BEFORE THE TEXAS BOARD OF NURSING

****

In the Matter of Registered Nurse	§	AGREED
License Number 730645	§	
issued to MICHAEL HARVEY GUERRA	§	ORDER

TEXAS BOARD OF NURSING
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.
Executive Director of the Board

On this day the Texas Board of Nursing, hereinafter referred to as the B considered the matter of MICHAEL HARVEY GUERRA, Registered Nurse License Nu 730645, hereinafter referred to as Respondent.

Information received by the Board produced evidence that Respondent may have violated Section 301.452(b)(1)&(10), Texas Occupations Code. Respondent waived informal proceedings, notice and hearing, and agreed to the entry of this Order offered on April 20, 2011, 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 proceedings, 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 Del Mar College, Corpus Christi, Texas, on May 14, 2004. Respondent was licensed to practice professional nursing in the State of Texas on July 6, 2006.

5. Respondent's professional nursing employment history is unknown.

6. On or about April 6, 2006, Respondent was issued an ORDER OF CONDITIONAL ELIGIBILITY, by the Board of Nurse Examiners for the State of Texas, Austin, Texas. A copy of the Findings of Fact, Conclusions of Law and Order is attached and incorporated, by reference, as part of this Order.

7. On or about February 20, 2009, Respondent became non-compliant with the Agreed Order issued to him by the Board of Nurse Examiners for the State of Texas on April 6, 2006. Non-compliance is the result of his failure to call the drug test line as required by the Texas Peer Assistance Program for Nurses (TPAPN). Stipulation number three (3) of the Agreed Order dated April 6, 2006 states:

"PETITIONER SHALL comply with all requirements of the TPAPN contact during its term."

8. In response to Finding of Fact Number Seven (7), Respondent states:

"1. [Respondent] faithfully maintained sobriety and has dutifully complied with the requirements of TPAPN and has been monitored by the Board for several years.
2. [Respondent] attempted to sign on at the TPAPN site and encountered difficultly electronically at least twice prior to the closing of the TPAPN case on August 4, 2009.
3. [Respondent] has successfully reported several hundred times via the TPAPN online and phone system and his failure to log on less than .033% over the years was not due to conscious indifference but due to an honest mistake. Also, the 2 pm deadline missed was due in part to the problem with logging on the TPAPN site and an unusually hectic assignment load.
4. Relief Sought: [Respondent] respectfully requests that the Board consider placing him back on the TPAPN program. The TPAPN program for [Respondent] would have terminated at or around March 2010 and he respectfully requests that he be given the opportunity to terminate the TPAPN program and demonstrate his lifelong commitment to sobriety which he has maintained and will continue to do so, for his nursing career and the remainder of his life."

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)&(10), Texas Occupations Code, and 22 TEX. ADMIN. CODE §217.12(9)&(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 730645, heretofore issued to MICHAEL HARVEY GUERRA, 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 Registered Nurse License Number 730645, previously issued to MICHAEL HARVEY GUERRA, to practice professional nursing in Texas is hereby SUSPENDED for a period of TWO (2) YEARS with the suspension STAYED and Respondent is hereby placed on PROBATION for TWO (2) YEARS with the following agreed terms of probation:

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

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.

(1) RESPONDENT SHALL comply in all respects with the Nursing Practice Act, Texas Occupations Code, §§301.001 *et seq.*, the Rules and Regulations Relating to Nurse Education, Licensure and Practice, 22 TEX. ADMIN. CODE §211.1 *et seq.* and this Order.

(2) RESPONDENT SHALL, within one (1) year of the suspension being stayed, 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 <u>not</u> 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) 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 Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder; 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/disciplinaryaction/stipscourses.html.*

(3) RESPONDENT SHALL pay a monetary fine and monitoring fee in the amount of seven hundred fifty dollars ($750). RESPONDENT SHALL pay this fine within forty-five (45) days of the suspension being stayed. Payment is to be made directly to the Texas Board of Nursing in the form of cashier's check or U.S. money order. Partial payments will not be accepted.

IT IS FURTHER AGREED, SHOULD RESPONDENT PRACTICE AS A 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 PROBATION CONDITIONS FOR TWO (2) YEARS OF EMPLOYMENT. THE LENGTH OF THE

PROBATIONARY 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 PROBATIONARY PERIOD:

(4) RESPONDENT SHALL notify each present employer in nursing of this Order of the Board and the probation conditions 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 probation conditions 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.

(5) 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.

(6) 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.

