

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.  
*Patricia R. Plummer*  
Executive Director of the Board

In the Matter of Registered §  
Nurse License Number 459761 §  
issued to ERLINDA C. DELAPENA §

ORDER OF THE BOARD

On this day, the Texas Board of Nursing, hereinafter referred to as the Board, accepted the voluntary surrender of Registered Nurse License Number 459761, issued to ERLINDA C. DELAPENA, hereinafter referred to as Respondent. This action was taken in accordance with Section 301.453(c), Texas Occupations Code.

Respondent waived representation by counsel, informal proceedings, notice and hearing.

The Board makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Respondent's license to practice professional nursing in the State of Texas is currently in inactive status.
2. Respondent waived representation by counsel, informal proceedings, notice and hearing.
3. Respondent received Baccalaureate Degree in Nursing from Western Mindanao State University, Philippines, on April 1, 1972. Respondent was licensed to practice professional nursing in the State of Texas on September 8, 1981.
4. Respondent's complete nursing employment history is unknown.
5. On or about April 11, 2013, Respondent was issued a Default Decision and Order by the California Board of Registered Nursing wherein Respondent's license to practice professional nursing in the State of California was Revoked. A copy of the Default Decision and Order issued by the California Board of Registered Nursing, dated April 11, 2013, is attached and incorporated by reference as part of this Order.

6. On September 16, 2013, the Board received a notarized statement from Respondent voluntarily surrendering the right to practice nursing in Texas. A copy of Respondent's notarized statement, dated September 11, 2013, is attached and incorporated herein by reference as part of this Order.

#### 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 cause pursuant to Section 301.452(b)(8), Texas Occupations Code, to take disciplinary action against Registered Nurse License Number 459761, heretofore issued to ERLINDA C. DELAPENA, including revocation of Respondent's license(s) to practice nursing in the State of Texas.
4. Under Section 301.453(c), Texas Occupations Code, the Board has the authority to accept the voluntary surrender of a license.
5. Under Section 301.453(d), Texas Occupations Code, the Board may impose conditions for reinstatement of licensure.
6. Any subsequent reinstatement of this license will be controlled by Section 301.453(d), Texas Occupations Code, and 22 TAC §§213.26-.29, and any amendments thereof in effect at the time of the reinstatement.

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ORDER

NOW, THEREFORE, IT IS ORDERED that the voluntary surrender of Registered Nurse License Number 459761, heretofore issued to ERLINDA C. DELAPENA, to practice nursing in the State of Texas, is accepted by the Executive Director on behalf of the Texas Board of Nursing.


In connection with this acceptance, the Board imposes the following conditions:

1. RESPONDENT SHALL NOT practice nursing, use the title of registered nurse or the abbreviation RN or wear any insignia identifying herself as a registered nurse or use any designation which, directly or indirectly, would lead any person to believe that RESPONDENT is a registered nurse during the period in which the license is surrendered.
2. RESPONDENT SHALL NOT petition for reinstatement of licensure until: one (1) year has elapsed from the date of this Order.
3. Upon petitioning for reinstatement, RESPONDENT SHALL satisfy all then existing requirements for relicensure.

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.

Effective this day 16th of September, 2013.

TEXAS BOARD OF NURSING

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

ERLINDA C. DELAPENA  
3135 CAMPUS DRIVE, APT 214  
SAN MATEO, CA 94403  
Registered Nurse License Number 459761

RECEIVED SEP 18 2013

Voluntary Surrender Statement

Dear Texas Board of Nursing:

I no longer desire to be licensed as a nurse. Accordingly, I voluntarily surrender my license(s) to practice in Texas. I waive representation by counsel and consent to the entry of an Order which outlines requirements for reinstatement of my license. I understand that I may not petition for reinstatement until one (1) year from the effective date of the Order. I understand that I will be required to comply with the Board's Rules and Regulations in effect at the time I submit any petition for reinstatement.

Signature *Erinda C. Delapena*

Date 9/11/13

Registered Nurse License Number 459761

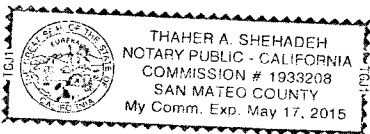
The State of ~~Texas~~ Calif. - Jornic  
San Mateo County.

