BEFORE THE TEXAS BOARD OF NURSING



In the Matter of \$
Registered Nurse License Number 733429 \$
issued to KENNETH TOD MCFARLAND \$



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 733429, issued to KENNETH TOD MCFARLAND, 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 delinquent status.
- 2. Respondent waived representation by counsel, informal proceedings, notice and hearing.
- 3. Respondent received an Associate Degree in Nursing from Cerritos College, Norwalk, California, on June 15, 1984. Respondent was licensed to practice professional nursing in the State of Texas on September 6, 2006.
- 4. Respondent's complete professional nursing employment history is unknown.
- 5. Formal Charges were filed on April 28, 2014. A copy of the Formal Charges is attached and incorporated, by reference, as part of this Order.
- 6. Formal Charges were mailed to Respondent on April 28, 2014.

- 7. On May 20, 2014, 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 May 20, 2014, is attached and incorporated herein by reference as part of this Order.
- 8. The Board policy implementing Rule 213.29 in effect on the date of this Agreed Order provides discretion by the Executive Director for consideration of conditional reinstatement after proof of twelve (12) consecutive months of abstinence from alcohol and drugs followed by licensure limitations/stipulations and/or peer assistance program participation.
- 9. The Board finds that there exists serious risks to public health and safety as a result of impaired nursing care due to intemperate use of controlled substances or chemical dependency.

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 733429, heretofore issued to KENNETH TOD MCFARLAND, 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.

THE BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK.

CONTINUED ON NEXT PAGE.

ORDER

NOW, THEREFORE, IT IS ORDERED that the voluntary surrender of Registered Nurse License Number 733429, heretofore issued to KENNETH TOD MCFARLAND, to practice nursing in the State of Texas, is/are 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 professional nursing, use the title of "registered nurse" or the abbreviation "RN" or wear any insignia identifying himself 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/s is/are surrendered.
- 2. RESPONDENT SHALL NOT petition for reinstatement of licensure until: one (1) year has elapsed from the date of this Order; and, RESPONDENT has obtained objective, verifiable proof of twelve (12) consecutive months of sobriety immediately preceding the petition.
- 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 20th day of May, 2014.

TEXAS BOARD OF NURSING

By:

Katherine A. Thomas, MN, RN, FAAN

Executive Director on behalf

3

of said Board

Date:

May 20, 2014

To:

Texas Board of Nursing

From:

Kenneth Tod McFarland

Regarding:

Registered Nurse number 733429

To whom it may concern,

I, Kenneth Tod McFarland, hereby surrender my Texas nursing license and all rights to practice nursing in the state of Texas. I'm sorry but I don't not have a copy of my Texas license to send you, as a shredded it back when I was having my psychological issues.

I'm sure you are aware of what I've done in the state of California, most notably writing a prescription and using a physician's name that I forged, the prescription was for myself.

I have already been through hearings and have freely given up my license to practice nursing in the state of California, and will happily do the same in the state of Texas as I am no longer a registered nurse.

Thank you for taking this letter in consideration.

Respectfully submitted,

Kenneth Tod McFarland

Notary Public Jason G. Tho mas

May 20, 2014

JASON G. THOMAS
Commission # 1980253
Notary Public - California
Said Becateding County
My Comm. Expires Jun 27, 2016

In the Matter of	§	BEFORE THE TEXAS
Permanent Registered Nurse	§	
License Number 733429	§	
Issued to KENNETH TOD MCFARLAND,	Š	
Respondent	Š	BOARD OF NURSING

FORMAL CHARGES

This is a disciplinary proceeding under Section 301.452(b), Texas Occupations Code. Respondent, KENNETH TOD MCFARLAND, is a Registered Nurse holding License Number 733429, which is in delinquent status at the time of this pleading.

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

CHARGE I.

On or about December 14, 2013, the Voluntary Surrender of Respondent's registered nurse license, nurse practitioner certificate, and nurse practitioner furnishing certificate, was accepted by the State of California Board of Registered Nursing, Sacramento, California. A copy of the Decision and Order dated December 14, 2013, is attached and incorporated, by reference, as part of this pleading.

The above action constitutes grounds for disciplinary action in accordance with Section 301.452(b)(8), Texas Occupations Code.