(7) RESPONDENT SHALL NOT practice as a nurse on the night shift, rotate shifts, work overtime, accept on-call assignments, or be used for coverage on any unit other than the identified, predetermined unit(s) to which Respondent is regularly assigned for one (1) year of employment as a nurse.

(8) 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) month period for two (2) years of employment as a nurse.

(9) 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.

(10) 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. For the remainder of the probation period, random screens shall be performed at least once every three (3) months. All random screens SHALL BE conducted through urinalysis. Screens obtained through urinalysis is the sole method accepted by the Board.

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 probation 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 probation period.

Any positive result for which the nurse does not have a valid prescription or failure to report for a drug screen, which may be considered the same as a positive result, will be regarded

as non-compliance with the terms of this Order and may subject the nurse to further disciplinary action including EMERGENCY SUSPENSION pursuant to Section 301.4551, Texas Occupations Code, or REVOCATION of Respondent's license and multistate licensure privileges, if any, to practice nursing in the State of Texas.

(11) RESPONDENT SHALL attend at least two (2) support group meetings each week, one of which must be for substance abuse and provided by Alcoholics Anonymous, Narcotics Anonymous, or another comparable recovery program that has been pre-approved by the Board. 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 and ORDERED that if during the period of probation, an additional allegation, accusation, or petition is reported or filed against the Respondent's license, the probationary period shall not expire and shall automatically be extended until the allegation, accusation, or petition has been acted upon by the Board.

IT IS FURTHER AGREED, that upon full compliance with the terms of this Order, all encumbrances will be removed from RESPONDENT's license and RESPONDENT shall be eligible for multistate licensure privileges, if any, to practice nursing in the State of Texas.

BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK.

CONTINUED ON NEXT PAGE.

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 violation 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 19 day of May, 2011.

RN

MICHAEL HARVEY GUERRA, Respondent

Sworn to and subscribed before me this 19 day of May, 2011.

SEAL

Notary Public in and for the State of TEXAS

TRISHA MONIQUE PALACIOS
Notary Public, State of Texas
My Commission Expires
February 11, 2014

Approved as to form and substance.

Joe A. Flores, Attorney for Respondent

Signed this 19th day of May, 2011.

WHEREFORE, PREMISES CONSIDERED, the Texas Board of Nursing does hereby ratify and adopt the Agreed Order that was signed on the 19th day of May, 2011, by MICHAEL HARVEY GUERRA, Registered Nurse License Number 730645, and said Order is final.

Effective this 14th day of June, 2011.

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 MICHAEL HARVEY GUERRA PETITIONER for Eligibility for Licensure	§ § § §	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 MICHAEL HARVEY GUERRA, 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)(3)&(9), Texas Occupations Code.

A public meeting was held on February 14, 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 application of MICHAEL HARVEY GUERRA, 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 Bell, CLU, ChFC; George Buchenau, Jr., BSN, RN, MBA; and Rachel Gomez, LVN. Staff present were: Katherine A. Thomas, MN, RN, Executive Director; James W. Johnston, General Counsel; Anthony L. Diggs, Director, Enforcement Division; and Angela Bradford, Legal Assistant.

BALANCE OF PAGE INTENTIONALLY LEFT BLANK.

CONTINUED ON NEXT PAGE.

FINDINGS OF FACT

1. On or about February 17, 2004, 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 an Associate Degree in Nursing from Del Mar College, Corpus Christi, Texas, in May 2004.

4. Petitioner completed the Petition for Declaratory Order and answered "yes" to Question Number One (1), which reads as follows: *"Have you been arrested in any state, territory, or country, including expunged offenses and deferred adjudication with or without prejudice of guilt for anything other than a minor traffic violation?"* and Question Number Two (2), which reads as follows: *"Have you been convicted, adjudged guilty by a court, pled guilty or pled nolo contendere to any crime whether or not a sentence was imposed?"*

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

   A. On December 11, 1995, Petitioner was charged with the state jail felony offense of Criminal Mischief in the 28th District Court of Nueces County, Texas. Petitioner was granted a pretrial diversion agreement with proceedings being deferred for one (1) year and charges dismissed upon completion.

   B. On February 19, 2001, Petitioner was arrested for the misdemeanor offense of Driving While License Suspended. On July 30, 2001, in the County Court at Law No. 2 of Nueces County, Texas, Petitioner was granted a motion to dismiss the charge as a plea bargain for the charges of Theft and Possession of Marijuana.

   C. On July 30, 2001, Petitioner was charged with the misdemeanor offense of Theft in the County Court at Law No. 2 of Nueces County, Texas. Petitioner entered a plea of nolo contendere and proceedings were deferred without adjudication of guilt and Petitioner was sentenced to nine (9) months probation. On May 2, 2002, Petitioner was discharged from probation.

