

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.

William C. Palmer
Executive Director of the Board

Information received by the Board produced evidence that Respondent may have violated Section 301.452(b)(8), Texas Occupations Code. Respondent waived representation by counsel, informal proceedings, notice and hearing, and agreed to the entry of this Order offered on May 24, 2011, by Katherine A. Thomas, MN, RN, Executive Director, subject to ratification by the Board.

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(s).
2. Respondent waived representation by counsel, 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 a Diploma in Nursing from Los Angeles County Medical Center, Los Angeles, California, on December 23, 1992. Respondent was licensed to practice professional nursing in the State of Texas on September 14, 2009.
5. Respondent's professional nursing employment history includes:

USC Medical Center
Los Angeles, California

Respondent's professional nursing employment history continued:

10/95 - 06/08	RN	Della Martin Center/Huntington Hosp. Pasadena, California
07/08 - 07/09	RN	Kaiser Permanente Downey, California
08/09 - 09/09	Unknown	
10/09 - Present	RN	Mayhill Hospital Denton, Texas

6. On or about April 18, 2011, Respondent's license to practice as a registered nurse in the State of California was REVOKED, with the revocation STAYED, and Respondent was placed on PROBATION for a period of three (3) years by the State of California, Board of Registered Nursing, Department of Consumer Affairs, Los Angeles, California. A copy of the Stipulated Settlement and Disciplinary Order dated April 18, 2011 is attached and incorporated, by reference, as part of this Order.

7. In response to Finding of Fact Number Six (6), Respondent states:

"The patient was admitted for suicidal ideation and placed on suicide precaution level 2. During the admission intake of the patient his short shoelaces, on a pair of dockside type shoes, was not removed. I signed off on the contra banding procedure and allowed the patient to keep his shoes. The shoelaces were quite short and I did not feel they posed a threat to the patient. I failed to take into consideration the length of the leather strap around the top of the shoes. I have never denied this error and have cooperated at all times with the investigation that would follow this error in judgment.

In July 2010 I was informed that the Nursing Board in California was going to pursue the case in question. In April 2011 I accepted an out of court settlement and was placed on a 3-year probation that was tolled until, and if, I ever chose to practice in California again."

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 violation of Section 301.452(b)(8), Texas Occupations Code.

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 775107, heretofore issued to MARK EUGENE MCELREA, including revocation of Respondent's license(s) to practice 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 775107, previously issued to MARK EUGENE MCELREA, to practice professional nursing in Texas is hereby SUSPENDED for a period of three (3) years with the suspension STAYED and Respondent is hereby placed on PROBATION for three (3) years with the following agreed terms of probation:

IT IS FURTHER AGREED and ORDERED that, while under the terms of this Order, this Order SHALL apply to any and all future licenses issued to Respondent to practice nursing in the State of Texas.

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

IT IS FURTHER AGREED and ORDERED that while Respondent's license(s) is/are encumbered by this order the Respondent may not work outside the State of Texas pursuant to a nurse licensure compact 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 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) 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, within one (1) year of the suspension being stayed, successfully complete the course "Sharpening Critical Thinking Skills," a 3.6 contact hour online program provided by the National Council of State Boards of Nursing (NCSBN) Learning Extension. In order to receive credit for completion of this program, RESPONDENT SHALL SUBMIT the continuing education certificate of completion for this program to the Board's office, to the attention of Monitoring. This course is to be taken in addition to any continuing education requirements the Board may have for relicensure. *Information regarding Board-approved courses may be found at*

t h e f o l l o w i n g B o a r d w e b s i t e a d d r e s s :

<http://www.bon.state.tx.us/disciplinaryaction/stipscourses.html>

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 THREE (3) YEAR(S) OF EMPLOYMENT. THE LENGTH OF THE PROBATIONARY 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) OR A VOCATIONAL NURSE (LVN) LICENSE, AS APPROPRIATE, WILL NOT APPLY TO THIS STIPULATION PERIOD:

(4) RESPONDENT SHALL notify each present employer in nursing of this Order of the Board and the probation conditions on RESPONDENT'S license(s). 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(s). 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) For the first year of employment as a Nurse under this Order, RESPONDENT SHALL be directly supervised by a Registered Nurse, if licensed as a Registered Nurse, or by a Licensed Vocational Nurse or a Registered Nurse, if licensed as a Licensed Vocational Nurse. Direct supervision requires another nurse, as applicable, to be working on the same unit as RESPONDENT and immediately available to provide assistance and intervention. RESPONDENT SHALL work only on regularly assigned, identified and predetermined unit(s). The 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) For the remainder of the probation period, RESPONDENT SHALL be supervised by a Registered Nurse, if licensed as a Registered Nurse, or by a Licensed Vocational Nurse or a Registered Nurse, if licensed as a Licensed Vocational 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.

