



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

N THE MATTER OF PERMANENT
REGISTERED NURSE
LICENSE NUMBER 841455
ISSUED TO
SARAH ELIZABETH MARTIN,
RESPONDENT

§
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BEFORE THE TEXAS

BOARD OF NURSING

NUNC PRO TUNC ORDER OF THE BOARD

TO: SARAH ELIZABETH MARTIN
3219 RIDGE GREEN
KINGWOOD, TX 77345

An Order of the Board was entered for Sarah Elizabeth Martin on September 12, 2017. The Order, however, contained the incorrect effective date. Upon notice and hearing, administrative agencies, like the Courts, have the power to enter nunc pro tunc orders where it can be seen by reference to a record that what was intended to be entered, but was omitted by inadvertence or mistake, can be corrected upon satisfactory proof of its rendition provided that no intervening rights will be prejudiced. *Railroad Comm'n v. McClain*, 356 S.W.2d 330, 334 (Tex. App.--Austin 1962, no writ) (citing *Frankfort Ky. Nat. Gas Co. v. City of Frankfort*, 276 Ky. 199, 123 S.W.2d 270, 272).

The Executive Director, as agent of the Texas Board of Nursing, after review and due consideration of the record and the facts therein submits and enters the corrected Order, which correctly references the effective date. Respondent received due process regarding her license; therefore, her rights have not been prejudiced.

NOW, THEREFORE, IT IS ORDERED that the corrected Order of the Board is hereby approved and entered on the dates set forth below.

Order effective September 12, 2017.

Entered this 13th day of November, 2017.

BY:

KATHERINE A. THOMAS, MN, RN, FAAN
EXECUTIVE DIRECTOR ON BEHALF OF SAID BOARD

IN THE MATTER OF PERMANENT
REGISTERED NURSE
LICENSE NUMBER 841455
ISSUED TO
SARAH ELIZABETH MARTIN,
RESPONDENT

§ BEFORE THE TEXAS
§
§ BOARD OF NURSING
§
§ ELIGIBILITY AND
§
§ DISCIPLINARY COMMITTEE



I do hereby certify this to be a complete, accurate, and true copy of the document which is on file or is of record in the offices of the Texas Board of Nursing.
Patricia R. Parnell
Executive Director of the Board

ORDER OF THE BOARD

TO: SARAH ELIZABETH MARTIN
3219 RIDGE GREEN
KINGWOOD, TX 77345

During open meeting held in Austin, Texas, on **September 12, 2017**, the Texas Board of Nursing Eligibility and Disciplinary Committee (hereinafter "Committee") heard the above-styled case, based on the failure of the Respondent to appear as required by 22 TEX. ADMIN. CODE Ch. 213.

The Committee finds that notice of the facts or conduct alleged to warrant disciplinary action has been provided to Respondent in accordance with Texas Government Code § 2001.054(c) and Respondent has been given an opportunity to show compliance with all the requirements of the Nursing Practice Act, Chapter 301 of the Texas Occupations Code, for retention of Respondent's license(s) to practice nursing in the State of Texas.

The Committee finds that the Formal Charges were properly initiated and filed in accordance with section 301.458, Texas Occupations Code.

The Committee finds that after proper and timely Notice regarding the violations alleged in the Formal Charges was given to Respondent in this matter, Respondent has failed to appear in accordance with 22 TEX. ADMIN. CODE Ch. 213.

The Committee finds that the Board is authorized to enter a default order pursuant to Texas Government Code § 2001.056.

The Committee, after review and due consideration, adopts the proposed findings of fact and conclusions of law as stated in the Formal Charges which are attached hereto and incorporated by

reference for all purposes and the Staff's recommended sanction of revocation by default. This Order will be properly served on all parties and all parties will be given an opportunity to file a motion for rehearing [22 TEX. ADMIN.CODE § 213.16(j)]. All parties have a right to judicial review of this Order.

All proposed findings of fact and conclusions of law filed by any party not specifically adopted herein are hereby denied.

NOW, THEREFORE, IT IS ORDERED that Permanent Registered Nurse License Number 841455, previously issued to SARAH ELIZABETH MARTIN, to practice nursing in the State of Texas be, and the same is/are hereby, REVOKED.

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

Entered this **12th day of September, 2017.**

TEXAS BOARD OF NURSING

BY:



KATHERINE A. THOMAS, MN, RN, FAAN
EXECUTIVE DIRECTOR ON BEHALF OF SAID BOARD

Attachment: Formal Charge filed July 14, 2017.

d17r(RN)(2016.05.11)

Re: Permanent Registered Nurse License Number 841455
Issued to SARAH ELIZABETH MARTIN
DEFAULT ORDER - REVOKE

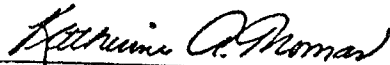
CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of September, 2017, a true and correct copy of the foregoing DEFAULT ORDER was served and addressed to the following person(s), as follows:

Via USPS Certified Mail, Return Receipt Requested
SARAH ELIZABETH MARTIN
3219 RIDGE GREEN
KINGWOOD, TX 77345

Via USPS First Class Mail

BY:



KATHERINE A. THOMAS, MN, RN, FAAN
EXECUTIVE DIRECTOR ON BEHALF OF SAID BOARD

In the Matter of	§	BEFORE THE TEXAS
Permanent Registered Nurse	§	
License Number 841455	§	
Issued to SARAH ELIZABETH MARTIN,	§	
Respondent	§	BOARD OF NURSING

FORMAL CHARGES

This is a disciplinary proceeding under Section 301.452(b), Texas Occupations Code. Respondent, SARAH ELIZABETH MARTIN, is a Registered Nurse holding License Number 841455, 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 August 21, 2015, Respondent entered a plea of Guilty to and was convicted of ADULTERATION OF DRUG HELD SALE, a felony offense committed between October of 2014 and on or about March 25, 2015, in the United States District Court, Southern District of California, under Case No. 15CR1394-JLS. As a result of the conviction, Respondent was placed on probation for a period of three (3) years, and was ordered to pay a fine.

The above action constitutes grounds for disciplinary action in accordance with Section 301.452(b)(3)&(10), Texas Occupations Code, and is a violation of 22 TEX. ADMIN. CODE §217.12(13).

CHARGE II.

On or about August 5, 2017, Respondent's license to practice professional nursing in the State of California was issued a REVOCATION by the California State Board of Nursing, San Diego, California. A copy of the Findings of Fact, Conclusions of Law, and Agreed Order dated August 5, 2017, is attached and incorporated, by reference, as part of this Order.

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.

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 Guidelines for Criminal Conduct; and on adopted policies related to Substance Use Disorders and Other Alcohol and Drug Related Conduct, which can be found under the "Discipline & Complaints; Board Policies & Guidelines" section of the Board's website, www.bon.texas.gov.

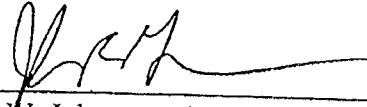
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NOTICE IS GIVEN that, based on the Formal Charges, the Board will rely on the Disciplinary Matrix, located at 22 TEX. ADMIN. CODE §213.33(b), which can be found under the "Discipline & Complaints; Board Policies & Guidelines" section of the Board's website, www.bon.texas.gov.

Filed this 14 day of July, 2017.

TEXAS BOARD OF NURSING



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

In the Matter of the Accusation Against:

SARAH ELIZABETH MARTIN,

Registered Nursing License No. 849972

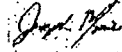
Respondent.

