



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.
Katherine A. Thomas
Executive Director of the Board

BEFORE THE TEXAS BOARD OF NURSING

In the Matter of Registered § AGREED
Nurse License Number 614754 §
issued to LEON FRANCIS ROIBALLOVE § ORDER

On this day the Texas Board of Nursing, hereinafter referred to as the Board, considered the matter of LEON FRANCIS ROIBALLOVE, Registered Nurse License Number 614754, hereinafter referred to as Respondent.

Information received by the Board produced evidence that Respondent may be subject to discipline pursuant to Section 301.452(b)(8) and 301.453, Texas Occupations Code. Respondent waived representation by counsel, informal proceedings, notice and hearing, and agreed to the entry of this Order approved by Katherine A. Thomas, MN, RN, FAAN, Executive Director, on August 21, 2013, subject to ratification by the Board.

FINDINGS OF FACT

1. Prior to the institution of Agency proceedings, notice of the matters specified below in these Findings of Fact was served on Respondent and Respondent was given an opportunity to show compliance with all requirements of the law for retention of the license(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 an Associate Degree in Nursing from Pacific Union College, Angwin, California, on June 1, 1989. Respondent was licensed to practice professional nursing in the State of Texas on March 23, 1995.
5. Respondent's complete nursing employment history is unknown.

6. On or about January 5, 2013, Respondent was issued a Decision After Reconsideration/Order by the California Board of Registered Nursing wherein Respondent's license to practice professional nursing in the State of California was Revoked with the revocation stayed and placed on Probation with terms and conditions for a period of one (1) year. A copy of the Decision After Reconsideration/Order issued by the California Board of Registered Nursing, dated January 5, 2013 is attached and incorporated by reference as part of this charge.
7. In response to Finding of Fact Number Six (6), Respondent states the incident was due to a minor patient filing charges against him for striking her in the face. Respondent further states he was attempting to avoid being struck by the minor patient with a water pitcher.

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 614754, heretofore issued to LEON FRANCIS ROIBALLOVE, 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 614754, previously issued to LEON FRANCIS ROIBALLOVE, to practice nursing in Texas is/are hereby SUSPENDED for a period of two (2) years with the suspension STAYED and Respondent is hereby placed on PROBATION for two (2) years with the following agreed terms of probation:

IT IS FURTHER AGREED and ORDERED that, 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 entry of this Order, 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.texas.gov/disciplinaryaction/stipscourses.html>

(3) RESPONDENT SHALL, within one (1) year of entry of this Order, 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. *Board-approved courses may be found at the following Board website address: <http://www.bon.texas.gov/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 TWO (2) YEAR(S) OF EMPLOYMENT. THE LENGTH OF THE PROBATIONARY PERIOD WILL BE EXTENDED UNTIL SUCH TWENTY-FOUR (24) MONTHS HAVE ELAPSED. PERIODS OF UNEMPLOYMENT OR OF EMPLOYMENT THAT DO NOT REQUIRE THE USE OF A REGISTERED NURSE (RN) 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 two (2) year(s) of employment as a nurse.

(9) RESPONDENT SHALL participate in anger management therapy with a "professional counselor" possessing credentials approved by the Board. RESPONDENT SHALL CAUSE the therapist to submit written reports, on forms provided by the Board, as to the RESPONDENT'S progress in anger management therapy, rehabilitation and capability to safely practice nursing. The report must indicate whether or not the RESPONDENT'S stability is sufficient to provide direct patient care safely. Such reports are to be furnished each and every month for three

(3) months. If therapy is recommended beyond the initial three (3) months, the reports shall then be required at the end of each three (3) month period for the remainder of the probation period, or until RESPONDENT is dismissed from anger management therapy.

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 may be eligible for nurse licensure compact privileges, if any.

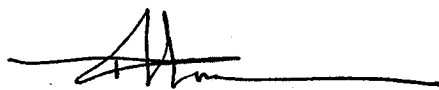
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RESPONDENT'S CERTIFICATION

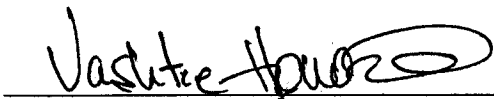
I understand that I have the right to legal counsel prior to signing this Agreed Order. I waive representation by counsel. I have reviewed this Order. I neither admit nor deny the violation(s) alleged herein. By my signature on this Order, I agree to the Findings of Fact, Conclusions of Law, Order, and 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 19th day of October, 2013



LEON FRANCIS ROIBALLOVE, Respondent

Sworn to and subscribed before me this 19th day of October, 2013.



