



Board of Nurse Examiners For the State of Texas

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Katherine A. Thomas, MN, RN
Executive Director

August 18, 2005

Certified Mail No.7003 1680 0001 5358 9929

Return Receipt Requested

Ricardo Acosta
3727 Andrews Hwy. Apt. #3513
Odessa, Texas 79762

Dear Mr. Acosta:

Your Application for Licensure by Examination was considered by the Executive Director of the Board on July 4, 2005. The Executive Director reviewed your case based on your application for licensure as a professional nurse in the State of Texas pursuant to Section 301.257, Texas Occupations Code, as amended.

Based on the review of your file, the Executive Director of the Board finds you ineligible for licensure as a professional nurse in the State of Texas on the grounds discussed below:

- In a written statement to the Board, Petitioner states that between 1994 - 1997, he received two (2) citations for the misdemeanor offense of Minor in Possession of Alcohol in Rankin, Texas.
- On November 3, 2000, Petitioner was charged with the misdemeanor offenses of Driving Under the Influence of Liquor and No Driver's License in the District Court of Benning, Georgia. Petitioner entered a plea of guilty and was sentenced to one (1) year probation.
- On July 12, 2002, Petitioner was charged with the misdemeanor offense of Public Intoxication in the County Court at Law of Ector County, Texas. Petitioner entered a plea of guilty and was assessed a fine in the amount of one hundred fifty dollars (\$150.00).
- On July 12, 2002, Petitioner was charged with the misdemeanor offense of Open Container in the County Court at Law of Ector County, Texas. Petitioner entered a plea of guilty and was assessed a fine in the amount of one hundred fifty dollars (\$150.00).
- On June 6, 2005, Petitioner was seen by John Lehman, Ph.D., to undergo a forensic psychological evaluation to include a chemical dependency component and a polygraph examination. The evaluation process revealed that Petitioner's like of alcohol is more important than nursing, as partying is more important than being responsible. Knowing the evaluation was nearing, Petitioner chose to drive intoxicated three (3) days prior and used cocaine two months ago.

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- Dr. Lehman recommends the following:
 1. Petitioner is **not fit** to practice nursing at this time. He is a substance abuser, and probably chemically dependent. Petitioner needs to address his problems with alcohol prior to being accepted to sit for the exam. His immaturity and flagrant disregard for the law (regular driving drunk) raises concerns about his ability to work within the laws and guidelines of the Board.
 2. Petitioner needs to enter an alcohol rehabilitation program and needs to document at least a year of continuous sobriety, then be reevaluated as to his suitability to sit for the exam.
 3. If allowed to test after the above is accomplished, Petitioner's practice should be monitored for compliance with abstinence guidelines.

- 1. The Board of Nurse Examiners requires that petitioners demonstrate the ability to place the interest of patients, clients and the public foremost and to abide by the standards of practice and unprofessional conduct rules. Your past conduct, to wit: failure to conform your behavior to the requirements of the law which resulted in your conviction or previous incarceration is inconsistent with the minimal qualifications required of nurses.

Section 301.452, Texas Occupations code, provides in pertinent part that:

 - (b) A person is subject to denial of a license or to disciplinary action under this subchapter for :
 - (1) a violation of this chapter or a rule or order issued under this chapter;
 - (2) fraud or deceit in procuring or attempting to procure a license to practice professional nursing;
 - (3) a conviction for a felony or for a misdemeanor involving moral turpitude;
 - (4) conduct that results in the revocation of probation imposed because of conviction for a felony or for a misdemeanor involving moral turpitude;
 - (5) use of a nursing license, diploma, or permit, or the transcript of such a document, that has been fraudulently purchased, issued, counterfeited, or materially altered;
 - (6) impersonating or acting as a proxy for another person in the licensing examination required under Section 301.253 or 301.255;
 - (7) directly or indirectly aiding or abetting an unlicensed person in connection with the unauthorized practice of professional nursing;
 - (8) revocation, suspension, or denial of, or any other action relating to, the person's license to practice nursing in another jurisdiction;
 - (9) intemperate use of alcohol or drugs that the board determines endangers or could endanger a patient;
 - (10) unprofessional or dishonorable conduct that, in the board's opinion, is likely to deceive, defraud, or injure a patient or the public;
 - (11) adjudication of mental incompetency;
 - (12) lack of fitness to practice because of a mental or physical health condition that could result in injury to a patient or the public; or
 - (13) failure to care adequately for a patient or to conform to the minimum standards of acceptable professional nursing practice in a manner that, in the board's opinion, exposes a patient or other person unnecessarily to risk of harm.
 - (c) The Board may refuse to admit a person to a licensing examination for a ground described under Subsection (b).