(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 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 three (3) year(s) of employment as a nurse.

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(s), 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(s) to practice nursing in the State of Texas and RESPONDENT shall be eligible for nurse licensure compact privileges, if any.

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RESPONDENT'S CERTIFICATION

I understand that I have the right to legal counsel prior to signing this Agreed Order. I waive representation by counsel. 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(s) to practice nursing in the State of Texas, as a consequence of my noncompliance.

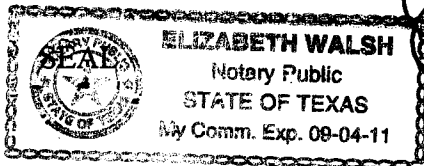
Signed this 15 day of June, 2011.

Mark Eugene Mcelrea *Mark Eugene Mcelrea*
MARK EUGENE MCELREA, Respondent

Sworn to and subscribed before me this

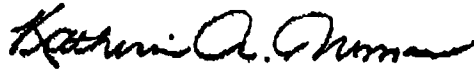
day of

15th June, 2011.
Elizabeth Walsh
Notary Public in and for the State of Texas

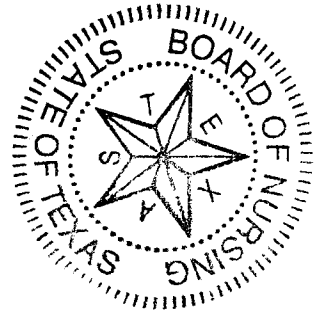


WHEREFORE, PREMISES CONSIDERED, the Texas Board of Nursing does hereby ratify and adopt the Agreed Order that was signed on the 15th day of June, 2011, by MARK EUGENE MCELREA, Registered Nurse License Number 775107, and said Order is final.

Effective this 21st day of July, 2011.



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



BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

MARK EUGENE MCELREA

4313 Bay Meadow Drive
Denton, TX 76210-3666

Registered Nurse License No. **488834**

Respondent

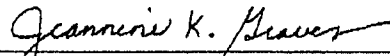
Case No. 2010-661

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on **April 18, 2011.**

IT IS SO ORDERED **March 17, 2011.**



President
Board of Registered Nursing
Department of Consumer Affairs
State of California

1 KAMALA D. HARRIS
Attorney General of California
2 GLORIA A. BARRIOS
Supervising Deputy Attorney General
3 LINDA L. SUN
Deputy Attorney General
4 State Bar No. 207108
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-6375
6 Facsimile: (213) 897-2804
Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 2010-661

11 **MARK EUGENE MCELREA**
12 **4313 Bay Meadow Drive**
13 **Denton, TX 76210-3666**
Registered Nurse License No. 488834

OAH No. L-2010071117

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

14 Respondent.

15
16 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
17 entitled proceedings that the following matters are true:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) is the Interim Executive Officer of the
20 Board of Registered Nursing (Board). She brought this action solely in her official capacity and
21 is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by
22 Linda L. Sun, Deputy Attorney General.

23 2. Respondent Mark Eugene McElrea (Respondent) is representing himself in this
24 proceeding and has chosen not to exercise his right to be represented by counsel.

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3. On or about March 31, 1993, the Board issued Registered Nurse License No. 488834 to Respondent. The Registered Nurse License was in full force and effect at all times relevant to the charges brought in Accusation No. 2010-661 and will expire on November 30, 2010, unless renewed.

JURISDICTION

4. Accusation No. 2010-661 was filed before the Board and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on June 25, 2010. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 2010-661 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in Accusation No. 2010-661. Respondent has also carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 2010-661.

9. Respondent agrees that his Registered Nurse License is subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

10. This stipulation shall be subject to approval by the Board of Registered Nursing. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Registered Nursing may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

11. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

12. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

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DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Registered Nurse License No. 488834 issued to Respondent Mark Eugene McElrea is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

Severability Clause. Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

1. **Obey All Laws.** Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by Respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, Respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

Criminal Court Orders: If Respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

2. **Comply with the Board's Probation Program.** Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the Respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

Upon successful completion of probation, Respondent's license shall be fully restored.