   D. On July 30, 2001, Petitioner was charged with the misdemeanor offense of Possession of Marijuana in the County Court at Law No. 2 of Nueces County, Texas. Petitioner entered a plea of nolo contendere and proceedings were deferred without adjudication of guilt and Petitioner was sentenced to nine (9) months probation. On May 2, 2002, Petitioner was discharged from probation.

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

7. On July 30, 2004, Petitioner was seen by Antoinette R. Cicerello, Ph.D., Forensic Psychology Associate of Texas, Richardson, Texas, to undergo a forensic psychological evaluation to include a chemical dependency evaluation and polygraph examination. The results of the evaluation indicates that Petitioner currently meets the criteria for alcohol and marijuana abuse, with most recent use a few months ago. Due to Petitioner's current use and criminal conduct, Dr. Cicerello cannot recommend that Petitioner would consistently behave in accordance with the Board's Rules.

   Dr. Cicerello recommends that Petitioner undergo intensive outpatient substance abuse treatment and show that he can maintain avoidance of criminal conduct for a substantial period of time, followed by a repeat forensic psychological evaluation with a chemical dependency component and polygraph examination.

8. To comply with the recommendation made by Dr. Cicerello, a letter was submitted to the Board by James E. Sandoval, MS, LCDC, The Council on Alcohol & Drug Abuse, Coastal Bend, Corpus Christi, Texas stating that on February 8, 2005, Petitioner successfully completed the Intensive Outpatient Access Drug & Alcohol Counseling Program. Mr. Sandoval stated that Petitioner was an asset to the group through consistent attendance, participation and a willingness to work with the staff and other clients in the pursuit of abstinence from all mood altering chemicals.

9. On October 5, 2005, Petitioner was seen by Troy Martinez, Psy.D., Corpus Christi, Texas, to undergo a forensic psychological evaluation to include a chemical dependency component and a polygraph examination. The results of the evaluation found no indications of clinically significant mood disturbances, personality dysfunction, or more severe forms of psychopathology. Petitioner's history is clear for poly-substance abuse, including alcohol, with a preference to marijuana; however, Petitioner indicated no use within the past twelve (12) months, with findings supported through a polygraph examination.

   Dr. Martinez does not see any other meaningful mental health issues contributing to substance use. Further, general stress does not appear to be a significant precipitation trigger to his past substance abuse. Instead, past drug and alcohol abuse seems most clearly reflective of over-learned, socialized behavior. Despite Petitioner's abstinence over the past several months, Dr. Martinez would recommend community substance abuse treatment, random drug screening, and a referral to TPAPN for a reasonable period of time should the Board further consider his eligibility for licensure.

   With Petitioner's willingness and ability to remain abstinent from substances of abuse, Dr. Martinez believes that Petitioner is capable of conducting himself in accordance with the requirements of Rules 213.27 - 213.29 at 22 TAC, consistently behaving in accordance with the minimal standards set by the Board's Rules 217.11 at 22 TAC, staying in accordance with generally accepted nursing standards and avoiding behaviors identified as constituting unprofessional misconduct.