- 2. Your past conduct, resulting in criminal conviction, demonstrates a lack of judgement and respect for interpersonal boundaries which are necessary to the safe practice of professional nursing.

3. In addition, the above conduct constitutes a violation of §217.11(1)(A) and §217.12(1)(A), Rules and Regulations Relating to Nurse Education, Licensure and Practice, 22 Texas Administrative Code:

§217.11. Standards of Nursing Practice. The responsibility of the Texas Board of Nurse Examiners (Board) is to regulate the practice of nursing within the State of Texas for Vocational Nurses, Registered Nurses, and Registered Nurses with advanced practice authorization. The standards of practice establish a minimum acceptable level of nursing practice in any setting for each level of nursing licensure or advanced practice authorization. Failure to meet these standards may result in action against the nurse's license even if no actual patient injury resulted. Standards applicable to all Nurses:

- (1) Standards Applicable to All Nurses. All vocational nurses, registered nurses and registered nurses with advanced practice authorization shall:
- (A) Know and conform to the Texas Nursing Practice Act and the Board's rules and regulations as well as all Federal, State, or local laws, rules or regulations affecting the nurse's current area of nursing practice;

§217.12 Unprofessional Conduct. The unprofessional conduct rules are intended to protect clients and the public from incompetent, unethical, or illegal conduct of licensees. The purpose of these rules is to identify unprofessional or dishonorable behaviors of a nurse which the board believes are likely to deceive, defraud or injure clients or the public. Actual injury to a client need not be established. These behaviors include but are not limited to:

- (1) Unsafe Practice - actions or conduct including, but not limited to:
- (A) Carelessly failing, repeatedly failing, or exhibiting an inability to perform vocational, registered or advanced practice nursing in conformity with the standards of minimum acceptable level of nursing practice set out in Rule 217.11;

4. You have failed to provide sufficient evidence of good professional character or meet the Board's requirements for licensure of persons with criminal convictions as described in the Board's Rule at 22 Texas Administrative Code §213.27 and §213.28.

§213.27. Good Professional Character.

- (a) Good professional character is the integrated pattern of personal, academic and occupational behaviors which, in the judgment of the Board, indicates that an individual is able to consistently conform his or her conduct to the requirements of the Nursing Practice Act, the Board's rules and regulations, and generally accepted standards of nursing practice including, but not limited to, behaviors indicating honesty, accountability, trustworthiness, reliability and integrity.
- (b) Factors to be used in evaluating good professional character in eligibility and disciplinary matters are:
- (1) Good professional character is determined through the evaluation of behaviors demonstrated by an individual in his or her personal, academic and occupational history. An individual's age, education and experience necessarily affect the nature and extent of behavioral history; and, therefore shall be considered in each evaluation.
- (2) A person who seeks to obtain or retain a license to practice professional or vocational nursing shall provide evidence of good professional character which, in the judgment of the Board, is sufficient to insure that the individual can consistently act in the best interest of patients/clients and the public in any practice setting. Such evidence shall establish that person:
- (A) is able to distinguish right from wrong;
- (B) is able to think and act rationally;
- (C) is able to keep promises and honor obligations;
- (D) is accountable for his or her own behavior;
- (E) is able to practice nursing in an autonomous role with patients/clients, their families significant others and members of the public who are or how may become physically, emotionally or financially vulnerable;
- (F) is able to recognize and honor the interpersonal boundaries appropriate to any therapeutic relationship or health care setting; and
- (G) is able to promptly and fully self-disclose facts, circumstances, events, errors and omissions when such disclosure could enhance the health status of patients/clients or the public or could protect patients/clients or the public from unnecessary risk of harm.

