BEFORE THE
TEXAS BOARD OF NURSING
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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

In the Matter of CLAYTON OSCAR BIZZELL, PETITIONER for Eligibility for Licensure	§ § § §	ORDER OF CONDITIONAL ELIGIBILITY

On the date entered below, the Texas Board of Nursing, hereinafter referred to as "Board," considered the Petition for Declaratory Order and supporting documents filed by CLAYTON OSCAR BIZZELL, 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 *et seq.*, of the Texas Occupations Code.

A public meeting was held on September 9, 2008, by the Eligibility and Disciplinary Committee of the Texas Board of Nursing, at 333 Guadalupe, Tower 3, Suite 460, Austin, Texas, 78701, in which the Petition of CLAYTON OSCAR BIZZELL, PETITIONER, was considered.

PETITIONER appeared in person. PETITIONER was notified of PETITIONER's right to be represented by legal counsel and elected to waive representation by counsel.

Board Members in attendance were: Brenda Jackson, PhD, RN, and Beverley Nutall, LVN. Staff present were: Katherine A. Thomas, MN, RN, Executive Director; James W. Johnston, General Counsel; Anthony L. Diggs, Director, Enforcement Division; Cynthia LoCastro, Legal Assistant; Diane Burell, Investigator; Jennifer Ellis, RN, Investigator; Bonnie Krznarich, Investigator; Christen Werley, Investigator; Erin Menefee, Investigator; and James S. Smelser, Investigator.

FINDINGS OF FACT

1. On or about December 4, 2007, Petitioner submitted a Petition for Declaratory Order 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. PETITIONER waived representation, notice, administrative hearing, and judicial review.

3. PETITIONER received an Associate Degree in Professional Nursing from Odessa College Nursing Program, Odessa, Texas, in August, 2008.

4. PETITIONER completed the Petition for Declaratory Order and answered "yes" to the question which reads 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?*

   (You may only exclude Class C misdemeanor traffic violations.)

5. PETITIONER completed the Petition for Declaratory Order and answered "yes" to the question which reads as follows: *"Has any licensing authority refused to issue you a license or ever revoked, annulled, cancelled, accepted surrender of, suspended, placed on probation, refused to renew a license, certificate or multi-state privilege held by you now or previously, or ever fined, censured, reprimanded or otherwise disciplined you?"*

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

   A. On July 23, 2002, PETITIONER, was charged with the offense of Minor in Possession, in the Justice Court, Precinct #2, Ector County, Texas. PETITIONER entered a plea of guilty/nolo contendere and received deferred adjudication with six (6) months probation. Probation completed January 21, 2003.

   B. On July 5, 2003, PETITIONER was charged with Minor Driving Under Influence of Alcohol First Offense and Possession Open Container, in the Municipal Court of the

City of Odessa, Texas. Petitioner plead guilty, received Deferred Disposition, and was assessed a fine of $295.00.

C. On January 30, 2004, Petitioner pled guilty to the offense of Possession of Drug Paraphernalia in the County Court at Law No. 2 of Ector County, Texas, Cause No. 03-3334. Petitioner was fined $200.00.

D. On June 15, 2004, Complaint was filed against Petitioner for the offense of Minor Consuming Alcoholic Beverage in Justice Precinct No. 4, Midland County, Texas. Petitioner received Deferred Disposition and was assessed a fine in the amount of $455.00.

E. On April 25, 2005, Petitioner was charged with Driving While Intoxicated in the County Court at Law of Ector County, Texas, Cause No. 05-1969. Petitioner successfully completed a Pre-Trial Intervention Program and cause was dismissed on January 23, 2005.

F. On November 6, 2006, Petitioner plead nolo Contendere and was found guilty for the misdemeanor offense of Deadly Conduct in the County Court of Midland County, Texas, No. 113684. Petitioner was fined $500.00 together with all costs of prosecution.

7. On May 9, 2008, PETITIONER was seen by Troy Martinez, Psy.D., to undergo a forensic psychological evaluation to include a chemical dependency component and a polygraph examination. Dr. Martinez stated the following: "I would strongly recommend that he abstain from using alcohol or any illicit substance. This also has direct implications concerning professional activities. Thus, I would recommend that the Board consider TPAPN referral given his classification as an alcohol dependent individual with a past history of drug abuse. With that said, and contingent upon his ability to remain abstinent from all substances of potential abuse, I believe Mr. Bizzell is capable of conducting himself in accordance with the requirements of Rules 213.27 - 213.29 at 22 TAC, would be capable of consistently behaving in accordance with the minimal standards set by the Board's rules 217.11 at 22 TAC, would be able to consistently behave in accordance with generally accepted nursing standards and consistently be able to avoid behaviors identified as constituting unprofessional misconduct."

8. The Board received letters of support/recommendation for PETITIONER from the following:

- A letter of reference dated October 31, 2007, was submitted to the Board on behalf of PETITIONER by E. Clarice Kimbriel, RN, MSN, Associate Professor, Odessa College Nursing Program, Odessa, Texas.