10. Petitioner presented evidence of current fitness to practice professional nursing.

11. The Board received letters of support/recommendation for Petitioner from the following:

- A letter of reference dated September 18, 2002, was submitted to the Board by Petitioner from Richard G. Campbell, Emergency Department, Spohn Hospital, Corpus Christi, Texas.
- A letter of reference dated September 26, 2002, was submitted to the Board by Petitioner from Lyle T. Mathews, RN, Director of Emergency Services, Christus Spohn South Hospital, Corpus Christi, Texas.
- A letter of reference dated October 1, 2002, was submitted to the Board by Petitioner from Mark E. Greenlee, MD, Spohn South Emergency Department, Corpus Christi, Texas.
- A letter of reference dated December 19, 2003, was submitted to the Board by Petitioner from Theresa Morse, Assistant Professor, Del Mar College, Corpus Christi, Texas.
- A letter of recommendation dated February 9, 2004, was submitted to the Board on behalf of Petitioner by Shari Stoops, MSN, RN, Del Mar College, Corpus Christi, Texas.
- A letter of recommendation dated August 3, 2004, was submitted on behalf of Petitioner by J. Wally Fears, RN, CEN, Clinical Educator Emergency Services Department, Christus Spohn South Hospital, Corpus Christi, Texas.
- A letter of reference dated August 3, 2004, was submitted on behalf of Petitioner by Mark S. Renner, RN, Christus Spohn South Hospital, Corpus Christi, Texas.
- A letter of reference dated August 3, 2004, was submitted on behalf of Petitioner by Lynda Guarneri, RN, Christus Spohn South Hospital, Corpus Christi, Texas.
- A letter of reference dated August 4, 2004, was submitted on behalf of Petitioner by Mike Howie, RN.
- A letter of recommendation dated August 5, 2004, was submitted on behalf of Petitioner by Jean Bayabos, RN.
- A letter of reference dated August 8, 2004, was submitted on behalf of Petitioner by Marsha Kossum, RN, BSN, Christus Spohn South Hospital, Corpus Christi, Texas.
- A letter of reference dated August 8, 2004, was submitted on behalf of Petitioner by Tonya Wilson, RN, Christus Spohn South Hospital, Corpus Christi, Texas.
- A letter of recommendation dated August 9, 2004, was submitted on behalf of Petitioner by Linda Snyder, Director, Christus Spohn South Hospital, Corpus Christi, Texas.
- A letter of reference dated August 12, 2004, was submitted on behalf of Petitioner by Matthew A. Levine, CI, The Council on Alcohol and Drug Abuse, Coastal Bend, Corpus Christi, Texas.
- A letter of reference dated August 23, 2004, was submitted on behalf of Petitioner by Mary Delia Linthacum, RN, MS, MSN, Associate Professor, Del Mar College, Corpus Christi, Texas.

- A letter of reference was submitted on behalf of Petitioner by Ben Zuniga, RN, Corpus Christi, Texas.
- A letter of recommendation dated October 14, 2004, was submitted on behalf of Petitioner by Tami Hildreth, RN, CEN.
- A letter of reference dated October 14, 2004, was submitted on behalf of Petitioner by Alma Baghezza, RN, Corpus Christi, Texas.
- A letter of recommendation dated October 15, 2004, was submitted on behalf of Petitioner by Jang Choi, RN, Christus Spohn South Hospital, Corpus Christi, Texas.
- A letter of reference dated October 15, 2004, was submitted on behalf of Petitioner by Lewis E. Hayes, Christus Spohn South Hospital, Corpus Christi, Texas.
- A letter of reference dated October 17, 2004, was submitted on behalf of Petitioner by Lorri L. Elliott, RN, BSN, CCRN, Sandia, Texas.
- A letter of recommendation dated October 17, 2004, was submitted on behalf of Petitioner by Eve Duhart, RN, Sinton, Texas.
- A letter of reference was submitted on behalf of Petitioner by Jeannie Leighfield, RN, Christus Spohn South Hospital, Corpus Christi, Texas.
- A letter of recommendation dated October 17, 2004, was submitted on behalf of Petitioner by Albert Dozier, RN, CEN.
- A letter of recommendation dated October 18, 2004, was submitted on behalf of Petitioner by Robin R. Appleby, RN, CEN, Robstown, Texas.
- A letter of reference dated October 19, 2004, was submitted on behalf of Petitioner by Kathy Rockwell, RN, MSN, CEN, Professor, Del Mar College, Corpus Christi, Texas.

12. 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.

13. The Board considered evidence of Petitioner's substance abuse and subsequent rehabilitation as provided in §213.29, 22 Texas Administrative Code.

14. The Committee's review of the grounds for potential ineligibility has been made on the basis of the information provided by Petitioner.

15. Petitioner has sworn that, with the exception of matters disclosed in connection with the Application for Initial Licensure by Examination, 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.

16. On February 14, 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.

17. In consideration of Petitioner's past conduct and subsequent evidence of rehabilitation, the Board finds that Petitioner should be declared conditionally eligible to take the National Council Licensure Examination for Registered Nurses.

18. 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 application 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, MICHAEL HARVEY GUERRA, 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 a PETITIONER's license to practice professional nursing in the State of Texas.

BALANCE OF PAGE INTENTIONALLY LEFT BLANK.

CONTINUED ON NEXT PAGE.

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 Application for Initial Licensure by Examination, 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 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 15 day of March, 2006.

Michael H. Guerra

MICHAEL HARVEY GUERRA, PETITIONER

Sworn to and subscribed before me this 15th day of March, 2006.

SEAL

JULIE G. MEDRANO
My Commission Expires
February 19, 2008

Julie G. Medrano

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 15th day of March, 2006, by MICHAEL HARVEY GUERRA, PETITIONER, for Application for Initial Licensure by Examination, and said Order is final.

Entered and effective this 6th day of April, 2006.

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