultram, or other synthetic opiates, and/or the use of controlled substances, except as prescribed by a licensed practitioner for a legitimate purpose. If prescribed, PETITIONER SHALL CAUSE the licensed practitioner to submit a written report identifying the medication, dosage and the date the medication was prescribed. The report shall be submitted directly to the office of the Board by the prescribing practitioner, within ten (10) days of the date of the prescription. **In the event that prescriptions for controlled substances are required for periods of two (2) weeks or longer, the Board may require and PETITIONER SHALL submit to an evaluation by a Board approved physician specializing in Pain Management or Psychiatry. The performing evaluator will submit a written report to the Board's office, including results of the evaluation, clinical indications for the prescriptions, and recommendations for on-going treatment within thirty (30) days from the Board's request.**

(6) PETITIONER SHALL submit to random periodic screens for controlled substances, tramadol hydrochloride (Ultram), and alcohol. For the first six (6) month period, random screens shall be performed at least once per month. For the remainder of the two (2) year stipulation period, random screens shall be performed at least once every three (3) months.

Specimens shall be screened for at least the following substances:

Amphetamines	Meperidine
Barbiturates	Methadone
Benzodiazepines	Methaqualone
Cannabinoids	Opiates
Cocaine	Phencyclidine
Ethanol	Propoxyphene
tramadol hydrochloride (Ultram)	

A Board representative may appear at the PETITIONER's place of employment at any time during the stipulation period and require PETITIONER to produce a specimen for screening.

All screens shall be properly monitored and produced in accordance with the Board's policy on Random Drug Testing. A complete chain of custody shall be maintained for each specimen obtained and analyzed. PETITIONER SHALL be responsible for the costs of all random drug screening during the stipulation period.

Any positive result for which the nurse does not have a valid prescription will be regarded as non-compliance with the terms of this Order and may subject the nurse to further disciplinary action by this Board.

IT IS FURTHER AGREED, that upon full compliance with the terms of this Order, PETITIONER SHALL be issued an unencumbered license and multistate licensure privileges, if any, 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 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.

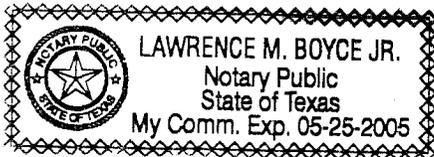
Signed this 14th day of October, 2004.

William H. McCarthy, Jr.
WILLIAM HART MCCARTHY, JR., PETITIONER

Sworn to and subscribed before me this 14 day of October, 2004.

SEAL

[Signature]
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 14th day of October, 2004, by WILLIAM HART MCCARTHY, JR., PETITIONER, for Petition for Declaratory Order, and said Order is final.

Entered this 26th day of October, 2004.

BOARD OF NURSE EXAMINERS
FOR THE STATE OF TEXAS


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