



Government Code § 2001.056.

The Eligibility and Disciplinary Committee, after review and due consideration, adopts the proposed findings of fact and conclusions of law as stated in the Formal Charges which are attached hereto and incorporated by reference for all purposes and the Staff's recommended sanction of revocation by default. This Order will be properly served on all parties and all parties will be given an opportunity to file a motion for rehearing [22 TEX. ADMIN.CODE § 213.16(j)]. All parties have a right to judicial review of this Order.

All proposed findings of fact and conclusions of law filed by any party not specifically adopted herein are hereby denied.

NOW, THEREFORE, IT IS ORDERED that Permanent Registered Certificate Number 632969 and Permanent Vocational Certificate Number 140565, previously issued to DEBORAH G. ROPER a/k/a/ DEBBIE GAIL ROPER, to practice professional and vocational nursing in the State of Texas be, and the same is hereby, REVOKED.

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

Entered this 8th day of March, 2011.

TEXAS BOARD OF NURSING

BY:



KATHERINE A. THOMAS, MN, RN  
EXECUTIVE DIRECTOR ON BEHALF OF SAID BOARD

Attachment: Formal Charge filed December 9, 2010.

Re: Permanent Registered Certificate Number 632969  
and Permanent Vocational Certificate Number 450565  
Issued to DEBORAH G. ROPER  
DEFAULT ORDER -REVOKE

CERTIFICATE OF SERVICE

I hereby certify that on the 8<sup>th</sup> day of March, 2011, a true and correct copy  
of the foregoing DEFAULT ORDER was served by placement in the U.S. Mail via certified mail, and  
addressed to the following person:

Deborah G. Roper  
3800 CR 145 W  
Midland, Texas 79706

*Katherine A. Thomas*

BY: \_\_\_\_\_

KATHERINE A. THOMAS, MN, RN  
EXECUTIVE DIRECTOR ON BEHALF OF SAID BOARD



In the Matter of Registered License § BEFORE THE TEXAS  
Number 632969, and Vocational Nurse License §  
Number 140565, Issued to §  
DEBORAH G. ROPER, Respondent § BOARD OF NURSING

### FORMAL CHARGES

This is a disciplinary proceeding under Section 301.452(b), Texas Occupations Code. Respondent, DEBORAH G. ROPER, a.k.a DEBBIE GAIL ROPER, is a Registered Nurse holding license number 632969, which is in delinquent status at the time of this pleading and is a Vocational Nurse holding license number 140565, which is in delinquent status at the time of this pleading.

Written notice of the facts and conduct alleged to warrant adverse licensure action was sent to Respondent at Respondent's address of record and Respondent was given opportunity to show compliance with all requirements of the law for retention of the license prior to commencement of this proceeding.

#### CHARGE I.

On or about December 22, 2003, Respondent entered a plea of Guilty to POSSESSION OF A CONTROLLED SUBSTANCE PG 1<1G (a State Jail felony offense committed on April 1, 2003), in the 13th District Court, Navarro County, Texas, under Cause No. 28952. As a result of the plea, the proceedings against Respondent were deferred without entering an adjudication of guilt and Respondent was placed on probation for a period of five (5) years. Additionally, Respondent was ordered to pay a fine and court costs.

On or about January 4, 2005, the probation Respondent was granted under Cause Number 28952 was Revoked, and as a result, Respondent was adjudged Guilty of POSSESSION OF A CONTROLLED SUBSTANCE PG 1<1G (a State Jail felony offense committed on April 1, 2003), in the 13th District Court, Navarro County, Texas, under Cause No. 28952. Respondent was sentenced to one (1) year of confinement in the Texas Department of Criminal Justice, Huntsville, Texas, to run concurrent with Cause No. 55115.

The above action constitutes grounds for disciplinary action in accordance with Section 301.452(b)(4)&(10), Texas Occupations Code (effective September 1, 2003), and is a violation of 22 TEX. ADMIN. CODE §217.12(1) (effective September 1, 1999).

#### CHARGE II.

On or about January 12, 2005, Respondent entered a plea of Guilty and was convicted of DRIVING WHILE INTOXICATED (a Class B misdemeanor offense committed on December 4, 2004), in the Navarro County Court, Navarro County, Texas, under Cause No. 55115. As a result of the conviction, Respondent was sentenced to six (6) months confinement in the Texas Department of Criminal Justice, Huntsville, Texas, to run concurrent with Cause No. 28952.

The above action constitutes grounds for disciplinary action in accordance with Section 301.452(b)(10), Texas Occupations Code (effective September 1, 2003), and is a violation of 22 TEX. ADMIN. CODE §217.12(1) (effective September 1, 1999).

