BEFORE THE BOARD OF NURSING
FOR THE STATE OF TEXAS
****

In the Matter of	§	ELIGIBILITY
KIRK ERNEST WHITE	§	
APPLICANT for Eligibility for	§	AGREED ORDER
Licensure	§	

On the date entered below, the Board of Nursing for the State of Texas, hereinafter referred to as the Board, considered the Application for Licensure by Endorsement and supporting documents filed by KIRK ERNEST WHITE, hereinafter referred to as APPLICANT, together with any documents and information gathered by staff and APPLICANT's Certificate contained herein. Information received by the Board produced evidence that APPLICANT may have violated Section 301.452(b)(10), Texas Occupations Code.

APPLICANT waived representation by counsel, notice and hearing, and agreed to the entry of this Order offered on March 16, 2009, by Katherine A. Thomas, MN, RN, Executive Director.

FINDINGS OF FACT

1. On or about February 1, 2008, Applicant submitted a Temporary License/Endorsement Application requesting a determination of eligibility for licensure in compliance with Section 301.257 of the Texas Occupations Code and the Board's Rule at 22 Texas Administrative Code Section 213.30.

2. Applicant waived representation, notice, administrative hearing, and judicial review.

3. Applicant is received a Certificate in Vocational Nursing from National Park Community College, Hot Springs, Arkansas, in June 2005.

4. Applicant completed the Application for Licensure by Endorsement and answered "yes" to the question which reads in part as follows: *"For any criminal offense, including those pending appeal, have you:*
   A. been convicted of a misdemeanor?

B. been convicted of a felony?
C. pled nolo contendere, no contest, or guilty?
D. received deferred adjudication?
E. been placed on community supervision or court-ordered probation, whether or not adjudicated guilty?
F. been sentenced to serve jail or prison time? court-ordered confinement?
G. been granted pre-trial diversion?
H. been arrested or any pending criminal charges?
I. been cited or charged with any violation of the law?
J. been subject of a court-martial; Article 15 violation, or received any form of military judgment/punishment/action?"

5. Applicant disclosed the following criminal history, to wit:

A. On February 16, 1995, Applicant entered a plea of guilty to the misdemeanor offense of Driving While Intoxicated in the County Court at Law of Harris County, Texas. Applicant was sentenced to one (1) year probation. On February 29, 1996, Applicant completed all terms of probation.

B. On February 4, 1999, Applicant entered a plea of guilty to the misdemeanor offense of Driving While Intoxicated, Cause No. 98-1301, in the County Court at Law No. 2 of Lufkin County, Texas. Applicant was sentenced to one hundred eighty (180) days confinement in the Lufkin County Jail, which was probated for two (2) years.

C. On February 4, 1999, Applicant entered a plea of guilty to the misdemeanor offense of Driving While Intoxicated, Cause No. 98-10989, in the County Court at Law of Lufkin County, Texas. Applicant was sentenced to two (2) years probation.

D. On January 29, 2007, Applicant entered a plea of guilty to the misdemeanor offense of Driving While Intoxicated, Cause No. 07-0000055, in the County Court at Law of Garland County, Texas. Applicant was sentenced to one (1) year confinement in the Garland County jail, which was suspended with the following conditions: Applicant complete forty (40) hours of community service, a six (6) week alcohol and substance abuse program, and eighty (8) hours of driver's education class.

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

7. On November 12, 2008, Applicant was seen by Joyce M. Gayles, Ph.D., Clinical Psychologist, to undergo a forensic psychological evaluation to include a chemical dependency component and a polygraph examination. The overall results of the evaluation showed Applicant as a person who is emotionally stable, responsible, and goal-oriented. There are no indications of psychological problems nor a propensity toward criminal or acting out behavior. There is a low probability that Applicant is Substance Dependence as measured by the SASSI-3. However, he admits to a lengthy history of alcohol use, with

several period of regular and heavy use which he tends to attribute to being in environments that encourage and supported drinking. Given Applicant's history of excessive alcohol use and his criminal charges related to alcohol, he should be referred to TPAPN for intervention and assistance in maintaining sobriety. He would also benefit from individual counseling with a focus on helping him to identify triggers and resolve any issues that contribute to his use of alcohol. With such assistance, Dr. Gayles believes that Applicant can be expected to fulfill the responsibilities of a nurse and conduct himself in a professional manner according to Board Rules 213.27-213.29, 217.11, and 217.12.

8. Applicant presented evidence of current fitness to practice vocational nursing.

9. 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.

10. The Executive Director considered evidence of Applicant's substance abuse and subsequent rehabilitation as provided in §213.29, 22 Texas Administrative Code.