Before me, the undersigned authority, on this date personally appeared ERLINDA C. DELAPENA who, being duly sworn by me, stated that he or she executed the above for the purpose therein contained and that he or she understood same.

Sworn to before me the 11<sup>th</sup> day of September, 2013.

SEAL

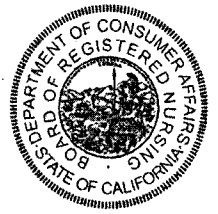
*Thayer A. Shehadeh*  
Notary Public in and for the State of CA



I hereby certify the foregoing to be a true copy of the documents on file in our office.

BOARD OF REGISTERED NURSING

*Louise R. Bailey, M.Ed., RN*  
Louise R. Bailey, M. Ed., RN  
Executive Officer



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

In the Matter of the Accusation Against:

**ERLINDA ABITONA DELAPENA  
3135 Campus Dr Apt 214  
San Mateo, CA 94403**

**Registered Nurse License No. 413916**

**RESPONDENT**

Case No. 2013-196

**DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

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**FINDINGS OF FACT**

1. On or about September 20, 2012, Complainant Louise R. Bailey, M.Ed.,RN, in her official capacity as the Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs, filed Accusation No. 2013-196 against Erlinda Abitona Delapena (Respondent) before the Board of Registered Nursing. (Accusation attached as Exhibit A.)

2. On or about July 31, 1987, the Board of Registered Nursing (Board) issued Registered Nurse License No. 413916 to Respondent. The Registered Nurse License was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2013, unless renewed.

3. On or about September 20, 2012, Respondent was served by Certified and First Class Mail copies of the Accusation No. 2013-196, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record which, pursuant to Business and Professions Code section 136 and/Title 16, California Code of Regulation, section 1409.1, is required to be reported and maintained with the Board, which was:

221 Cupertino Way  
San Mateo, CA 94403.

1           4.    Service of the Accusation was effective as a matter of law under the provisions of  
2 Government Code section 11505, subdivision (c) and/or Business & Professions Code section  
3 124.

4           5.    On or about October 30, 2012, the Certified Mail documents were returned and  
5 marked by the U.S. Postal Service, "Return to Sender, Unclaimed." On or about October 3, 2012,  
6 Respondent changed her address with the Board and on or about October 31, 2012, Respondent  
7 was re-served at her current address of record with the Board which is:

8           3135 Campus Dr Apt 214  
9           San Mateo, CA 94403.

10          On or about November 20, 2012, the signed Certified Mail Receipt was returned to our  
11 office indicating a delivery date of November 10, 2012.

12          6.    Business and Professions Code section 2764 states:

13                The lapsing or suspension of a license by operation of law or by order or decision of  
14 the board or a court of law, or the voluntary surrender of a license by a licentiate shall not deprive  
15 the board of jurisdiction to proceed with an investigation of or action or disciplinary proceeding  
16 against such license, or to render a decision suspending or revoking such license.

17          7.    Government Code section 11506 states, in pertinent part:

18                (c) The respondent shall be entitled to a hearing on the merits if the respondent files a  
19 notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation  
20 not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's  
21 right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

22          8.    Respondent failed to file a Notice of Defense within 15 days after service of  
23 the Accusation upon her, and therefore waived her right to a hearing on the merits of Accusation  
24 No. 2013-196.

25          9.    California Government Code section 11520 states, in pertinent part:

26                (a) If the respondent either fails to file a notice of defense or to appear at the hearing, the  
27 agency may take action based upon the respondent's express admissions or upon other evidence  
28 and affidavits may be used as evidence without any notice to respondent.