NOTICE IS GIVEN that staff will present evidence in support of the recommended disposition of up to, and including, revocation of Respondent's license/s to practice nursing in the State of Texas pursuant to the Nursing Practice Act, Chapter 301, Texas Occupations Code and the Board's rules, 22 Tex. Admin. Code §§ 213.27 - 213.33. Additionally, staff will seek to impose on Respondent the administrative costs of the proceeding pursuant to Section 301.461, Texas Occupations Code. The cost of proceedings shall include, but is not limited to, the cost paid by the Board to the State Office of Administrative Hearings and the Office of the Attorney General or other Board counsel for legal and investigative services, the cost of a court reporter and witnesses, reproduction of records, Board staff time, travel, and expenses. These shall be in an amount of at least one thousand two hundred dollars (\$1200.00).

NOTICE IS GIVEN that all statutes and rules cited in these Charges are incorporated as part of this pleading and can be found at the Board's website, www.bon.texas.gov.

NOTICE IS GIVEN that to the extent applicable, based on the Formal Charges, the Board will rely on Adopted Disciplinary Sanction Policies for Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder, for Lying and Falsification, and for Fraud, Theft and Deception, which can be found at the Board's website, www.bon.texas.gov.

NOTICE IS GIVEN that, based on the Formal Charges, the Board will rely on the Disciplinary Matrix, which can be found at www.bon.texas.gov/disciplinaryaction/discp-matrix.html.

NOTICE IS ALSO GIVEN that Respondent's past disciplinary history, as set out below and described in the Order(s) which is/are attached and incorporated by reference as part of these charges, will be offered in support of the disposition recommended by staff: Decision and Order of State of California Board of Registered Nursing dated December 14, 2013.

Filed this 28th day of April , 20_14.

TEXAS BOARD OF NURSING

James W. Johnston, General Counsel

Board Certified - Administrative Law

Texas Board of Legal Specialization State Bar No. 10838300

Jena Abel, Assistant General Counsel State Bar No. 24036103

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

John R. Griffith, Assistant General Counsel State Bar No. 24079751

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

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

John Vanderford, Assistant General Counsel State Bar No. 24086670

333 Guadalupe, Tower III, Suite 460
Austin, Texas 78701
P: (512) 305-6811
F: (512) 305-8101 or (512)305-7401

Attachments: Decision and Order of State of California Board of Registered Nursing dated December 14, 2013.

D/2013.11.19

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

In the Matter of the Accusation Against:

KENNETH TOD MCFARLAND 6561 Flagstone Place Rancho Cucamonga, CA 91739

Registered Nurse License No. 375735 Nurse Practitioner Certificate No. 15326 Nurse Practitioner Furnishing Certificate No. 15326

Respondent

Case No. 2013-309

DECISION AND ORDER

The attached Stipulated Surrender of License and 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 December 14, 2013.

IT IS SO ORDERED December 14, 2013.

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

REGISTERED NURSING PROGRAM

Louise R. Bailey, M. ED., RN

OF CONSUME OF CALIFORNIA.

Raymond Mallel, President Board of Registered Nursing Department of Consumer Affairs

State of California

- 11	· •		
1	Kamala D. Harris	•	
2	Attorney General of California ARMANDO ZAMBRANO	•	• 4
3	Supervising Deputy Attorney General CHRISTINE JUNE LEE		
4	Deputy Attorney General State Bar No. 282502	•	•
5	300 So. Spring Street, Suite 1702 Los Angeles, CA 90013		
6	Telephone: (213) 897-2539 Facsimile: (213) 897-2804	in the second of	· ·
7	Attorneys for Complainant		e e e e e e e e e e e e e e e e e e e
8	BEROI	RE THE	
	BOARD OF REGIS	STERED NURSING	**
9		CONSUMER AFFAIRS CALIFORNIA	•
10		i ' ' ' ' ' ' ' ' ' ' ' ' ' ' ' ' ' ' '	
11	In the Matter of the Accusation Against:	Case No. 2013-309	
12	KENNETH TOD MCFARLAND	STIPULATED SURREI	
13	6561 Flagstone Place Rancho Cucamonga, CA 91739	OF LICENSE AND DIS ORDER	CIPLINARY
14	Registered Nurse License No. 375735		•
15	Nurse Practitioner Certificate No. 15326 Nurse Practitioner Furnishing		•
16	Certificate No. 15326		
	Respondent.		
17 18			
19	In the interest of a prompt and speedy res]	sistent with the nublic
20	interest and the responsibility of the Board of	•	•
	4 7		
21	Affairs, the parties hereby agree to the fo		
22	Disciplinary Order, which will be submitted to t	he Board of Registered Nu	rsing for approval, and
23	adoption as the final disposition of Accusation N	lo. 2013-309.	
24	PAR	RTIES	
25	1. Louise R. Bailey, M.Ed., RN ("Con	mplainant") is the Executiv	e Officer of the Board
26	of Registered Nursing, Department of Consum	ner Affairs. She brings th	is action solely in he
27	official capacity and is represented in this matt	er by Kamala D. Harris, A	ttorney General of the
	, , ,	•	-

State of California, by Armando Zambrano, Deputy Attorney General.