Case No. 2016-240

OAH No. 2015120515

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

BOARD OF REGISTERED NURSING


Joseph L. Morris, Ph.D., MSN, RN
Executive Officer



DECISION AFTER REJECTION

Adam L. Berg, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Diego, California, on August 9, 2016.

Agustin F. Lopez II, Deputy Attorney General, Department of Justice, State of California, represented complainant, Louise R. Bailey, M.Ed., R.N., Executive Officer, Board of Registered Nursing, Department of Consumer Affairs, State of California.

Stacie L. Patterson, Attorney at Law, represented respondent, Sarah Elizabeth Martin.

The matter was submitted on August 9, 2016.

On August 25, 2016, Administrative Law Judge Adam L. Berg issued his Proposed Decision. On November 14, 2016, the Board issued its Notice of Rejection of Proposed Decision. On December 14, 2016, the Board issued its Order Fixing Date for Submission of Argument. After review of the entire administrative record including the transcript, and written argument from Respondent, the Board hereby renders its decision in this matter.

FACTUAL FINDINGS

Background

1. In 2013, the Board licensed respondent as a registered nurse.¹ There is no history of discipline against respondent's license.

2. On September 8, 2015, complainant signed the accusation seeking the revocation or suspension of respondent's license. The accusation alleged respondent was convicted of adulteration of a drug held for sale, a crime substantially related to the qualifications, functions, or duties of a registered nurse. As additional causes for discipline, complainant alleged respondent committed unprofessional conduct by: unlawfully obtaining a controlled substance; obtaining a controlled substance by fraud; and engaging in theft, dishonesty, fraud, or deceit.

2015 Conviction for Adulteration of a Drug Held for Sale

3. On July 1, 2015, in the United States District Court, Southern District of California, upon a guilty plea, respondent was convicted of a felony violation of sections 331(k) and 333(a)(2) of title 21 of the United States Code, adulteration of a drug held for sale.² As a result of the conviction, the court placed respondent on supervised probation.³

4. The circumstances of respondent's conviction were obtained from the plea agreement between respondent and the United States Attorney. Between October 2014 and March 25, 2015, respondent was employed as a registered nurse at a fertility clinic in La Jolla. As part of her duties, respondent administered meperidine hydrochloride to her patients.⁴ During this time period, respondent removed the meperidine hydrochloride from the vials with a syringe and refilled the vials with saline. To conceal the adulteration, she glued the caps back on the vials and put them back into the safe. The parties agreed that the adulterated drug was administered to more than 50 but less than 250 patients at the clinic; however, there was no evidence that respondent's conduct led to the harm of any patient, or involved a conscious or reckless risk of death or serious bodily injury.

Respondent's Testimony

¹ Complainant did not submit a license certification. However, based on respondent's testimony, clear and convincing evidence established that she is a licensed registered nurse in the State of California, subject to the jurisdiction of the Board.

² The statute makes it unlawful to adulterate a drug held for sale after shipment in interstate commerce with the intent to defraud and mislead.

³ The conviction records did not contain any sentencing information other than respondent was placed on supervised probation. According to the plea agreement, it was recommended that respondent's probation require the completion of a six-month residential drug treatment program. Respondent testified she was placed on probation for three years and required to perform 100 hours of community service.

⁴ Meperidine hydrochloride is the generic form of Demerol, an opioid analgesic containing meperidine, a schedule II controlled substance under Health and Safety Code section 11055, subdivision (c)(17), and a dangerous drug under Business and Professions Code section 4022.

5. Respondent is 25 years old. She received her Bachelor of Science degree in Nursing from St. Louis University in 2013. She obtained her nursing license in Texas before moving to San Diego in July 2013. After becoming licensed in California, she began working as a registered nurse at a fertility clinic in early 2014. She worked at the clinic for approximately a year-and-a-half.

Respondent testified that she has suffered from migraines and fibromyalgia since she was young. She controlled both by staying active and living a healthy life style; however, they would both be aggravated from stress. Respondent said when she was working at the clinic she was under a great deal of pain. One day, she administered Demerol to a patient. Because she was busy, she inadvertently put the unused Demerol in her pocket. She discovered it when she went home, and because she was in a lot of pain, she self-administered the Demerol. Respondent believed she was almost a year into her time at the clinic when she first used Demerol. She said the Demerol relieved her pain, and she started to use it more and more. Respondent said she became addicted and began replacing the drug inside the vials with saline at the fertility clinic, in order to avoid detection. She described her addiction as a "vicious cycle," as she built up a tolerance for the drug. Eventually, her employer became aware and launched an investigation. Her employer reported her to federal authorities.

6. Respondent admitted she is an addict. In June 2015 she entered CRASH (Community Resources and Self Help), an intensive six-month residential drug treatment program. Following her release in December 2015, she completed CRASH's aftercare program. She attends Alcoholics Anonymous (AA) four times a week and works with a sponsor. She is currently working the tenth step of her 12-step program. She sees a therapist once every two weeks. She claims a sobriety date of June 13, 2015. Respondent remains on criminal probation, where she is subject to random drug tests. She said she has never had a positive test.

Respondent was articulate in describing her addiction. She said she began experimenting with substances at an early age, including marijuana and cocaine at the age of 13. As a child, she would also use her parents' pain medications. In college, she abused alcohol. Respondent described triggers for abusing substances. She said she learned a great deal in her treatment program, which was extremely intense. When she encounters stress, she now talks to her sponsor, goes to a meeting, or does something good for herself. She focuses on staying active and healthy. She understands the nature of addiction and that she cannot be around controlled substances.

7. Respondent said when she notified the board of her conviction she agreed to enter the board's diversion program. In preparation for the program, she placed her license on inactive status. However, she was later told that due to her conviction, she was ineligible for the program. She has since reinstated her license and taken required continuing education. She described her love of nursing and believes she is good at helping others and relating to her patients. She would like to teach nursing and said she had excellent instructors who inspired her. She said she would comply with any terms of probation, including

restrictions on practice where controlled substances are present. She would like to obtain a job doing nursing research or working as a study coordinator.

8. Respondent's testimony was sincere, contrite, and credible. She expressed regret about her actions and understood that they had the potential to place patients at risk, as well as subjecting them to inadequate pain relief. She became emotional when she spoke about her job at the fertility clinic and the joy she felt helping her patients. She understands the breach of trust she committed between her patients and her employer. However, she also credited the events for turning her life around. She spoke genuinely of the skills and information she learned at CRASH and now understands the power of her addiction. In a written statement, she wrote that the program was the most difficult, yet rewarding, six months of her life. She believes that the information she obtained makes her safer to practice than ever. She understands that recovery is a continuous process but believes she is now in a place to prevent her addiction from taking over her life.

Psychological Evaluation

9. Respondent submitted a psychological evaluation by Clark R. Clipson, Ph.D., dated May 11, 2016.⁵ Dr. Clipson evaluated respondent on April 18, 2016, at the request of respondent's attorney. Dr. Clipson corroborated much of respondent's testimony about her early addiction, the circumstances leading to her conviction, and her recovery. Dr. Clipson also reviewed respondent's medical records, which indicated a history of migraines dating back to an early age.

Personal Reference Letters

10. James Martin is respondent's father and special agent with the Department of Homeland Security. He wrote about the difficulty, given his professional background, in accepting what respondent had done. However, he believes the time respondent spent in CRASH has been invaluable for respondent. She moved back to Houston to be close to family and friends and has attended support groups and complied with probation. Mr. Martin wrote that respondent enjoys strong family support.

11. Marcie McDonald is a former high school administrator, has known respondent since she was a child, and attested to respondent's good character. She was shocked to hear of respondent's drug use and misconduct, but believes respondent has come through the events a stronger person. She said she would trust her with the care of her own child and believes respondent is committed to excellence in the nursing profession.

