

BEFORE THE TEXAS BOARD OF NURSING

In the Matter of Registered Nurse § AGREED
License Number 734491 §
issued to DONALD LEO ANDERSON § ORDER

On this day the Texas Board of Nursing, hereinafter referred to as the Board, considered the matter of DONALD LEO ANDERSON, Registered Nurse License Number 734491, hereinafter referred to as Respondent.

Information received by the Board produced evidence that Respondent may have violated Section 301.452(b)(1) and (10), Texas Occupations Code. Respondent waived informal conference, notice and hearing, and agreed to the entry of this Order offered by Katherine A. Thomas, MN, RN, Executive Director, subject to ratification by the Board.

FINDINGS OF FACT

1. Prior to the institution of Agency proceedings, notice of the matters specified below in these Findings of Fact was served on Respondent and Respondent was given an opportunity to show compliance with all requirements of the law for retention of the license.
2. Respondent waived informal conference, notice and hearing, and agreed to the entry of this Order.
3. Respondent is currently licensed to practice professional nursing in the State of Texas.
4. Respondent received an Associate Degree in Nursing from El Paso Community College, El Paso, Texas, on May 12, 2006. Respondent was licensed to practice professional nursing in the State of Texas on October 10, 2006.
5. Respondent's complete professional nursing employment history is unknown.

6. On September 11, 2006, Respondent was issued an Order of Conditional Eligibility which required him to participate in the Texas Peer Assistance Program for Nurses (TPAPN). A copy of the September 11, 2006, Order of Conditional Eligibility, Findings of Fact, and Conclusions of Law is attached and incorporated, by reference, as part of this Order.
7. On June 15, 2007, while employed with Providence Memorial Hospital, El Paso, Texas, Respondent tested positive for ethyl glucuronide, a metabolite of eTOH, in the 250 range. This is suggestive of Respondent's potential noncompliance with the Order in that the TPAPN contract required Respondent abstain from ingestion of alcohol.
8. Respondent states he has been sober since December 12, 2002, and denied consuming alcohol to his TPAPN case manager. He has successfully completed a drug court program and is an active member of both Alcoholics and Narcotics Anonymous.
9. The Board finds that there exists serious risks to public health and safety as a result of impaired nursing care due to intemperate use of controlled substances or chemical dependency.

CONCLUSIONS OF LAW

1. Pursuant to Texas Occupations Code, Sections 301.451-301.555, the Board has jurisdiction over this matter.
2. Notice was served in accordance with law.
3. The evidence received is sufficient to prove violations of Section 301.452(b)(1) and (10), Texas Occupations Code, and 22 TEX. ADMIN. CODE §217.12(9) and (11)(B).
4. The evidence received is sufficient cause pursuant to Section 301.452(b), Texas Occupations Code, to take disciplinary action against Registered Nurse License Number 734491, heretofore issued to DONALD LEO ANDERSON, including revocation of Respondent's license to practice professional nursing in the State of Texas.

ORDER

IT IS THEREFORE AGREED and ORDERED, subject to ratification by the Texas Board of Nursing, that RESPONDENT SHALL receive the sanction of a WARNING WITH STIPULATIONS, and RESPONDENT 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 Respondent's multistate licensure privilege, if any, to practice professional nursing in compact states.

IT IS FURTHER AGREED and ORDERED that while Respondent's license is encumbered by this Order, Respondent may not work outside the State of Texas pursuant to a multistate licensure privilege without the written permission of the Texas Board of Nursing and the Board of Nursing in the party state where Respondent wishes to work.

IT IS FURTHER AGREED that:

(1) RESPONDENT SHALL deliver the wallet-sized license issued to DONALD LEO ANDERSON, to the office of the Texas Board of Nursing within ten (10) days from the date of ratification of this Order for appropriate notation.

(2) RESPONDENT SHALL, within one (1) year of entry of this Order, successfully complete a course in Texas nursing jurisprudence and ethics. RESPONDENT 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, documentation of care, principles of nursing ethics, confidentiality, professional boundaries, and the Board's Disciplinary Sanction Policies regarding Sexual Misconduct, Fraud, Theft and Deception, Nurses with Chemical Dependency, and Lying and Falsification. Courses focusing on malpractice issues will not be accepted. RESPONDENT 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 RESPONDENT'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 at the following Board website address:* <http://www.bon.state.tx.us/about/stipscourses.html>.

IT IS FURTHER AGREED, SHOULD RESPONDENT PRACTICE AS A REGISTERED NURSE IN THE STATE OF TEXAS, RESPONDENT WILL PROVIDE DIRECT PATIENT CARE AND PRACTICE IN A HOSPITAL, NURSING HOME, OR OTHER CLINICAL SETTING AND RESPONDENT MUST WORK IN SUCH SETTING A MINIMUM OF SIXTY-FOUR (64) HOURS PER MONTH UNDER THE FOLLOWING STIPULATIONS FOR ONE 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:

(3) RESPONDENT SHALL notify each present employer in nursing of this Order of the Board and the stipulations on RESPONDENT's license. RESPONDENT SHALL present a complete copy of this Order and all Proposals for Decision issued by the Administrative Law Judge, if any, to each present employer within five (5) days of receipt of this Order. RESPONDENT SHALL notify all future employers in nursing of this Order of the Board and the stipulations on RESPONDENT's license. RESPONDENT SHALL present a complete copy of this Order and all Proposals for Decision issued by the Administrative Law Judge, if any, to each future employer prior to accepting an offer of employment.