 Kenneth Tod McFarland ("Respondent") is representing himself in this proceeding and has chosen not to exercise his right to be represented by counsel.

License History

- 3. On or about August 31, 1984, the Board of Registered Nursing ("Board") issued Registered Nurse License Number 375735 to Respondent. The Registered Nurse License was in full force and effect at all times relevant to the charges brought herein. The Registered Nurse License expired on September 30, 2012, and has not been renewed.
- 4. On or about October 5, 2004, the Board of Registered Nursing issued Nurse Practitioner Certification Number 15326 to Respondent Kenneth Tod McFarland. The Nurse Practitioner Certification was in full force and effect at all times relevant to the charges brought herein. The Nurse Practitioner Certificate expired on September 30, 2012, and has not been renewed.
- 5. On or about April 26, 2005, the Board of Registered Nursing issued Nurse Practitioner Furnishing Certification No. 15326 to Respondent. The Nurse Practitioner Furnishing Certification was in full force and effect at all time relevant to the charges brought herein. The Nurse Practitioner Furnishing Certification expired on September 30, 2012 and has not been renewed.

JURISDICTION

6. Accusation No. 2013-309 was filed before the Board of Registered Nursing and is currently pending against the Respondent. The accusation and all other statutorily required documents were properly served on Respondent on October 24, 2012. Respondent timely filed a notice of defense contesting the accusation. A copy of Accusation No. 2013-309 is attached as Exhibit "A" and incorporated herein by reference.

ADVISEMENT AND WAIVERS

- Respondent has carefully read and understands the charges and allegations in the Accusation No. 2013-309.
- Respondent has carefully read and understands the effects of this Stipulated Surrender of License and Disciplinary Order.

- 9. Respondent is fully aware of his legal rights in this matter, including the right to have 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.
- 10. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

- 11. Respondent admits the truth of each and every charge and allegation in Accusation No. 2013-309.
- 12. Respondent agrees that cause exists for license discipline and hereby surrenders his registered nursing license, nurse practitioner certificate, and nurse practitioner furnishing certificate for the Board's formal acceptance.
- 13. Respondent understands that by signing the stipulation he enables the Board to issue an order accepting the surrender of his registered nursing license, nurse practitioner certificate, and nurse practitioner furnishing certificate without further process.

CONTINGENCY

14. This stipulation shall be subject to approval by the Board. 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 Surrender of License 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 the matter.

	15.	The parties understand and agree that facsimile copies of the Stipulated Surrender of
Licen	ise and	d Disciplinary Order, including facsimile signatures thereto, shall have the same force
and e	ffect a	as the originals.

- 16. The Stipulated Surrender of License and Disciplinary Order are 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). The Stipulated Surrender of License 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.
- 17. In consideration of the foregoing admissions and stipulations, the parties agree that the Board of Registered Nursing, may without further notice or formal proceeding, issue and enter the following Order:

<u>ORDER</u>

IT IS HEREBY ORDERED that registered nurse license number 375735 issued to Respondent is surrendered and accepted by the Board of Registered Nursing. Furthermore, nurse practitioner certificate number 15326, and nurse practitioner furnishing certificate number 15326 issued to Respondent are surrendered and accepted by the Board of Registered Nursing

- The surrender of Respondent's registered nurse license, nurse practitioner certificate, nurse practitioner furnishing certificate, and the acceptance of the surrendered license and certificates by the Board, shall constitute the imposition of discipline against Respondent.
- The stipulated surrender constitutes a record of discipline and shall become a part of the Respondent's license history with the Board of Registered Nursing.
- 3. Respondent shall lose all rights and privileges as a licensed registered nurse and nurse practitioner in California, as of the effective date of the Board's Decision and Order.
- 4. Respondent shall cause to be delivered to the Board his pocket license cards, and if one was issued, his wall certificate, on or before the effective date of the Decision and Order.