### CHARGE III.

On May 21, 2006, Respondent submitted an Online Renewal Form to the Board of Nurse Examiners, in which she provided false, deceptive, and/or misleading information, in that she answered "No" to the question:

"Have you ever been convicted, placed on community supervision whether or not adjudicated guilty, sentenced to serve jail or prison time or granted pre-trial diversion, or plead guilty, no contest or nolo contendere to any crime in any state, territory or country, or received a court order whether or not a sentence was imposed, including any pending criminal charges or unresolved arrests whether or not on appeal (excluding minor Class C traffic violations)? This includes expunged offenses and deferred adjudication with or without a finding of guilt. Please note that DUI's, DWI's and 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 MIPs or MICs, you must answer "Yes.")"

Respondent failed to disclose that on or about December 22, 2003, Respondent entered a plea of Guilty to POSSESSION OF A CONTROLLED SUBSTANCE PG 1<1G (a State Jail felony offense committed on April 1, 2003), in the 13th District Court, Navarro County, Texas, under Cause No. 28952. As a result of the plea, the proceedings against Respondent were deferred without entering an adjudication of guilt and Respondent was placed on probation for a period of five (5) years. Additionally, Respondent was ordered to pay a fine and court costs.

Furthermore, on or about January 4, 2005, the probation Respondent was granted under Cause Number 28952 was Revoked, and as a result, Respondent was adjudged Guilty of POSSESSION OF A CONTROLLED SUBSTANCE PG 1<1G (a State Jail felony offense committed on April 1, 2003), in the 13th District Court, Navarro County, Texas, under Cause No. 28952. Respondent was sentenced to one (1) year of confinement in the Texas Department of Criminal Justice, Huntsville, Texas, to run concurrent with Cause No. 55115.

Respondent also failed to disclose that on or about January 12, 2005, Respondent entered a plea of Guilty and was convicted of DRIVING WHILE INTOXICATED in the Navarro County, Texas, under Cause No. 55115. As a result of the conviction, Respondent was sentenced to six (6) months confinement in the Texas Department of Criminal Justice, Huntsville, Texas, to run concurrent with Cause No. 28952.

The above action constitutes grounds for disciplinary action in accordance with Section 301.452(b)(2)&(10), Texas Occupations Code (effective September 1, 2005), and is a violation of 22 TEX. ADMIN. CODE §217.12(6)(I) (effective September 28, 2004).

NOTICE IS GIVEN that staff will present evidence in support of the recommended disposition of up to revocation of Respondent's license to practice nursing in the State of Texas pursuant to

the Board's rules, 22 TEX. ADMIN. CODE §§ 213.27 - 213.33 and TEX. OCC. CODE Ch. 53. Additionally, staff will seek to impose on Respondent the administrative costs of the proceeding pursuant to Section 301.461, Texas Occupations Code. The cost of proceedings shall include, but is not limited to, the cost paid by the Board to the State Office of Administrative Hearings and the Office of the Attorney General or other Board counsel for legal and investigative services, the cost of a court reporter and witnesses, reproduction of records, Board staff time, travel, and expenses. These shall be in an amount of at least one thousand two hundred dollars (\$1200.00).

NOTICE IS GIVEN that all statutes and rules cited in these Charges are incorporated as part of this pleading and can be found at the Board's website, [www.bon.state.tx.us](http://www.bon.state.tx.us).

NOTICE IS GIVEN that to the extent applicable, based on the Formal Charges, the Board will rely on Adopted Disciplinary Guidelines for Criminal Conduct and on Adopted Disciplinary Sanction Policies for Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder, and for Lying and Falsification, which can be found at the Board's website, [www.bon.state.tx.us](http://www.bon.state.tx.us).

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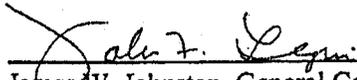
CONTINUED ON NEXT PAGE.

NOTICE IS GIVEN that, based on the Formal Charges, the Board will rely on the Disciplinary Matrix, which can be found at [www.bon.state.tx.us/disciplinaryaction/discp-matrix.html](http://www.bon.state.tx.us/disciplinaryaction/discp-matrix.html).

NOTICE IS ALSO GIVEN that Respondent's past disciplinary history, as set out below and described in the Order which is attached and incorporated by reference as part of these charges, will be offered in support of the disposition recommended by staff: Agreed Order dated May 23, 1996.

Filed this 9th day of December, 2010.

