EDMUND G. BROWN JR., Attorney General
of the State of California
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California Department of Justice
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Attorneys for Complainant

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

In the Matter of the First Amended Statement of Issues Against: **VALENTIN GARCIA LOPEZ, JR.** CDC #V98071 GYM - 137 UP P. O. Box 2400 Susanville, CA 96127-2400 Applicant/Respondent.	Case No. 2008-180 **FIRST AMENDED STATEMENT OF ISSUES**

Complainant alleges:

PARTIES

1. Ruth Ann Terry, M.P.H., R.N. ("Complainant") brings this First Statement of Issues solely in her official capacity as the Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs.

2. **Valentin Garcia Lopez, Jr.** On or about June 26, 2001, the Board of Registered Nursing ("Board") received an Application for Licensure by Examination from Valentin Garcia Lopez, Jr. ("Applicant/Respondent"). On or about April 24, 2001, Applicant/Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on March 12, 2007.

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JURISDICTION

3. Section 2736 of the Business and Professions Code ("Code") provides, in pertinent part:

> (a) An applicant for licensure as a registered nurse shall comply with each of the following:
>
> (3) Not be subject to denial of licensure under Section 480.

STATUTORY PROVISIONS

4. Code section 480 provides, in pertinent part:

> (a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:
>
> (1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken 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.
>
> (2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or
>
> (3) Done any act which if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.
>
> The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made.

5. Code section 2761 provides, in pertinent part:

> The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:
>
> (a) Unprofessional conduct, which includes, but is not limited to, the following:
>
> (4) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a health care professional license or certificate by another state or territory of the United States, by any other government agency, or by another California

health care professional licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that action.

(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.

REGULATORY PROVISIONS

6. California Code of Regulations, title 16, section 1444, provides, in pertinent part:

> 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.

FIRST GROUND FOR DENIAL OF LICENSURE

(Conviction of Crime)

7. Grounds exist to deny the application of Applicant/Respondent under Code sections 2736, subdivision (a)(3), 480, subdivision (a)(1), and 2761, subdivision (f), in that on or about June 29, 2005, in the case entitled, *People v. Valentin Garcia Lopez, Jr.* (Super. Ct. Ventura County, 2005, No. 2004100136), Applicant/Respondent was convicted by the court upon a plea of guilty of five counts of violating Penal Code section 487, subdivision (a) (grand theft of personal property); one count of violating Penal Code section 530.5, subdivision (a) (identity theft); one count of violating Penal Code section 1320, subdivision (b) (failure to appear on own recognizance); five counts of violating Corporations Code section 25110 (offer to sell security without qualification); and, five counts of violating Corporations Code section 25401 (offer or sale of security), all felonies and crimes substantially related to the qualifications, functions or duties of a licensee within the meaning of California Code of Regulations, title 16, section 1444.

8. The circumstances of the convictions are as follows:

a. On or about October 1, 2003, through September 11, 2004, Applicant/Respondent unlawfully took money and personal property of a value exceeding Four Hundred Dollars ($400), to wit: money, the property of another. (Pen. Code, § 487, subd. (a).)

b. On or about August 2, 2004, through September 17, 2004, Applicant/Respondent willfully and unlawfully obtained personal identifying information on S. W. without authorization, and used that information for an unlawful purpose and to obtain, and attempt to obtain, credit, goods and services and medical information in the name of S. W. without consent. (Pen. Code, § 530.5, subd. (a).)

c. On or about October 25, 2004, Applicant/Respondent, who was charged the commission of a felony and who was released from custody on his own recognizance, and who in order to evade the process of the court, willfully failed to appear as required. (Pen. Code, § 1320, subd. (b).)

d. On or about July 10, 2003, through on or about October 25, 2003, Applicant/Respondent unlawfully offered or sold in this state a security in an issuer transaction. (Corp. Code, § 25110.)

e. On or about July 10, 2003, through on or about November 1, 2003, Applicant/Respondent unlawfully offered or sold a security in this state, or bought, or offered to buy a security in this state by means of a written or oral communication which included an untrue statement of a material fact, or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. (Corp. Code, § 25401.)

SECOND GROUND FOR DENIAL OF LICENSURE

(Commission of Dishonest, Fraudulent, or Deceitful Acts)

9. Grounds exist to deny the application of Applicant/Respondent under Code section 2736, subdivision (a)(3), and Code section 480, subdivision (a)(2), in that, as more particularly set forth under paragraphs 7 and 8, above, Applicant/Respondent committed acts involving dishonesty, fraud, or deceit with the intent to substantially benefit Applicant/Respondent, or another, or to substantially injure another.