- (3) Any conviction for a felony or for a misdemeanor involving moral turpitude or order of probation with or without an adjudication of guilt for an offense that would be a felony or misdemeanor involving moral turpitude if guilt were adjudicated.
 - (4) Any revocation, suspension, or denial of, or any other adverse action relating to, the person's license or privilege to practice nursing in another jurisdiction.
 - (c) The following provisions shall govern the determination of present good professional character and fitness of a Petitioner, Applicant or Licensee who has been convicted of a felony in Texas or placed on probation for a felony with or without an adjudication of guilt in Texas, or who has been convicted or placed on probation with or without an adjudication of guilt in another jurisdiction for a crime which would be a felony in Texas. A Petitioner, Applicant, or Licensee may be found lacking in present good professional character and fitness under this rule based on the underlying facts of a felony conviction or deferred adjudication, as well as based on the conviction or probation through deferred adjudication itself.
5. §213.28. Licensure of Persons with Criminal Convictions.
- (a) This section sets out the considerations and criteria on the eligibility of persons with criminal convictions to obtain a license as a registered or vocational nurse or those already licensed who renew their license. The Board may refuse to approve persons to take the licensure examination, may refuse to issue or renew a license or certificate of registration, or may refuse to issue a temporary permit to any individual that has been convicted of a felony, a misdemeanor involving moral turpitude, or engaged in conduct resulting in the revocation of probation imposed pursuant to such a conviction.
 - (b) The practice of nursing involves clients, their families, significant others and the public in diverse settings. The registered and vocational nurse practices in an autonomous role with individuals who are physically, emotionally and financially vulnerable. The nurse has access to personal information about all aspects of a person's life, resources and relationships. Therefore, criminal behavior whether violent or non-violent, directed against persons, property or public order and decency is considered by the Board as highly relevant to an individual's fitness to practice nursing.
 - (c) In considering whether a criminal conviction renders the individual ineligible for licensure or renewal of licensure as a registered or vocational nurse, the Board shall consider:
 - (1) the knowing or intentional practice of nursing without a license issued under the NPA;
 - (2) any felony or misdemeanor involving moral turpitude;
 - (3) the nature and seriousness of the crime;
 - (4) the relationship of the crime to the purposes for requiring a license to engage in nursing practice;
 - (5) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and
 - (6) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of nursing practice;
 - (7) whether imprisonment followed a felony conviction, felony community supervision revocation, revocation of parole or revocation of mandatory supervision; and
 - (8) conduct that results in the revocation of probation imposed because of conviction for a felony or for a misdemeanor involving moral turpitude.
 - (d) In addition to the factors that may be considered under subsection (c) of this section, the Board, in determining the present fitness of a person who has been convicted of a crime, shall consider:
 - (1) the extent and nature of the person's criminal activity;
 - (2) the age of the person when the crime was committed;
 - (3) the amount of time that has elapsed since the person's last criminal activity;
 - (4) the conduct and work activity of the person before and after the criminal activity;
 - (5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; and
 - (6) other evidence of the person's present fitness, including letters of recommendation from: prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; that sheriff or chief of police in the community where the person resides; and any other persons in contact with the convicted person.

Ricardo Acosta
August 18, 2005
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Due to this denial, you have the right to a public hearing before an Administrative Law Judge with the State Office of Administrative Hearings. Should you decide to appeal this decision, submit a written request for a public hearing, to the attention of Ryan Sprott, Legal Assistant, Office of General Counsel, 333 Guadalupe, Suite 3-460, Austin, Texas, 78701. Your written request to appeal this decision must be received in our office within sixty (60) days of the date of this letter.

Please note that the Board's rules, 22 Tex. Admin. Code §§ 213.27 - 213.30, are incorporated herein and can be located on the Board's website at www.bne.state.tx.us.

Sincerely,



Katherine A. Thomas, MN, RN
Executive Director

KAT/ac

Enclosures: Rule 213.27 Good Professional Character
 Rule 213.28 Licensure of Persons with Criminal Convictions