1           10. Pursuant to its authority under Government Code section 11520, the Board after  
2 having reviewed the proof of service dated September 20, 2012, signed by Brent Farrand, and the  
3 proof of service dated October 31, 2012, signed by Kami Pratab and the returned envelope finds  
4 Respondent is in default. The Board will take action without further hearing and, based on  
5 Accusation No. 2013-196 and the documents contained in Default Decision Investigatory  
6 Evidence Packet in this matter which includes:

7           Exhibit 1: Pleadings offered for jurisdictional purposes; Accusation No. 2013-196,  
8                                 Statement to Respondent, Notice of Defense (two blank copies), Request  
9                                 for Discovery and Discovery Statutes (Government Code sections  
10                                11507.5, 11507.6 and 11507.7), proof of service; and if applicable, mail  
11                                receipt or copy of returned mail envelopes;

12          Exhibit 2: License History Certification for Erlinda Abitona Delapena, Registered  
13                                Nurse License No. 413916;

14          Exhibit 3: Affidavits of Don Tsue and Ramona Nichols Smith;

15          Exhibit 4: Certification of costs by Board for investigation and enforcement in Case  
16                                No. 2013-196;

17          Exhibit 5: Declaration of costs by Office of the Attorney General for prosecution of  
18                                Case No. 2013-196;

19          Exhibit 6: Letter from California Department of Public Health.

20 The Board finds that the charges and allegations in Accusation No. 2013-196 are separately and  
21 severally true and correct by clear and convincing evidence.

22           11. Taking official notice of Certification of Board Costs and the Declaration of Costs by  
23 the Office of the Attorney General contained in the Default Decision Investigatory Evidence  
24 Packet, pursuant to the Business and Professions Code section 125.3, it is hereby determined that  
25 the reasonable costs for Investigation and Enforcement in connection with the Accusation are  
26 \$9,270.75 as of November 29, 2012.

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DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Erlinda Abitona Delapena has subjected her following license(s) to discipline:

a. Registered Nurse License No. 413916

2. The agency has jurisdiction to adjudicate this case by default.

3. The Board of Registered Nursing is authorized to revoke Respondent's license(s) based upon the following violations alleged in the Accusation, which are supported by the evidence contained in the Default Decision Investigatory Evidence Packet in this case.

a. Violation of Business and Professions Code section 2761(a)(1) - Unprofessional Conduct, Gross Negligence.

b. Violation of Business and Professions Code section 2761(a)(4) - Disciplinary action by Another Governmental Agency.

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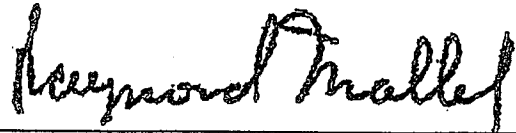
ORDER

IT IS SO ORDERED that Registered Nurse License No. 413916, heretofore issued to Respondent Erlinda Abitona Delapena, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on APRIL 11, 2013.

It is so ORDERED MARCH 12, 2013



Board of Registered Nursing  
Department of Consumer Affairs  
State of California

Attachment:

Exhibit A: Accusation No. 2013-196

# Exhibit A

Accusation No. 2013-196

1 KAMALA D. HARRIS  
Attorney General of California  
2 FRANK H. PACOE  
Supervising Deputy Attorney General  
3 JUDITH J. LOACH  
Deputy Attorney General  
4 State Bar No. 162030  
455 Golden Gate Avenue, Suite 11000  
5 San Francisco, CA 94102-7004  
Telephone: (415) 703-5604  
6 Facsimile: (415) 703-5480  
E-mail: Judith.Loach@doj.ca.gov  
7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. *2013-196*

13 **ERLINDA ABITONA DELAPENA**  
221 Cupertino Way  
San Mateo, CA 94403

**ACCUSATION**

14 **Registered Nurse License No. 413916**

15 Respondent.

16  
17 Complainant alleges:

18 PARTIES

19 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her  
20 official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
21 Consumer Affairs:

22 2. On or about July 31, 1987, the Board of Registered Nursing issued Registered Nurse  
23 License Number 413916 to Erlinda Abitona Delapena ("Respondent"). The Registered Nurse  
24 License was in full force and effect at all times relevant to the charges brought herein and will  
25 expire on April 30, 2013, unless renewed.

26 JURISDICTION

27 3. This Accusation is brought before the Board of Registered Nursing ("Board"),  
28 Department of Consumer Affairs, under the authority of the following laws. All section

1 references are to the Business and Professions Code unless otherwise indicated.

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

6 5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license  
7 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the  
8 licensee or to render a decision imposing discipline on the license.

9 6. Section 118, subdivision (b), of the Code provides that the suspension, expiration,  
10 surrender and/or cancellation of a license shall not deprive the Board of jurisdiction to proceed  
11 with a disciplinary action during the period within which the license may be renewed, restored,  
12 reissued or reinstated

13 7. Section 2761 of the Code states:

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

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

17 "..."