TEXAS BOARD OF NURSING

  
James W. Johnston, General Counsel

Board Certified - Administrative Law  
Texas Board of Legal Specialization  
State Bar No. 10838300

Jena Renee Koslan Abel, Assistant General Counsel  
State Bar No. 24036103

Lance Robert Brenton, Assistant General Counsel  
State Bar No. 24066924

Robert Kyle Hensley, Assistant General Counsel  
State Bar No. 50511847

Nikki Hopkins, Assistant General Counsel  
State Bar No. 24052269

John F. Legris, Assistant General Counsel  
State Bar No. 00785533

TEXAS BOARD OF NURSING  
333 Guadalupe, Tower III, Suite 460  
Austin, Texas 78701  
P: (512) 305-6824  
F: (512) 305-8101 or (512)305-7401

Attachments: Order of the Board dated May 23, 1996

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DOCKET NO. 507-96-0354

**CONFIDENTIAL**

IN THE MATTER OF  
DEBORAH GAIL ROPER

PETITION FOR  
DECLARATORY ORDER

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BEFORE THE BOARD  
OF NURSE EXAMINERS  
STATE OF TEXAS

ORDER OF THE BOARD

TO: DEBORAH GAIL ROPER  
c/o Thomas F. Best  
Attorney at Law  
2700 Bee Caves Road, Suite 114  
Austin, Texas 78746

During open meeting at Austin, Texas, the Board of Nurse Examiners finds that after proper and timely notice was given, the above-styled case was heard by an Administrative Law Judge who made and filed a proposal for decision containing the Administrative Law Judge's findings of fact and conclusions of law. The proposal for decision was properly served on all parties and all parties were given an opportunity to file exceptions and replies as part of the record herein.

The Board of Nurse Examiners, after review and due consideration of the proposal for decision, and exceptions and replies filed, if any, adopts the findings of fact and conclusions of law of the Administrative Law Judge as if fully set out and separately stated herein. All proposed findings of fact and conclusions of law filed by any party not specifically adopted herein are hereby denied.

NOW, THEREFORE, IT IS ORDERED that DEBORAH GAIL ROPER be, and she is hereby, declared eligible to sit for the RN Licensure Examination at its next scheduled date.

IT IS FURTHER ORDERED that upon attaining a passing grade on the RN Licensure Examination for Registered Nurses, that the application of DEBORAH GAIL ROPER for licensure as a registered nurse in the State of Texas, shall be denied, but that such denial shall be suspended for a period of one year and during such one year

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period of probation the license of DEBORAH GAIL ROPER shall be subject to the following stipulations:

1. RESPONDENT SHALL, within one (1) year of entry of this order, successfully complete a course in Nursing Jurisprudence. RESPONDENT SHALL obtain Board approval of the course prior to enrollment. Home Study courses and video programs will not be approved. In order for the course to be approved, the target audience must include registered nurses. It must be a minimum of six (6) contact hours in length. The course's content should include the Nursing Practice Act, Standards of Practice, and documentation of care. 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 is to be taken in addition to any continuing education requirements the Board may have for relicensure.
2. RESPONDENT SHALL notify each present employer in professional nursing of this order of the Board and the stipulation conditions on RESPONDENT's license. RESPONDENT SHALL present a copy of this order to each present employer within five (5) days of notification of this order. RESPONDENT SHALL notify all potential employers in professional nursing of this order of the Board and the stipulations conditions on RESPONDENT's license. RESPONDENT SHALL present a copy of this order to each potential employer prior to employment.
3. RESPONDENT SHALL CAUSE each present employer in professional nursing to submit the Notification of Employment form to the Board's office within ten (10) days of notification of this order. RESPONDENT SHALL CAUSE each potential employer to submit the Notification of Employment form to the Board's office within five (5) days of employment as a professional nurse.
4. For the first year of employment as a Registered Nurse, RESPONDENT SHALL be directly supervised by a registered nurse. Direct supervision requires another professional nurse to be working on the same unit as RESPONDENT and readily available to provide assistance and intervention. RESPONDENT SHALL work only on regularly assigned, identified and predetermined unit(s). The RESPONDENT

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SHALL NOT be employed by a nurse registry, temporary nurse employment agency or home health agency. RESPONDENT SHALL NOT be self-employed or contract for services. Multiple employers are prohibited.

5. RESPONDENT SHALL CAUSE each employer to submit, on forms provided by the Board, periodic reports as to RESPONDENT's capability to practice professional nursing. These reports shall be completed by the registered nurse who supervises the RESPONDENT. These reports shall be submitted to the office of the Board at the end of each three (3) months for one year of employment as a professional nurse.

6. RESPONDENT shall comply in all respects with TEX. REV. CIV. STAT. ANN. arts. 4513 through 4528, the Rules and Regulations Relating to Professional Nurse Education, Licensure and Practice of The Board of Nurse Examiners and the provisions of the terms of this Order of the Board.

Entered this 23rd day of May, 1996.