11. Licensure of Applicant poses no direct threat to the health and safety of patients or the public, provided Applicant complies with the stipulations outlined in this Order.

12. The Executive Director's review of the grounds for potential ineligibility has been made on the basis of the information provided by Applicant.

13. Applicant has sworn that, with the exception of matters disclosed in connection with the Temporary License/Endorsement Application, his past behavior conforms to the Board's professional character requirements. Applicant presented no evidence of behavior which is inconsistent with the Board's character requirements in 22 Texas Administrative Code §213.27.

14. On March 16, 2009, the Executive Director considered evidence of Applicant's past behavior in light of the character factors set out in 22 Texas Administrative Code, §213.27 and determined that Applicant currently demonstrates the criteria required for good professional character.

15. 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 his conduct to the requirements of the Nursing Practice Act, the Board's Rules and Regulations, and generally accepted standards of nursing practice.

16. Applicant'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 Texas Board of Nursing has jurisdiction over this matter pursuant to Section 301.453 *et seq.*, Texas Occupations Code.

2. Applicant has submitted an Application for Licensure by Endorsement requesting a determination of eligibility for licensure in compliance with Section 301.257 of the Texas Occupations Code and the Board's Rule at 22 Texas Administrative Code Section 213.30.

3. Applicant shall immediately notify the Board of any fact or event that could constitute a ground of ineligibility for licensure under Section 301.452 *et seq.*, Texas Occupations Code.

4. The Texas Board of Nursing 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 Applicant does not currently pose a direct threat to the health and safety of patients or the public.

5. 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 his conduct to the requirements of the Nursing Practice Act, the Board's Rules and Regulations, and generally accepted standards of nursing practice.

6. The Board may, in its discretion, order a Applicant, upon initial licensure as a vocational 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

IT IS THEREFORE AGREED that the application of KIRK ERNEST WHITE, APPLICANT, is hereby conditionally GRANTED and shall be subject to conditions.

(1) APPLICANT shall obtain and read the Texas Nursing Practice Act, and the Rules and Regulations Relating to Nurse Education, Licensure and Practice.

(2) IT IS FURTHER ORDERED that APPLICANT 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 Nurse Education, Licensure and Practice, 22 TEX. ADMIN. CODE §211.01 *et seq.*, and this Order.

IN ADDITION, IT IS THEREFORE FURTHER AGREED and ORDERED that APPLICANT, upon initial licensure, SHALL comply with the following conditions for such a time as is required for APPLICANT to successfully complete the Texas Peer Assistance Program for Nurses (TPAPN):

(1) APPLICANT 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 three hundred fifty dollars ($350.00) payable to TPAPN.

(2) Upon acceptance into the TPAPN, APPLICANT SHALL waive confidentiality and provide a copy of the executed TPAPN contract to the Texas Board of Nursing.

(3) APPLICANT SHALL comply with all requirements of the TPAPN contract during its term.

(4) APPLICANT SHALL CAUSE the TPAPN to notify the Texas Board of Nursing of any violation of the TPAPN contract.

IT IS FURTHER AGREED and ORDERED that this Order SHALL be applicable to Applicant's multistate licensure privileges, if any, to practice vocational nursing in the State of Texas.

IT IS FURTHER AGREED and ORDERED that while Applicant's license is encumbered by this Order, Applicant 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 Applicant wishes to work.

IT IS FURTHER AGREED, SHOULD APPLICANT 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 APPLICANT's license to practice vocational nursing in the State of Texas.

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APPLICANT'S CERTIFICATION

I am the Applicant 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 Application for Licensure by Endorsement, 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 application, 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 agree to inform the Board of any other fact or event that could constitute a ground for denial of licensure prior to accepting any permit or license from the Texas Board of Nursing.

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 vocational 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 Texas Board of Nursing enter this Order.

Signed this 4th day of May 2009.

Kirk Ernest White

KIRK ERNEST WHITE, APPLICANT

Sworn to and subscribed before me this 4 day of May, 2009.

SEAL

Lynn Sonora

Notary Public in and for the State of Texas

LYNN SONORA
MY COMMISSION EXPIRES
March 21, 2013

WHEREFORE, PREMISES CONSIDERED, the Executive Director on behalf of the Board of Nursing for the State of Texas does hereby ratify and adopt the Order of Conditional Eligibility that was signed on the 4th day of May, 2009, by KIRK ERNEST WHITE, APPLICANT, for Temporary License/Endorsement Application, and said Order is final.

Entered and effective this 18th day of May, 2009.

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