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THIRD GROUND FOR DENIAL OF LICENSURE

(Acts as Grounds for Suspension or Revocation of a License)

10. Grounds exist to deny the application of Applicant/Respondent under Code sections 2736, subdivision (a)(3), and 480, subdivision (a)(3), in that, as more particularly set forth under paragraphs 7 and 8, above, Applicant/Respondent was convicted of crimes substantially related to the qualifications, functions or duties of a licensee, acts which if committed by a licensee would have subjected that license to suspension or revocation under Code section 2761, subdivision (f) (conviction of crime).

FOURTH GROUND FOR DENIAL OF LICENSURE

(Discipline by Another California Health Care Professional Licensing Board)

11. Grounds exist to deny the application of Applicant/Respondent under Code section 2761, subdivision (a)(4), in that Respondent has been disciplined by The California Board of Vocational Nursing and Psychiatric Technicians (hereafter "LVN Board"). Effective April 1, 2007, pursuant to the Decision and Order filed by the LVN Board, attached hereto as **Exhibit "A"** and incorporated herein, Respondent's California Vocational Nurse License Number VN 207143 was revoked. The basis for discipline was that Respondent had been convicted of crimes substantially related to the qualifications, functions, and duties of a licensed vocational nurse, as more particularly set forth in paragraphs 7 and 8, subparagraphs a through e, above.

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PRAYER

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

1. Denying the application of Valentin Garcia Lopez, Jr. for a registered nurse license; and,

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

DATED: 1/18/08

Robert Hochberg for

RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

03579110-SA2007101508
rjt 08/16/07 rev. 1/7/08 ps

Exhibit A

State of California Department of Consumer Affairs

BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
2535 CAPITOL OAKS DRIVE, SUITE 205
SACRAMENTO, CALIFORNIA 95833-2945
TELEPHONE (916) 263-7800; FAX (916) 263-7855
INTERNET ADDRESS: http://www.bvnpt.ca.gov

CERTIFIED MAIL

March 27, 2007

Valentin Lopez, Jr.
CDC #V-98071
Valley View Conservation Camp #34
PO Box 8
Elk Creek, CA 95939-0008

Dear Mr. Lopez:

Your petition for reconsideration of the Board of Vocational Nursing and Psychiatric Technicians' Decision to revoke your vocational nurse license, number VN 207143, is denied. Your license is **revoked** effective **April 1, 2007**.

Sincerely,

Angelina Martin
Program Manager

Enclosure

cc: Karen J. Brandt, Administrative Law Judge
Geoffrey S. Allen, Deputy Attorney General

AM:aw

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

In the Matter of the Accusation Against: VALENTIN LOPEZ, JR. CDC #V-98071 Valley View Conservation Camp #34 PO Box 8 Elk Creek, CA 95939-0008 Vocation Nurse License No. VN 207143 Respondent.	Case No. 6873

DECISION

The Board of Vocational Nursing and Psychiatric Technicians hereby denies your Petition for Reconsideration of its March 22, 2007 Decision in the above-entitled matter.

This Decision shall become effective on April 1, 2007.

IT IS SO ORDERED this 27TH day of March, 2007.

John P. Vertido, L.V.N.
President

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

In the Matter of the Accusation Against: VALENTIN G. LOPEZ, JR. CDC #V-98071 Valley View Conservation Camp #34 PO Box 8 Elk Creek, CA 95939-0008 Vocational Nurse License No. VN 207143 Respondent.	Case No. 6873

ORDER DELAYING DECISION

Pursuant to Section 11521(a) of the Government Code, the Board of Vocational Nursing and Psychiatric Technicians (Board) hereby issues this Order Delaying Decision in the above-stated case until April 1, 2007. The purpose of the delay is to permit the Board to review your Petition for Reconsideration.

IT IS SO ORDERED this 26TH day of February, 2007.

John P. Vertido, L.V.N.
President

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

In the Matter of the Accusation Against: VALENTIN G. LOPEZ, JR. CDC #V-98071 Valley View Conservation Camp #34 P.O. Box 8 Elk Creek, CA 95939-0008 Vocational Nurse License No. VN 207143 Respondent.	Case No. 6873 OAH No. N2006080471

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 March 22, 2007.