BOARD OF NURSE EXAMINERS  
FOR THE STATE OF TEXAS

BY:

*Katherine A. Thomas*  
Katherine A. Thomas, M.N., R. N.  
Executive Director on behalf of  
said Board

Enclosure: Proposal for Decision, pages 1 through 11, Appendix A, Page 1 and 11

APPENDIX A

TEX. REV. CIV. STAT. art. 6252-13c §4 states, in part:

(a) A licensing authority may ... deny to a person the opportunity to be examined for a license because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of the licensed occupation.

(b) In determining whether a criminal conviction directly relates to an occupation, the licensing authority shall consider:

- (1) the nature and seriousness of the crime;
- (2) the relationship of the crime to the purposes for requiring a license to engage in the occupation;
- (3) 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
- (4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.

(c) In addition to the factors that may be considered under Subsection (b) of this section, the licensing authority, in determining the present fitness of a person who has been convicted of a crime, shall consider the following evidence:

- (1) the extent and nature of the person's past criminal activity;
- (2) the age of the person at the time of the commission of the crime;
- (3) the amount of time that has elapsed since the person's last criminal activity;
- (4) the conduct and work activity of the person prior to and following the criminal activity;
- (5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release;
- (6) other evidence of the person's present fitness, including letters of recommendation from: prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; the sheriff and chief of police in the community where the person resides; and any other persons in contact with the convicted person; and
- (7) It shall be the responsibility of the applicant to the extent possible to secure and provide to the licensing authority the recommendations of the prosecution, law enforcement, and correctional authorities as required under this Act; the applicant shall also furnish proof in such form as may be required by the licensing authority that he or she has maintained a record of steady employment and has supported his or her dependents and

has otherwise maintained a record of good conduct and has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which he or she has been convicted.

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DOCKET NO. 507-96-0354

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IN THE MATTER OF  
DEBORAH GAIL ROPER

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BEFORE THE STATE OFFICE  
OF  
ADMINISTRATIVE HEARINGS

PETITION FOR  
DECLARATORY ORDER

PROPOSAL FOR DECISION

This case resulted from the decision of the Executive Director of the Board of Nurse Examiners (the Board) to find the Petitioner, Ms. Deborah Gail Roper, ineligible for examination for licensure. Ms. Roper seeks a Declaratory Order allowing her to sit for the examination. The Board's staff (the Staff) initially recommended that she be denied the requested Declaratory Order. During the hearing, the Staff witness, Dr. Sally Glaze, R.N., recommended that Ms. Roper be allowed to sit for the examination and, if she passes, be placed under supervised practice. The Administrative Law Judge agrees with Dr. Glaze's recommendation.

I. Jurisdiction, Notice and Procedural History

There are no contested issues of notice or jurisdiction in this proceeding. Therefore, these matters are set out in the proposed findings of fact and conclusions of law without further discussion here.

The hearing on the merits commenced on March 7, 1996, in the Clements Building, 300 West 15th Street, Austin, Texas. After the taking of evidence, the record was held open until March 29, 1996, for the receipt of proposed findings of fact and conclusions of law. The Staff was represented by Mr. William Hopkins, Assistant General Counsel, Board of Nurse Examiners. Ms. Deborah Gail Roper appeared and was represented by her attorney, Mr. Thomas Best.

II. Discussion

A. Grounds for Hearing

Ms. Roper filed her Petition for Declaratory Order on or about December 7, 1994. Ms. Roper received an Associate Degree in Nursing on May 13, 1995, from Navarro College, Corsicana, Texas. In her application for licensure, Ms. Roper had revealed that she had been previously convicted of a crime other than a minor traffic violation. The Staff reviewed the application and evidence of the conviction and, on October 2, 1995, proposed to find her ineligible to sit for the exam. Ms. Roper timely requested a hearing regarding her eligibility.

The Staff has alleged as grounds for denying Ms. Roper the right to sit for the licensure examination that she had been convicted of a felony in March 1985 (unlawful possession of a controlled substance, cocaine), and subsequent revocation of felony probation in September 1985 for a positive drug test in March 1985 for

marijuana and amphetamines, failure to report to her probation officer, failure to provide the probation officer with her current address and failure to pay probation fees as required.

B. Statutory Provisions

The Board's authority to consider petitions for declaratory orders is set out at TEX. REV. CIV. STAT. ANN. art. 4519a, which states: "(a) An individual enrolled or planning to enroll in an educational program that prepares an individual for an initial license as a registered nurse who has reason to believe that the individual is ineligible for the license may petition the Board for a declaratory order as to the individual's eligibility...(b) If the Board proposes to find the petitioner ineligible for a license, the petitioner is entitled to a hearing before the Board..."

Authority for restricting entry of persons to the ranks of professional nurses is found at TEX. REV. CIV. STAT. ANN. art. 4525(a) which provides that the Board may refuse to admit persons to the licensing examination for "(3) Conviction of a crime of the grade of felony, or a crime of lesser grade which involves moral turpitude, or any conduct resulting in the revocation of probation imposed pursuant to such conviction."