3. **Report in Person.** Respondent, during the period of probation, shall appear in person at interviews/meetings as directed by the Board or its designated representatives.

1 4. **Residency, Practice, or Licensure Outside of State.** Periods of residency
2 or practice as a registered nurse outside of California shall not apply toward a reduction of this
3 probation time period. Respondent's probation is tolled, if and when he resides outside of
4 California. Respondent must provide written notice to the Board within 15 days of any change of
5 residency or practice outside the state, and within 30 days prior to re-establishing residency or
6 returning to practice in this state.

7 Respondent shall provide a list of all states and territories where he has ever been licensed
8 as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide
9 information regarding the status of each license and any changes in such license status during the
10 term of probation. Respondent shall inform the Board if he applies for or obtains a new nursing
11 license during the term of probation.

12 5. **Submit Written Reports.** Respondent, during the period of probation,
13 shall submit or cause to be submitted such written reports/declarations and verification of actions
14 under penalty of perjury, as required by the Board. These reports/declarations shall contain
15 statements relative to Respondent's compliance with all the conditions of the Board's Probation
16 Program. Respondent shall immediately execute all release of information forms as may be
17 required by the Board or its representatives.

18 Respondent shall provide a copy of this Decision to the nursing regulatory agency in every
19 state and territory in which he has a registered nurse license.

20 6. **Function as a Registered Nurse.** Respondent, during the period of
21 probation, shall engage in the practice of registered nursing in California for a minimum of 24
22 hours per week for 6 consecutive months or as determined by the Board.

23 For purposes of compliance with the section, "engage in the practice of registered nursing"
24 may include, when approved by the Board, volunteer work as a registered nurse, or work in any
25 non-direct patient care position that requires licensure as a registered nurse.

26 The Board may require that advanced practice nurses engage in advanced practice nursing
27 for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.
28

1 If Respondent has not complied with this condition during the probationary term, and
2 Respondent has presented sufficient documentation of his good faith efforts to comply with this
3 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an
4 extension of Respondent's probation period up to one year without further hearing in order to
5 comply with this condition. During the one year extension, all original conditions of probation
6 shall apply.

7 **7. Employment Approval and Reporting Requirements.** Respondent shall
8 obtain prior approval from the Board before commencing or continuing any employment, paid or
9 voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all
10 performance evaluations and other employment related reports as a registered nurse upon request
11 of the Board.

12 Respondent shall provide a copy of this Decision to his employer and immediate
13 supervisors prior to commencement of any nursing or other health care related employment.

14 In addition to the above, Respondent shall notify the Board in writing within seventy-two
15 (72) hours after he obtains any nursing or other health care related employment. Respondent
16 shall notify the Board in writing within seventy-two (72) hours after he is terminated or separated,
17 regardless of cause, from any nursing, or other health care related employment with a full
18 explanation of the circumstances surrounding the termination or separation.

19 **8. Supervision.** Respondent shall obtain prior approval from the Board
20 regarding Respondent's level of supervision and/or collaboration before commencing or
21 continuing any employment as a registered nurse, or education and training that includes patient
22 care.

23 Respondent shall practice only under the direct supervision of a registered nurse in good
24 standing (no current discipline) with the Board of Registered Nursing, unless alternative methods
25 of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are
26 approved.

27 Respondent's level of supervision and/or collaboration may include, but is not limited to the
28 following:

1 (a) Maximum - The individual providing supervision and/or collaboration is present in
2 the patient care area or in any other work setting at all times.

3 (b) Moderate - The individual providing supervision and/or collaboration is in the patient
4 care unit or in any other work setting at least half the hours Respondent works.

5 (c) Minimum - The individual providing supervision and/or collaboration has person-to-
6 person communication with Respondent at least twice during each shift worked.

7 (d) Home Health Care - If Respondent is approved to work in the home health care
8 setting, the individual providing supervision and/or collaboration shall have person-to-person
9 communication with Respondent as required by the Board each work day. Respondent shall
10 maintain telephone or other telecommunication contact with the individual providing supervision
11 and/or collaboration as required by the Board during each work day. The individual providing
12 supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to
13 patients' homes visited by Respondent with or without Respondent present.