18 COST RECOVERY

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

23 STATEMENT OF FACTS

24 9. At all relevant times Respondent was employed as a staff nurse at San Mateo Medical  
25 Center, 3A/B Inpatient Psychiatric Unit, San Mateo, California.

26 10. On the evening of March 29, 2010, up to the morning of March 30, 2010, Respondent  
27 was assigned to Patient AR ("AR"), a 23 year-old female.

28 11. Between 3:00 to 4:00 a.m., on March 30, 2010, Respondent was informed that

1 Patient RO ("RO"), a 27 year-old male was observed leaving AR's room and that AR was seen  
2 pulling up her pants.

3 12. Respondent failed to interview and/or evaluate AR after the incident.

4 13. At approximately 10:53 a.m., on March 30, 2010, AR reported to staff that she had  
5 been raped earlier in the morning and identified RO as her assailant. A medical examination  
6 confirmed that RO had sexual contact with AR.

7 FIRST CAUSE FOR DISCIPLINE

8 (Incompetence -- Failure to Conduct Assessment of AR)

9 14. Respondent is subject to disciplinary action for unprofessional conduct under Code  
10 section 2761, subdivision (a)(1), as defined in title 16 of the Code of Regulations, sections 1443  
11 and 1443.5, in that she failed to evaluate AR after being informed that RO was observed leaving  
12 her room and that AR was seen pulling up her pants. The facts in support of this cause for  
13 discipline are set forth above in paragraphs 9 through 13.

14 SECOND CAUSE FOR DISCIPLINE

15 (Gross Negligence -- Failure to Comply With Observation Protocols)

16 15. Respondent is subject to disciplinary action for unprofessional conduct under Code  
17 section 2761, subdivision (a)(1), as defined in title 16 of the Code of Regulations, section 1442, in  
18 that she failed to comply with the Inpatient Psychiatric Unit patient observation protocols. The  
19 facts are as follows:

20 a. The Inpatient Psychiatric Unit protocols provided that at a minimum each patient was  
21 to be observed every 15 minutes with their location and activity/behavior being recorded on a  
22 document entitled "Observation Checklist." The staff member performing rounds was required to  
23 initial the Observation Checklist for the rounds they completed.

24 b. From 11:45 p.m., on March 29, 2010 up to 7:00 a.m., on March 30, 2010, staff  
25 member Hernandez was assigned to perform the 15 minute observation checks on all patients.  
26 However, at approximately 1:45 a.m., on March 30, 2010, Hernandez took her break, returning to  
27 the unit at approximately 2:45 a.m. Respondent had assumed responsibility for performing the 15  
28 minute observation checks during this time. However, Respondent's initials did not appear on the

1 Observation Checklist during the time she was relieving Hernandez.

2 THIRD CAUSE FOR DISCIPLINE

3 (Discipline By Another Governmental Agency)

4 16. Respondent is subject to disciplinary action under Code section 2761, subdivision  
5 (a)(4), in that on August 16, 2010, she received a letter from the San Mateo County Medical  
6 Center, citing "Dishonesty," "Disrespectful or discourteous conduct toward a county officer or  
7 official, another employee, or a member of the public," and "Failure to follow policy(ies) or work  
8 rule(s), or negligence in the performance of one's duties." The letter from Respondent's employer  
9 referenced its intent to dismiss her from her position as a staff nurse effective August 31, 2010,  
10 based on the incident as set forth above in paragraphs 9 through 13 and 15.

11 PRAYER

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

- 14 1. Revoking or suspending Registered Nurse License Number RN 413916, issued to  
15 Erlinda Abitona Delapena;
- 16 2. Ordering Erlinda Abitona Delapena to pay the Board of Registered Nursing the  
17 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
18 Professions Code section 125.3;
- 19 3. Taking such other and further action as deemed necessary and proper.

20 DATED: September 20, 2012

21 *Louise R. Bailey*  
22 LOUISE R. BAILEY, M.Ed., RN  
23 Executive Officer  
24 Board of Registered Nursing  
25 Department of Consumer Affairs  
26 State of California  
27 Complainant

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