5.	If the	e Responder	it subsec	quently a	pplies fo	or licens	me or p	etition	s for r	einstateme	ent in
the Stat	e of Ca	difornia, the	n the B	oard shal	l treat t	he appl	ication	or peti	tion as	a petitio	n for
reinstate	ment.	Responden	t shall	comply	with a	ll laws	, regula	itions,	and g	procedures	for
reinstate	ment of	f a revoked l	icense i	n effect a	at the tir	ne when	n the pe	tition i	s filed	, and all o	f the
charges	and alle	gations conta	uned in	Accusation	on No. 2	013-309	9 shall b	e deem	ed to I	oe true, con	rrėct,
and adm	itted by	the Respond	ent whe	n the Boa	ard deter	mines v	vhether t	lo grant	t or de	ny the peti	tion.

- 6. If Respondent applies for a new license or certification, or petitions for reinstatement of a license, by any other healthcare licensing agency in California, then all of the charges and allegations contained in Accusation No. 2013-309 shall be deemed to be true, correct, and admitted by the Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.
- 7. If and when Respondent's license is reinstated, he 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 \$4,097.50. Respondent shall be permitted to pay these costs in a payment plan approved by the Board. Nothing in this provision shall be construed to prohibit the Board from reducing the amount of cost recovery upon reinstatement of the license.
- Respondent shall not apply for licensure or petition for reinstatement for at least two
 years from the effective date of the Decision and Order.

ACCEPTANCE

I have carefully read the Stipulated Surrender of License and Disciplinary Order. I understand the stipulation and the effect it will have on my registered nurse license and nurse practitioner certificates. I enter into this stipulation voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Registered Nursing.

Dated: August Z	2013 _ک ے
-----------------	---------------------

Respondent

Kespondent

ENDORSEMENT The foregoing Stipulated Surrender of License and Disciplinary Order are hereby submitted for consideration by the Board of Registered Nursing. Dated: August 27, 2013 Respectfully Submitted. KAMALA D. HARRIS Attorney General of California ARMANDO ZAMBRANO Supervising Deputy Attorney General CHRISTINE JUNE LEE Deputy Attorney General Attorney for Complainant LA2012507493 51233538.docx 8/16/13

Exhibit A

Accusation No. 2013-309

(Case No. 2013-309)

1	•	**************************************
1	, Kamala D. Harris	
2	Attorney General of California GLORIA A. BARRIOS	
3	Supervising Deputy Attorney General ARMANDO ZAMBRANO	
	Deputy Attorney General	$oldsymbol{e}_{i}$
4	State Bar No. 225325 300 So. Spring Street, Suite 1702	
5	Los Angeles, CA 90013	
6	Telephone: (213) 897-2542 Facsimile: (213) 897-2804	•
7	Attorneys for Complainant	
	-	<u>talan</u> s
8		RE THE STERED NURSING
9		ONSUMER AFFAIRS CALIFORNIA
10	SIAIBOR	ALL VIVIA
11		
12	In the Matter of the Accusation Against:	Case No. 2013 - 309
13	KENNETH TOD MCFARLAND	ACCUSATION
14	6561 Flagstone Place Rancho Cucamonga, CA 91739	
15	Registered Nurse License No. 375735	
16	Nurse Practitioner Certificate No. 15326 Nurse Practitioner Furnishing)
17	Certificate No. 15326	. •
:	Respondent.	
18	0	•
19	Complainant alleges:	
20	PAR	TIES
21		mplainant") brings this Accusation solely in he
22	official capacity as the Executive Officer of the	ne Board of Registered Nursing, Department of
23	Consumer Affairs.	
24	Registered Nurse License	* .
25	2. On or about August 31, 1984, th	e Board of Registered Nursing, Department of
26	Consumer Affairs, issued Registered Nurse L	icense No. 375735 to Kenneth Tod McFarland
27	("Respondent"). The Registered Nurse License	was in full force and effect at all times relevant to
28	the charges brought herein and will expire on Se	ptember 30, 2012, unless renewed.

. 7 8.

28 //

3. On or about October 5, 2004, the Board of Registered Nursing, Department of Consumer Affairs, issued Nurse Practitioner Certification No. 15326 to Respondent Kenneth Tod McFarland. The Nurse Practitioner Certification was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2012, unless renewed.

Nurse Practitioner Furnishing Certification

4. On or about April 26, 2005, the Board of Registered Nursing, Department of Consumer Affairs, issued Nurse Practitioner Furnishing Certification No. 15326 to Respondent Kenneth Tod McFarland. The Nurse Practitioner Furnishing Certification was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2012, unless renewed.

JURISDICTION

- 5. 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 ("Code") unless otherwise indicated.
 - 6. Section 2750 of the Code provides:

"Bvery certificate holder or licensee, including licensees holding temporary licenses, or licensees holding licenses placed in an inactive status, may be disciplined as provided in this article [Article 3 of the Nursing Practice Act (Bus. & Prof Code Section 2700 et seq.)]. As used in this article, "license" includes certificate, registration, or any other authorization to engage in practice regulated by this chapter. The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code [the Administrative Procedure Act], and the board shall have all the powers granted therein."

7. Section 118(b) of the Code provides:

"The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent

of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground."

8. Section 2764 of the Code provides:

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

STATUTORY PROVISIONS

Section 2761 of the Code provides, in pertinent part: 9.

"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, which includes, but is not limited to, the following:

- (d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter or regulations adopted pursuant to it."
- 10. Section 2762 of the Code provides:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof.

(d) Be committed or confined by a court of competent jurisdiction for intemperate use of or addiction to the use of any of the substances described in subdivisions (a) and (b) of this section, in which event the court order of commitment or confinement is prima facie evidence of such commitment or confinement.

(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to the substances described in subdivision (a) of this section."

Code section 2770.7 provides, in pertinent part:

"(a) The board shall establish criteria for the acceptance, denial, or termination of registered nurses in the diversion program. Only those registered nurses who have voluntarily requested to participate in the diversion program shall participate in the

27 28

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

3

"(d) Neither acceptance nor participation in the diversion program shall preclude the board from investigating or continuing to investigate, or taking disciplinary action or continuing to take disciplinary action against, any registered nurse for any unprofessional conduct committed before, during, or after participation in the diversion program. (e) All registered nurses shall sign an agreement of understanding that the withdrawal or termination from the diversion program at a time when the program manager or diversion evaluation committee determines the licentiate presents a threat to the public's health and safety shall result in the utilization by the board of diversion treatment records in disciplinary or criminal proceedings. (f) Any registered nurse terminated from the diversion program for failure to comply with program requirements is subject to disciplinary action by the board for acts committed before, during, and after participation in the diversion program. A registered nurse who has been under investigation by the board and has been terminated from the diversion program by a diversion evaluation committee shall be reported by the diversion evaluation committee to the board." Code section 2770.11 provides: "(a) Bach registered nurse who requests participation in a diversion program shall agree to cooperate with the rehabilitation program designed by the committee and approved by the program manager. Any failure to comply with the provisions of a rehabilitation program may result in termination of the registered nurse's 12 participation in a program. The name and license number of a registered nurse who 13 is terminated for any reason, other than successful completion, shall be reported to the board's enforcement program. 14 (b) If the program manager determines that a registered nurse, who is denied admission into the program or terminated from the program, presents a threat to the 15 public or his or her own health and safety, the program manager shall report the name and license number, along with a copy of all diversion records for that 16 registered nurse, to the board's enforcement program. The board may use any of the records it receives under this subdivision in any disciplinary proceeding." 17 Code section 4022 provides: 18 "Dangerous drug" or "dangerous device" means any drug or device unsafe for self-19 use in humans or animals, and includes the following: (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing 20 without prescription," "Rx only," or words of similar import. (b) Any device that bears the statement: "Caution: federal law restricts this device 21 ""Rx only," or words of similar import, the to sale by or on the order of a blank to be filled in with the designation of the practitioner licensed to use or order 22 use of the device. (c) Any other drug or device that by federal or state law can be lawfully dispensed 23 only on prescription or furnished pursuant to Section 4006. 24

Code section 4060 provides:

14.

25

26

27

28

.1

2

3

4

5

6

7

8

9

10

11

"No person shall possess any controlled substance, except that furnished to a person

upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug

order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to Section

1 2	3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either Section 4052.1 or 4052.2. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist,
	physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in
.3	containers correctly labeled with the name and address of the supplier or producer.
4	Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, to order his or her own stock of
5	dangerous drugs and devices."
6	15. Code section 822 provides:
7	"If a licensing agency determines that its licentiate's ability to practice his or her profession safely is impaired because the licentiate is mentally ill, or physically ill
8	affecting competency, the licensing agency may take action by any one of the following methods:
9	(a) Revoking the licentiate's certificate or license. (b) Suspending the licentiate's right to practice.
10	(c) Placing the licentiate on probation. (d) Taking such other action in relation to the licentiate as the licensing agency in
·11	its discretion deems proper. The licensing agency shall not reinstate a revoked or suspended certificate or
12	license until it has received competent evidence of the absence or control of the condition which caused its action and until it is satisfied that with due regard for the
13	public health and safety the person's right to practice his or her profession may be safely reinstated."
. 14	Gardy Tombards
15	16. Health and Safety Code section 11170 provides:
16	"No person shall prescribe, administer, or furnish a controlled substance for himself."
17	17. Health and Safety Code section 11173 provides:
18	"(a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances,
19	(1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment or
20	a material fact. (b) No person shall make a false statement in any prescription, order, report, or
21	record, required by this division. (c) No person shall, for the purpose of obtaining controlled substances, falsely
22	assume the title of, or represent himself to be, a manufacturer, wholesaler, pharmacist, physician, dentist, veterinarian, registered nurse, physician's assistant,
23	or other authorized person. (d) No person shall affix any false or forged label to a package or receptacle
24	containing controlled substances."
25	18. Health and Safety Code section 11174 provides:
26	"No person shall, in connection with the prescribing, furnishing, administering, or

dispensing of a controlled substance, give a false name or false address."

27

28

//

 19. Norco is the brand name for a narcotic that contains Hydrocodone bitartrate and Acetaminophen. Hydrocodone is in a group of drugs called opioid pain relievers. Acetaminophen is a less potent pain reliever that increases the effects of hydrocodone. Norco is generally prescribed to treat moderate to severe pain. It is designated as a Schedule III controlled substance per Health and Safety Code section 11056(e)(4). It is usually found in tablet form and marketed under the trade names Vicodin, and Lortab.

- 20. <u>Darvocet</u> contains a combination of Propoxyphene and Acetaminophen. Propoxyphene is a narcotic pain reliever. Darvocet is generally prescribed to treat mild to moderate pain and is designated as a Schedule IV controlled substance per Health & Safety Code Section 11057(c)(2). In November 2010, the US Food and Drug Administration (FDA) withdrew all medications containing Propoxyphene due to concerns about dangerous cardiac side effects.
- 21. Fentanyl is a powerful synthetic opiate analgesic similar to but approximately 100 times more potent than morphine. It is typically used to treat patients with severe pain, or to manage pain after surgery. It is also sometimes used to treat people with chronic pain who are physically tolerant to opiates. It is designated as a Schedule II controlled substance per Health & Safety Code Section 11055(c)(8).
- 22. <u>Dilaudid</u> is the brand name for the narcotic Hydromorphone Hydrochloride. It is an opioid pain relievers and generally prescribed to treat moderate to severe pain. It is designated as a Schedule II controlled substance per Health and Safety Code section 11055(b)(1)(J).
- 23. Percocet is the brand name for the narcotic that contains Oxycodone and Acetaminophen. Oxycodone is in a group of drugs called opioid pain relievers. Acetaminophen is a less potent pain reliever that increases the effects of Oxycodone. Percocet is generally prescribed to treat moderate to severe pain. It is designated as a Schedule II controlled substance per Health and Safety Code section 11055(b)(1)(M).
- 24. <u>Ultram</u> is the brand name for the pain reliever Tramadol. It is a centrally-acting synthetic analysesic used to treat moderate to severe pain. It is designated as a dangerous drug per Health and Safety Code section 4022 and can be lawfully dispensed only by a prescription.

COST RECOVERY

25. Business and Professions Code Section 125.3 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.

PUBLIC SAFETY RISK: RESPONDENT'S TERMINATION FROM DRUG DIVERSION PROGRAM

- 26. On January 12, 2012, the Respondent voluntarily requested to participate in the Board of Registered Nursing's Diversion Program in order to obtain assistance with his chemical dependency. At the time, the Respondent was working as a Nurse Practitioner at Desert Valley Hospital, in Victorville, CA. He admitted taking forty (40) Norco pills per day and writing false and fraudulent prescriptions for personal use.
 - 27. On January 19, 2012, the Respondent voluntarily entered a 60-day inpatient program.
- 28. On March 28, 2012, the Respondent underwent surgery to his left index finger after reportedly suffering an accident while using a utility knife. The Respondent received Fentanyl and Dilaudid in the hospital and a prescription for Ultram.
- 29. On March 29, 2012, the Respondent was admitted into the Board's Diversion Program administered by Maximus. The Respondent agreed to comply with all the recovery terms and conditions including complete sobriety, abstaining from mind-altering substances, suspension from nursing practice, successful completion of a 12-step program with 90-day inpatient treatment, random drug testing, and regular reporting.
- 30. On April 5, 2012, the Respondent underwent emergency surgery to his lower left leg after reportedly suffering a chainsaw accident while cutting wood. The Respondent received Percocet in the hospital and a prescription for Ultram.
- 31. On May 18, 2012, the Respondent provided a urine sample, which tested positive for the controlled substance Propoxyphene (Darvocet) and Norpropoxyphene. The Respondent later admitted taking two Darvocet pills to help him sleep.

- 32. On May 29, 2012, the Respondent was placed in a 72-hour involuntary psychiatric hold and underwent emergency surgery after attempting to amputate his left arm with a miter saw and severely damaging tendons. He reportedly felt depressed and cut his arm to the bone. He admitted this was not the first time that he tried to hurt himself and that he had previously tried to amputate his leg with a chainsaw. He was housed in a psychiatric unit for 14 days of treatment.
- 33. On June 22, 2012, the Respondent was terminated unsuccessfully from the Diversion Program for public safety risk and failing to comply with program requirements.

FIRST CAUSE FOR DISCIPLINE

(Use of Controlled Substances - Dangerous or Injurious to Himself or Public)

34. Respondent is subject to disciplinary action under Code sections 2761(a) and 2762(b), in that while employed as a registered nurse, he used controlled substances or dangerous drugs to an extent or in a manner dangerous or injurious to himself or any other person, or the public or to the extent that such use impairs his ability to conduct with safety to the public the practice authorized by his license. Complainant refers to and by this reference incorporates the allegations set forth above in paragraphs 27 through 33, inclusive, as though fully set forth herein.

SECOND CAUSE FOR DISCIPLINE

(Attempted to Obtain Controlled Substances by Fraud, Deceit, or Misrepresentation)

- 35. Respondent is subject to disciplinary action under Code sections 2761(a) and 2762(e), in accordance with Code section 4060 and Health and Safety Code sections 11173 and 11170, in that while employed as a registered nurse, obtained or attempted to obtain controlled substances, or procured or attempted to procure the administration of or prescription for controlled substances, by fraud, deceit, misrepresentation, or subterfuge; or by the concealment of a material fact. The facts and circumstances are:
- a. On or about December 24, 2011, the Respondent obtained or attempted to obtain a controlled substance by using a fraudulent prescription from Desert Valley Hospital. The prescription indicated the Respondent's name as the patient, and ordered 100 pills of Norco 10/325.

ъ.	On or abo	ut Nov	ember 26, 2	2011, the	Resp	ondent	obtai	ned or a	ttemp	ted to	ob ob	tain
controlled	substance	by usi	ng a fraudi	lent pres	cript	tion from	n De	esert Val	lley 1	Hospi	tal.	Th
prescription	n indicated	the R	espondent's	name as	the	patient,	and	ordered	100	pills	of l	Norce
10/325.				a			i					

c. Both prescriptions were purportedly signed by an emergency room physician, who was subsequently interviewed, and emphatically denied signing the prescription or ordering a prescription for the Respondent. The Respondent later admitted to writing the false and fraudulent prescriptions for personal use.

THIRD CAUSE FOR DISCIPLINE

(Attempted to Obtain or Possess in Violation of Law-Controlled Substances)

36. Respondent is subject to disciplinary action under Code sections 2761(a) and 2761(d), in accordance with 2762(a), in that while employed as a registered nurse, he attempted to obtain or obtaining or possessed in violation of law, or prescribed, or except as directed by a licensed physician and surgeon, administered to himself, any controlled substance or dangerous drug. Complainant refers to and by this reference incorporates the allegations set forth above in paragraph 35, as though fully set forth.

PRAYER

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

- 1. Revoking or suspending Registered Nurse License Number 375735, issued to Kenneth Tod McFarland;
- 2. Revoking or suspending Nurse Practitioner Certification No. 15326, issued to Kenneth Tod McFarland;
- 3. Revoking or suspending Nurse Practitioner Furnishing Certification No. 15326, issued to Kenneth Tod McFarland;

27 1/

28 1/

10 .