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

(5) RESPONDENT SHALL be supervised by a Registered Nurse who is on the premises. The supervising nurse is not required to be on the same unit or ward as RESPONDENT, but should be on the facility grounds and readily available to provide assistance and intervention if necessary. The supervising nurse shall have a minimum of two (2) years experience in the same or similar practice setting to which the Respondent is currently working. RESPONDENT SHALL work only regularly assigned, identified and predetermined unit(s). RESPONDENT SHALL NOT be employed by a nurse registry, temporary nurse employment agency, hospice, or home health agency. RESPONDENT SHALL NOT be self-employed or contract for services. Multiple employers are prohibited.

(6) RESPONDENT SHALL CAUSE each employer to submit, on forms provided to the Respondent by the Board, periodic reports as to RESPONDENT's capability to practice nursing. These reports shall be completed by the Registered Nurse who supervises the RESPONDENT. 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.

(7) RESPONDENT 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, RESPONDENT 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 RESPONDENT 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.**

(8) RESPONDENT SHALL submit to random periodic screens for controlled substances, tramadol hydrochloride (Ultram), and alcohol. For the first three (3) month period, random screens shall be performed at least once per week. For the next three (3) month period, random screens shall be performed at least twice per month. For the next six (6) month period, random screens shall be performed at least once per month.

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 RESPONDENT's place of employment at any time during the stipulation period and require RESPONDENT 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. RESPONDENT 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. Failure to report for a drug screen may be considered the same as a positive result and may result in further disciplinary action by this Board.

(9) RESPONDENT SHALL attend at least two (2) support group meetings each week, one of which shall be for substance abuse; and RESPONDENT SHALL provide acceptable evidence of attendance. Acceptable evidence shall consist of a written record of at least: the date of each meeting; the name of each group attended; and the signature and printed name of the chairperson of each group attended by RESPONDENT. RESPONDENT SHALL submit the required evidence on the forms provided by the Board at the end of every three (3) months. No duplications, copies, third party signatures, or any other substitutions will be accepted as evidence.

IT IS FURTHER AGREED, that upon full compliance with the terms of this Order, RESPONDENT 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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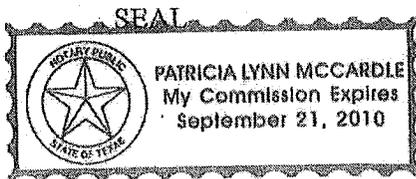
RESPONDENT'S CERTIFICATION

I understand that I have the right to legal counsel prior to signing this Agreed Order. I have reviewed this Order. I neither admit nor deny the violations alleged herein. By my signature on this Order, I agree to the Findings of Fact, Conclusions of Law, Order, and any conditions of said Order, to avoid further disciplinary action in this matter. I waive judicial review of this Order. I understand that this Order is subject to ratification by the Board. When this Order is ratified, the terms of this Order become effective, and a copy will be mailed to me. 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.

Signed this 3rd day of DECEMBER, 2007.

Donald Leo Anderson
DONALD LEO ANDERSON, Respondent

Sworn to and subscribed before me this 3rd day of December, 2007.



Patricia McCardle
Notary Public in and for the State of Texas

Approved as to form and substance.

[Signature]
LOUIS LEICHTER, Attorney for Respondent

Signed this 5 day of Dec, 2007.

WHEREFORE, PREMISES CONSIDERED, the Texas Board of Nursing does hereby ratify and adopt the Agreed Order that was signed on the 3rd day of December, 2007, by DONALD LEO ANDERSON, Registered Nurse License Number 734491, and said Order is final.

Effective this 17th day of January, 2008.



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

BEFORE THE BOARD OF NURSE EXAMINERS
FOR THE STATE OF TEXAS

In the Matter of	§	
DONALD LEO ANDERSON,	§	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 Petition for Declaratory Order and supporting documents filed by DONALD LEO ANDERSON, 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) *et seq.*, Texas Occupations Code.

PETITIONER waived representation by counsel, notice and hearing, and agreed to the entry of this Order offered on July 14, 2006, by Katherine A. Thomas, MN, RN, Executive Director.

FINDINGS OF FACT

1. On or about February 28, 2006, 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 graduated with an Associate Degree in Nursing from El Paso Community College, El Paso, Texas, in May 2006.
4. Petitioner completed the Petition for Declaratory Order and answered "yes" to Question Number Two (2), which reads 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 (excluding minor traffic violations)? This includes expunged offenses and*

deferred adjudication with or without prejudice of guilt. Please note that DUI's, DWI's, PI's must be reported and are not considered minor traffic violations. (One time minor in possession [MIP] or minor in consumption [MIC] do not need to be disclosed, therefore, you may answer "No." If you have two or more MIP's or MIC's, you must answer "Yes".)