12. Jan Franco, R.N., has known respondent since December 2015. Ms. Franco wrote that she has been sober for 27 years and is also a registered nurse. She and respondent have been close, and they both attend AA meetings together. Ms. Franco knows respondent's

⁵ Dr. Clipson did not appear to testify; his evaluation is hearsay and was only used to supplement or explain other evidence. (Gov. Code, § 11513, subd. (d).) Thus, his professional opinions were not considered.

sponsor and can attest to respondent working the steps. Although she has not worked with respondent in a nursing environment, she would trust respondent with her care in a hospital or clinic.

13. John Morris, LMSW-ACP, LMFT, is a marriage and family therapist who has worked with respondent and her family on and off for the past 10 years. Following respondent's completion of CRASH, Mr. Morris has worked with respondent individually. Mr. Morris wrote that respondent has not made excuses for her behavior and has assumed "ownership and accountability" for her actions. He said respondent has recognized her disease, and he believes she has made a lifelong commitment to remain in recovery and surround herself with positive role models. He wrote that respondent is "a person of considerable depth and fortitude not normally found in an individual her age."

14. Kelly Charles, R.N. and Rebekah Rauckman both attended college with respondent. They praised respondent's personality and concern about others. They said her misconduct did not reflect who she is as a person, and they both continue to provide her with support in her recovery.

Additional Documents

15. Respondent submitted a performance review for the year 2014. The review indicated that respondent met and exceeded job expectations and she was "a good employee who demonstrates enthusiasm when doing her work."

16. Respondent submitted a certificate of completion for the CRASH six-month residential program and aftercare program.

17. Respondent submitted completion certificates for 33 hours of continuing education.

Cost Recovery

18. Complainant submitted certification of costs and requested cost recovery pursuant to Business and Professions Code section 125.3. The certification by the deputy attorney general contained information related to services provided by the Office of the Attorney General and included costs of prosecution totaling \$5,315. The certification complied with the requirements of California Code of Regulations, title 1, section 1042, subdivision (b). The evidence established that the costs incurred are reasonable. Respondent did not address her ability to pay costs.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Complainant bears the burden of establishing that the charges in the accusation are true. (Evid. Code § 115.) The standard of proof in an administrative action seeking to suspend or revoke a professional license is "clear and convincing evidence." (*Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853,856.) Clear and convincing evidence requires a finding of high probability, or evidence so clear as to leave no substantial doubt; it requires sufficiently strong evidence to command the unhesitating assent of every reasonable mind. (*Katie V. v. Sup. Ct.* (2005) 130 Cal.App.4th 586, 594.)

Relevant Statutory Authority

2. Business and Professions Code section 2761, subdivision (a), authorizes the board to discipline a licensee for unprofessional conduct. Subdivision (f) authorizes the board to discipline a licensee for conviction of any offense substantially related to the qualifications, functions, and duties of a registered nurse.

3. Business and Professions Code section 2762, subdivision (a), provides that it is unprofessional conduct to unlawfully obtain a controlled substance or dangerous drug. Subdivision (c) provides it is unprofessional conduct to be convicted of an offense "involving the prescription, consumption, or self-administration" of a controlled substance or dangerous drug.

Substantial Relationship

4. California Code of Regulations, title 16, section 1444, provides:

A conviction or act shall be considered to be substantially related to the qualifications, functions, or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

(c) Theft, dishonesty, fraud, or deceit...

5. Respondent adulterated vials containing meperidine hydrochloride by replacing the drug with saline and returning the vials to stock to be administered to patients. Such action involved theft, dishonesty, fraud, and deceit, and is substantially related to the qualifications, functions, and duties of a registered nurse. (Cal. Code Regs., tit 16, § 1444, subd. (c).)

Cause Exists to Impose Discipline

6. Cause exists to impose discipline against respondent's license, pursuant to Business and Professions Code section 2761, subdivision (f), based on

respondent's conviction of a crime substantially related to the qualifications, functions, and duties of a registered nurse (first cause for discipline).

7. Cause exists to impose discipline against respondent's license, pursuant to Business and Professions Code section 2761, subdivision (a), on the grounds that respondent committed unprofessional conduct under Business and Professions Code section 2762, subdivision (a), for unlawfully obtaining meperidine hydrochloride, a schedule II controlled substance (second cause for discipline).

8. Cause exists to impose discipline against respondent's license, pursuant to Business and Professions Code section 2761, subdivision (a), on the grounds that respondent committed unprofessional conduct under Business and Professions Code section 2762, subdivision (c), for having been convicted of a criminal offense involving the self-administration of a controlled substance (third cause for discipline).

9. Cause does not exist to impose discipline against respondent's license pursuant to Business and Professions Code section 2761, subdivision (a), as it relates to California Code of Regulations, title 16, section 1444, subdivision (c). The cited regulation provides criteria for determining whether a conviction is substantially related, not definitions of unprofessional conduct. Therefore, the fourth cause for discipline did not provide an independent basis for license discipline and is dismissed.

Measure of Discipline

10. The purpose of an administrative proceeding seeking the revocation or suspension of a professional license is not to punish the individual; the purpose is to protect the public from dishonest, immoral, disreputable or incompetent practitioners. (*Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

11. California Code of Regulations, title 16, section 1445, subdivision (b), states when considering the suspension or revocation of a license, the board will consider the nature and severity of the act or offense; the total criminal record; the time that has elapsed since commission of the offense; whether the licensee has complied with any terms or parole, probation, restitution or any other sanctions lawfully imposed against such person; evidence of expungement; and any evidence of rehabilitation submitted.

12. Under California Code of Regulations, title 16, section 1444.5, the board shall consider the disciplinary guidelines entitled "Recommended Guidelines for Disciplinary Orders and Conditions of Probation (10/02)." Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the board determines that the facts of the particular case warrant such a deviation.

13. Under the disciplinary guidelines, the recommended penalty for a violation of Business and Professions Code section 2761, subdivision (f), is revocation. As for Section 2762, subdivisions (b) and (c), in the cases where respondent replaced, withheld, or substituted drugs on the job, the minimum recommended discipline is revocation. However,

in the case of a first time offense with documented evidence of an on-going rehabilitation program, the minimum discipline is stayed revocation with three years' probation.

14. Rehabilitation is a state of mind. The law looks with favor on one who has achieved reformation and regeneration. (*Hightower v. State Bar* (1983) 34 Cal.3d 150, 157.) The absence of a prior disciplinary record is a mitigating factor. (*Chefsky v. State Bar* (1984) 36 Cal.3d 116, 132, fn. 10.) Remorse and cooperation are mitigating factors. (*In re Demergian* (1989) 48 Cal.3d 284, 296.) While a candid admission of misconduct and full acknowledgement of wrongdoing may be a necessary step in the rehabilitation process, it is only a first step. A truer indication of rehabilitation is presented if an individual demonstrates by sustained conduct over an extended period of time that he is once again fit to practice. (*In re Trebilcock* (1981) 30 Cal.3d 312, 315-316.)

15. Applying the factors set forth in California Code of Regulations, title 16, section 1445, respondent suffered a felony conviction for adulteration of drugs, a serious offense. A little more than a year has passed since she was convicted, and she remains on criminal probation. Respondent has complied with all conditions of her criminal probation. Respondent has no other arrests or convictions on her criminal record.

16. Respondent's conduct was serious and betrayed the trust of her patients and employer. Although there was no evidence that any patient suffered actual harm, the potential for harm was great. Not only were patients deprived of pain medication, there was potential for contamination that could have had serious consequences. On the other hand, the incident appears to be in stark contrast to respondent's character, and underscores the power of addiction. Respondent has no other criminal record, and this conviction is inconsistent with her otherwise law-abiding lifestyle. Respondent appears to have benefited from her time in intensive rehabilitation and takes her commitment to sobriety seriously.