- A letter of reference dated November 13, 2007, was submitted to the Board on behalf of PETITIONER by Marylin Boomer, RN, BSN, 1st Level Coordinator, Odessa College Nursing Program, Odessa, Texas.

- A letter of reference dated July 6, 2008, was submitted to the Board on behalf of PETITIONER by P. Gail Meagher, MSN, RN, Department Chair ADN Program, Odessa College Nursing Program, Odessa, Texas.

- A letter of reference dated August 11, 2008, was submitted to the Board on behalf of PETITIONER by Don Owens, RN, BSN, Divisional Director of Surgical Services, MCH Medical Center Hospital, Odessa, Texas.

9. PETITIONER presented evidence of current fitness to practice professional nursing, provided PETITIONER complies with the stipulations as outlined in this Order.

10. The safety of patients and the public requires that all persons licensed to practice nursing be fit, and able to consistently practice nursing in autonomous roles under demanding and stressful conditions.

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

12. PETITIONER has sworn that, with the exception of matters disclosed in connection with the Petition for Declaratory Order, his past behavior conforms to the Board's professional character requirements. PETITIONER presented no evidence of behavior which is inconsistent with the Board's character requirements in Section 213.27, title 22 of the Texas Administrative Code.

13. On September 9, 2008, 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 Section 213.27 and determined that PETITIONER currently demonstrates the criteria required for good professional character.

CONCLUSIONS OF LAW

1. The Texas Board of Nursing has jurisdiction over this matter pursuant to Section 301.453 of the Texas Occupations Code.

2. Petitioner has submitted a Petition for Declaratory Order 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. PETITIONER's criminal history reflects criminal conduct which is grounds for denial of a license under Section 301.452 et seq., of the Texas Occupations Code.

4. PETITIONER shall immediately notify the Board of any fact or event that could constitute a ground of ineligibility for licensure under Section 301.452 of the Texas Occupations Code.

5. The Board may license an individual who has been previously convicted, adjudged guilty by a court, pled guilty or pled nolo contendere to any crime whether or not a sentence was imposed upon consideration of the factors set out in 22 Texas Administrative Code Section 213.28 and evaluating the direct relationship to nursing according to Section 53.001 *et seq.*, Texas Occupations Code.

6. 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 Section 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.

ORDER

NOW, THEREFORE, IT IS ORDERED that upon receipt of documentation of PETITIONER'S successful completion of a Board approved intensive outpatient treatment program, and upon PETITIONER meeting the requirements for graduation and payment of any required fees, CLAYTON OSCAR BIZZELL, 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 Professional Nurse in the State of Texas.

IT IS FURTHER ORDERED that PETITIONER SHALL comply in all respects with the Nursing Practice Act, Texas Occupations Code Sections 301.001 *et seq.*, the Rules and Regulations Relating to Professional Nurse Education, Licensure and Practice, 22 TEX. ADMIN. CODE Section 211.1 *et seq.*, and this Order.

IT IS FURTHER AGREED and ORDERED that this Order SHALL be applicable to PETITIONER's multistate licensure privilege, 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, the 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 ORDERED that PETITIONER, upon attaining a passing grade on the NCLEX-RN®, shall be issued a license to practice professional nursing in the State of Texas which shall bear the appropriate notation, and PETITIONER SHALL be subject to the following stipulations:

(1) PETITIONER SHALL, within one (1) year of initial licensure in the State of Texas, successfully complete a course in Texas nursing jurisprudence and ethics. PETITIONER SHALL obtain Board approval of the course prior to enrollment only if the course is not being offered by a pre-approved provider. Home study courses and video programs will not be approved. In order for the course to be approved, the target audience shall include nurses. It shall be a minimum of six (6) contact hours in length. The course's content shall include the Nursing Practice Act, standards of practice, documentation of care, principles of nursing ethics, confidentiality, professional boundaries, and the Board's Disciplinary Sanction Policies regarding Sexual Misconduct, Fraud, Theft and Deception, Nurses with Chemical Dependency, and Lying and Falsification. Courses focusing on malpractice issues will not be accepted. PETITIONER 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 PETITIONER'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*.

IT IS FURTHER AGREED, SHOULD PETITIONER PRACTICE AS A REGISTERED NURSE IN THE STATE OF TEXAS, PETITIONER WILL PROVIDE DIRECT PATIENT CARE AND PRACTICE IN A HOSPITAL, NURSING HOME, OR OTHER CLINICAL SETTING AND PETITIONER MUST WORK IN SUCH SETTING A MINIMUM OF SIXTY-FOUR (64) HOURS PER MONTH UNDER THE FOLLOWING STIPULATIONS FOR THREE (3) YEARS OF EMPLOYMENT. THE LENGTH OF THE STIPULATION PERIOD WILL BE EXTENDED UNTIL SUCH THIRTY-SIX (36) MONTHS HAVE ELAPSED. PERIODS OF UNEMPLOYMENT OR OF EMPLOYMENT THAT DO NOT REQUIRE THE USE OF A REGISTERED NURSE (RN) LICENSE WILL NOT APPLY TO THIS STIPULATION PERIOD:

(2) PETITIONER SHALL notify all future employers in nursing of this Order of the Board and the stipulations on PETITIONER's license. PETITIONER SHALL present a complete copy of this Order to each future employer prior to accepting an offer of employment.