If the Board proposes to deny the Petitioner the opportunity to sit for the licensure examination based upon the Petitioner's criminal background, TEX. REV. CIV. STAT. ANN. arts. 6252-13c §4 and 6252-13d are applicable even though those statutes were not cited in the notice letter. The applicable text of Article 6252-13c §4 is found in the Appendix to this proposal. The Staff is obligated to consider the criteria set forth in the statute. (For the most part, the provisions of Article 6252-13c §4 are set forth in 22 TAC §213.28).

C. Rules of the Board of Nurse Examiners

The Board has, by rule, established guidelines and criteria to use in determining whether a person with a criminal conviction is eligible to obtain a license as a registered nurse. That rule, found at 22 TAC §213.28, states that the Board may refuse to admit persons to its licensure examinations who have been convicted of a felony or who have engaged in conduct resulting in the revocation of probation imposed pursuant to that conviction. In considering whether a criminal conviction renders the person ineligible for licensure, the Board is required under 22 TAC §213.28(c) to consider:

- (1) the knowing or intentional practice of professional nursing without a license issued under the Nursing Practice Act (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 professional 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 professional nursing practice.

In addition to the factors listed in 22 TAC §213.28(c), the Board, in determining the present fitness of a person who has been convicted of a crime, shall consider the additional factors listed in 22 TAC §213.28(d):

- (1) the extent and nature of the person's past criminal activity;
- (2) the age of the person at the time of the commission of the crime;
- (3) the amount of time that has elapsed since the person's last criminal activity;
- (4) the conduct and work activity of the person prior to and following the criminal activity;
- (5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release; and
- (6) other evidence of the person's present fitness, including letters of recommendation from: prosecutorial, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; the sheriff or chief of police in the community where the person resides; and any other persons in contact with the convicted person.

In addition, the Board may evaluate the good professional character of a potential licensee under the standards set out in 22 TAC §213.27. Good professional character is the integrated pattern of personal, academic and occupational behaviors which 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.

#### D. Evidence Received

As of the date of hearing, Ms. Roper was 41 years old. She was 31 years old on the date of her conviction in March 1985. She has not violated the law during the past nine years.

##### 1. Previous Criminal Conviction

On March 5, 1985, in the 283rd District Court of Dallas County, Texas, Cause No. F84-88600-T, Ms. Roper entered a plea of guilty to and was convicted of the felony offense of unlawful possession of a controlled substance, cocaine. As a result of the conviction, Ms. Roper was (i) sentenced to four years imprisonment, which sentence was suspended during four years of supervised probation; (ii) fined \$300.00; (iii) required to report to her probation officer weekly; (iv) required to pay a monthly \$15.00 probation fee; (v) required to remain within Dallas County, and to not travel

outside Dallas County without written permission from the court; and (vi) required to participate in drug evaluation and treatment programs, specifically the Intensive Supervision Program (ISP).

On September 4, 1985, the State of Texas filed a motion to revoke Ms. Roper's probation for the following reasons: (i) submission on or about March 11, 1985, of a urine sample which tested positive for marijuana and amphetamines; (ii) failure to report to her probation officer during the months of April through August 1985; (iii) failure to provide her probation officer with a valid address; and (iv) failure to pay a probation fee as directed.

Ms. Roper's probation was revoked on September 10, 1985, and she was sentenced to 2 years in jail beginning August 30, 1985. She was released from jail approximately six months later on February 3, 1986. She has not been in trouble with the law since her release from jail. On August 30, 1987, she was released from parole.

## 2. Petitioner's evidence

### a. Petitioner's testimony and documents

Ms. Roper testified regarding the circumstances of her adolescence leading up to her trouble with the law, her arrest and conviction in late 1984 and early 1985, and her employment and educational history in the decade following her release. Understandably, she was very embarrassed and remorseful about her past violations of the law.

As stated above, Ms. Roper was arrested in October 1984 for unlawful possession of cocaine. She admitted that she had committed the crime, knew that it was wrong, understood the negative impact that it had had, and continues to have, on her life, and understood that she had regrettably associated with persons of questionable character during that time leading up to her arrest and conviction. She testified that she left Dallas County without the court's permission because she wanted to live in Corsicana where her daughter, Christina Davis-James, now 26 years old, lived. She admitted that immediately after her conviction and suspended sentence she did not take the requirements of her probation seriously. This eventually led to the revocation of her probation and her incarceration in late 1985 and early 1986.