14 9. **Employment Limitations.** Respondent shall not work for a nurse's
15 registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a
16 traveling nurse, or for an in-house nursing pool.

17 Respondent shall not work for a licensed home health agency as a visiting nurse unless the
18 registered nursing supervision and other protections for home visits have been approved by the
19 Board. Respondent shall not work in any other registered nursing occupation where home visits
20 are required.

21 Respondent shall not work in any health care setting as a supervisor of registered nurses.
22 The Board may additionally restrict Respondent from supervising licensed vocational nurses
23 and/or unlicensed assistive personnel on a case-by-case basis.

24 Respondent shall not work as a faculty member in an approved school of nursing or as an
25 instructor in a Board approved continuing education program.

26 Respondent shall work only on a regularly assigned, identified and predetermined
27 worksite(s) and shall not work in a float capacity.
28

1 If Respondent is working or intends to work in excess of 40 hours per week, the Board may
2 request documentation to determine whether there should be restrictions on the hours of work.

3 10. **Complete a Nursing Course(s).** Respondent, at his own expense, shall
4 enroll and successfully complete a course(s) relevant to the practice of registered nursing no later
5 than six months prior to the end of his probationary term.

6 Respondent shall obtain prior approval from the Board before enrolling in the course(s).
7 Respondent shall submit to the Board the original transcripts or certificates of completion for the
8 above required course(s). The Board shall return the original documents to Respondent after
9 photocopying them for its records.

10 11. **Cost Recovery.** Respondent shall pay to the Board costs associated with
11 its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the
12 amount of five thousand five hundred dollars (\$5,500). Respondent shall be permitted to pay
13 these costs in a payment plan approved by the Board, with payments to be completed no later
14 than three months prior to the end of the probation term.

15 If Respondent has not complied with this condition during the probationary term, and
16 Respondent has presented sufficient documentation of his good faith efforts to comply with this
17 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an
18 extension of Respondent's probation period up to one year without further hearing in order to
19 comply with this condition. During the one year extension, all original conditions of probation
20 will apply.

21 12. **Violation of Probation.** If Respondent violates the conditions of his
22 probation, the Board after giving Respondent notice and an opportunity to be heard, may set aside
23 the stay order and impose the stayed revocation of Respondent's license.

24 If during the period of probation, an accusation or petition to revoke probation has been
25 filed against Respondent's license or the Attorney General's Office has been requested to prepare
26 an accusation or petition to revoke probation against Respondent's license, the probationary
27 period shall automatically be extended and shall not expire until the accusation or petition has
28 been acted upon by the Board.

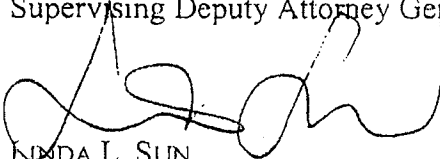
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Registered Nursing of the Department of Consumer Affairs.

Dated: 1-12-11

Respectfully Submitted,

KAMALA D. HARRIS
Attorney General of California
GLORIA A. BARRIOS
Supervising Deputy Attorney General


LINDA L. SUN
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 2010-661

1 EDMUND G. BROWN JR.
Attorney General of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 MARC D. GREENBAUM
Supervising Deputy Attorney General
4 State Bar No. 138213
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2579
6 Facsimile: (213) 897-2804
E-mail: Marc.Greenbaum@doj.ca.gov
7 Attorneys for Complainant

8
9
10 BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
11 STATE OF CALIFORNIA
12
13

14 In the Matter of the Accusation Against:

Case No. 2010-6461

15 MARK EUGENE MCELREA
417 N. Hidalgo Ave.
16 Alhambra, CA 91801

ACCUSATION

17 Registered Nurse License No. 488834

18 Respondent.
19

20
21 Complainant alleges:

22 PARTIES

23 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
24 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
25 of Consumer Affairs.

26 2. On or about March 31, 1993, the Board of Registered Nursing issued Registered
27 Nurse License Number 488834 to Mark Eugene McElrea (Respondent). The Registered Nurse
28

1 License was in full force and effect at all times relevant to the charges brought herein and will
2 expire on November 30, 2010, unless renewed.

3 JURISDICTION

4 3. This Accusation is brought before the Board of Registered Nursing (Board),
5 Department of Consumer Affairs, under the authority of the following laws. All section
6 references are to the Business and Professions Code unless otherwise indicated.