(3) PETITIONER SHALL CAUSE each employer to submit the Notification of Employment form, which is provided to the PETITIONER by the Board, to the Board's office within five (5) days of employment as a nurse.

(4) For the first year of employment as a Registered Nurse under this Order, PETITIONER SHALL be directly supervised by a Registered Nurse. Direct supervision requires

another Registered Nurse to be working on the same unit as PETITIONER and immediately available to provide assistance and intervention. PETITIONER SHALL work only on regularly assigned, identified and predetermined unit(s). The PETITIONER SHALL NOT be employed by a nurse registry, temporary nurse employment agency, hospice, or home health agency. PETITIONER SHALL NOT be self-employed or contract for services. Multiple employers are prohibited.

(5) For the remainder of the stipulation/probation period, PETITIONER 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 PETITIONER, 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 PETITIONER is currently working. PETITIONER SHALL work only regularly assigned, identified and predetermined unit(s). PETITIONER SHALL NOT be employed by a nurse registry, temporary nurse employment agency, hospice, or home health agency. PETITIONER SHALL NOT be self-employed or contract for services. Multiple employers are prohibited.

(6) PETITIONER SHALL NOT practice as a Registered 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 PETITIONER is regularly assigned for one (1) year of employment as a professional nurse.

(7) PETITIONER SHALL NOT practice as a professional nurse in any critical care area for one (1) year of employment as a professional nurse. Critical care areas include, but are not limited to, intensive care units, emergency rooms, operating rooms, telemetry units, recovery rooms, and labor and delivery units.

(8) PETITIONER SHALL NOT administer or have any contact with controlled substances, Nubain, Stadol, Dalgan, Ultram, or other synthetic opiates for one (1) year of employment as a professional nurse.

(9) PETITIONER SHALL CAUSE each employer to submit, on forms provided to the PETITIONER by the Board, periodic reports as to PETITIONER's capability to practice nursing. These reports shall be completed by the Registered Nurse who supervises the PETITIONER. 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 three (3) years of employment as a registered nurse.

(10) PETITIONER 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, PETITIONER 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 PETITIONER 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.**

(11) PETITIONER 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 stipulation period, random screens shall be performed at least once every three (3) months.

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 PETITIONER's place of employment at any time during the stipulation period and require PETITIONER 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. PETITIONER SHALL be responsible for the costs of all random drug screening during the stipulation period.

Any positive result for which the nurse does not have a valid prescription will be regarded as non-compliance with the terms of this Order and may subject the nurse to further disciplinary action by this Board. Failure to report for a drug screen may be considered the same as a positive result and may result in further disciplinary action by this Board.

(12) PETITIONER SHALL attend at least two (2) support group meetings each week, one of which shall be for substance abuse; and PETITIONER 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 PETITIONER. PETITIONER SHALL submit the required evidence on the forms provided by the Board at the end of every three (3) months. No duplications, copies, third party signatures, or any other substitutions will be accepted as evidence.

IT IS FURTHER AGREED, that upon full compliance with the terms of this Order, PETITIONER SHALL be issued an unencumbered license and multistate licensure privileges, if any, to practice professional nursing in the State of Texas.

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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 22 Texas Administrative Code. I certify that my past behavior, except as disclosed in my Petition for Declaratory Order, has been in conformity with the Board's professional character rule. I have provided the Board with complete and accurate documentation of my past behavior.

In connection with my Petition for Declaratory Order, I acknowledge that I have read and I understand sections 301.252, 301.253, and 301.257 of the Texas Occupations Code, section 301.452 of the 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 Professional 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® (RN) Examination or 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 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 Texas Board of Nursing enter this Order.

Signed this 3 day of December, 2008

CLAYTON OSCAR BIZZELL, PETITIONER

Sworn to and subscribed before me this 3 day of December, 2008.

SEAL
DEBBIE LACEY
MY COMMISSION EXPIRES
February 15, 2012

Notary Public in and for the State of

WHEREFORE, PREMISES CONSIDERED, the Executive Director on behalf of the Texas Board of Nursing does hereby ratify and adopt the Order of Conditional Eligibility that was signed on the 3rd day of December, 2008, by CLAYTON OSCAR BIZZELL, PETITIONER, for Petition for Declaratory Order, and said Order is final.

Entered this *10th* day of *December*, *2008*.

TEXAS BOARD OF NURSING

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