While counsel for the Board tried through cross-examination to show that Ms. Roper had in her possession at the time of her arrest a handgun and drugs in addition to cocaine, the evidence shows only that she was found with cocaine on her person. The arrest report, introduced as Board Ex. 6b, included not only the factual circumstances surrounding her arrest, but also those relating to the arrest of Paul Rollins, Ms. Roper's friend. She was charged and convicted of possession of cocaine. She was not charged with possession of drugs other than cocaine, nor was she charged with possession of a handgun. She denied having other drugs in her possession at the time of her arrest, and further testified that the weapon belonged to Mr. Rollins. The affidavit of the arresting officer supports her testimony of the factual circumstances of her arrest. The evidence does not support the Board's

contention that she had other drugs or a weapon in her possession at the time of her arrest.

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Ms. Roper testified that after her release from jail in February 1986, she married; had a second child, Jason, who is now eight years old; and worked various part-time jobs, cleaning houses and working as a waitress and secretary in order to provide for herself and her children. She entered Navarro College in 1989, and received an Associates Degree and her LVN license. In June 1994, she entered the bridge program at the School of Nursing at Navarro College, receiving an Associates Degree in Nursing in May 1995. She has worked at Navarro County Hospital since 1992 as a licensed vocational nurse.

The Petitioner submitted four letters regarding her release from parole and lack of further arrest. Ms. Roper paid her \$300.00 fine, all the probation fees, and completed the required drug treatment program. She was released from parole in August 1987. She testified that she has not used drugs since her conviction, and does not drink alcoholic beverages.

The Petitioner also submitted letters of recommendation from twelve (12) persons, each of whom was acquainted with the Petitioner's background and most of whom were advised of the purpose of the letter. The letter writers are:

- a. Daisy Russell, BSN, RN; Director of Nursing Services, Navarro Regional Hospital
- b. Connie Randall, RN; Unit Supervisor, Rehabilitation, Navarro Regional Hospital
- c. Jackie Curtis, RN; Assistant Unit Supervisor, Rehabilitation, Navarro Regional Hospital
- d. Leonard Dixon, Texas Department of Criminal Justice, Pardons and Paroles Division
- e. Judy Tayem, RN; Rehabilitation Unit, Navarro Regional Hospital
- f. Marylu Harris, RN; Rehabilitation Services, Navarro Regional Hospital
- g. Patti C. DeZelle, Graduate Nurse, Navarro College
- h. Janie Banks, RN; Rehabilitation Unit, Navarro Regional Hospital
- i. Judy W. Howden, PhD, RN; Allied Health Division Director, Navarro College
- j. Sara Washington, MS, RN; Associate Degree Nursing Program, Department Chair, Navarro College
- k. Margaret Thomas, RN
- l. James T. Davis, Pastor

The writers recommend the Petitioner without qualification. Counsel for the Board tried to show that Ms. Roper lacked the ability to be honest, and that the recommendations should therefore be discounted, because she had not disclosed all of the factual circumstances of her past arrest and conviction to current or potential employers, supervisors and/or coworkers. Although she admitted that she had not disclosed all the facts surrounding her past conviction to some of the persons who had written letters on her behalf, most of them did know of her past and continued to

support her request to sit for the examination despite that knowledge. Counsel for the Board further suggested that Ms. Roper lacked veracity because she had admittedly not disclosed her past arrest and conviction to her minor son, Jason. While disclosure to current and potential employers, supervisors, and coworkers is relevant to this inquiry, whether Ms. Roper has talked about these matters with her minor son is not. On rebuttal, Ms. Roper affirmed that she would meet any and all reporting requirements found in the Board's rules and regulations.

b. Testimony of Jackie T. Curtis

Ms. Roper's supervisor, Mr. Curtis, testified on her behalf. Mr. Curtis supported her application for licensure without reservation even though he learned additional specific details surrounding her arrest and conviction during Ms. Roper's cross-examination. According to Mr. Curtis, Ms. Roper is extremely dependable, continually demonstrates initiative, requires only minimal supervision, and is an individual of good character.

c. Testimony of Christina Davis-James

Ms. Roper's daughter, Ms. Davis-James, supported her mother's request to take the examination. Ms. Davis-James was approximately 14 years old at the time of her mother's arrest. She admitted that it was a difficult period in her life, but Ms. Davis-James testified that her mother had changed for the better since her release, and that their relationship had improved accordingly.

3. Staff's witness

Dr. Sally Glaze, EdD, RN, CS, Director of Practice for the Board, testified on behalf of the Board. According to Dr. Glaze, the Board considers felony convictions and inability to disclose relevant information as inconsistent with eligibility for licensure as a registered professional nurse. But while the Staff initially recommended that Ms. Roper be found ineligible to sit for the examination, Dr. Glaze testified during the hearing that, in her opinion, Ms. Roper should be allowed to sit for the examination, and if she passes, certain restrictions should be placed on her practice for a specified amount of time.