7 STATUTORY PROVISIONS

8 4. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part,
9 that the Board may discipline any licensee, including a licensee holding a temporary or an
10 inactive license, for any reason provided in Article 3 (commencing with section 2750) of the
11 Nursing Practice Act.

12 5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license
13 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
14 licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the
15 Code, the Board may renew an expired license at any time within eight years after the expiration.

16 6. Section 2761 of the Code states, in part, as follows:

17 "The board may take disciplinary action against a certified or licensed nurse or deny an
18 application for a certificate or license for any of the following:

19 (a) Unprofessional conduct, which includes, but is not limited to, the following:

20 (1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing
21 functions. . . ."

22 7. Section 2725 of the Code states, in pertinent part:

23 "(a) In amending this section at the 1973-74 session, the Legislature recognizes that
24 nursing is a dynamic field, the practice of which is continually evolving to include more
25 sophisticated patient care activities. It is the intent of the Legislature in amending this section at
26 the 1973-74 session to provide clear legal authority for functions and procedures that have
27 common acceptance and usage. It is the legislative intent also to recognize the existence of
28 overlapping functions between physicians and registered nurses and to permit additional sharing

1 of functions within organized health care systems that provide for collaboration between
2 physicians and registered nurses. These organized health care systems include, but are not
3 limited to, health facilities licensed pursuant to Chapter 2 (commencing with Section 1250) of
4 Division 2 of the Health and Safety Code, clinics, home health agencies, physicians' offices, and
5 public or community health services.

6 (b) The practice of nursing within the meaning of this chapter [the Nursing Practice Act]
7 means those functions, including basic health care, that help people cope with difficulties in daily
8 living that are associated with their actual or potential health or illness problems or the treatment
9 thereof, and that require a substantial amount of scientific knowledge or technical skill, including
10 all of the following:

11 (1) Direct and indirect patient care services that ensure the safety, comfort, personal
12 hygiene, and protection of patients; and the performance of disease prevention and restorative
13 measures.

14 (2) Direct and indirect patient care services, including, but not limited to, the
15 administration of medications and therapeutic agents, necessary to implement a treatment, disease
16 prevention, or rehabilitative regimen ordered by and within the scope of licensure of a physician,
17 dentist, podiatrist, or clinical psychologist, as defined by Section 1316.5 of the Health and Safety
18 Code.

19 ...

20 (4) Observation of signs and symptoms of illness, reactions to treatment, general behavior,
21 or general physical condition, and (A) determination of whether the signs, symptoms, reactions,
22 behavior, or general appearance exhibit abnormal characteristics, and (B) implementation, based
23 on observed abnormalities, of appropriate reporting, or referral, or standardized procedures, or
24 changes in treatment regimen in accordance with standardized procedures, or the initiation of
25 emergency procedures.

26 (c) 'Standardized procedures,' as used in this section, means either of the following:
27
28

1 (1) Policies and protocols developed by a health facility licensed pursuant to Chapter 2
2 (commencing with Section 1250) of Division 2 of the Health and Safety Code through
3 collaboration among administrators and health professionals including physicians and nurses.

4 (2) Policies and protocols developed through collaboration among administrators and
5 health professionals, including physicians and nurses, by an organized health care system which
6 is not a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of
7 Division 2 of the Health and Safety Code.

8 The policies and protocols shall be subject to any guidelines for standardized procedures
9 that the Division of Licensing of the Medical Board of California and the Board of Registered
10 Nursing may jointly promulgate. If promulgated, the guidelines shall be administered by the
11 Board of Registered Nursing. . . ."

12 8. California Code of Regulations, title 16, section 1442, states:

13 "As used in Section 2761 of the code, 'gross negligence' includes an extreme departure from
14 the standard of care which, under similar circumstances, would have ordinarily been exercised by
15 a competent registered nurse. Such an extreme departure means the repeated failure to provide
16 nursing care as required or failure to provide care or to exercise ordinary precaution in a single
17 situation which the nurse knew, or should have known, could have jeopardized the client's health
18 or life."

19 9. California Code of Regulations, title 16, section 1443, states:

20 "As used in Section 2761 of the code, 'incompetence' means the lack of possession of or the
21 failure to exercise that degree of learning, skill, care and experience ordinarily possessed and
22 exercised by a competent registered nurse as described in Section 1443.5."