Given the recent nature of the conviction; the fact that respondent is still on criminal probation; the significant danger respondent posed to public safety, and the relatively short period of sobriety, license revocation would normally be required for public protection. However, because of the inroads she has made in the treatment of her addiction, respondent has sufficiently demonstrated that she can safely practice as a nurse with a probationary license under strict conditions and limitations. In addition to the optional conditions for substance abusers, respondent shall be prohibited from practicing in any facility where she would have access to controlled substances.⁶ These conditions are appropriately tailored to reflect respondent's circumstances and are sufficient for public protection.

Cost Recovery

17. Complainant is seeking recovery of the reasonable costs of prosecution. The California Supreme Court in *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 held that a regulation imposing costs for investigation and enforcement under

⁶ These limitations are addressed in probation condition numbers (7) and (9).

California Code of Regulations, title 16, section 317.5, which is similar to Business and Professions Code section 125.3, did not violate due process. But it was incumbent on the board in that case to exercise discretion to reduce or eliminate costs awards in a manner such that costs imposed did not “deter [licensees] with potentially meritorious claims or defenses from exercising their right to hearing.”

The Supreme Court set forth factors to consider in deciding whether to reduce or eliminate costs: whether the licensee used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed; whether the licensee had a “subjective” good faith belief in the merits of his or her position; whether the licensee raised a “colorable challenge” to the proposed discipline; whether the licensee had the financial ability to make payments; and whether the scope of the investigation was appropriate in light of the alleged misconduct. The reasoning of *Zuckerman* must be applied to Business and Professions Code section 125.3 since the language in the cost recovery regulation at issue in *Zuckerman* and Section 125.3 are substantially the same.

Applying the *Zuckerman* criteria, respondent had a subjective good faith in the merits of her position, raised a “colorable challenge” to the proposed discipline, and received a reduction in the severity of the discipline imposed. As such, costs are reduced to \$2,500.

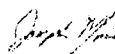
ORDER

IT IS HEREBY ORDERED that Registered Nurse License Number 849972 issued to respondent Sarah Elizabeth Martin is REVOKED.

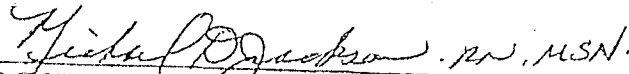
If and when respondent’s license is reinstated, she shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 125.3 in the amount of \$2,500. Respondent shall be permitted to pay these costs in a payment plan approved by the Board. Nothing in this provision shall be construed to prohibit the Board from reducing the amount of cost recovery upon reinstatement of the license.

This Decision shall become effective on April 5, 2017.

IT IS SO ORDERED March 6, 2017.

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

JOSEPH L. MILLER, PhD, MSN, RN
Executive Officer




MICHAEL JACKSON, MSN, RN, CEN, PHN
BOARD PRESIDENT
BOARD OF REGISTERED NURSING
STATE OF CALIFORNIA

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8 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 2016-240

13 SARAH ELIZABETH MARTIN
14 3565 1st Avenue, Apartment G
San Diego, CA 92103

A C C U S A T I O N

15 Registered Nurse License No. 849972

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

23 2. On August 23, 2013, the Board of Registered Nursing issued Registered Nurse
24 License Number 849972 to Sarah Elizabeth Martin (Respondent). The Registered Nurse License
25 was in full force and effect at all times relevant to the charges brought herein and will expire on
26 December 31, 2016, unless renewed.

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1 JURISDICTION

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

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

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

12 STATUTORY PROVISIONS

13 6. Section 482 of the Code states:

14 Each board under the provisions of this code shall develop criteria to
15 evaluate the rehabilitation of a person when:

- 16 (a) Considering the denial of a license by the board under Section 480;
or
17 (b) Considering suspension or revocation of a license under Section
18 490.

19 Each board shall take into account all competent evidence of rehabilitation
furnished by the applicant or licensee.

20 7. Section 493 of the Code states:

21 Notwithstanding any other provision of law, in a proceeding conducted by
22 a board within the department pursuant to law to deny an application for a license
23 or to suspend or revoke a license or otherwise take disciplinary action against a
24 person who holds a license, upon the ground that the applicant or the licensee has
25 been convicted of a crime substantially related to the qualifications, functions, and
26 duties of the licensee in question, the record of conviction of the crime shall be
27 conclusive evidence of the fact that the conviction occurred, but only of that fact,
and the board may inquire into the circumstances surrounding the commission of
the crime in order to fix the degree of discipline or to determine if the conviction
is substantially related to the qualifications, functions, and duties of the licensee in
question.

28 As used in this section, 'license' includes 'certificate,' 'permit,'
'authority,' and 'registration.'

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8. 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, which includes, but is not limited to, the following:

....

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

....

9. Section 2762 of the Code states:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], 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.

....

(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.

....

10. Section 2765 of the Code states:

A plea or verdict of guilty or a conviction following a plea of *nolo contendere* made to a charge substantially related to the qualifications, functions and duties of a registered nurse is deemed to be a conviction within the meaning of this article. The board may order the license or certificate suspended or revoked, or may decline to issue a license or certificate, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

REGULATORY PROVISIONS

11. California Code of Regulations, title 16, section 1444, states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

- (a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.
- (b) Failure to comply with any mandatory reporting requirements.
- (c) Theft, dishonesty, fraud, or deceit.
- (d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

12. California Code of Regulations, title 16, section 1445 states:

.....
(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
- (6) Evidence, if any, of rehabilitation submitted by the licensee.

COST RECOVERY

13. 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, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

DRUG

14. Meperidine Hydrochloride contains meperidine, a schedule II controlled substance under Health and Safety Code Section 11055, subdivision (c)(17) and a dangerous drug under Business of Professions Code section 4022.

FIRST CAUSE FOR DISCIPLINE

(May 28, 2015 Conviction for Adulteration of Drug Held for Sale After Shipment in Interstate Commerce in and Between October 2014 and March 25, 2015)

15. Respondent has subjected her Registered Nurse License to disciplinary action under Code section 2761, subdivisions (a) and (f), in that she was convicted of a crime that is substantially related to the qualifications, functions, and duties of a licensed registered nurse. The circumstances are as follows:

a. On May 28, 2015, in a criminal proceeding entitled *United States of America, Plaintiff v. Sarah Elizabeth Martin Defendant*, in the United States District Court for the Southern District of California, Criminal Case Number 15CR1394-JLS, Respondent was convicted by plea of guilty of violating Title 21 of the United States Code, sections 331, subdivision (k) and 333, subdivision (a)(2), adulteration of drug held for sale.

b. As a result of the conviction, on August 21, 2015, Respondent was sentenced to supervised probation for a term of six months in a residential drug rehabilitation center, *nunc pro tunc* to June 15, 2015, the date Respondent started attending CRASH¹.

c. The facts that led to the criminal conviction are that between and in October 2014 and on March 25, 2015, Respondent adulterated vials containing meperidine hydrochloride, while such vials were being held for sale after shipment in interstate commerce, with intent to defraud or mislead.

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¹ CRASH is a 12-step model residential recovery program that requires random testing, located in San Diego.

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2 SECOND CAUSE FOR DISCIPLINE

3 (Unprofessional Conduct - Obtain A Controlled Substance In Violation Of Law)

4 16. Respondent has subjected her Registered Nurse License to disciplinary action
5 under Code section 2762, subdivision (a), in that between and in October 2014 and on March 25,
6 2015, as described in paragraph 15, above, Respondent obtained controlled substances as defined
7 in Division 10 of the Health and Safety Code, by adulterating vials containing meperidine
8 hydrochloride that were being held for sale.