E. Analysis of Evidence and Recommendation

In this proceeding, the Petitioner, Ms. Roper, had the burden of showing by a preponderance of the credible evidence that she should be allowed to sit for the licensure examination in spite of her past. It was the Petitioner's burden to present sufficient evidence to show that doubts should be resolved in her favor.

Possession of a controlled substance is a serious crime of particular interest to the Board because the practice of professional nursing places the nurse in a setting where there is opportunity for abuse of controlled substances. The evidence presented, however, persuades the ALJ that Ms. Roper has rehabilitated herself to the extent necessary to withstand any urges to misappropriate or wrongfully use any

controlled substances. Over the past decade, Ms. Roper has shown her increased maturity by obeying the law, supporting herself and her children, returning to college to further her education, successfully completing the necessary degrees to further her career, and gaining the respect and support of her peers and supervisors through her competent work at Navarro Hospital. The credible evidence supports the conclusion that her rehabilitation has been successful. The ALJ was particularly persuaded in this regard by Dr. Glaze's testimony that Ms. Roper should be allowed to sit for the examination, but that certain conditions should be imposed for a specified amount of time.

The Staff's fear regarding access to controlled substances has mostly been addressed by Ms. Roper's conduct following her release from jail. The Board has the authority, when it has reason to believe that a licensee may fall short of the Board's standards, to require that the licensee should be closely supervised and that periodic reports be submitted to the Board describing the licensee's competence. The ALJ therefore recommends the adoption of Dr. Glaze's position that Ms. Roper be allowed to sit for the examination, but be placed on probation for a specified amount of time.

In its Closing Written Argument, filed March 22, 1996, the Board recommended several stipulations restricting Petitioner's practice in the event the ALJ found the Petitioner eligible for licensure. The ALJ adopts the recommended stipulations which would require that the Petitioner: (1) successfully complete an approved course in Nursing Jurisprudence; (2) notify her present employer and all potential employers of the Board's order and the stipulations on her license; (3) cause her employer, and each potential employer, to file a timely Notification of Employment with the Board; (4) be directly supervised by a registered nurse for the first year of her employment as a registered nurse, along with other specified restrictions on her practice; and (5) cause her employer to file periodic reports with the Board regarding her capability to practice professional nursing.

Because the Board did not recommend a specific amount of time for which to impose the stipulations, the ALJ, therefore, recommends that Ms. Roper be allowed to sit for the examination and, if she passes, be placed on probation for one year consistent with the stipulations adopted by the ALJ.

#### PROPOSED FINDINGS OF FACT

1. On or about December 7, 1994, the Board of Nurse Examiners (Board) received a Petition for Declaratory Order from Deborah Gail Roper (the Petitioner) which reflected that she had been convicted of a crime other than a minor traffic violation.
2. Petitioner was arrested on October 24, 1984, and charged with the felony offense of possession of a controlled substance, cocaine.
3. On March 5, 1985, in the 283rd District Court of Dallas County, Texas, Cause No. F84-88600-T, Ms. Roper entered a plea of guilty, to and was convicted of the felony offense of unlawful possession of a controlled substance, cocaine.

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4. As a result of the conviction, Ms. Roper was (i) sentenced to four years imprisonment, which sentence was suspended during four years of supervised probation; (ii) fined \$300.00; (iii) required to report to her probation officer weekly; (iv) required to pay a monthly \$15.00 probation fee; (v) required to remain within Dallas County, and to not travel outside Dallas County without written permission from the court; and (vi) required to participate in drug evaluation and treatment programs, specifically the Intensive Supervision Program (ISP).
5. On September 4, 1985, the State of Texas filed a motion to revoke Ms. Roper's probation for the following reasons: (i) submission on or about March 11, 1985, of a urine sample which tested positive for marijuana and amphetamines; (ii) failure to report to her probation officer during the months of April through August 1985; (iii) failure to provide her probation officer with a valid address; and (iv) failure to pay a probation fee as directed.
6. Ms. Roper's probation was revoked on September 10, 1985, and she was sentenced to 2 years in jail beginning August 30, 1985. She was released from jail approximately six months later on February 3, 1986. She has not been in trouble with the law since her release from jail. On August 30, 1987, she was released from parole.
7. The Staff reviewed the application and evidence of the conviction and, on October 2, 1995, the Executive Director of the Board proposed to find the Petitioner ineligible to sit for the licensing examination.
8. On November 29, 1995, the Petitioner filed a request for a hearing on her petition.
9. On February 20, 1996, the Petitioner was notified by certified mail, return receipt requested, of the date, time and location of the hearing on her petition.
10. The hearing on the merits commenced on March 7, 1996, at the State Office of Administrative Hearings, Clements Building, 300 West 15th Street, Austin, Texas. The Staff was represented by Mr. William Hopkins, Assistant General Counsel, Board of Nurse Examiners. Ms. Roper appeared and was represented by her attorney, Mr. Thomas Best.
11. After the taking of evidence, the record was held open until March 29, 1996, for the receipt of proposed findings of fact and conclusions of law.
12. The Petitioner admitted that she had committed the crime and knew that it was wrong.
13. The Petitioner admitted that she left Dallas County without the court's permission because she wanted to live in Corsicana where her daughter was living at that time.