Notary Public in and for the State of TN

My commission expires 9/8/2014

WHEREFORE, PREMISES CONSIDERED, the Texas Board of Nursing does hereby ratify and adopt the Agreed Order that was signed on the 19th day of October, 2013, by LEON FRANCIS ROIBALLOVE, Registered Nurse License Number 614754, and said Order is final.

Effective this 10th day of December, 2013.

A handwritten signature in cursive script, appearing to read "Katherine A. Thomas".

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

Katherine A. Thomas MN, RN
Executive Director
Texas Board of Nursing
333 Guadalupe Street.
Suite 3-466.
Austin TX 78701

Leon Raiballave
10721 Colomast.
Loma Linda, CA 92354

October 26, 2013

Decision of the Texas Board of Nursing

Ms. Thomas

May God guide you as you assist me with the dilemma on hand. I have been served with your decision, from practicing Nursing on my Compact License in Tennessee, Not permitting to work outside Texas, 2 yrs probation, (3) Course requirements. Course approved by the Board.

Ms. Thomas, I am going to ~~add~~ attend Southern Adventist University, Chatanooga, Tennessee for RN to MSN program. Without the permission to work in Tennessee I won't be able to start the program January 6th, 2014. I have placed my further education on line to long. Please have Empathy or Sympathy. Please do not flag by Texas license in the Lord's name, please

I will meet your probation requirements for 2 yrs working the hours you mention in Tennessee & Georgia for these are the recommended states I am required to be licensed for the Clinical, practical Hours.

I have not worked in Texas since 1995 I activated my License 614754, 2008 for Travel assignment. But my 2 yrs in Trauma Level I, II and III, IV has been in California Emergency Department.

Please Reconsider your Decision, My future education and career pend's on it. I have lost everything since May 11, 2011 when Calif. B of RN flagged my license. 44596.
I will have your Decision lead

Katherine A. Thomas
MN, RN FAAN
Executive Director.

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



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

In the Matter of the First Accusation
Against:

LEON FRANCIS ROIBALLOVE

Case No. 2011-718

OAH No. 2011030970

Respondent.

DECISION AFTER RECONSIDERATION

The attached Decision After Reconsideration is hereby adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective on January 5, 2013.

IT IS SO ORDERED this 6th day of December 2012.

Raymond Mallet
Board of Registered Nursing
Department of Consumer Affairs
State of California

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

In the Matter of the Accusation Against:

LEON FRANCIS ROIBALLOVE

Registered Nurse License No. 464559

Respondent.

Case No. 2011-718

OAH No. 2011030970

DECISION AFTER RECONSIDERATION

On November 2, 2011, in San Diego, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Desiree I. Kellogg, Deputy Attorney General, Office of the Attorney General, represented complainant. Respondent represented himself.

This matter was submitted on November 2, 2011.

The Administrative Law Judge issued his Proposed Decision on or about November 8, 2011. The Proposed Decision of the Administrative Law Judge was non-adopted on December 16, 2011. The Proposed Decision of the Administrative Law Judge was adopted by operation of law on May 16, 2012 to become effective on June 15, 2012. On June 4, 2012 a 30-day Order was issued by the Board of Registered Nursing to allow The Office of the Attorney General the opportunity to petition for reconsideration. The Office of the Attorney General petitioned for reconsideration on or about June 12, 2012. On June 26, 2012 an Order Granting Reconsideration and Staying the Decision Pending Reconsideration was issued by the Board.

Having reviewed the petition for reconsideration and other documents submitted by both the Office of the Attorney General and the respondent, the Board now makes and enters its decision after reconsideration as follows:

FACTUAL FINDINGS

1. On February 23, 2011, Louise R. Bailey, M.Ed., R.N., Interim Executive Officer, Board of Registered Nursing of the State of California (Board), filed Accusation No. 2011-718 in her official capacity. Respondent filed a timely Notice of Defense.