9 THIRD CAUSE FOR DISCIPLINE

10 (Unprofessional Conduct - Conviction for Obtaining Controlled Substance By Fraud)

11 17. Respondent has subjected her Registered Nurse License to disciplinary action
12 under Code section 2762, subdivision (c), in that on May 28, 2015, as described in paragraph 15,
13 above, Respondent was convicted of a criminal offense involving the adulteration of controlled
14 substances.

15 FOURTH CAUSE FOR DISCIPLINE

16 (Unprofessional Conduct - Theft, Dishonesty, Fraud, or Deceit)

17 18. Respondent has subjected her Registered Nurse License to disciplinary action
18 under Code section 2761, subdivision (a), in that she engaged in unprofessional conduct as
19 defined in title 16 of the California Code of Regulations, section 1444, subdivision (c), when
20 Respondent adulterated vials containing meperidine hydrochloride, while such vials were being
21 held for sale after shipment in interstate commerce, with intent to defraud or mislead, as
22 described in paragraph 15, above.

23 PRAYER

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

26 1. Revoking or suspending Registered Nurse License Number 849972, issued to
27 Sarah Elizabeth Martin;

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2. Ordering Sarah Elizabeth Martin 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; and

3. Taking such other and further action as deemed necessary and proper.

DATED: September 08, 2015

fr Louise R. Bailey
LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

SD2015801166
81109101.doc

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

BOARD OF REGISTERED NURSING

Joseph L. Morris
Joseph L. Morris, PhD, MSN, RN
Executive Officer



IN THE MATTER OF PERMANENT
REGISTERED NURSE
LICENSE NUMBER 841455
ISSUED TO
SARAH ELIZABETH MARTIN,
RESPONDENT

§ BEFORE THE TEXAS
§ BOARD OF NURSING
§ ELIGIBILITY AND
§ DISCIPLINARY COMMITTEE



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.
Heather Chapman
Executive Director of the Board

ORDER OF THE BOARD

TO: SARAH ELIZABETH MARTIN
3219 RIDGE GREEN
KINGWOOD, TX 77345

During open meeting held in Austin, Texas, on **September 12, 2017**, the Texas Board of Nursing Eligibility and Disciplinary Committee (hereinafter "Committee") heard the above-styled case, based on the failure of the Respondent to appear as required by 22 TEX. ADMIN. CODE Ch. 213.

The Committee finds that notice of the facts or conduct alleged to warrant disciplinary action has been provided to Respondent in accordance with Texas Government Code § 2001.054(c) and Respondent has been given an opportunity to show compliance with all the requirements of the Nursing Practice Act, Chapter 301 of the Texas Occupations Code, for retention of Respondent's license(s) to practice nursing in the State of Texas.

The Committee finds that the Formal Charges were properly initiated and filed in accordance with section 301.458, Texas Occupations Code.

The Committee finds that after proper and timely Notice regarding the violations alleged in the Formal Charges was given to Respondent in this matter, Respondent has failed to appear in accordance with 22 TEX. ADMIN. CODE Ch. 213.

The Committee finds that the Board is authorized to enter a default order pursuant to Texas Government Code § 2001.056.

The Committee, after review and due consideration, adopts the proposed findings of fact and conclusions of law as stated in the Formal Charges which are attached hereto and incorporated by

reference for all purposes and the Staff's recommended sanction of revocation by default. This Order will be properly served on all parties and all parties will be given an opportunity to file a motion for rehearing [22 TEX. ADMIN.CODE § 213.16(j)]. All parties have a right to judicial review of this Order.

All proposed findings of fact and conclusions of law filed by any party not specifically adopted herein are hereby denied.

NOW, THEREFORE, IT IS ORDERED that Permanent Registered Nurse License Number 841455, previously issued to SARAH ELIZABETH MARTIN, to practice nursing in the State of Texas be, and the same is/are hereby, REVOKED.

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

Entered this 17th day of September, 2017.

TEXAS BOARD OF NURSING



BY:

KATHERINE A. THOMAS, MN, RN, FAAN
EXECUTIVE DIRECTOR ON BEHALF OF SAID BOARD

Attachment: Formal Charge filed July 14, 2017.

d17r(RN)(2016.05.11)

Re: Permanent Registered Nurse License Number 841455
Issued to SARAH ELIZABETH MARTIN
DEFAULT ORDER - REVOKE

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of September, 2017, a true and correct copy of the foregoing DEFAULT ORDER was served and addressed to the following person(s), as follows:

Via USPS Certified Mail, Return Receipt Requested
SARAH ELIZABETH MARTIN
3219 RIDGE GREEN
KINGWOOD, TX 77345

Via USPS First Class Mail

BY:



KATHERINE A. THOMAS, MN, RN, FAAN
EXECUTIVE DIRECTOR ON BEHALF OF SAID BOARD

In the Matter of § BEFORE THE TEXAS
Permanent Registered Nurse §
License Number 841455 §
Issued to SARAH ELIZABETH MARTIN, §
Respondent § BOARD OF NURSING

FORMAL CHARGES

This is a disciplinary proceeding under Section 301.452(b), Texas Occupations Code. Respondent, SARAH ELIZABETH MARTIN, is a Registered Nurse holding License Number 841455, 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 August 21, 2015, Respondent entered a plea of Guilty to and was convicted of ADULTERATION OF DRUG HELD SALE, a felony offense committed between October of 2014 and on or about March 25, 2015, in the United States District Court, Southern District of California, under Case No. 15CR1394-JLS. As a result of the conviction, Respondent was placed on probation for a period of three (3) years, and was ordered to pay a fine.

The above action constitutes grounds for disciplinary action in accordance with Section 301.452(b)(3)&(10), Texas Occupations Code, and is a violation of 22 TEX. ADMIN. CODE §217.12(13).

CHARGE II.

On or about August 5, 2017, Respondent's license to practice professional nursing in the State of California was issued a REVOCATION by the California State Board of Nursing, San Diego, California. A copy of the Findings of Fact, Conclusions of Law, and Agreed Order dated August 5, 2017, is attached and incorporated, by reference, as part of this Order.

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.

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 Guidelines for Criminal Conduct; and on adopted policies related to Substance Use Disorders and Other Alcohol and Drug Related Conduct, which can be found under the "Discipline & Complaints; Board Policies & Guidelines" section of the Board's website, www.bon.texas.gov.

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CONTINUED ON NEXT PAGE.

NOTICE IS GIVEN that, based on the Formal Charges, the Board will rely on the Disciplinary Matrix, located at 22 TEX. ADMIN. CODE §213.33(b), which can be found under the "Discipline & Complaints; Board Policies & Guidelines" section of the Board's website, www.bon.texas.gov.

Filed this 14 day of July, 2017.

TEXAS BOARD OF NURSING



James W. Johnston, General Counsel
Board Certified - Administrative Law
Texas Board of Legal Specialization
State Bar No. 10838300

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

In the Matter of the Accusation Against:

SARAH ELIZABETH MARTIN,

Registered Nursing License No. 849972

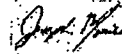
Respondent.

Case No. 2016-240

OAH No. 2015120515

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

BOARD OF REGISTERED NURSING


Joseph L. Morris, Ph.D., MSN, RN
Executive Officer



DECISION AFTER REJECTION

Adam L. Berg, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Diego, California, on August 9, 2016.