5. Petitioner disclosed the following criminal history, to wit:
 - A. On October 8, 1981, Petitioner was charged with the felony offense of Burglary of a Vehicle in the District Court of El Paso, Texas. On January 11, 1982, Petitioner was convicted and was sentenced to three (3) years community supervision.
 - B. On March 17, 2001, Petitioner was charged with the felony offense of Possession of a Controlled Substance in the District Court of El Paso County, Texas. On July 9, 2001, Petitioner was found guilty by the presiding judge and placed on two (2) years deferred adjudication. Petitioner's probation was extended one (1) year on April 28, 2003. On June 24, 2004, Petitioner was granted early discharge from probation.
6. Petitioner's criminal history report discloses that on October 5, 1970, Petitioner was charged with the offense of Burglary in El Paso County, Texas, and on November 7, 1970, Petitioner was charged with the offense of Possession of Marijuana in El Paso County, Texas. No disposition for these offenses was provided by Petitioner.
7. Petitioner's criminal history report also discloses that he was charged with Attempt to Commit Homicide in El Paso, Texas, with the grand jury returning a "No Bill" for this offense. Petitioner's explanation for this offense is that as he was burglarizing a vehicle in a bar parking lot (Petitioner's 1981 felony conviction), the owner came out of the bar and approached Petitioner with a gun. Petitioner states he grabbed the gun and they wrestled and the gun went off. Petitioner states "I thought I was fighting for my life. I did not want to hurt the guy but he had a gun. I did not want to die either."
8. There is no evidence of any subsequent criminal conduct.
9. Petitioner completed the Petition for Declaratory Order and answered "no" to Question Number Five (5), 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?"*
10. A progress report dated January 10, 2006, was submitted to the Board by Yesenia I. Arras, LCSW, Department of Veteran Affairs, El Paso, Texas, stating that Petitioner entered a treatment program on September 16, 2002, for cocaine dependence. Petitioner then entered the Drug Court Program in December 2002 and successfully completed intensive treatment compliance monitoring. On August 26, 2004, Petitioner had a diagnosis of "Cocaine Dependence full sustained remission."
11. On April 19, 2006, Petitioner was requested to undergo a Forensic Psychological Evaluation

to include a Chemical Dependency Component and Polygraph Exam. On June 20, 2006, Petitioner presented to Matthew L. Ferrara, Ph.D., Austin, Texas, to undergo a forensic psychological evaluation to include a chemical dependency component and polygraph examination. The results of the evaluation indicate that Petitioner is able to consistently conform his behavior to the Nursing Practice Act, Board rules and regulations, and generally accepted standards of nursing practice. Petitioner's responses on the SASSI-III yielded a rating of low probability of a substance abuse disorder. However, Petitioner does have a history of substance abuse and legal problems, which cannot be ignored. On February 17, 2006, Petitioner was administered a polygraph examination by Peter Heller with no signs of deception indicated.

12. Petitioner presented evidence of current fitness to practice professional nursing.
13. The Board received letters of support/recommendation for Petitioner from the following:
 - A letter of recommendation dated October 14, 2005, was submitted to the Board on behalf of Petitioner by Max Veltman, RNC, MSN, CPNP, El Paso Community College, El Paso, Texas.
 - A letter of recommendation dated July 7, 2005, was submitted to the Board on behalf of Petitioner by Patty Shanaberger, RN, MSN, Family Nurse Practitioner, Nursing Faculty, El Paso Community College, El Paso, Texas.
14. 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.
15. The Executive Director considered evidence of Petitioner's substance abuse as provided in §213.29, 22 Texas Administrative Code.
16. The Executive Director's review of the grounds for potential ineligibility has been made on the basis of the information provided by Petitioner.
17. Petitioner has sworn that, with the exception of matters disclosed in connection with the Petition for Declaratory Order, 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.
18. On or about July 14, 2006, the Executive Director 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.
19. In consideration of Petitioner's past conduct and subsequent evidence of rehabilitation, the

Executive Director finds that Petitioner should be declared conditionally eligible to take the National Council Licensure Examination for Registered Nurses.

20. 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, DONALD LEO ANDERSON, 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 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.

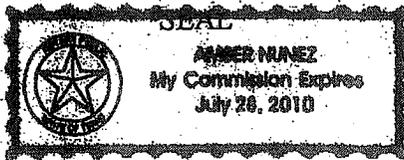
I understand that if I fail to comply with all terms and conditions of this Order, I will be subject to investigation and disciplinary sanction, including revocation of my license to practice professional nursing in the State of Texas, as a consequence of my noncompliance.

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 2nd day of SEPTEMBER, 2006.

Donald Leo Anderson
DONALD LEO ANDERSON, PETITIONER

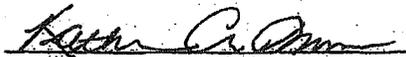
Sworn to and subscribed before me this 2nd day of September, 2006.



Amber Nunez
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 2nd day of September, 2006, by DONALD LEO ANDERSON, PETITIONER, for Petition for Declaratory Order, and said Order is final.

Entered and effective this 11th day of September, 2006.


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