2. On March 31, 1991, the Board issued registered nurse license number 464559 to respondent and at all relevant times, the license was in full force and effect.

3. On June 17-18, 2009, respondent was employed at the Arrowhead Regional Medical Center (Arrowhead) and was assigned to the pediatric unit. During the evening of June 17, a 15-year old female was brought into the hospital due to medical injuries she had just sustained, and two San Bernardino County probation officers were assigned to monitor her. The minor was psychologically unstable and had overdosed on drugs. She had suffered injuries to her leg, back, arm and face when she had jumped out of a car. She had a brace on her leg. While she was in the hospital room, her behavior was erratic. She screamed, yelled obscenities, made threats, and refused to calm down or comply with any directives.

Shortly after midnight, respondent heard a commotion in the patient's room and entered it to check on her. He found her yelling, swearing, and generally uncontrollable. She threatened to hurt herself or others. Respondent told her to calm down and lower her voice because there were other patients and babies on the unit. He then left. After he left, the minor removed her leg brace, ignoring directives from the probation officers to leave it alone, and threw it against the wall.

Respondent re-entered the room a few minutes later. The minor was still cursing loudly and threatening to hurt herself or others. Respondent noticed the brace had been removed. He tried to find out what happened and to put it back on. She told him to get away, yelled and cursed at him, and told him that the police had tried to kill her by throwing her out of a car on the freeway. At this point, respondent asked the patient if she were bipolar. She cursed at him again and asked him if he were bipolar. Respondent answered by saying everyone is bipolar. As he was trying to put the brace back on her, the patient reached over, grabbed a telephone receiver, and threw it at respondent. It hit him in the chest. Respondent then slapped her in the face. The patient yelled at him again and threw a water bottle at him. She also kicked the portable nightstand. The probation officers grabbed her and tried to restrain her, but she fought them and tried to bite and spit on them.

During the commotion, someone hit the panic button, and within a few minutes, hospital security staff arrived. Respondent left the room and was reassigned to other patients.

Shortly after this incident, Arrowhead terminated respondent's employment. He had been a probationary employee at the time of the incident.

4. Respondent testified at the hearing and admitted he slapped the minor patient on the face. He explained that after she threw the telephone at him, he believe she was reaching for the water bottle to throw at him, he reached out to prevent her from doing so, and in the process, his hand

struck her face. Respondent testified he was not angry, but was trying to protect himself from a patient who had just assaulted and insulted him. Respondent recognized that it was unprofessional conduct for him to slap a patient under any circumstances. In addition to admitting his wrongdoing at the hearing, respondent admitted it to the Board's investigator two months after the incident.

5. Prior to becoming licensed in 1991, respondent had attended three years of medical school in the Caribbean, but he dropped out before completing his program. He entered a nursing program intending to use it as a stepping-stone to return to medical school, but he decided he wanted to remain in nursing. He has worked primarily in emergency departments except for two years when he worked as a travelling nurse. After he was terminated from Arrowhead, he worked for several nursing registries, but since the filing of the accusation, he has not been able to work in a hospital.

Respondent is 54 years old. He was born in Pakistan. He is married and has two minor children. His wife is also a registered nurse. He has taken anger management classes in the past in connection with his employment with Kaiser, and is presently in counseling with a psychologist for depression and is taking medication

6. The Board incurred costs of investigation and enforcement of this matter in the amount of \$3,672.50 for the services of the Attorney General's Office and \$3,859.50 for the services of an investigator from the Division of Investigation. The total amount is \$7,532.00 and it is reasonable.

Respondent offered no evidence to suggest that he was not able to pay these costs.

7. The probationary conditions contained in the Proposed Decision do not appear to be based upon the Board's Recommended Guidelines for Disciplinary Orders and Conditions of Probation, effective 5/25/03, ("Board Guidelines") in that references are made to licensed vocational nurse and psychiatric technician who are licensees of the Board of Vocational Nursing and Psychiatric Technicians and the proposed Conditions of Probation while similar, are not identical to the Standard Probation Conditions contained in the Board's Guidelines.

LEGAL CONCLUSIONS

1. Business and Professions Code section 2761 provides in part:

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

(a) Unprofessional conduct...