23 10. California Code of Regulations, title 16, section 1443.5 states:

24 "A registered nurse shall be considered to be competent when he/she consistently
25 demonstrates the ability to transfer scientific knowledge from social, biological and physical
26 sciences in applying the nursing process, as follows:

27 ///

28 ///

1 (1) Formulates a nursing diagnosis through observation of the client's physical condition
2 and behavior, and through interpretation of information obtained from the client and others,
3 including the health team.

4 (2) Formulates a care plan, in collaboration with the client, which ensures that direct and
5 indirect nursing care services provide for the client's safety, comfort, hygiene, and protection, and
6 for disease prevention and restorative measures.

7 (3) Performs skills essential to the kind of nursing action to be taken, explains the health
8 treatment to the client and family and teaches the client and family how to care for the client's
9 health needs.

10 (4) Delegates tasks to subordinates based on the legal scopes of practice of the
11 subordinates and on the preparation and capability needed in the tasks to be delegated, and
12 effectively supervises nursing care being given by subordinates.

13 (5) Evaluates the effectiveness of the care plan through observation of the client's physical
14 condition and behavior, signs and symptoms of illness, and reactions to treatment and through
15 communication with the client and health team members, and modifies the plan as needed.

16 (6) Acts as the client's advocate, as circumstances require, by initiating action to improve
17 health care or to change decisions or activities which are against the interests or wishes of the
18 client, and by giving the client the opportunity to make informed decisions about health care
19 before it is provided."

20 COST RECOVERY

21 11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
22 administrative law judge to direct a licensee found to have committed a violation or violations of
23 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
24 enforcement of the case.

25 STATEMENT OF FACTS

26 12. Respondent was employed by Huntington Memorial Hospital, located in Pasadena,
27 California, from approximately October 2, 1995 to May 9, 2008. On or about May 1, 2008,
28 Respondent was working the night shift at the Della Martin Center for Behavioral Services at

1 Huntington Hospital. At about 12:48 a.m., Patient No. M1039866 was admitted to the psychiatric
2 unit, pursuant to a "5150 hold,"¹ and was placed on Suicide Precautions Level 2. Respondent
3 completed the admission process on the patient and allowed the patient to keep his shirt, pants,
4 and shoes, with the shoelaces still intact on the shoes. The patient's belt was sent home.

5 13. Huntington Memorial Hospital Policy No. 8614.226, effective October 2001, clearly
6 required that patient shoelaces were considered potentially dangerous items to psychiatric patients
7 and were to be removed from the patient and could not be used by the patient while hospitalized.

8 14. On or about May 2, 2008, Patient No. M1039866 was found in the bathroom of his
9 room, hanging by his neck from the shower control valves. The patient had used his own
10 shoelaces to hang himself. A Code Blue was called, but the patient expired.

11 15. On or about May 9, 2008, Respondent voluntarily resigned, in lieu of termination,
12 due to his failure to follow hospital policies and procedures relating during the admission of the
13 Patient No. M1039866.

14 FIRST CAUSE FOR DISCIPLINE

15 (Unprofessional Conduct - Incompetence, Negligence and/or Gross Negligence)

16 16. Respondent is subject to disciplinary action under section 2761, subdivision (a)(1), on
17 the grounds of unprofessional conduct in that Respondent committed acts of incompetent and/or
18 gross negligence, with the meaning of California Code of Regulations, title 16, sections 1442,
19 1443, and 1443.5, involving the care and treatment of Patient No. M1039866. The circumstances
20 are described more fully in paragraphs 12-15, above, and as follows:

21 a. Respondent failed to follow hospital policies and procedures requiring removal of
22 potentially dangerous contraband from a patient admitted involuntarily to the psychiatric unit due
23 to suicidal thoughts. The patient subsequently used the contraband to commit suicide.

24 b. Respondent failed to provide direct and indirect patient care services to ensure the
25 safety of a potentially suicidal patient.

26
27 ¹ A "5150 Hold" is an involuntary 72 hour hospital admission to a psychiatric unit when it
28 is determined that the patient poses a danger to themselves, a danger to others, or is gravely
disabled as the result of a psychiatric medical disorder.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 488834, issued to Mark Eugene McElrea;
2. Ordering Mark Eugene McElrea to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: 6/25/10 Louise R. Bailey
LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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