Agustin F. Lopez II, Deputy Attorney General, Department of Justice, State of California, represented complainant, Louise R. Bailey, M.Ed., R.N., Executive Officer, Board of Registered Nursing, Department of Consumer Affairs, State of California.

Stacie L. Patterson, Attorney at Law, represented respondent, Sarah Elizabeth Martin.

The matter was submitted on August 9, 2016.

On August 25, 2016, Administrative Law Judge Adam L. Berg issued his Proposed Decision. On November 14, 2016, the Board issued its Notice of Rejection of Proposed Decision. On December 14, 2016, the Board issued its Order Fixing Date for Submission of Argument. After review of the entire administrative record including the transcript, and written argument from Respondent, the Board hereby renders its decision in this matter.

FACTUAL FINDINGS

Background

1. In 2013, the Board licensed respondent as a registered nurse.¹ There is no history of discipline against respondent's license.

2. On September 8, 2015, complainant signed the accusation seeking the revocation or suspension of respondent's license. The accusation alleged respondent was convicted of adulteration of a drug held for sale, a crime substantially related to the qualifications, functions, or duties of a registered nurse. As additional causes for discipline, complainant alleged respondent committed unprofessional conduct by: unlawfully obtaining a controlled substance; obtaining a controlled substance by fraud; and engaging in theft, dishonesty, fraud, or deceit.

2015 Conviction for Adulteration of a Drug Held for Sale

3. On July 1, 2015, in the United States District Court, Southern District of California, upon a guilty plea, respondent was convicted of a felony violation of sections 331(k) and 333(a)(2) of title 21 of the United States Code, adulteration of a drug held for sale.² As a result of the conviction, the court placed respondent on supervised probation.³

4. The circumstances of respondent's conviction were obtained from the plea agreement between respondent and the United States Attorney. Between October 2014 and March 25, 2015, respondent was employed as a registered nurse at a fertility clinic in La Jolla. As part of her duties, respondent administered meperidine hydrochloride to her patients.⁴ During this time period, respondent removed the meperidine hydrochloride from the vials with a syringe and refilled the vials with saline. To conceal the adulteration, she glued the caps back on the vials and put them back into the safe. The parties agreed that the adulterated drug was administered to more than 50 but less than 250 patients at the clinic; however, there was no evidence that respondent's conduct led to the harm of any patient, or involved a conscious or reckless risk of death or serious bodily injury.

Respondent's Testimony

¹ Complainant did not submit a license certification. However, based on respondent's testimony, clear and convincing evidence established that she is a licensed registered nurse in the State of California, subject to the jurisdiction of the Board.

² The statute makes it unlawful to adulterate a drug held for sale after shipment in interstate commerce with the intent to defraud and mislead.

³ The conviction records did not contain any sentencing information other than respondent was placed on supervised probation. According to the plea agreement, it was recommended that respondent's probation require the completion of a six-month residential drug treatment program. Respondent testified she was placed on probation for three years and required to perform 100 hours of community service.

⁴ Meperidine hydrochloride is the generic form of Demerol, an opioid analgesic containing meperidine, a schedule II controlled substance under Health and Safety Code section 11055, subdivision (c)(17), and a dangerous drug under Business and Professions Code section 4022.

5. Respondent is 25 years old. She received her Bachelor of Science degree in Nursing from St. Louis University in 2013. She obtained her nursing license in Texas before moving to San Diego in July 2013. After becoming licensed in California, she began working as a registered nurse at a fertility clinic in early 2014. She worked at the clinic for approximately a year-and-a-half.

Respondent testified that she has suffered from migraines and fibromyalgia since she was young. She controlled both by staying active and living a healthy life style; however, they would both be aggravated from stress. Respondent said when she was working at the clinic she was under a great deal of pain. One day, she administered Demerol to a patient. Because she was busy, she inadvertently put the unused Demerol in her pocket. She discovered it when she went home, and because she was in a lot of pain, she self-administered the Demerol. Respondent believed she was almost a year into her time at the clinic when she first used Demerol. She said the Demerol relieved her pain, and she started to use it more and more. Respondent said she became addicted and began replacing the drug inside the vials with saline at the fertility clinic, in order to avoid detection. She described her addiction as a "vicious cycle," as she built up a tolerance for the drug. Eventually, her employer became aware and launched an investigation. Her employer reported her to federal authorities.

6. Respondent admitted she is an addict. In June 2015 she entered CRASH (Community Resources and Self Help), an intensive six-month residential drug treatment program. Following her release in December 2015, she completed CRASH's aftercare program. She attends Alcoholics Anonymous (AA) four times a week and works with a sponsor. She is currently working the tenth step of her 12-step program. She sees a therapist once every two weeks. She claims a sobriety date of June 13, 2015. Respondent remains on criminal probation, where she is subject to random drug tests. She said she has never had a positive test.

Respondent was articulate in describing her addiction. She said she began experimenting with substances at an early age, including marijuana and cocaine at the age of 13. As a child, she would also use her parents' pain medications. In college, she abused alcohol. Respondent described triggers for abusing substances. She said she learned a great deal in her treatment program, which was extremely intense. When she encounters stress, she now talks to her sponsor, goes to a meeting, or does something good for herself. She focuses on staying active and healthy. She understands the nature of addiction and that she cannot be around controlled substances.

7. Respondent said when she notified the board of her conviction she agreed to enter the board's diversion program. In preparation for the program, she placed her license on inactive status. However, she was later told that due to her conviction, she was ineligible for the program. She has since reinstated her license and taken required continuing education. She described her love of nursing and believes she is good at helping others and relating to her patients. She would like to teach nursing and said she had excellent instructors who inspired her. She said she would comply with any terms of probation, including

restrictions on practice where controlled substances are present. She would like to obtain a job doing nursing research or working as a study coordinator.

8. Respondent's testimony was sincere, contrite, and credible. She expressed regret about her actions and understood that they had the potential to place patients at risk, as well as subjecting them to inadequate pain relief. She became emotional when she spoke about her job at the fertility clinic and the joy she felt helping her patients. She understands the breach of trust she committed between her patients and her employer. However, she also credited the events for turning her life around. She spoke genuinely of the skills and information she learned at CRASH and now understands the power of her addiction. In a written statement, she wrote that the program was the most difficult, yet rewarding, six months of her life. She believes that the information she obtained makes her safer to practice than ever. She understands that recovery is a continuous process but believes she is now in a place to prevent her addiction from taking over her life.

Psychological Evaluation

9. Respondent submitted a psychological evaluation by Clark R. Clipson, Ph.D., dated May 11, 2016.⁵ Dr. Clipson evaluated respondent on April 18, 2016, at the request of respondent's attorney. Dr. Clipson corroborated much of respondent's testimony about her early addiction, the circumstances leading to her conviction, and her recovery. Dr. Clipson also reviewed respondent's medical records, which indicated a history of migraines dating back to an early age.

Personal Reference Letters

10. James Martin is respondent's father and special agent with the Department of Homeland Security. He wrote about the difficulty, given his professional background, in accepting what respondent had done. However, he believes the time respondent spent in CRASH has been invaluable for respondent. She moved back to Houston to be close to family and friends and has attended support groups and complied with probation. Mr. Martin wrote that respondent enjoys strong family support.

11. Marcie McDonald is a former high school administrator, has known respondent since she was a child, and attested to respondent's good character. She was shocked to hear of respondent's drug use and misconduct, but believes respondent has come through the events a stronger person. She said she would trust her with the care of her own child and believes respondent is committed to excellence in the nursing profession.

12. Jan Franco, R.N., has known respondent since December 2015. Ms. Franco wrote that she has been sober for 27 years and is also a registered nurse. She and respondent have been close, and they both attend AA meetings together. Ms. Franco knows respondent's

⁵ Dr. Clipson did not appear to testify; his evaluation is hearsay and was only used to supplement or explain other evidence. (Gov. Code, § 11513, subd. (d).) Thus, his professional opinions were not considered.

sponsor and can attest to respondent working the steps. Although she has not worked with respondent in a nursing environment, she would trust respondent with her care in a hospital or clinic.

13. John Morris, LMSW-ACP, LMFT, is a marriage and family therapist who has worked with respondent and her family on and off for the past 10 years. Following respondent's completion of CRASH, Mr. Morris has worked with respondent individually. Mr. Morris wrote that respondent has not made excuses for her behavior and has assumed "ownership and accountability" for her actions. He said respondent has recognized her disease, and he believes she has made a lifelong commitment to remain in recovery and surround herself with positive role models. He wrote that respondent is "a person of considerable depth and fortitude not normally found in an individual her age."

14. Kelly Charles, R.N. and Rebekah Rauckman both attended college with respondent. They praised respondent's personality and concern about others. They said her misconduct did not reflect who she is as a person, and they both continue to provide her with support in her recovery.

Additional Documents

15. Respondent submitted a performance review for the year 2014. The review indicated that respondent met and exceeded job expectations and she was "a good employee who demonstrates enthusiasm when doing her work."

16. Respondent submitted a certificate of completion for the CRASH six-month residential program and aftercare program.

17. Respondent submitted completion certificates for 33 hours of continuing education.

Cost Recovery

18. Complainant submitted certification of costs and requested cost recovery pursuant to Business and Professions Code section 125.3. The certification by the deputy attorney general contained information related to services provided by the Office of the Attorney General and included costs of prosecution totaling \$5,315. The certification complied with the requirements of California Code of Regulations, title 1, section 1042, subdivision (b). The evidence established that the costs incurred are reasonable. Respondent did not address her ability to pay costs.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Complainant bears the burden of establishing that the charges in the accusation are true. (Evid. Code § 115.) The standard of proof in an administrative action seeking to suspend or revoke a professional license is "clear and convincing evidence." (*Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853,856.) Clear and convincing evidence requires a finding of high probability, or evidence so clear as to leave no substantial doubt; it requires sufficiently strong evidence to command the unhesitating assent of every reasonable mind. (*Katie V. v. Sup. Ct.* (2005) 130 Cal.App.4th 586, 594.)

Relevant Statutory Authority

2. Business and Professions Code section 2761, subdivision (a), authorizes the board to discipline a licensee for unprofessional conduct. Subdivision (f) authorizes the board to discipline a licensee for conviction of any offense substantially related to the qualifications, functions, and duties of a registered nurse.

3. Business and Professions Code section 2762, subdivision (a), provides that it is unprofessional conduct to unlawfully obtain a controlled substance or dangerous drug. Subdivision (c) provides it is unprofessional conduct to be convicted of an offense "involving the prescription, consumption, or self-administration" of a controlled substance or dangerous drug.

Substantial Relationship

4. California Code of Regulations, title 16, section 1444, provides:

A conviction or act shall be considered to be substantially related to the qualifications, functions, or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

(c) Theft, dishonesty, fraud, or deceit...

5. Respondent adulterated vials containing meperidine hydrochloride by replacing the drug with saline and returning the vials to stock to be administered to patients. Such action involved theft, dishonesty, fraud, and deceit, and is substantially related to the qualifications, functions, and duties of a registered nurse. (Cal. Code Regs., tit 16, § 1444, subd. (c).)

Cause Exists to Impose Discipline

6. Cause exists to impose discipline against respondent's license, pursuant to Business and Professions Code section 2761, subdivision (f), based on

respondent's conviction of a crime substantially related to the qualifications, functions, and duties of a registered nurse (first cause for discipline).

7. Cause exists to impose discipline against respondent's license, pursuant to Business and Professions Code section 2761, subdivision (a), on the grounds that respondent committed unprofessional conduct under Business and Professions Code section 2762, subdivision (a), for unlawfully obtaining meperidine hydrochloride, a schedule II controlled substance (second cause for discipline).

8. Cause exists to impose discipline against respondent's license, pursuant to Business and Professions Code section 2761, subdivision (a), on the grounds that respondent committed unprofessional conduct under Business and Professions Code section 2762, subdivision (c), for having been convicted of a criminal offense involving the self-administration of a controlled substance (third cause for discipline).

9. Cause does not exist to impose discipline against respondent's license pursuant to Business and Professions Code section 2761, subdivision (a), as it relates to California Code of Regulations, title 16, section 1444, subdivision (c). The cited regulation provides criteria for determining whether a conviction is substantially related, not definitions of unprofessional conduct. Therefore, the fourth cause for discipline did not provide an independent basis for license discipline and is dismissed.

Measure of Discipline

10. The purpose of an administrative proceeding seeking the revocation or suspension of a professional license is not to punish the individual; the purpose is to protect the public from dishonest, immoral, disreputable or incompetent practitioners. (*Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

11. California Code of Regulations, title 16, section 1445, subdivision (b), states when considering the suspension or revocation of a license, the board will consider the nature and severity of the act or offense; the total criminal record; the time that has elapsed since commission of the offense; whether the licensee has complied with any terms or parole, probation, restitution or any other sanctions lawfully imposed against such person; evidence of expungement; and any evidence of rehabilitation submitted.

12. Under California Code of Regulations, title 16, section 1444.5, the board shall consider the disciplinary guidelines entitled "Recommended Guidelines for Disciplinary Orders and Conditions of Probation (10/02)." Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the board determines that the facts of the particular case warrant such a deviation.

13. Under the disciplinary guidelines, the recommended penalty for a violation of Business and Professions Code section 2761, subdivision (f), is revocation. As for Section 2762, subdivisions (b) and (c), in the cases where respondent replaced, withheld, or substituted drugs on the job, the minimum recommended discipline is revocation. However,

in the case of a first time offense with documented evidence of an on-going rehabilitation program, the minimum discipline is stayed revocation with three years' probation.

14. Rehabilitation is a state of mind. The law looks with favor on one who has achieved reformation and regeneration. (*Hightower v. State Bar* (1983) 34 Cal.3d 150, 157.) The absence of a prior disciplinary record is a mitigating factor. (*Chefsky v. State Bar* (1984) 36 Cal.3d 116, 132, fn. 10.) Remorse and cooperation are mitigating factors. (*In re Demergian* (1989) 48 Cal.3d 284, 296.) While a candid admission of misconduct and full acknowledgement of wrongdoing may be a necessary step in the rehabilitation process, it is only a first step. A truer indication of rehabilitation is presented if an individual demonstrates by sustained conduct over an extended period of time that he is once again fit to practice. (*In re Trebilcock* (1981) 30 Cal.3d 312, 315-316.)

15. Applying the factors set forth in California Code of Regulations, title 16, section 1445, respondent suffered a felony conviction for adulteration of drugs, a serious offense. A little more than a year has passed since she was convicted, and she remains on criminal probation. Respondent has complied with all conditions of her criminal probation. Respondent has no other arrests or convictions on her criminal record.

16. Respondent's conduct was serious and betrayed the trust of her patients and employer. Although there was no evidence that any patient suffered actual harm, the potential for harm was great. Not only were patients deprived of pain medication, there was potential for contamination that could have had serious consequences. On the other hand, the incident appears to be in stark contrast to respondent's character, and underscores the power of addiction. Respondent has no other criminal record, and this conviction is inconsistent with her otherwise law-abiding lifestyle. Respondent appears to have benefited from her time in intensive rehabilitation and takes her commitment to sobriety seriously.

Given the recent nature of the conviction; the fact that respondent is still on criminal probation; the significant danger respondent posed to public safety, and the relatively short period of sobriety, license revocation would normally be required for public protection. However, because of the inroads she has made in the treatment of her addiction, respondent has sufficiently demonstrated that she can safely practice as a nurse with a probationary license under strict conditions and limitations. In addition to the optional conditions for substance abusers, respondent shall be prohibited from practicing in any facility where she would have access to controlled substances.⁶ These conditions are appropriately tailored to reflect respondent's circumstances and are sufficient for public protection.

Cost Recovery

17. Complainant is seeking recovery of the reasonable costs of prosecution. The California Supreme Court in *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 held that a regulation imposing costs for investigation and enforcement under

⁶ These limitations are addressed in probation condition numbers (7) and (9).

California Code of Regulations, title 16, section 317.5, which is similar to Business and Professions Code section 125.3, did not violate due process. But it was incumbent on the board in that case to exercise discretion to reduce or eliminate costs awards in a manner such that costs imposed did not "deter [licensees] with potentially meritorious claims or defenses from exercising their right to hearing."

The Supreme Court set forth factors to consider in deciding whether to reduce or eliminate costs: whether the licensee used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed; whether the licensee had a "subjective" good faith belief in the merits of his or her position; whether the licensee raised a "colorable challenge" to the proposed discipline; whether the licensee had the financial ability to make payments; and whether the scope of the investigation was appropriate in light of the alleged misconduct. The reasoning of *Zuckerman* must be applied to Business and Professions Code section 125.3 since the language in the cost recovery regulation at issue in *Zuckerman* and Section 125.3 are substantially the same.

Applying the *Zuckerman* criteria, respondent had a subjective good faith in the merits of her position, raised a "colorable challenge" to the proposed discipline, and received a reduction in the severity of the discipline imposed. As such, costs are reduced to \$2,500.

ORDER

IT IS HEREBY ORDERED that Registered Nurse License Number 849972 issued to respondent Sarah Elizabeth Martin is REVOKED.

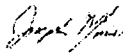
If and when respondent's license is reinstated, she shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 125.3 in the amount of \$2,500. Respondent shall be permitted to pay these costs in a payment plan approved by the Board. Nothing in this provision shall be construed to prohibit the Board from reducing the amount of cost recovery upon reinstatement of the license.

This Decision shall become effective on April 5, 2017.

IT IS SO ORDERED March 6, 2017.

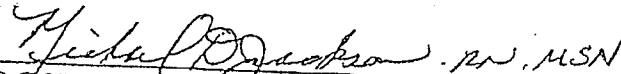
I hereby certify the foregoing to be a true copy of the documents on file in our office.

BOARD OF REGISTERED NURSING



Joseph L. Martin, PhD, MSN, RN
Executive Officer




MICHAEL JACKSON, MSN, RN, CEN, PHN
BOARD PRESIDENT
BOARD OF REGISTERED NURSING
STATE OF CALIFORNIA

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

12 In the Matter of the Accusation Against:
13 SARAH ELIZABETH MARTIN
14 3565 1st Avenue, Apartment G
San Diego, CA 92103
15 Registered Nurse License No. 849972
16 Respondent.

Case No. 2016-240
A C C U S A T I O N

17
18 Complainant alleges:

19 **PARTIES**

- 20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
22 Consumer Affairs.
23 2. On August 23, 2013, the Board of Registered Nursing issued Registered Nurse
24 License Number 849972 to Sarah Elizabeth Martin (Respondent). The Registered Nurse License
25 was in full force and effect at all times relevant to the charges brought herein and will expire on
26 December 31, 2016, unless renewed.

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28 ///

1 JURISDICTION

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

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

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

12 STATUTORY PROVISIONS

13 6. Section 482 of the Code states:

14 Each board under the provisions of this code shall develop criteria to
15 evaluate the rehabilitation of a person when:

16 (a) Considering the denial of a license by the board under Section 480;
or

17 (b) Considering suspension or revocation of a license under Section
18 490.

19 Each board shall take into account all competent evidence of rehabilitation
furnished by the applicant or licensee.

20 7. Section 493 of the Code states:

21 Notwithstanding any other provision of law, in a proceeding conducted by
22 a board within the department pursuant to law to deny an application for a license
23 or to suspend or revoke a license or otherwise take disciplinary action against a
24 person who holds a license, upon the ground that the applicant or the licensee has
25 been convicted of a crime substantially related to the qualifications, functions, and
26 duties of the licensee in question, the record of conviction of the crime shall be
27 conclusive evidence of the fact that the conviction occurred, but only of that fact,
and the board may inquire into the circumstances surrounding the commission of
the crime in order to fix the degree of discipline or to determine if the conviction
is substantially related to the qualifications, functions, and duties of the licensee in
question.

28 As used in this section, 'license' includes 'certificate,' 'permit,'
'authority,' and 'registration.'

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8. 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, which includes, but is not limited to, the following:

....

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

....

9. Section 2762 of the Code states:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], 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.

....

(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.

....

10. Section 2765 of the Code states:

A plea or verdict of guilty or a conviction following a plea of *nolo contendere* made to a charge substantially related to the qualifications, functions and duties of a registered nurse is deemed to be a conviction within the meaning of this article. The board may order the license or certificate suspended or revoked, or may decline to issue a license or certificate, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

REGULATORY PROVISIONS

11. California Code of Regulations, title 16, section 1444, states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

(b) Failure to comply with any mandatory reporting requirements.

(c) Theft, dishonesty, fraud, or deceit.

(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

12. California Code of Regulations, title 16, section 1445 states:

(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee.

COST RECOVERY

13. 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, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

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DRUG

14. Meperidine Hydrochloride contains meperidine, a schedule II controlled substance under Health and Safety Code Section 11055, subdivision (c)(17) and a dangerous drug under Business of Professions Code section 4022.

FIRST CAUSE FOR DISCIPLINE

(May 28, 2015 Conviction for Adulteration of Drug Held for Sale After Shipment in Interstate Commerce in and Between October 2014 and March 25, 2015)

15. Respondent has subjected her Registered Nurse License to disciplinary action under Code section 2761, subdivisions (a) and (f), in that she was convicted of a crime that is substantially related to the qualifications, functions, and duties of a licensed registered nurse. The circumstances are as follows:

a. On May 28, 2015, in a criminal proceeding entitled *United States of America, Plaintiff v. Sarah Elizabeth Martin Defendant*, in the United States District Court for the Southern District of California, Criminal Case Number 15CR1394-JLS, Respondent was convicted by plea of guilty of violating Title 21 of the United States Code, sections 331, subdivision (k) and 333, subdivision (a)(2), adulteration of drug held for sale.

b. As a result of the conviction, on August 21, 2015, Respondent was sentenced to supervised probation for a term of six months in a residential drug rehabilitation center, *nunc pro tunc* to June 15, 2015, the date Respondent started attending CRASH¹.

c. The facts that led to the criminal conviction are that between and in October 2014 and on March 25, 2015, Respondent adulterated vials containing meperidine hydrochloride, while such vials were being held for sale after shipment in interstate commerce, with intent to defraud or mislead.

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¹ CRASH is a 12-step model residential recovery program that requires random testing, located in San Diego.

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2. Ordering Sarah Elizabeth Martin 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; and

3. Taking such other and further action as deemed necessary and proper.

DATED: September 08, 2015

fr Louise Bailey
LOUISE R. BAILEY, M.Ed., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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

BOARD OF REGISTERED NURSING

Joseph L. Morris
Joseph L. Morris, PhD, MSN, RN
Executive Officer