2. Cause to suspend or revoke respondent's registered nurse license pursuant to Business and Professions Code section 2761, subdivision (a), unprofessional conduct for slapping a minor patient while on duty at a hospital, was established by Finding 3.

3. Title 16, California Code of Regulations, section 1444.5 provides:

"In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), the Board shall consider the disciplinary guidelines entitled: "Recommended Guidelines for Disciplinary Orders and Conditions of Probation" (10/02) which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the board in its sole discretion determines that the facts of the particular car warrant such a deviation—for example: the presence of mitigating factors; the age of the case; evidentiary problems."

4. The Board's Disciplinary Guidelines provide in part:

"In determining whether revocation, suspension or probation is to be imposed in a given case, factors such as the following should be considered:

1. Nature and severity of the act(s), offenses, or crime(s) under consideration.
2. Actual or potential harm to the public
3. Actual or potential harm to any patient.
4. Prior disciplinary record
5. Number and/or variety of current violations.
6. Mitigation evidence.
7. Rehabilitation evidence.
8. In case of a criminal conviction, compliance with conditions of sentence and/or court-ordered probation.
9. Overall criminal record.
10. Time passed since the act(s) or offense(s) occurred.
11. If applicable, evidence of expungement proceedings pursuant to Penal Code Section 1203.4."

5. The evidence in this case in light of these considerations established that on one occasion, respondent slapped a 15-year patient while he was providing care to her in a hospital. She suffered no injury. Respondent has had no prior disciplinary action taken against his license. He has been licensed for 20 years. Respondent has no criminal record. The only evidence of

rehabilitation was respondent's testimony the he is presently in counseling, but there is no indication that the issues being addressed in the counseling are connected to this matter.

There is, however, evidence of mitigation. Respondent was confronted with a 15-year old girl who was completely out of control. She was apparently under the influence of drugs and was suffering from a psychological disorder. She had been yelling, swearing, and causing a commotion for some time after she was brought to Arrowhead. She had removed a leg brace placed on her because of an injury she had just suffered and had thrown it against a wall. Respondent entered her room to try to quiet her because other patients, including babies, were asleep. Instead, respondent was subjected to first verbal and then physical abuse. She swore at him, mocked him, and then threw a telephone at him, hitting him in the chest. Respondent believed the patient was going to throw a water pitcher at him, and tried to prevent it. Whether that is the reason he slapped her, or whether he responded instinctively to having been assaulted by her, the fact remains that respondent was provoked. There is nothing to suggest respondent planned to attack her or intended to cause her harm. He obviously acted without thinking. His offense is a minor one.

Respondent was remorseful at the hearing and understood that it is never appropriate to strike a patient. The question is to determine the appropriate penalty for an instinctive but wrongful act that occurred in the blink of an eye, and caused no injury.

The Board's Guidelines provide that for a violation of Business and Professions Code section 2761, subdivision (a), the maximum penalty is revocation and the minimum penalty is revocation stayed and three years probation. The Guidelines also provide that deviation from the Guidelines is permissible in some cases if warranted. This is one of those cases. Respondent has been a registered nurse for 20 years and has worked primarily in emergency departments without incident. On June 18, 2009, he was confronted by an aggressive, combative patient who verbally and physically assaulted him. He acted instinctively and without thinking. He has no history of such impulsive or aggressive behavior. He caused her no harm.

A period of probation is designed to ensure that a nurse can practice his or her profession safely, and a three-year period is considered a sufficiently long period of time in which the Board can assess the nurse's ability to do so. Respondent's conduct in this matter does not demonstrate that he cannot practice nursing safely, but does show that he needs to be reminded that even instinctive reactions must be appropriate, and wrongdoing cannot be condoned. For that, a one-year period of probation is warranted to ensure that respondent does not repeat this conduct.

Respondent admitted that he has had no anger problems in the past, and has taken anger management courses. As part of the educational courses conditions of probation, respondent should be required to take another anger management course.

6. The Board incurred costs in the amount of \$7,532.00. Finding 11.

In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the Supreme Court rejected a constitutional challenge to a cost regulation similar to Business and Professions Code section 125.3. In so doing, however, the Court directed the administrative law

judge and the agency to evaluate several factors to ensure the cost provision did not deter individuals from exercising their right to a hearing: An agency must not assess the full costs where it would unfairly penalize the respondent who has committed some misconduct but who has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty; the agency must consider a respondent's subjective good faith belief in the merits of his or her position and whether the respondent has raised a colorable challenge; the agency must consider a respondent's ability to pay; and the agency may not assess disproportionately large investigation and prosecution costs when it has conducted a disproportionately large investigation to prove that a respondent engaged in relatively innocuous misconduct.

In this proceeding, respondent successfully established that his single act of slapping a patient was a minor act of unprofessional conduct. Legal Conclusion 5. Counsel for the Board argued at the hearing that respondent's misconduct should result in a revocation of his license, but respondent successfully demonstrated that revocation is not the proper discipline for this case. Legal Conclusion 5. Thus, respondent used the hearing process to establish that he committed some misconduct, but the severity of that misconduct is far less than argued for by counsel for the Board. For these reasons, under *Zuckerman*, the amount of the costs may be reduced. Accordingly, the Board's costs of its investigation and enforcement of this matter is reduced to \$2,500.00.

7. The use of the probation conditions contained in the Board's Guidelines ensures uniform and consistent implementation of discipline. The Proposed Decision does not impose probation according to the conditions set forth in the Board's Guidelines and instead imposes probation in a non-standard manner such as allowing Respondent be employed at a facility or a patients' home (unsupervised) where he has never been employed before. It is necessary that the Board's probationary conditions be uniformly applied, unless there are unique and extenuating circumstances which in the instant case are not present.

8. Respondent has difficulty controlling his anger and is currently taking anti-depressant and is under the care of a psychologist. A condition of probation that Respondent obtain appropriate treatment and counseling for mental health concerns that could affect his nursing practice.

ORDER

Registered Nurse License Number 464559 issued to respondent Leon Francis Roiballove is revoked. However, the revocation is stayed and respondent is placed on probation for one (1) year 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 the 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.

(4) **RESIDENCY, PRACTICE, OR LICENSURE OUTSIDE OF STATE** - Periods of residency or practice as a registered nurse outside of California shall not apply toward a reduction of this probation time period. Respondent's probation is tolled, if and when he resides outside of California. The Respondent must provide written notice to the Board within 15 days of any change of residency or practice outside the state, and within 30 days prior to re-establishing residency or returning to practice in this state.

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

(5) **SUBMIT WRITTEN REPORTS** - Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to Respondent's compliance with all the conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

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

(6) FUNCTION AS A REGISTERED NURSE - Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

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

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

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

(7) EMPLOYMENT APPROVAL AND REPORTING REQUIREMENTS - Respondent shall obtain prior approval from the Board before commencing or continuing any employment, paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all performance evaluations and other employment related reports as a registered nurse upon request of the Board.

Respondent shall provide a copy of this decision to her employer and immediate supervisors prior to commencement of any nursing or other health care related employment.

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

(8) SUPERVISION - Respondent shall obtain prior approval from the Board regarding Respondent's level of supervision and/or collaboration before commencing or continuing any employment as a registered nurse, or education and training that includes patient care.

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

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

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

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

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

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

(9) EMPLOYMENT LIMITATIONS - Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

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

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

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

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

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

(10) COMPLETE A NURSING COURSE(S) - Respondent, at his own expense, shall enroll and successfully complete a course(s) relevant to the practice of registered nursing no later than six months prior to the end of her probationary term.

Respondent shall obtain prior approval from the Board before enrolling in the course(s). Respondent shall submit to the Board the original transcripts or certificates of completion for the

above required course(s). The Board shall return the original documents to Respondent after photocopying them for its records.

(11) **COST RECOVERY** - Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 125.3 in the amount of \$2,500.00. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than three months prior to the end of the probation term.

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

(12) **VIOLATION OF PROBATION** - If Respondent violates the conditions of his probation, the Board after giving Respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation) of the Respondent's license.

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

(13) **LICENSE SURRENDER** - During Respondent's term of probation, if he ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, Respondent may surrender his license to the Board. The Board reserves the right to evaluate Respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent will no longer be subject to the conditions of probation.

Surrender of Respondent's license shall be considered a disciplinary action and shall become a part of Respondent's license history with the Board. A registered nurse whose license has been surrendered may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

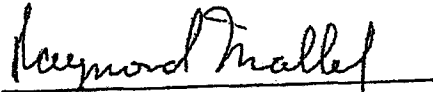
(1) Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or

(2) One year for a license surrendered for a mental or physical illness.

(14) THERAPY OR COUNSELING PROGRAM – Respondent, at his expense, shall participate in an on-going counseling program until such time as the Board releases him from this requirement and only upon the recommendation of the counselor. Written progress reports from the counselor will be required at various intervals.

This Decision shall become effective on JANUARY 5, 2013.

IT IS SO ORDERED this 6th day of DECEMBER 2012.



RAYMOND MALLEL
BOARD PRESIDENT
BOARD OF REGISTERED NURSING
STATE OF CALIFORNIA

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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:
13 **LEON FRANCIS ROIBALLOVE**
2231 Crescent Circle
14 Colton, CA 92324
15 Registered Nurse License No. 464559
16 Respondent.

Case No. 2011-718
ACCUSATION

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19 Complainant alleges:

20 **PARTIES**

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

24 2. On or about March 31, 1991, the Board of Registered Nursing issued Registered
25 Nurse License Number 464559 to Leon Francis Roiballove (Respondent). The Registered Nurse
26 License was in full force and effect at all times relevant to the charges brought herein and will
27 expire on August 31, 2012, unless renewed.

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JURISDICTION

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

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

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

6. Section 2811(b) of the Code provides, in pertinent part, that the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY PROVISIONS

7. Section 2761 of the Code states:

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

(a) Unprofessional conduct...

COST RECOVERY

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

CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

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3 9. Respondent is subject to disciplinary action for unprofessional conduct under section
4 2761(a) of the Code. The circumstances are as follows:

5 10. Respondent was employed as a registered nurse in the Pediatrics Unit of Arrowhead
6 Regional Medical Center in Colton, California. On or about June 18, 2009, E.W., a fifteen year
7 old female, was admitted as a patient to Arrowhead Regional Medical Center. Respondent was
8 assigned to E.W.'s care. During the course of her hospitalization, E.W. displayed aggressive and
9 combative behavior towards the probation officers who were holding her in custody pending her
10 release from the hospital and subsequently toward Respondent.

11 11. After hearing loud noises emanating from E.W.'s hospital room, Respondent entered
12 her hospital room in order to evaluate E.W. Respondent discovered E.W. yelling, cursing,
13 making threats to hurt herself and others and being otherwise uncontrollable. She had also
14 removed the leg brace from her injured leg. Respondent asked her to "calm down" and to lower
15 her voice. Respondent then put E.W.'s leg brace back onto her injured leg and left the room.

16 12. At approximately 12:25 a.m., Respondent entered the room for a second time in order
17 to check on E.W. after again hearing loud noises and knowing that E.W. was combative and
18 aggressive. Respondent asked E.W. if she needed anything and she cursed at him and told him
19 that the police tried to kill her. She blamed her injuries and arrest on the police and Respondent
20 asked her "are you sure it wasn't your bipolar personality?" E.W. then asked Respondent if he
21 thought she was crazy and called Respondent "bipolar." Respondent responded by stating that
22 "everyone is bipolar." Respondent then asked E.W. why she had removed her leg brace from her
23 injured leg. E.W. cursed at him and told him to get away from her. He then attempted to put
24 E.W.'s leg brace back onto her leg and E.W. threw a telephone at Respondent, hitting him in the
25 center of his chest. Respondent then slapped E.W. with his right palm striking the left side of her
26 cheek. In a written declaration dated September 7, 2010, Respondent admitted that he "came in
27 contact with [E.W.'s] face."
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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:

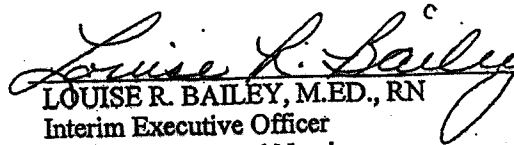
1. Revoking or suspending Registered Nurse License Number 464559, issued to Leon Francis Roiballove;

2. Ordering Leon Francis Roiballove 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: _____

2/23/11



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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