IT IS SO ORDERED this 20TH day of February, 2007.

John P. Vertido
President

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

In the Matter of the Accusation Against: VALENTIN G. LOPEZ, JR. CDC #V-98071 Valley View Conservation Camp #34 P.O. Box 8 Elk Creek, CA 95939-0008 Respondent.	**Case No. 6873** **OAH No. N2006080471** **ORDER NUNC PRO TUNC**

The Decision in the above-entitled matter, dated February 1, 2007, was served at 305 Rio Grande Avenue, Hutto, Texas, 78634, the Respondent's former address.

Good cause appearing, the Decision is hereby vacated nunc pro tunc and re-issued for proper service.

IT IS SO ORDERED this 20TH day of February, 2007.

John P. Vertido
President

COURT PAPER
STATE OF CALIFORNIA
STD. 113 (REV. 3-95)
95 28391

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

In the Matter of the Accusation Against: VALENTIN LOPEZ, JR. 305 Rio Grande Avenue Hutto, TX 78634 Vocational Nurse License No. VN 207143 Respondent.	Case No. 6873 OAH No. N2006080471

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 March 3, 2007.

IT IS SO ORDERED this 1ST day of February, 2007.

Sister Marie de Porres Taylor
President

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

In the Matter of the Accusation Against:	Case No. 6873
VALENTIN GARCIA LOPEZ, Jr. 305 Rio Grande Avenue Hutto, Texas 78634	OAH No. N2006080471
Vocational Nurse License No. VN 207143	
Respondent.	

PROPOSED DECISION

This matter was heard before Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings, State of California, on October 23, 2006, in Elk Creek, California.

Geoffrey S. Allen, Deputy Attorney General, represented Teresa Bello-Jones, J.D., M.S.N., R.N. (complainant), Executive Officer, Board of Vocational Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs, State of California.

Valentin Garcia Lopez, Jr. (respondent) appeared on his own behalf.

Evidence was received, the record was initially closed, and the matter was initially submitted on October 23, 2006. On October 31, 2006, the Administrative Law Judge issued an order, which reopened the record sua sponte and requested that the Deputy Attorney General submit detailed information describing the tasks performed by the Deputy Attorneys General and Legal Assistants who worked on this matter and the time spent on each task; in accordance with California Code of Regulations, title 1, section 1042, subdivision (b)(2). On November 13, 2006, the Deputy Attorney General submitted a Certification of Prosecution Costs: Supplemental Declaration of Geoffrey S. Allen, which was marked for identification as Exhibit 10 and admitted into evidence. The Deputy Attorney General also submitted a Certification of Prosecution Costs: Memorandum of Points and Authorities, which was marked for identification as Exhibit 11. Respondent was given an opportunity to file an objection to Exhibits 10 and 11. Respondent filed a letter dated November 20, 2006 and received on November 28, 2006, which stated that he would respect the decision of the

Administrative Law Judge on the issue of costs. Respondent's letter was marked for identification as Exhibit B. The record was closed and the matter was submitted on November 28, 2006.

FACTUAL FINDINGS

1. Complainant made and filed the Accusation in her official capacity.

2. On December 8, 2003, the Board issued vocational nurse license number VN 207143 to respondent. That license expired on October 31, 2005.

3. On June 29, 2005, in the Superior Court of California, County of Ventura, in Case No. 2004100136, respondent, upon a plea of guilty, was convicted of the following crimes, all of which were felonies:

a. Five counts of violating Penal Code section 487, subdivision (a), (grand theft of personal property of a value greater than $400.00). These five counts were subject to enhancements for violating Penal Code sections 186.11, subdivision (a)(1), (committing multiple felonies, a material element of which is fraud, which involved a pattern of taking more than $100,000); and 12022.6, subdivision (a)(1), (taking property of greater value than $50,000). These five counts were also subject to Penal Code section 1203.045, subdivision (a), (denial of probation for theft over $100,000).

b. One count of violating Penal Code section 530.5, subdivision (a), (identity theft).

c. One count of violating Penal Code section 1320, subdivision (b), (failure to appear on own recognizance).

d. Five counts of violating Corporations Code section 25110 (offer to sell securities without qualifications).

e. Five counts of violating Corporations Code section 25401 (offer to sell securities by untrue statements).

4. The circumstances underlying respondent's convictions were as follows: respondent and another person told certain individuals that they were nurses and asked those individuals to invest in a business that respondent asserted he was going to start called Archangel Hospice, Inc. Respondent used the invested funds for personal items and expenses, and not for the business purposes for which they were invested. Respondent's wrongful acts occurred between October 2003 and September 2004.

5. Respondent was sentenced to serve five years and eight months in state prison. He was given credit for 468 days time served. In addition to fines, respondent was ordered to pay restitution totaling more than $150,000.

6. At the time of the hearing, respondent was serving his sentence in Valley View Conservation Camp. According to respondent, his parole date is May 27, 2007.

7. At hearing, respondent submitted a letter in which he accepted full responsibility for his actions and expressed his apology and regret. According to respondent, when he was practicing as a vocational nurse, he took care of elderly patients whose families had abandoned them. He asserted that he performed his vocational nursing duties well. He also asserted that he had learned from his mistakes and incarceration, had been rehabilitated, and would not repeat his wrongdoing. He asserted further that he assists and advises his fellow inmates who have small injuries and wounds. He requested that he be allowed to retain his license. He promised that if he could continue to work as a licensed vocational nurse after he is released from incarceration, he would pay full restitution to his victims.

8. Respondent did not present any supporting evidence to substantiate that he has engaged in significant rehabilitation efforts since his convictions. He did not offer any testimony or submit any letters of support from persons familiar with his convictions and the changes he has made in his life since his convictions. While respondent expressed remorse and promised he would refrain from criminal conduct in the future, he did not submit sufficient evidence to provide adequate assurances that he would not repeat his wrongdoing.

9. Pursuant to Business and Professions Code section 125.3, at hearing the Deputy Attorney General submitted a declaration that requested costs of prosecution in the total amount of $6,691.00. This total amount consisted of the following amounts:

a. $5,427.00 reported through October 17, 2006, which the Department of Justice had or would bill the Board. This amount consisted of 10.50 hours of Deputy Attorney General time incurred in fiscal year 2005-06 at $146.00 per hour; 13 hours of Deputy Attorney General time incurred in fiscal year 2006-07 at $158.00 per hour; and 20.00 hours of Legal Assistant time incurred in Fiscal Year 2005-06 at $92.00 per hour.

b. $1,264.00, which was a good faith estimate of eight additional hours of Deputy Attorney General time that was incurred after October 17, 2006 and would be billed to the Board for further preparation of the case up to the commencement of the hearing.

According to the Deputy Attorney General's declaration, time was spent on a number of tasks, including conducting an initial case evaluation; obtaining, reading and reviewing the investigative material and requesting further investigation, as needed; drafting pleadings, subpoenas, correspondence, memoranda, and other case-related documents; researching relevant points of law and fact; consulting and/or meeting with colleague deputies,

supervisory staff, experts, client staff, and investigators; communicating and corresponding with respondent; requesting discovery; and preparing for hearing.

The declaration of the Deputy Attorney General indicated that two Deputy Attorneys General and a Supervising Deputy Attorney General worked on this matter.

10. At hearing, respondent stated that he was willing to pay the full amount of any costs that might be assessed. He asserted, however, that he was unable to pay any costs while he was incarcerated, and requested that he be allowed to keep his license so that he could work after he was released in order to pay the assessed costs. Respondent did not offer any evidence as to his financial ability to make later payments.

11. Prior to hearing, complainant opposed two prehearing requests for continuances. At hearing, the only evidence the Deputy Attorney General offered against respondent were copies of court and police records. The Deputy Attorney General did not call any witnesses or conduct any cross-examination of respondent. The Deputy Attorney General's declaration did not explain whether and to what extent there may have been overlap between the two Deputy Attorneys General who worked on this case. The declaration also did not include any time sheets or time entries, or delineate with particularity the time spent by the Deputy Attorneys General and the Legal Assistants on any specific tasks. Given the nature of the evidence offered in this matter and the documents prepared by the Deputy Attorney General included in the file, there was not enough information presented at hearing to support the 51.5 total hours of time, either billed or requested. In light of these factors, the Deputy Attorney General was ordered to submit detailed information describing the tasks performed by the Deputy Attorneys General and Legal Assistants who worked on the this matter and the time spent on each task, in accordance with California Code of Regulations, title 1, section 1042, subdivision (b)(2).

12. In compliance with the order, the Deputy Attorney General submitted a supplemental declaration. Respondent did not object to the supplemental declaration. According to the supplemental declaration, the Board has been billed a total of $6,770.00 for work performed by Deputy Attorneys General and Legal Assistants. The detailed information submitted with the supplemental declaration indicates that the two Deputy Attorneys General who worked on this matter both recorded time spent on, among other things, case evaluation/assessment, case management, and document analysis. It would not be appropriate to charge respondent for any time spent on these activities that appears to be duplicative. The amount of $766.50 should, therefore, be deducted from the total amount billed in this matter. Given the supplemental information submitted by the Deputy Attorney General, the reasonable costs of investigation and prosecution are determined to be $6,003.50.

LEGAL CONCLUSIONS

1. Business and Professions Code section 2875 provides that the Board may discipline a holder of a vocational nurse license for any reason set forth in Article 3 (commencing with Business and Professions Code section 2875) of the Vocational Nursing Practice Act, Business and Professions Code section 2840 et seq.

2. Pursuant to Business and Professions Code section 118, subdivision (b), the expiration of a vocational nurse license does not deprive the Board of jurisdiction to proceed with disciplinary action upon any ground provided by law during any period in which the license may be renewed, restored, reissued or reinstated.

3. Pursuant to Business and Professions Code section 2878, the Board may suspend or revoke a vocational nurse license for:

> (f) Conviction of a crime substantially related to the qualifications, functions, and duties of a licensed vocational nurse, in which event the record of the conviction shall be conclusive evidence of the conviction.
>
> [¶]...[¶]
>
> (j) The commission of any act involving dishonesty, when that action is related to the duties and functions of the licensee.

Pursuant to Business and Professions Code section 490, the Board may suspend or revoke a license when it finds that the licensee has been convicted of a crime substantially related to the qualifications, functions or duties of the business or profession for which the license was issued.

California Code of Regulations, title 16, section 2521, in relevant part, provides that a crime:

> shall be considered to be substantially related to the qualifications, functions or duties of a licensed vocational nurse if to a substantial degree it evidences present or potential unfitness of a licensed vocational nurse to perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:
>
> [¶]...[¶]
>
> (e) Conviction of a crime involving fiscal dishonesty.

4. Given the facts set forth in Factual Findings 3 and 4, respondent's convictions, to a substantial degree, evidence his present and potential unfitness to perform the functions of a licensed vocational nurse in a manner consistent with the public health, safety, and welfare. In addition, respondent's convictions were for crimes involving financial dishonesty. Respondent's convictions are, therefore, substantially related to the qualifications, functions and duties of a licensed vocational nurse and establish cause to discipline his license pursuant to Business and Professions Code sections 490 and 2878, subdivision (f), in conjunction with California Code of Regulations, title 16, section 2521, subdivision (e).

5. Respondent's convictions were for dishonest actions related to the duties and functions of respondent as a licensee. Respondent's convictions, therefore, establish cause to discipline his license pursuant to Business and Professions Code section 2878, subdivision (j).

6. In its Disciplinary Guidelines, the Board has set forth the following criteria for determining whether a licensee who has been convicted of a crime has been sufficiently rehabilitated to support the retention of a license:

- Nature and severity of the act(s), offenses, or crimes under consideration.
- Actual or potential harm to the public.
- Actual or potential harm to any patient.
- Prior disciplinary record.
- Prior warnings on record or prior remediation.
- Number and/or variety of current violations.
- Mitigation evidence.
- Rehabilitation evidence.
- In case of a criminal conviction, compliance with terms of sentence and/or court-ordered probation.
- Overall criminal record.
- Time passed since the acts or offenses occurred.
- If applicable, evidence of expungment proceedings pursuant to Penal Code Section 1203.4.

The nature and severity of respondent's crimes were significant. Respondent used his position as a licensee to obtain monies by fraudulent means. His dishonest acts caused serious financial loss to his investors. Respondent was licensed in 2003. His wrongdoing occurred in 2003 and 2004. He was convicted in June 2005. He is currently incarcerated. He is not scheduled to be released until May 2007. He did not present any evidence in

mitigation and very little evidence of rehabilitation. Although respondent expressed his apologies to the Board and promised that he would not commit any criminal acts in the future, given the nature, significance and recency of respondent's convictions, it would not be consistent with the Department's Guidelines or the public interest and welfare to allow respondent to retain a vocational nurse license.

7. Pursuant to Business and Professions Code section 125.3, subdivision (a), an administrative law judge may direct a licensee found to have violated the licensing act to "pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case." Business and Professions Code section 125.3, subdivision (c) provides that a "certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General." Business and Professions Code section 125.3, subdivision (d) provides:

> The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). The finding of the administrative law judge with regard to costs shall not be reviewable by the board to increase the cost award. The board may reduce or eliminate the cost award, or remand to the administrative law judge where the proposed decision fails to make a finding on costs requested pursuant to subdivision (a).

In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the California Supreme Court set forth the following factors to be considered in determining the reasonableness of the costs sought pursuant to regulatory and statutory provisions like Business and Professions Code section 125.3:

> The Board must exercise its discretion to reduce or eliminate cost awards in a manner that will ensure that regulation 317.5 does not deter chiropractors with potentially meritorious claims or defenses from exercising their right to a hearing. Thus, the Board must not assess the full costs of investigation and prosecution when to do so will unfairly penalize a chiropractor who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed. The Board must consider the chiropractor's "subjective good faith belief in the merits of his or her position" [citation] and whether the chiropractor has raised a "colorable challenge" to the proposed discipline [citation]. Furthermore, as in cost recoupment schemes in which the government seeks to recover from

> criminal defendants the cost of their state-provided legal representation [citation], the Board must determine that the chiropractor will be financially able to make later payments. Finally, the Board may not assess the full costs of investigation and prosecution when it has conducted a disproportionately large investigation to prove that a chiropractor engaged in relatively innocuous misconduct.

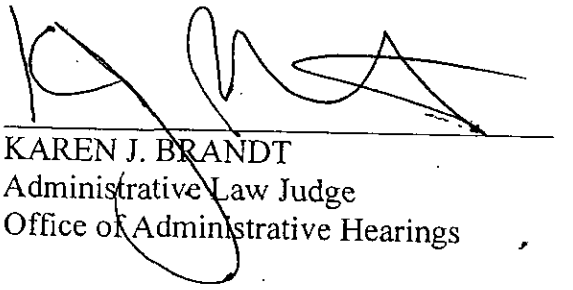
Respondent was not successful in getting any of the charges included in the Accusation dismissed. He did not raise a colorable challenge to the proposed discipline. Although respondent asserted that he would not be able to pay any costs until he was released from incarceration, he did not offer any evidence as to his financial ability to make later payments. As set forth in Factual Finding 12, the reasonable costs of investigation and prosecution are $6,003.50.

ORDER

1. The vocational nurse license number VN 207143, issued to respondent, Valentin Garcia Lopez, Jr., is hereby REVOKED.

2. Respondent shall pay to the Board its costs of investigation and prosecution in the amount of $6,003.50.

DATED: November 29, 2006



KAREN J. BRANDT
Administrative Law Judge
Office of Administrative Hearings

Exhibit "A"
Accusation No. 6873

BILL LOCKYER, Attorney General
of the State of California
SCOTT J. HARRIS, State Bar No. 238437
Deputy Attorney General
California Department of Justice
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-2554
Facsimile: (213) 897-2804

Attorneys for Complainant

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

In the Matter of the Accusation Against: VALENTIN GARCIA LOPEZ, JR. 305 Rio Grande Avenue Hutto, Texas 78634 Vocational Nurse License No. VN 207143 Respondent.	Case No. 6873 **ACCUSATION**

Complainant alleges:

PARTIES

1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs (Board).

2. On or about December 8, 2003, the Board issued Vocational Nurse License No. VN 207143 to Valentin Garcia Lopez, Jr. (Respondent). The Vocational Nurse License was in full force and effect at all times relevant to the charges brought herein and expired on October 31, 2005, and has not been renewed.

JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 2875 provides, in pertinent part, that the Board may discipline the holder of a vocational nurse license for any reason provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice Act.

5. Section 118, subdivision (b) of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under section 2892.1, the Board may renew an expired license at any time within four years after the expiration.

6. Section 2878 states:

"The Board may suspend or revoke a license issued under this chapter [the Vocational Nursing Practice Act (Bus. & Prof. Code, § 2840, et seq.)] for any of the following:

"(a) Unprofessional conduct...,

. . .

"(f) Conviction of a crime substantially related to the qualifications, functions, and duties of a licensed vocational nurse, in which event the record of the conviction shall be conclusive evidence of the conviction.

. . .

"(j) The commission of any act involving dishonesty, when that action is related to the duties and functions of the licensee."

7. Section 490 provides, in pertinent part, that the Board may suspend or revoke a license when it finds that the licensee has been convicted of a crime substantially related to the qualifications, functions or duties of a licensed vocational nurse.

8. California Code of Regulations, title 16, section 2521 states:

"For the purposes of denial, suspension, or revocation of a license issued pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered to be substantially related to the qualifications,

functions or duties of a licensed vocational nurse if to a substantial degree it evidences present or potential unfitness of a licensed vocational nurse to perform the functions authorized by the license in a manner consistent with the public health, safety , or welfare. Such crimes or acts shall include, but not be limited to those involving the following:

...

"(e) Conviction of a crime involving fiscal dishonesty."

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

FIRST CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crimes)

10. Respondent is subject to disciplinary action under Business and Professions Code sections 490 and 2878, subdivision (f), in conjunction with California Code of Regulations, title 16 section 2521, subdivision (e), in that Respondent was convicted of substantially related crimes involving fiscal dishonesty. The circumstances are as follows:

a. On or about June 29, 2005, Respondent was convicted in the Superior Court of California, County of Ventura, Case No. 2004100136, entitled *The People of the State of California v. Valentin Garcia Lopez, Jr.* of the following crimes:

1. Five counts of violating Penal Code section 487, subdivision (a), a felony, (grand theft of personal property of a value greater than $400.00). These five counts were subject to enhancements for violation of Penal Code section 186.11, subdivision (a)(1), a felony, (committed multiple felonies, a material element which is fraud, which involved a pattern of taking more than $100,000.00); Penal Code section 12022.6, subdivision (a)(1), a felony, (taking, damaging property of a value greater than $50,000.00); and Penal Code section 1203.045, subdivision (a), a felony, (taking, damaging property);

2. One count of violating Penal Code section 530.5, subdivision (a), a felony, (identity theft);

3. One count of violating Penal Code section 1320, subdivision (b), a felony, (failure to appear on own recognizance);

4. Five counts of violating Corporations Code section 25110, a felony, (offer or sell securities without qualification); and,

5. Five counts of violating Corporations Code section 25401, a felony, (offer or sell securities).

SECOND CAUSE FOR DISCIPLINE

(Dishonest Acts)

11. Respondent is subject to disciplinary action under Business and Professions Code section 2878, subdivision (j) in that Respondent engaged in dishonest acts, as set forth in paragraph 10, above. * * *

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians issue a decision:

1. Revoking or suspending Vocational Nurse License No. VN 207143, issued to Valentin Garcia Lopez, Jr.;

2. Ordering Valentin Garcia Lopez, Jr. to pay the Board of Vocational Nursing and Psychiatric Technicians 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: March 29, 2006

TERESA BELLO-JONES, J.D., M.S.N., R.N.
Executive Officer
Board of Vocational Nursing and Psychiatric Technicians
Department of Consumer Affairs
State of California
Complainant

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DECLARATION OF SERVICE BY CERTIFIED MAIL
AND
DECLARATION OF SERVICE BY FIRST CLASS MAIL

Case Name: In the Matter of the Accusation Against:
Valentin Lopez, Jr.

Case No.: 6873

I declare:

I am employed in the County of Sacramento, California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 2535 Capitol Oaks Drive, Suite 205, Sacramento, California 95833-2945.

On March 27, 2007, I served the attached

COVER LETTER, DECISION DENYING PETITION FOR RECONSIDERATION, ORDER DELAYING DECISION AND DECISION

in said cause, by placing a true copy thereof enclosed in two separate sealed envelopes with postage thereon fully prepaid by Certified Mail and First Class Mail, in the United States mail at Sacramento, California, addressed as follows:

NAME/ADDRESS	CERTIFIED MAIL NUMBER
Valentin Lopez, Jr. CDC #V-98071 Valley View Conservation Camp #34 PO Box 8 Elk Creek, CA 95939-0008	7007 0220 0003 3875 6710

I declare under penalty of perjury the foregoing is true and correct, and that this declaration was executed at Sacramento, California on March 27, 2007.

Amy Wyckoff
(Typed Name)

Amy Wyckoff
(Signature)

cc: **Karen J. Brandt, Administrative Law Judge**
Geoffrey S. Allen, Deputy Attorney General