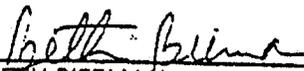
14. The Petitioner admitted that immediately after her conviction and suspended sentence she did not take the requirements of her probation seriously. This eventually led to the revocation of her probation and her incarceration in late 1985 and early 1986.
15. According to the arrest report and supporting affidavits of the arresting officer, the only drug found in the Petitioner's possession was cocaine. The Petitioner was not charged with possession of drugs other than cocaine, nor was she charged with possession of a handgun.
16. After her release from jail in February 1986, the Petitioner married; had a second child, Jason, who was eight years old at the time of the hearing; and worked various part-time jobs, cleaning houses and working as a waitress and secretary in order to provide for herself and her children.
17. The Petitioner entered Navarro College in 1989, and received an Associates Degree and her LVN license.
18. In June 1994, the Petitioner entered the bridge program at the School of Nursing at Navarro College, receiving an Associates Degree in Nursing in May 1995.
19. The Petitioner has worked at Navarro County Hospital since 1992 as a licensed vocational nurse.
20. The Petitioner paid her \$300.00 fine, all the probation fees, and completed the required drug treatment program. She was released from parole in August 1987.
21. The Petitioner has not used drugs since her conviction, and does not drink alcoholic beverages.
22. The Petitioner submitted letters of recommendation from 12 persons, each of whom was acquainted with the Petitioner's background and most of whom were advised of the purpose of the letter. The letter writers include her supervisors at Navarro Hospital, registered nurses who are co-workers of the Petitioner, fellow students and members of the staff of the nursing program at Navarro College, and the Petitioner's pastor.
23. The letter writers described in Finding of Fact No. 22 recommend the Petitioner for licensure without qualification.
24. Since her release from jail, the Petitioner has obeyed the law, supported herself and her children, returned to college to earn the necessary degrees to become a licensed vocational nurse and a registered nurse, and established a record of competent and dependable work at Navarro Hospital.

PROPOSED CONCLUSIONS OF LAW **CONFIDENTIAL**

1. Based upon Findings of Fact Nos. 1, 7, 8 and 9, the Board of Nurse Examiners has jurisdiction over this matter pursuant to TEX. REV. CIV. STAT. ANN. art. 4525.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law pursuant to TEX. GOV'T CODE ANN., Chapter 2003 (Vernon Supp. 1996).
3. Authority for restricting entry of persons to the ranks of professional nurses in the State of Texas is found at TEX. REV. CIV. STAT. ANN. art. 4525 which states, in part: "(a) The Board may refuse to admit persons to the licensing examination ... for any of the reasons for which the Board may take disciplinary action against a registered nurse under subsection (b) of this article....  
  
(b) The Board may take disciplinary action against a registered nurse for any of the following reasons:  
  
(3) Conviction of a crime of the grade of felony, or a crime of lesser grade which involves moral turpitude, or any conduct resulting in the revocation of probation imposed pursuant to such conviction.
4. TEX. REV. CIV. STAT. ANN. art. 4525 (a) provides that if the Board proposes to deny a person entrance to the examination, the person may request a hearing on his or her application.
5. The Board has, by rule, established guidelines and criteria to use in determining whether a person with a criminal conviction is eligible to obtain a license as a registered nurse. That rule, found at 22 TAC §213.28, states that the Board may refuse to admit persons to its licensure examinations who have been convicted of a felony or who have engaged in conduct resulting in the revocation of probation imposed pursuant to that conviction.
6. Based upon Findings of Fact Nos. 12, 15, 20 and 21, the Petitioner has demonstrated that she is not prone to inappropriately or illegally use drugs.
7. Based upon Findings of Fact Nos. 12, and 16 through 24, the Petitioner has proven by a preponderance of the evidence that her prior conviction for possession of a controlled substance should not be a bar to her entrance to the National Council Licensure Examination for Registered Nurses (NCLEX-RN).

- B. Based upon the foregoing, the Petitioner should be allowed to sit for the NCLEX-RN examination, and if she passes, be placed on probation for one year.

SIGNED this 16<sup>TH</sup> day of April, 1996.

  
BETH BIERMAN  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS