



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

Katherine A. Thomas
Executive Director of the Board

BEFORE THE TEXAS BOARD OF NURSING

In the Matter of	§	ELIGIBILITY
ESTHER RUTH OLVERA,	§	AGREED ORDER
PETITIONER for Eligibility for Licensure	§	
	§	

On this day the Texas Board of Nursing, hereinafter referred to as the Board, considered the Endorsement Application, which has been processed as a Petition for Declaratory Order, hereinafter referred to as the Petition, pursuant to 22 TEX. ADMIN. CODE §217.5(f) & §213.30, and supporting documents filed by ESTHER RUTH OLVERA, hereinafter referred to as Petitioner, requesting a determination of eligibility for licensure in compliance with Sections 301.252, 301.257 and 301.260, Texas Occupations Code, and the Board's Rules at 22 TEX. ADMIN. CODE §217.5(f) and §213.30, together with any documents and information gathered by staff and Petitioner's Certification contained herein.

Information received by the Board produced evidence that Petitioner may be ineligible for licensure pursuant to Sections 301.452(b)(3)&(9) and 301.453, Texas Occupations Code.

Petitioner waived notice and hearing and agreed to the entry of this Agreed Order approved by Katherine A. Thomas, MN, RN, FAAN, Executive Director, on May 14, 2020.

FINDINGS OF FACT

1. On or about February 6, 2020, Petitioner submitted the Petition requesting a determination of eligibility for licensure.
2. Petitioner received a Certificate in Vocational Nursing from Casa Loma College, Van Nuys, California, on April 1, 2002.
3. Petitioner completed the petition and answered Yes to the question which reads as follows:
"For any criminal offense, including those pending appeal, have you:
A. been convicted of a misdemeanor?"

- B. been convicted of a felony?*
 - C. pled nolo contendere, no contest, or guilty?*
 - D. received deferred adjudication?*
 - E. been placed on community supervision or court-ordered probation, whether or not adjudicated guilty?*
 - F. been sentenced to serve jail or prison time? court-ordered confinement?*
 - G. been granted pre-trial diversion?*
 - H. been arrested or have any pending criminal charges?*
 - I. been cited or charged with any violation of the law?*
 - J. been subject of a court-martial; Article 15 violation; or received any form of military judgment/punishment/action?*
- (You may only exclude Class C misdemeanor traffic violations.)*

4. Petitioner disclosed the following criminal history, to wit:

On December 8, 2016, Petitioner entered a plea of Nolo Contendere to and was convicted of count one (1) of violating Vehicle Code section 21352, subdivision (a), DRIVING WHILE UNDER THE INFLUENCE OF ALCOHOL, a felony offense, count two (2) of violating Vehicle Code section 23550, DRIVING UNDER THE INFLUENCE OF ALCOHOL WITHIN TEN YEARS OF THREE OTHER DUI OFFENSES, a felony offense.

As a result of the conviction, on count one (1), Petitioner was given a suspended three (3) year state prison term and was placed on five (5) years formal probation under terms and conditions including serving one hundred eighty (180) days in the Los Angeles County Jail, and an additional three (3) days in lieu of a three hundred ninety dollars (\$390.00) fine.

As a result of the conviction, on count two (2), Petitioner was given a suspended sentence and was placed on five (5) years formal probation, with the condition that she abstain from any use of alcohol.

- 5. There is no evidence of any subsequent criminal conduct.
- 6. Petitioner completed the Petition and answered Yes to the question which reads as follows: *"Has any licensing authority refused to issue you a license or ever revoked, annulled, cancelled, accepted surrender of, suspended, placed on probation, refused to renew a professional license, certificate or multi-state privilege held by you now or previously, or ever fined, censured, reprimanded or otherwise disciplined you?"*
- 7. On February 21, 2018, Petitioner was issued a Decision before the Board of Vocational Nursing and Psychiatric Technicians of Consumer Affairs State of California, to revoke her nursing license with the revocation stayed and Petitioner's Vocational Nurse license be

placed on probation for a period of five (5) years. A copy of the February 21, 2018, Decision is attached and incorporated, by reference, as part of this Order.

8. After considering the action taken by the Board of Vocational Nursing and Psychiatric Technicians Department of Consumer Affairs State of California, along with Petitioner's subsequent conduct, the Executive Director is satisfied that Petitioner should be able to meet the requirements of the Nursing Practice Act, the Board's Rules and Regulations, and generally accepted standards of nursing practice.
9. Petitioner completed the Petition and answered No to the question which reads as follows:
"Within the past five (5) years have you been addicted to and/or treated for the use of alcohol or any other drug?"
10. Petitioner completed a six (6) month residential alcohol and drug treatment program at Walter Hoving House on July 4, 2017.
11. The safety of patients and the public requires that all persons licensed to practice nursing be fit, sober, and able to consistently practice nursing in autonomous roles under demanding and stressful conditions.
12. The Executive Director considered evidence of Petitioner's past behavior in light of the factors set out in 22 TEX. ADMIN. CODE §213.27 and determined that Petitioner currently demonstrates the criteria required for licensure.
13. The Executive Director considered evidence of Petitioner's past criminal conduct in light of the considerations and criteria provided in 22 TEX. ADMIN. CODE §§213.28 & 213.33, and, if applicable, Chapter 53, Section 53.001 *et seq.*, Texas Occupations Code.
14. The Executive Director considered evidence of Petitioner's substance use disorder, and subsequent rehabilitation as provided in 22 TEX. ADMIN. CODE §213.29 and in accordance with 22 TEX. ADMIN. CODE §213.33.
15. The Executive Director's review of the grounds for potential ineligibility has been made on the basis of Petitioner's disclosures.
16. Petitioner has been advised by the Board that any information found to be incomplete, incorrect or misleading to the Board or a subsequent discovery of a basis of ineligibility will be considered by the Board and may result in an ultimate determination of ineligibility or the later revocation of a license obtained through fraud or deceit.
17. Petitioner shall immediately notify the Board of any fact or event that could constitute a ground of ineligibility for licensure under Section 301.452(b), Texas Occupations Code.

CONCLUSIONS OF LAW

1. Pursuant to Texas Occupations Code, Sections 301.451-301.555, the Board has jurisdiction over this matter.
2. On or about February 6, 2020, Petitioner submitted the Petition requesting a determination of eligibility for licensure in compliance with Sections 301.252, 301.257, and 301.260, Texas Occupations Code, and the Board's Rules at 22 TEX. ADMIN. CODE §217.5(f) and §213.30.
3. Petitioner's history reflects conduct which may constitute grounds for denial of a license under Section 301.452(b)(3)&(9), Texas Occupations Code.
4. The Board may probate the denial of a license under conditions for a specified term pursuant to Section 301.453, Texas Occupations Code.
5. The Board may license an individual who has been previously convicted, adjudged guilty by a court, pled guilty or pled nolo contendere to any crime whether or not a sentence was imposed upon consideration of the factors set out in 22 TEX. ADMIN. CODE §213.28 and evaluating the direct relationship to nursing according to 22 TEX. ADMIN. CODE §213.28 and, as applicable, Chapter 53, Section 53.001 *et seq.*, Texas Occupations Code.
6. The Board may license an individual who has a history of substance use disorder after consideration of the criteria set out in 22 TEX. ADMIN. CODE §213.29 if the Board determines the individual does not pose a direct threat to the health and safety of patients or the public.
7. The Board may license an individual upon evaluation of the factors in 22 TEX. ADMIN. CODE §213.27, and pursuant to 22 TEX. ADMIN. CODE §213.33, if the Board is satisfied that the individual is able to consistently conform her conduct to the requirements of the Nursing Practice Act, the Board's Rules and Regulations, and generally accepted standards of nursing practice.
8. This Order is conditioned upon the accuracy and completeness of Petitioner's disclosures. Any subsequently discovered discrepancies will result in investigation and possible disciplinary action, up to revocation of Petitioner's license(s).
9. Pursuant to Section 301.463(d), Texas Occupations Code, this Agreed Order is a settlement agreement under Rule 408, Texas Rules of Evidence, in civil or criminal litigation.

TERMS OF ORDER

I. ELIGIBILITY FOR LICENSURE AND APPLICABILITY

IT IS THEREFORE AGREED and ORDERED that the PETITION is hereby **GRANTED**, and upon payment of any required fees and meeting all other applicable requirements, PETITIONER SHALL be issued the applicable license to practice nursing in the State of Texas in accordance with the terms of this Order.

- A. Until successfully completed, any and all licenses issued to Petitioner shall be subject to the terms of this Order.
- B. Until successfully completed, this Order SHALL be applicable to PETITIONER'S nurse licensure compact privileges, if any, to practice nursing in the State of Texas.
- C. As a result of this Order, PETITIONER'S license will be designated "single state" and PETITIONER may not work outside the State of Texas in another nurse licensure compact party state.

II. COMPLIANCE WITH LAW

While under the terms of this Order, PETITIONER agrees to comply in all respects with the Nursing Practice Act, Texas Occupations Code, §§301.001 *et seq.*, the Rules and Regulations Relating to Nursing Education, Licensure and Practice, 22 TEX. ADMIN. CODE §§211.1 *et seq.*, and this Eligibility Agreed Order.

III. REMEDIAL EDUCATION COURSE(S)

In addition to any continuing education requirements the Board may require for licensure renewal, PETITIONER SHALL successfully complete the following remedial education course(s) **within one (1) year of licensure, unless otherwise specifically indicated:**

- A. **A Board-approved course in Texas nursing jurisprudence and ethics** that shall be a minimum of six (6) hours in length. The course's content shall include the

Nursing Practice Act, standards of practice, documentation of care, principles of nursing ethics, confidentiality, professional boundaries, and the Board's Disciplinary Sanction Policies regarding: Sexual Misconduct; Fraud, Theft, and Deception; Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder; and Lying and Falsification. Courses focusing on malpractice issues will not be accepted. Home study and video programs will not be approved.

- B. **The course "Sharpening Critical Thinking Skills,"** a 3.6 contact hour online program provided by the National Council of State Boards of Nursing (NCSBN) Learning Extension.

In order to receive credit for completion of this/these course(s), PETITIONER SHALL CAUSE the instructor to submit a Verification of Course Completion form or SHALL submit the continuing education certificate, as applicable, to the attention of Monitoring at the Board's office. PETITIONER SHALL first obtain Board approval of any course prior to enrollment if the course is not being offered by a pre-approved provider. *Information about Board-approved courses and Verification of Course Completion forms are available from the Board at www.bon.texas.gov/compliance.*

IV. EMPLOYMENT REQUIREMENTS

In order to complete the terms of this Order, PETITIONER must work as a nurse in the State of Texas, providing direct patient care in a clinical healthcare setting, for a minimum of sixty-four (64) hours per month for twelve (12) quarterly periods [three (3) years] of employment. This requirement will not be satisfied until twelve (12) quarterly periods of employment as a nurse have elapsed. Periods of unemployment or of employment that do not require the use of a registered nurse (RN) or a vocational nurse (LVN) license, as appropriate, will not apply to this period and will not count towards completion of this requirement.

- A. **Notifying Present and Future Employers:** PETITIONER SHALL notify each present employer in nursing and present each with a complete copy of this Order, including all attachments, if any, within five (5) days of receipt of this Order. While under the terms of this Order, PETITIONER SHALL notify all future employers in nursing and present each with a complete copy of this Order, including all attachments, if any, prior to accepting an offer of employment.

- B. **Notification of Employment Forms:** PETITIONER SHALL CAUSE each present employer in nursing to submit the Board's "Notification of Employment" form to the Board's office within ten (10) days of receipt of this Order. PETITIONER SHALL CAUSE each future employer to submit the Board's "Notification of Employment form" to the Board's office within five (5) days of employment as a nurse.
- C. **No Night or Rotating Shifts, Overtime, or On-Call:** For the first year [four (4) quarters] of employment as a Nurse under this Order, PETITIONER SHALL NOT practice as a nurse on the night shift, rotate shifts, work overtime, accept on-call assignments, or be used for coverage on any unit other than the identified, predetermined unit(s) to which PETITIONER is regularly assigned.
- D. **No Critical Care:** For the first year [four (4) quarters] of employment as a Nurse under this Order, PETITIONER SHALL NOT practice as a nurse in any critical care area. Critical care areas include, but are not limited to, intensive care units, emergency rooms, operating rooms, telemetry units, recovery rooms, and labor and delivery units.
- E. **No Administration of Controlled Medications:** For the first year [four (4) quarters] of employment as a Nurse under this Order, PETITIONER SHALL NOT administer or have any contact with controlled substances, Nubain, Stadol, Dalgan, Ultram, Propofol, or other synthetic opiates.
- F. **Direct Supervision:** For the first year [four (4) quarters] of employment as a Nurse under this order, PETITIONER SHALL be directly supervised by a Registered Nurse, if licensed as a Registered Nurse, or by a Licensed Vocational Nurse or a Registered Nurse, if licensed as a Licensed Vocational Nurse. Direct supervision requires another nurse, as applicable, to be working on the same unit as PETITIONER and immediately available to provide assistance and intervention. PETITIONER SHALL work only on regularly assigned, identified and predetermined unit(s). PETITIONER SHALL NOT be employed by a nurse registry, temporary nurse employment agency, hospice, or home health agency. PETITIONER SHALL NOT be self-employed or contract for services. Multiple employers are prohibited.
- G. **Indirect Supervision:** For the remainder of the stipulation/probation period, PETITIONER SHALL be supervised by a Registered Nurse, if licensed as a Registered Nurse, or by a Licensed Vocational Nurse or a Registered Nurse, if licensed as a Licensed Vocational Nurse, who is on the premises. The supervising nurse is not required to be on the same unit or ward as PETITIONER, but should be on the facility grounds and readily available to provide assistance and intervention if necessary. The supervising nurse shall have a minimum of two (2) years of experience in the same or similar practice setting to which the

PETITIONER is currently working. PETITIONER SHALL work only regularly assigned, identified and predetermined unit(s). PETITIONER SHALL NOT be employed by a nurse registry, temporary nurse employment agency, hospice, or home health agency. PETITIONER SHALL NOT be self-employed or contract for services. Multiple employers are prohibited.

- H. **Nursing Performance Evaluations:** PETITIONER SHALL CAUSE each employer to submit, on forms provided to the PETITIONER by the Board, periodic reports as to PETITIONER'S capability to practice nursing. These reports shall be completed by the individual who supervises the PETITIONER and these reports shall be submitted by the supervising individual to the office of the Board at the end of each three (3) month quarterly period for twelve (12) quarters [three (3) years] of employment as a nurse.

V. DRUG AND ALCOHOL RELATED REQUIREMENTS

- A. While under the terms of this Order, PETITIONER SHALL **abstain from the use of alcohol, nalbuphine, propofol and all controlled substances**, except as prescribed by a licensed practitioner for a legitimate purpose. If prescribed, PETITIONER SHALL CAUSE the licensed practitioner to submit a written report identifying the medication, dosage and the date the medication was prescribed. The report shall be submitted directly to the office of the Board by the prescribing practitioner, within ten (10) days of the date of the prescription. In the event that the prescriptions for controlled substances are required for periods of two (2) weeks or longer, the Board may require and PETITIONER SHALL submit to a pain management and/or chemical dependency evaluation by a Board approved evaluator. The performing evaluator must submit a written report meeting the Board's requirements to the Board's office within thirty (30) days from the Board's request.
- B. While working as a nurse under the terms of this Order, PETITIONER SHALL **submit to random periodic screens for alcohol, nalbuphine, propofol and all controlled substances**. The Board will provide instructions on how to enroll in the Board's drug and alcohol testing program following the entry of this Order and screening will begin when PETITIONER obtains employment and submits the Notification of Employment form to the Board.
- For the first three (3) month [1st quarter] period PETITIONER works as a nurse under the terms of this Order, random screens shall be performed at least once per week.
 - For the next three (3) month [2nd quarter] period, random screens shall be performed at least twice per month.
 - For the next six (6) month period [3rd & 4th quarters], random screens shall be performed at least once per month.

- For the remainder of the probation period, if any, random screens shall be performed at least once every three (3) month quarterly period.

All random screens SHALL BE conducted through urinalysis. Any test result for a period of time in which the PETITIONER is not working as a nurse under the terms of this Order will not count towards satisfaction of this requirement. All screens shall be properly monitored and produced in accordance with the Board's policy on Random Drug Testing. A complete chain of custody shall be maintained for each specimen obtained and analyzed. PETITIONER SHALL be responsible for the costs of all random drug screening during the stipulation/probation period.

Specimens shall be screened for any or all of the following substances and/or their metabolites:

Amphetamine	Methamphetamine	MDMA
MDA	Alprazolam	Diazepam
Alpha-o-alprazolam	Alpha-Hydroxytriazolam	Clonazepam
Desmethyldiazepam	Lorazepam	Midazolam
Oxazepam	Temazepam	Amobarbital
Butabarbital	Butalbital	Pentobarbital
Phenobarbital	Secobarbital	Codeine
Hydrocodone	Hydromorphone	Methadone
Morphine	Opiates	Oxycodone
Oxymorphone	Propoxyphene	Cannabinoids
Cocaine	Phencyclidine	Ethanol
Heroin	Fentanyl	Tramadol
Meperidine	Carisoprodol	Butorphanol
Nalbuphine	Ketamine	Propofol

Upon enrollment in the Board's drug and alcohol testing program, **PETITIONER SHALL, on a daily basis, call or login online to the Board's designated drug and alcohol testing vendor to determine whether or not PETITIONER has been selected to produce a specimen for screening that day** and SHALL, if selected, produce a specimen for screening that same day at an approved testing location and/or comply with any additional instructions from the vendor or Board staff. Further, **a Board representative may appear** at the PETITIONER'S place of employment at any time during the probation period and require PETITIONER to produce a specimen for screening.

Consequences of Positive or Missed Screens. Any positive result for which PETITIONER does not have a valid prescription or refusal to submit to a drug or alcohol screen may subject PETITIONER to further disciplinary action, including TEMPORARY SUSPENSION pursuant to Section 301.4551, Texas Occupations Code, or REVOCATION of Petitioner's license(s) and nurse licensure compact privileges, if any, to practice nursing in the State of Texas. Further, failure to report for a drug screen, excessive dilute specimens, or failure to call in for a drug screen

may be considered the same as a positive result or refusal to submit to a drug or alcohol screen.

- C. While under the terms of this Order, PETITIONER SHALL **attend at least two (2) support group meetings each week**, one of which must be for substance abuse and provided by Alcoholics Anonymous, Narcotics Anonymous, or another comparable recovery program that has been pre-approved by the Board. PETITIONER SHALL provide acceptable evidence of attendance. Acceptable evidence shall consist of a written record of at least: the date of each meeting; the name of each group attended; and the signature and printed name of the chairperson of each group attended by PETITIONER. PETITIONER SHALL submit the required evidence on the forms provided by the Board at the end of every three (3) month quarterly period. No duplications, copies, third party signatures, or any other substitutions will be accepted as evidence.

VI. PROBATION REPORTS

PETITIONER SHALL CAUSE his/her probation officer to submit written reports on forms provided to the PETITIONER by the Board. The reports shall indicate the PETITIONER'S compliance with the court ordered probation. The reports shall be furnished each and every three (3) month period until PETITIONER is released from probation.

VII. SUBSEQUENT CRIMINAL PROCEEDINGS

IT IS FURTHER AGREED, should the PETITIONER'S conduct, as outlined in the findings of fact of this Eligibility Agreed Order, result in subsequent judicial action, including a deferred disposition, PETITIONER may be subject to further disciplinary action, up to, and including, revocation of PETITIONER'S license(s) to practice nursing in the State of Texas.

VIII. RESTORATION OF UNENCUMBERED LICENSE(S)

Upon full compliance with the terms of this Eligibility Agreed Order, all encumbrances will be removed from PETITIONER'S license(s) and/or privilege(s) to practice nursing in the State of Texas and, subject to meeting all existing eligibility

requirements in Texas Occupations Code Chapter 304, Article III, PETITIONER may be eligible for nurse licensure compact privileges, if any.

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PETITIONER'S CERTIFICATION

I am the Petitioner in this matter. I have fully and truthfully disclosed all of my past conduct which could constitute grounds for licensure ineligibility, and I have caused a complete and accurate criminal history to be submitted to the Texas Board of Nursing from each jurisdiction in which I have been adjudged guilty by way of conviction or deferred order. I certify that my past behavior, except as disclosed in my application/petition, has been in conformity with the Board's character rule. I have provided the Board with complete and accurate documentation of my past conduct in violation of the penal law of any jurisdiction which was disposed of through any procedure short of conviction, such as: conditional discharge, deferred adjudication or dismissal. I have no criminal prosecution pending in any jurisdiction.

In connection with my application, I acknowledge that I have read and I understand Sections 301.157(d), 301.252, 301.253, 301.257, 301.258, 301.260, 301.452, and 301.453, Texas Occupations Code, and Chapter 53, Section 53.001 *et seq.*, Texas Occupations Code, and 22 TEX. ADMIN. CODE §§213.27, 213.28, 213.29, and 213.30. I agree with all terms of this Order, including the Findings of Fact and Conclusions of Law and any stipulations as set out in this Order. I acknowledge that this Order is stipulated and I understand that I am not eligible to receive a Temporary Permit to practice nursing. I agree to inform the Board of any other fact or event that could constitute a ground for denial of licensure prior to accepting any license from the Texas Board of Nursing.

I understand that if I fail to comply with all terms and conditions of this Order, I will be subject to investigation and disciplinary sanction, including TEMPORARY SUSPENSION pursuant to Section 301.4551, Texas Occupations Code, and/or REVOCATION of my license(s) and/or nurse licensure compact privileges, if any, to practice nursing in the State of Texas, as a consequence of my noncompliance.

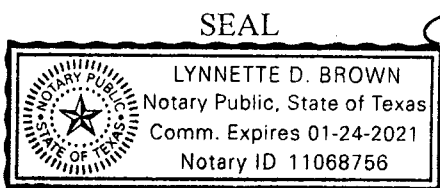
I understand that I can be represented by an attorney in this matter. I waive representation by counsel, notice, administrative hearing, and judicial review of this Order and request that the Texas Board of Nursing ratify this Order.

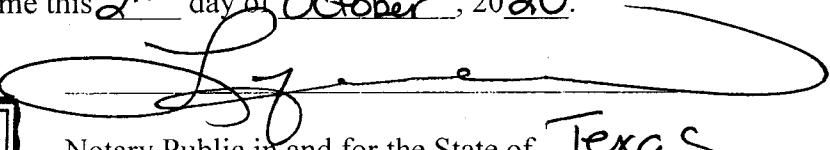
Signed this 2 day of October, 2020.



ESTHER RUTH OLVERA, PETITIONER

Sworn to and subscribed before me this 2nd day of October, 2020.




Notary Public in and for the State of Texas

WHEREFORE, PREMISES CONSIDERED, the Texas Board of Nursing does hereby ratify and adopt the Eligibility Agreed Order that was signed on the 2nd day of October, 2020, by ESTHER RUTH OLVERA, PETITIONER for Eligibility for Licensure, and said Eligibility Agreed Order is final.

Effective this 10th day of November, 2020.

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

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

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BEFORE THE
BOARD OF VOCATIONAL NURSING
AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation and Petition
To Revoke Probation Against:

Case No. VN-2013-1756

OAH No. 2017041247

ESTHER RUTH OLVERA
3420 Olive St., Apt. B
Huntington Park, CA 90255

Vocational Nurse License No.
VN 207906

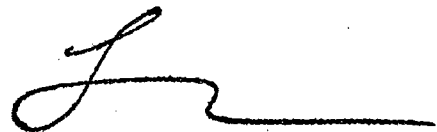
Respondent.

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the
Board of Vocational Nursing and Psychiatric Technicians as the Final Decision in the above entitled
matter.

This Decision shall become effective on February 21, 2018.

IT IS SO ORDERED this 18th day of January 2018.



Tammy Endozo, VN
President

BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation and Petition to
Revoke Probation Against:

ESTHER RUTH OLVERA

Vocational Nurse License
Number VN 207906,

Respondent.

Case No. VN-2013-1756

OAH Case No. 2017041247

PROPOSED DECISION

Glynda B. Gomez, Administrative Law Judge, Office of Administrative Hearings,
heard this matter on November 16, 2017, in Los Angeles, California.

Supervising Deputy Attorney Elyse Davidson represented Cheryl C. Anderson, M.S.,
R.N., Interim Executive Officer (Complainant), Board of Vocational Nursing and Psychiatric
Technicians (Board). Respondent Esther Ruth Olvera (Respondent), represented herself.

Evidence was received and the matter was submitted on November 16, 2017.

FACTUAL FINDINGS

1. Complainant filed the Amended Accusation while acting in her official
capacity.

2. The Board issued vocational nurse license number VN 207906 to Respondent
on January 30, 2004. The license is active and renewed through September 30, 2019.

3. On May 24, 2013, in Los Angeles Superior Court Case Number 3MP01862,
Respondent was convicted, on her plea of nolo contendere, of violating Vehicle Code section
23152, subdivision (b), driving while having 0.08 percent or more, by weight, blood alcohol
level, a misdemeanor. Respondent was sentenced to 13 days in jail and placed on probation
for 36 months on terms and conditions including attending a 3-month First Offender Driving

Under the Influence program. The facts and circumstances surrounding the convictions are that on February 20, 2013, officers were called to a domestic disturbance where they found Respondent inebriated and shouting and banging on her ex-husband's door. During the investigation, the officers discovered an open beer bottle in Respondent's car console. When arrested, Respondent's breath alcohol level was .16 percent.

4. On January 13, 2014, in Los Angeles Superior Court Case Number 3MP08999, Respondent was convicted, on her plea of nolo contendere, of violating Vehicle Code section 20002, subdivision (a), hit and run with property damage, a misdemeanor. Respondent was given a suspended sentence and placed on 36 months of probation on terms and conditions including the payment of fines, fees, and assessments. The facts and circumstances of the conviction are that on August 10, 2013, Respondent fell asleep behind the wheel after working a night shift and rear-ended another vehicle, pushing that vehicle into a third vehicle. Respondent initially stopped, but then left the scene.

5. On February 14, 2014, in Los Angeles Superior Court Case Number 3JB08454, Respondent was convicted, on her plea of nolo contendere, of violating Vehicle Code section 23152, subdivision (b), driving while having 0.08 percent or more, by weight, blood alcohol level, a misdemeanor. Respondent was sentenced to 40 days in jail, ordered to complete the Hospital and Morgue program and placed on probation for four years on terms and conditions including the payments of fines, fees and assessments. The facts and circumstances of the conviction are that, on October 17, 2013, a California Highway Patrol (CHP) officer stopped Respondent for a traffic violation after observing her vehicle weaving between lanes. While speaking to Respondent, the officer detected the smell of alcoholic beverages in the vehicle. He also observed Respondent to have bloodshot and watery eyes and to have slow and slurred speech. Respondent told the officer that she had consumed two beers. Respondent failed field sobriety tests. At the time of her arrest, Respondent provided breath samples with a breath alcohol content level of .15 percent and .14 percent.

6. On May 16, 2014, in Los Angeles Superior Court Case Number 4JB02443, Respondent was convicted, on her plea of nolo contendere, of violating Vehicle Code sections 23152, subdivision (b), driving while having 0.08 percent or more, by weight, blood alcohol level, a misdemeanor and 14601.2, subdivision (a), driving while privileges are suspended or revoked with knowledge, a misdemeanor. Respondent was sentenced to one year in jail. The facts and circumstances of the convictions are that, on February 6, 2014, a CHP officer stopped Respondent for a traffic violation after having observed her vehicle weaving and straddling the lane lines on the freeway. Respondent provided the CHP officer her expired driver's license and advised him that her license was suspended. The CHP officer observed that Respondent's eyes were bloodshot and watery, and her breath smelled of alcohol. Respondent failed field sobriety tests and a Preliminary Alcohol Screening test showed Respondent's breath alcohol content level at .19 percent on the first reading and .18 percent on the second reading.

7. Also on May 16, 2014, at Respondent's request, the court entered a Nunc Pro Tunc order consolidating all of Respondent's pending criminal cases, terminating all

probation and sentencing Respondent to six months in jail to run concurrent with her one-year jail sentence for the May 16, 2014 conviction.

8. On December 8, 2016, in Los Angeles Superior Court Case Number BA450516, Respondent was convicted, on her plea of nolo contendere, of one count of violating Vehicle Code sections 21352, subdivision (a), driving while under the influence of alcohol, a felony and 23550, driving under the influence of alcohol within ten years of three other DUI offenses, a felony. On count one, Respondent was given a suspended three-year state prison term and placed on five years formal probation under terms and conditions including serve 180 days in the county jail, and an additional three days in lieu of a \$390 fine. On count two, Respondent was given a suspended sentence and placed on five years formal probation, ordered to pay fines, fees and restitution and to cooperate with her probation officer on a plan for alcohol abuse and prevention and to abstain from any use of alcohol. The circumstances surrounding the convictions are that on September 23, 2016, CHP officers conducted a traffic stop after observing Respondent's vehicle veering and swerving on the freeway nearly colliding with a wall and another vehicle. Respondent refused to stop on the freeway when officers attempted to stop her. Respondent exited the freeway and parked on a city street. She refused to roll her window down and continued to drink a can of beer after she stopped her vehicle. Respondent failed field sobriety tests, had bloodshot, watery eyes and was unable to stand.

9. Respondent experienced tremendous personal and financial turmoil during the period of 2010-2016. Respondent went through the breakup of her ten-year marriage, a divorce, a foreclosure, a job loss and loss of custody of her children. Respondent's depression and desperation intensified, and she began abusing alcohol. Respondent hit rock bottom and then embarked on a rehabilitation journey. Respondent completed a six-month residential alcohol and drug treatment program at Walter Hoving House on July 4, 2017, a court-ordered 14-week anger management class, an 18-month SB-38 Driving Under the Influence Prevention course, Alcoholics Anonymous meetings, and a six month long parenting class. Respondent believes that she has now obtained the tools she needs to manage her life and stress. She takes prescription medication for her depression, has a support group, follows a faith-based anti-relapse program and attends church on a regular basis. Respondent now shares custody of her sons with her ex-husband and contributes to their support. Respondent credibly testified about her remorse for her misconduct and her hope for the future. Respondent has been sober since her last arrest on September 23, 2016.

10. Respondent submitted letters of reference from Keren Romero, a licensed vocational nurse, Sandra Ulloa, a registered nurse and Frances Ramos, a registered nurse.

A. In her letter dated October 20, 2017, Ms. Romero, who is Respondent's cousin and has known Respondent for 20 years, wrote:

She is honest, sincere, caring, and loving to me and my family. There were many times when she would work 16 hour days to care for her family, and still gave her time, to

help me study for my exams. It is, in part, and because of her that I passed my LVN exams. She worked vigorously with me. She has taught me the work ethic necessary for a nurse, as well as, its challenges. If not for her selflessness, and caring, I would not be in the nursing field. Further, I would not be continuing my studies to become an R.N.

Ms. Olvera certainly understands that she has done wrong and expresses regrets for her actions. She would like to learn from her actions, and move forward with her life as a productive citizen. What I see is that she is rebuilding her life to claim a greater sense of dignity, and hope.

She can achieve so much more being productive, if given the chance and opportunity to return to her vocation. Given the chance, and in the fullness of time she would pick herself up. It is my opinion that the truest measure of the human spirit is what they do to make right their wrongs, after life pulls them down. In Ms. Olvera I see that she has picked herself up, and is moving forward. Therefore, I implored this Honorable Board show her leniency, and grant her a second chance, and not revoke or suspend her LVN license. She will better serve society as a productive citizen. To suspend or revoke her license would create a tremendous financial hardship upon her, at his very vulnerable time in her life. She needs to take care of her children, and be in their lives. ...

(Exhibit A)

B. In her October 19, 2017 letter, Sandra Ulloa, RN, wrote:

Esther Olvera and I have had the pleasure of working together on and off for various Health Care organizations since December, 2005, when she was hired by our company to fill the role of Float License Vocational Nurse. We were in strong need of a hands-on, process-oriented nurse for our day-to-day clinical operations. Esther turned out to be the nurse we needed because of her flexibility, dependability, and commitment to patient satisfaction.

Esther's ability to provide caring and efficient nursing procedures to her patients significantly strengthened our overall patient satisfaction results. She worked hard as an individual, and even harder as team player. Her main focus has been to provide quality nursing care for her patients. The population she served ranged from pediatrics to geriatrics.

The characteristic that is most commendable in Esther is her desire to provide exceptional quality care to her patients. Esther has always presented to work properly groom [sic], her professionalism has always being [sic] evident by the great respect she has for her nursing profession. We have work [sic] in various clinical setting that required adjusting to the culture of the various clinics. . . . I believe she was able to make significant improvements because of her commitment to do so. Her ability to be open to positive feedback makes her an asset to any health care organization that employs her.

Lastly, Esther is a great motivator and mentor. During the time that she worked as Clinic Supervisor the employees in our organization were always inspired, and prepared to meet new challenges because of her motivational style of management. Esther is a natural born leader. She is confident and decisive. She makes everyone around her better and would be an excellent addition to any medical organization.

(Exhibit A)

C. In her October 22, 2017 reference letter, Francy Ramos, RN, wrote:

...We worked together for 4 years, while Esther worked as a nurse in Roybal Comprehensive Health Comprehensive Health Center. I can confirm that Esther is careful, considerate, efficient, responsible, and dedicated to the well-being of others. She always exhibited a can do attitude, worked long hours to ensure all her patients were taken care and was flexible to work in various departments at the facility as needed.

She is well-regarded among all the staff at the hospital as a person of high integrity, honesty, and true care for others. Esther and I, worked on several sensitive and emergency situations, and she has always conducted herself with common sense and compassion.

I am aware that Esther has a DUI incident. However, I wish to express that under no circumstances does this incident reflect on her ability to perform her job as a nurse.

(Exhibit A)

11. Respondent's 2015 work performance evaluation was positive.

12. Complainant produced a declaration of Deputy Attorney General Elyse M. Davidson that described Deputy Attorneys General and paralegal time incurred at rates of \$170 per hour and \$120 per hour, respectively, for a total of \$6,955 in prosecution costs. According to the detailed printout attached to Ms. Davidson's declaration, attorney and paralegal time was used for investigation, drafting pleadings, engaging in client communication, and trial preparation. The costs are excessive and the time records evidence duplicative efforts by multiple attorneys. The 10.50 hours billed by Deputy Attorney General Elyse M. Davidson, the 1.70 hours of supervisory time billed by Supervising Deputy Attorney General Thomas L. Rinaldi and the 10.50 hours of paralegal time constitute the reasonable costs of prosecution of this matter in the sum of \$3,334.

LEGAL CONCLUSIONS

1. Complainant must prove her case by clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) Clear and convincing evidence means the evidence is "so clear as to leave no substantial doubt" and is "sufficiently strong to command the unhesitating assent of every reasonable mind." (*Mathieu v. Norrell Corporation* (2004) 115 Cal.App.4th 1174, 1190 [citing *Mock v. Michigan Millers Mutual Ins. Co.* (1992) 4 Cal.App.4th 306, 332-333].)

2. Business and Professions code sections 490 and 493 provide that the Board may discipline a licensee who has been convicted of a crime that is substantially related to the qualifications, functions, or duties of the business or profession for which the license was granted.

3. Business and Professions Code section 2875 provides that the Board is authorized to discipline any of its licensees.

4. Business and Professions Code section 2878, subdivision (a), provides that a licensee may be disciplined for unprofessional conduct.

5. Business and Professions Code section 2878, subdivision (f), provides that a licensee may be disciplined for the conviction of a crime substantially related to the qualifications, functions, and duties of a licensed vocational nurse, where the record of the conviction shall be conclusive evidence of the conviction.

6. Business and Professions Code section 2878.5, subdivision (c), provides that it is unprofessional conduct for licensee to be convicted of an offense involving the dangerous use of drugs or alcohol.

7. Business and Professions Code section 125.3 provides that the Board may request the administrative law judge to direct a licensee 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.

8. Cause exists to discipline Respondent's vocational nurse license, pursuant to Business and Professions Code section 490, in conjunction with Business and Professions Code section 2878, subdivision (f), and California Code of Regulations, title 16, section 2521, in that Respondent was convicted of a crime substantially related to the qualifications, functions or duties of a licensed vocational nurse, by reason of factual findings 1-8 and legal conclusions 1-3 and 5.

9. Cause exists to discipline Respondent's vocational nurse license, pursuant to Business and Professions Code sections 2878, subdivision (a), and 2878.5, subdivision (c), on the grounds of unprofessional conduct because Respondent was convicted of crimes involving alcoholic beverages, by reason of factual findings 1-8 and legal conclusions 1-3, 4 and 6.

10. Cause exists to discipline Respondent's vocational nurse license, pursuant to Business and Professions Code sections 2878, subdivision (a), and 2878.5, subdivision (b), on the grounds of unprofessional conduct because Respondent used alcoholic beverages to an extent or in a manner dangerous or injurious to herself, any person, or the public, by reason of factual findings 1-8 and legal conclusions 1-4 and 6.

11. Once grounds for discipline of the license have been established, the next consideration must be whether Respondent is rehabilitated from her misconduct. The Board has established criteria for use in making a rehabilitation determination. California Code of Regulations, title 16, section 2522, provides that the criteria to be considered when evaluating the rehabilitation of an individual. The criteria analyzed with respect to Respondent is as follows:

(1) Nature and severity of the act(s), offense(s), or crime(s) under consideration. *Respondent's crimes were serious, but did not involve patient care.*

(2) Actual or potential harm to the public. *Respondent's crimes all involved potential harm to the public.*

(3) Actual or potential harm to any patient. *There was no potential or actual patient harm.*

(4) Overall disciplinary record. *Not applicable.*

(5) Overall criminal actions taken by any federal, state or local agency or court. *Respondent has two felonies and three misdemeanor criminal convictions.*

- (6) Prior warnings on record or prior remediation. *Not applicable.*
- (7) Number and/or variety of current violations. *Respondent suffered two felony convictions and three misdemeanors in a five-year period.*
- (8) Mitigation evidence. *Respondent experienced extreme distress from the termination of her marriage, loss of her job, loss of her home and loss of custody of her children in a compacted period. She has suffered from depression and self-medicated with alcohol. Respondent has completed a six-month residential rehabilitation program, parenting classes, drug and alcohol counseling, and anger management courses and has been sober since her last arrest. Respondent's references opined that she was a respected and competent nurse.*
- (9) In case of a criminal conviction, compliance with terms of sentence and/or court-ordered probation. *Respondent is in compliance with her current probation and will remain on probation until December of 2021.*
- (10) Time passed since the act(s) or offense(s) occurred. *Respondent's most recent conviction is one year old.*
- (11) If applicable, evidence of proceedings to dismiss a conviction pursuant to Penal Code section 1203.4. *Not applicable.*
- (12) Cooperation with the Board and other law enforcement or regulatory agencies. *Respondent has been cooperative with the Board.*
- (13) Other rehabilitation evidence. *Respondent expressed remorse and has been sober for more than a year.*

12. Applying the rehabilitation criteria in light of the foregoing law, Respondent's license should be disciplined. Rehabilitation is a state of mind and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) The evidentiary significance of misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.) Little weight is generally given to good behavior while one is on parole or probation as is the case here. (see *In Re Gossage* (2000) 23 Cal. 4th 1080.) Respondent has yet to demonstrate any sustained period of good behavior absent the incentive of a pending criminal probation and a potential jail term. Nevertheless, complete revocation of Respondent's license under the current set of circumstances would be unduly harsh and more than what is required to protect the public. Respondent would benefit, and the public would be adequately protected

by an extended period of probation which includes alcohol and drug testing and counseling so that the Board may monitor her practice and ensure that she remains on her current path of sobriety.

13. Complainant established that the Board has incurred reasonable costs of \$3,334 in this matter under the provisions of Business and Professions Code section 123.5. However, the Board must consider a Respondent's subjective good faith belief in the merits of her position, whether she has raised a colorable challenge to the discipline sought and consider her ability to pay the costs. (*Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32.) In light of these factors, and based upon Respondent's financial condition, current unemployment and the severity of the order below, it would be unduly punitive to require Respondent to pay all the Board's costs. It is reasonable for Respondent to pay \$1,000 in costs prior to the completion of probation on terms approved of by the Board. (Factual Findings 1-12 and Legal Conclusion 7 and 13.)

ORDER

Respondent Esther Ruth Olvera's vocational nurse license is hereby revoked. However, the revocation is stayed and Respondent's vocational nurse license is placed on probation for a period of five years on the following terms and conditions:

1. OBEY ALL LAWS

Respondent shall obey all federal, state and local laws at all times, including all statutes and regulations governing the license. Respondent shall submit, in writing, a full and detailed account of any and all violations of the law, including alleged violations, to the Board within 5 days of occurrence. This provision applies during any period of suspension or any other period of non-practice, in state or out of state.

To ensure compliance with this condition, Respondent shall submit fingerprints through the Department of Justice and Federal Bureau of Investigation within 30 days of the effective date of the Decision, unless the Board determines that fingerprints were previously submitted by the Respondent to the Board.

Respondent shall also submit to the Board a recent 2" x 2" photograph of herself within 30 days of the effective date of the Decision.

If Respondent is under a criminal court order, including probation or parole, and the order is violated, it shall be deemed a violation of these probation conditions. Respondent shall submit proof of satisfactory completion of any criminal probation or parole that ends after the effective date of the Board's Decision. Respondent shall submit certified copies of court documents related to the expungement of any conviction(s) if not previously submitted.

2. COMPLIANCE WITH PROBATION PROGRAM

Respondent shall fully comply with the conditions of probation established by the Board and shall cooperate with representatives of the Board in its monitoring and investigation of Respondent's compliance with the Probation Program.

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

3. SUBMIT WRITTEN REPORTS

Respondent shall submit or cause to be submitted, under penalty of perjury, any written reports or declarations and verifications of actions as required by the Board or its representatives. These reports or declarations shall contain statements relative to Respondent's compliance with all the conditions of the Board's Probation Program.

Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

In the first report, Respondent shall provide a list of all states and territories where she has ever been licensed as a vocational/practical nurse, psychiatric technician, or registered nurse. Respondent shall provide information regarding the status of each license and any change in license status during the period of probation. Respondent shall inform the Board if he/she applies for or obtains a new nursing or psychiatric technician license during the period of probation.

Respondent shall provide a copy of the Board's Decision to the regulatory agency in every state and territory in which she has applied for or holds a vocational/practical nurse, psychiatric technician, and/or registered nurse license.

**4. NOTIFICATION OF ADDRESS AND TELEPHONE
NUMBER CHANGE(S)**

Respondent shall notify the Board, in writing, within 5 days of any change in address or telephone number(s). Respondent's failure to claim mail sent by the Board may be deemed a violation of these probation conditions.

**5. NOTIFICATION OF RESIDENCY OR PRACTICE OUTSIDE OF
STATE**

Respondent shall notify the Board, in writing, within 5 days, if she leaves California to reside or practice in another state. Periods of residency or practice outside of California shall not apply toward a reduction of this probation time period. If Respondent resides or practices outside of California, the period of probation shall be automatically

extended for the same time period she resides or practices outside of California. Respondent shall provide written notice to the Board within 5 days of any change of residency or practice.

Respondent shall notify the Board, in writing, within 5 days, upon her return to California.

6. MEETINGS WITH BOARD REPRESENTATIVE(S)

Respondent shall appear in person at meetings as directed by the Board or its designated representatives.

7. NOTIFICATION TO EMPLOYER(S)

When currently employed or applying for employment in any capacity in any health care profession, Respondent shall notify her employer of the probationary status of Respondent's license. This notification to the Respondent's current health care employer shall occur no later than the effective date of the Decision. The Respondent shall notify any prospective health care employer of her probationary status with the Board prior to accepting such employment. At a minimum, this notification shall be accomplished by providing the employer or prospective employer with a copy of the Board's Accusation or Statement of Issues and Disciplinary Decision.

Respondent shall provide to the Board the name(s), physical address(s), mailing address(s), and telephone number(s) of all health care employers and supervisors. Respondent shall complete the required consent forms and sign an agreement with her employer(s) and supervisor(s) authorizing the Board and the employer(s) and supervisor(s) to communicate regarding Respondent's work status, performance, and monitoring.

The Health Care Profession includes, but is not limited to: Licensed Vocational Nurse, Psychiatric Technician, Registered Nurse, Medical Assistant, Paramedic, Emergency Medical Technician, Certified Nursing Assistant, Home Health Aide, and all other ancillary technical health care positions.

Respondent shall cause each health care employer to submit to the Board all performance evaluations and any other employment related reports as required by the Board. Respondent shall notify the Board, in writing, of any difficulty in securing employer reports within 5 days of such an event.

Respondent shall notify the Board, in writing, within 5 days of any change in employment status. Respondent shall notify the Board, in writing, if she is terminated or separated, regardless of cause, from any nursing or health care related employment with a full explanation of the circumstances surrounding the termination or separation.

8. EMPLOYMENT REQUIREMENTS AND LIMITATIONS

Respondent shall work in her licensed capacity in the state of California. This practice shall consist of no less than 6 continuous months and of no less than 20 hours per week.

Respondent shall not work for a nurses' registry or in any private duty position, a temporary nurse placement agency, as a faculty member in an accredited or approved school of nursing, or as an instructor in a Board approved continuing education course except as approved, in writing, by the Board. Respondent shall work only on a regularly assigned, identified and predetermined work site(s) and shall not work in a float capacity except as approved, in writing, by the Board.

9. SUPERVISION REQUIREMENTS

Before commencing or continuing employment in any health care profession, Respondent shall obtain approval from the Board of the supervision provided to Respondent while employed.

Respondent shall not function as a charge nurse (i.e., work in any healthcare setting as the person who oversees or directs licensed vocational nurses, psychiatric technicians, certified nursing assistants, or unlicensed assistive personnel) or supervising psychiatric technician during the period of probation, except as approved, in writing, by the Board.

10. COMPLETION OF EDUCATIONAL COURSE(S)

Respondent, at her own expense, shall enroll and successfully complete coursework substantially related to the violation(s) no later than the end of the first year of probation.

The coursework shall be in addition to that required for license renewal. The Board shall notify Respondent of the course content and number of contact hours required. Within 30 days of the Board's written notification of assigned coursework, Respondent shall submit a written plan to comply with this requirement. The Board shall approve such plan prior to enrollment in any course of study.

Upon successful completion of the coursework, Respondent shall submit "original" completion certificates to the Board within 30 days of course completion.

11. MAINTENANCE OF VALID LICENSE

Respondent shall, at all times, maintain an active current license with the Board, including any period of suspension.

Should Respondent's license expire, by operation of law or otherwise, upon renewal or reinstatement, Respondent's license shall be subject to any and all conditions of this probation not previously satisfied.

12. COST RECOVERY REQUIREMENTS

Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of \$1,000.

Respondent shall be permitted to pay these costs in a payment plan approved by the Board with payments to be completed no later than three months prior to the end of the probation period. The filing of bankruptcy by Respondent shall not relieve Respondent of her responsibility to reimburse the Board for its investigation and prosecution costs. Failure to make payments in accordance with any formal agreement entered into with the Board or pursuant to any Decision by the Board shall be considered a violation of probation.

If Respondent has not complied with this condition during the probationary period, and Respondent presents sufficient documentation of her good faith effort to comply with this condition, and if no other conditions have been violated, the Board or its representatives may, upon written request from Respondent, extend the probation period up to one year, without further hearing, in order to comply with this condition. During the extension, all original conditions of probation will apply.

Except as provided above, the Board shall not renew or reinstate the license of any respondent who has failed to pay all the costs as directed in a Decision.

13. LICENSE SURRENDER

During probation, if Respondent ceases practicing due to retirement, health reasons, or is otherwise unable to satisfy the conditions of probation, Respondent may surrender her license to the Board. The Board reserves the right to evaluate Respondent's request and to exercise its discretion whether to grant the request without further hearing. Upon formal acceptance of the tendered license, Respondent will no longer be subject to the conditions of probation.

Surrender of Respondent's license shall be considered a disciplinary action and shall become a part of Respondent's license history with the Board. A licensee who surrenders her license may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary Decision for the surrender:

- 3 years for reinstatement of a license surrendered for any reason other than a mental or physical illness; or
- 1 year for a license surrendered for a mental or physical illness.

14. VIOLATION OF PROBATION

If Respondent violates the conditions of her probation, the Board, after giving Respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation) of Respondent's license. If during probation, an Accusation or Petition to Revoke Probation has been filed against Respondent's license or the Attorney General's Office has been requested to prepare an Accusation or Petition to Revoke Probation against Respondent's license, the probationary period shall automatically be extended and shall not expire until the Accusation or Petition has been acted upon by the Board.

15. EXAMINATION BY A PHYSICIAN

Within 60 days of the effective date of the Decision, Respondent shall submit to a physical examination by a physician of her choice who meets minimum criteria established by the Board. The physician must be licensed in California and Board certified in Family Practice, Internal Medicine or a related specialty. The purpose of this examination shall be to determine ability to perform all professional duties with safety to self and to the public. Respondent shall provide the examining physician with a copy of the Board's Disciplinary Order prior to the examination. The cost of such examination shall be paid by Respondent.

Respondent shall cause the physician to submit to the Board a written medical report in a format acceptable to the Board. This report shall be submitted within 90 days of the effective date of the Decision. If the examining physician finds that Respondent is not physically fit to practice or can only practice with restrictions, the examining physician shall notify the Board verbally within 24 hours and in writing within 5 working days. The Board shall notify Respondent in writing of the examining physician's determination of unfitness to practice and shall order Respondent to cease or restrict licensed activities as a condition of probation.

Respondent shall comply with any order to cease or restrict her practice until the Board is satisfied of Respondent's fitness to practice safely and has so notified Respondent in writing. Respondent shall document compliance in the manner required by the Board.

16. PSYCHIATRIC/PSYCHOLOGICAL EVALUATION

Within 60 days of the effective date of the Decision, Respondent shall submit to a psychiatric/psychological evaluation. The evaluation shall be performed by a psychiatrist licensed in California and Board certified in psychiatry, or by a clinical psychologist licensed in California. This evaluation shall be for the purpose of determining Respondent's current mental, psychological, and emotional fitness to perform all professional duties with safety to self and to the public. Respondent shall provide the evaluator with a copy of the Board's Disciplinary Order prior to the evaluation. The cost of such evaluation shall be paid by Respondent.

Respondent shall cause the evaluator to submit to the Board a written report concerning Respondent's status and progress as well as such other information as may be requested by the Board. This report shall be submitted in a format acceptable to the Board within 90 days from the effective date of the Decision.

If the evaluator finds that Respondent is not psychologically fit to practice safely, or can only practice with restrictions, the evaluator shall notify the Board verbally within 24 hours and in writing within 5 working days. The Board shall notify Respondent in writing of the evaluator's determination of unfitness to practice and shall order Respondent to cease or restrict licensed activities as a condition of probation. Respondent shall comply with any order to cease or restrict her practice until the Board is satisfied of Respondent's fitness to practice safely and has so notified Respondent in writing. Respondent shall document compliance in the manner required by the Board.

If the evaluator finds that psychotherapy is required, Respondent shall participate in a therapeutic program at the Board's discretion. The cost of such therapy shall be paid by Respondent.

17. REHABILITATION PROGRAM

Within 30 days of the effective date of the Decision, Respondent shall enter a rehabilitation and monitoring program specified by the Board. Respondent shall successfully complete such treatment contract as may be recommended by the program and approved by the Board. Respondent shall submit written verification of successful completion of such treatment in a format acceptable to the Board within 30 days of completion.

Components of the treatment contract shall be relevant to the violation and to Respondent's current status in recovery or rehabilitation. The components may include, but are not limited to restrictions on practice and work setting, random bodily fluid testing, abstention from drugs and alcohol or other identified types of addictive behavior, use of work site monitors, participation in addictive behavior rehabilitation programs or groups, psychotherapy, counseling, psychiatric evaluations, and other appropriate rehabilitation or monitoring programs. The cost for participation in this program shall be paid by Respondent.

18. ADDICTIVE BEHAVIOR SUPPORT GROUPS

Within five (5) days of the effective date of the Decision, Respondent shall begin attendance at an addictive behavior support group (e.g. Alcoholics Anonymous, Narcotics Anonymous, Nurse Support Group, Al-Anon, Gamblers Anonymous). Verified documentation of attendance shall be submitted by the Respondent with each written report as required by the Board. Respondent shall continue attendance in such a group for the duration of probation.

19. ABSTAIN FROM CONTROLLED SUBSTANCES

Respondent shall completely abstain from the personal use or possession of controlled substances, as defined in the California Uniform Controlled Substances Act, and dangerous drugs as defined in Section 4021 and 4022 of the Business and Professions Code, except when lawfully prescribed by a licensed practitioner for a bona fide illness.

20. ABSTAIN FROM USE OF ALCOHOL AND PRODUCTS CONTAINING ALCOHOL

Respondent shall completely abstain from the use of alcoholic beverages and products containing alcohol.

21. SUBMIT BIOLOGICAL FLUID SAMPLES

Respondent shall immediately submit to biological fluid testing, at respondent's cost, upon request by the Board or its designee. There will be no confidentiality in test results; positive test results will be immediately reported to the Board and the respondent's current employer.

Respondent shall be required to document compliance in the manner required by the Board.

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22. SUBMIT TO DRUG TESTING

Respondent shall immediately submit to random, observed and directed drug testing, at Respondent's cost, upon request by the Board or its designee. Respondent shall be subject to the frequency of testing specified in Standard 4 of the Substance Abuse Coordination Committee's Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (April 2011) established by the Substance Abuse Coordination Committee. Respondent shall make daily contact as directed by the Board to determine if she must submit to drug testing. Respondent shall submit his/her specimen on the same day that she is notified that a test is required. All alternative collection sites due to vacation or travel outside of California must be approved by the Board prior to the vacation or travel.

Specimen collectors must either be certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the U.S. Department of Transportation. Specimen collectors shall adhere to the current U.S. Department of Transportation Specimen Collection Guidelines. Testing locations shall comply with the Urine Specimen Collection Guidelines published by the U.S. Department of Transportation.

Laboratories shall be certified and accredited by the U.S. Department of Health and Human Services.

A collection site must submit a specimen to the laboratory within 1 business day of receipt. A chain of custody shall be used on all specimens. The laboratory shall process results and provide legally defensible test results within 7 days of receipt of the specimen. The Board shall be notified of non-negative test results within 1 business day and shall be notified of negative test results within 7 business days.

There will be no confidentiality in test results. Positive test results will be immediately reported to the Board, Respondent's employer and worksite monitor, if any.

23. POSITIVE DRUG TEST

When the Board confirms that a positive drug test is evidence of use of a prohibited substance, Respondent has committed a major violation and the Board shall impose the consequences set forth in Major and Minor Violations.

A positive result for a banned substance will result in Respondent being ordered to cease practice and subject her license to further disciplinary action.

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24. MAJOR AND MINOR VIOLATIONS

Major Violations include, but are not limited to, the following:

1. Failure to complete a Board-ordered program;
2. Failure to undergo a required clinical diagnostic evaluation;
3. Committing multiple minor violations of probation conditions;
4. Treating a patient while under the influence of drugs or alcohol;
5. Committing any drug or alcohol offense that is a violation of the Business and Professions Code or state or federal law;
6. Failure to obtain biological testing for substance abuse;
7. Testing positive for a banned substance; and
8. Knowingly using, making, altering, or possessing any object or product in such a way as to defraud a drug test designed to detect the presence of alcohol or a controlled substance.

If Respondent commits a major violation, the Board shall order Respondent to cease practice and refer the matter for disciplinary action or other action as determined by the Board.

Minor Violations include, but are not limited to, the following:

1. Failure to submit required documentation in a timely manner;
2. Unexcused non-attendance at required meetings;
3. Failure to contact a monitor when required; and
4. Any other violations that do not present an immediate threat to the licensee or to the public.

If Respondent commits a minor violation, the Board shall determine what action is appropriate.

25. CLINICAL DIAGNOSTIC EVALUATION

Within 30 days of the effective date of the Decision and at any time upon order of the Board, Respondent shall undergo a clinical diagnostic evaluation. Respondent shall provide the evaluator with a copy of the Board's Decision prior to the clinical diagnostic evaluation being performed. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations. The evaluator shall not have a financial, personal, or business relationship with the licensee with the last 5 years.

The clinical diagnostic evaluation report shall set forth whether the licensee has a substance abuse problem, is a threat to herself or others, and provide recommendations for substance abuse treatment, practice restrictions, or other recommendations related to the licensee's rehabilitation and safe practice. If the evaluator determines during the

evaluation process that a licensee is a threat to herself or others, the evaluator shall notify the Board within 24 hours of such a determination.

Any time Respondent is ordered to undergo a clinical diagnostic evaluation, Respondent shall cease practice for a minimum of 30 days pending the results of the evaluation. During such time, Respondent shall submit to random drug testing at a minimum of 2 times per week.

Respondent shall cause the evaluator to submit to the Board a written clinical diagnostic evaluation report within 10 days from the date the evaluation is complete, unless an extension, not to exceed 30 days, is granted to the evaluator by the Board.

Respondent shall not return to practice until the Board determines that he/she is able to safely practice either full-time or part-time and has had at least 30 days of negative drug test results. In deciding what, if any work limitations will be placed on a license, the Board will consider the factors set forth in SACC Standard No. 6. Respondent shall comply with any restrictions or recommendations made as a result of the clinical diagnostic evaluation. If a license is restricted to less than full-time practice, before requesting a modification to work full time, Respondent shall meet the criteria found in SACC Standard No. 11. Failure to undergo a clinical diagnostic evaluation when ordered to do so shall subject Respondent's license to further disciplinary action.

26. GROUP MEETINGS WITH QUALIFIED FACILITATOR

Upon recommendation of the clinical evaluator and/or determination by the Board, Respondent shall participate in group support meetings led by a facilitator who meets the following qualifications and requirements: The meeting facilitator must have a minimum of 3 years' experience in the treatment and rehabilitation of substance abuse and shall be licensed or certified by the State or other nationally certified organization(s). The meeting facilitator must not have a financial, personal, or business relationship with Respondent in the last 5 years.

The meeting facilitator shall provide to the Board a signed document showing Respondent's name, the group name, the dates and location of the meetings, Respondent's attendance, and Respondent's level of participation and progress.

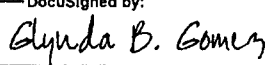
The meeting facilitator shall report within 24 hours any unexcused absence to the Board.

27. WORKSITE MONITOR

Respondent shall submit the name of a proposed worksite monitor within 30 days of the effective date of the Decision. Respondent shall complete any required consent forms and sign an agreement with the worksite monitor and the Board regarding Respondent

and the worksite monitor's requirements and reporting responsibilities as specified in Standard 7 of the Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (April 2011) established by the Substance Abuse Coordination Committee. If the worksite monitor terminates the agreement with Respondent and/or the Board, Respondent shall not practice until another worksite monitor is approved in writing by the Board.

Dated: December 18, 2017

DocuSigned by:


GLYNDA B. GOMEZ
Administrative Law Judge
Office of Administrative Hearings