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

In the Matter of the Accusation and Petition to Revoke Probation Against: **ESPERANZA L. BROWN** 412 24th Street #59 Alamorgordo, NM 88310 Registered Nurse License No. 469421 Respondent.	Case No. 2010-559 **ACCUSATION AND PETITION TO REVOKE PROBATION**

Complainant alleges:

PARTIES

1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation and Petition to Revoke Probation solely in her official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs.

2. On or about August 31, 1991, the Board of Registered Nursing issued Registered Nurse License Number 469421 to Esperanza L. Brown (Respondent). The Registered Nurse License expired on August 31, 2005, and has not been renewed.

3. In a disciplinary action entitled "In the Matter of Accusation Against Esperanza L. Brown," Case No. 2005-58 the Board of Registered Nursing, issued a decision, effective June 17,

2005, in which Respondent's Registered Nurse License was revoked. However, the revocation was stayed and Respondent's registered nurse license was placed on probation for a period of three (3) years with certain terms and conditions; however, probation was tolled because the respondent resides outside the State of California. A copy of that decision is attached as Exhibit A and is incorporated by reference.

JURISDICTION

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

STATUTORY PROVISIONS

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

6. Section 2764 of the Business and Professions Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Business and Professions Code, the Board may renew an expired license at any time within eight years after the expiration.

7. Section 2761 of the Business and Professions Code states, 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.

. . .

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

FACTUAL BACKGROUND

9. On or about June 1, 2005, Respondent submitted an application for relicensure as a registered nurse to the New Mexico Board of Nursing in which she responded by noting "CA" and "not in effect" to a question inquiring if any disciplinary action had been "considered or taken" in a state other than New Mexico since her last renewal or reactivation. By affixing her signature on the application, respondent certified that her answers and statements contained therein were true and correct. On or about October 19, 2005, the New Mexico Board of Nursing filed a complaint against Esperanza Brown (License No. R47569) for alleged violations of the Nursing Practice Act in that she failed to notify the New Mexico Board that her nursing license had been disciplined in another jurisdiction. On or about February 14, 2007, the New Mexico Board of Nursing revoked by default License No. R47569 issued to Esperanza Brown.

CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Disciplinary Action By Another State)

10. Respondent is subject to disciplinary action under Business and Professions Code section 2761(a)(4) for unprofessional conduct based on disciplinary action taken against her license by the State of New Mexico. The circumstances are as follows:

11. On or about February 14, 2007, In The Matter of Esperanza Brown, License No. R47569, Before the Board of Nursing For the State of New Mexico, respondent's New Mexico Registered Nurse License was revoked by default.

CAUSE TO REVOKE PROBATION

(Residency, Practice, or Licensure Outside of State)

12. At all times after the effective date of Respondent's probation, Condition No. 4 stated:

Residency, Practice, or Licensure Outside of State. Periods of residency or practice as a registered nurse outside of California shall not apply toward a reduction of this probation time period. Respondent's probation is tolled, if and when she resides outside of California. Respondent must provide written notice to the Board within 15 days of any change of residency or practice outside the state, and within 30 days prior to re-establishing residency or returning to practice in this state.

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

13. Respondent's probation is subject to revocation because she failed to comply with Probation Condition No. 4, referenced above. The facts and circumstances regarding this violation are as follows:

Respondent failed to inform the Board of any changes in her license status during the term of probation, specifically, she failed to notify the Board that her New Mexico nursing license was revoked by default on February 14, 2007.

PRAYER

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

1. Revoking the probation that was granted by the Board of Registered Nursing in Case No. 2005-58 and imposing the disciplinary order that was stayed thereby revoking Registered Nurse License No. 469421 issued to Esperanza L. Brown;

2. Revoking or suspending Registered Nurse License No. 469421, issued to Esperanza L. Brown;

/ / /

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

DATED: 4-30-10

Louise R. Bailey

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

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Exhibit A

Decision and Order

Board of Registered Nursing Case No. 2005-58

BILL LOCKYER, Attorney General
of the State of California
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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 Accusation Against: **ESPERANZA BROWN** **a.k.a. Esperanza Lopez** 3185 Garrity Way #925 Richmond, CA 94806 *and/or:* 250 Fairfax Road, Space 179 Bakersfield, CA 93307 Registered Nurse License No. 469421 Respondent.	Case No. 2005-58 OAH No. 2004100189 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

PARTIES

1. Ruth Ann Terry, M.P.H., R.N. (Complainant) is the Executive Officer of the Board of Registered Nursing. She brought this action solely in her official capacity and is represented in this matter by Bill Lockyer, Attorney General of the State of California, by Aspasia A. Papavassiliou, Deputy Attorney General.

2. Respondent Esperanza Brown a.k.a. Esperanza Lopez (Respondent) is representing herself in this proceeding and has chosen not to exercise her right to be represented

by counsel.

3. On or about August 31, 1991, the Board of Registered Nursing issued Registered Nurse license No. 469421 to Respondent. The license was in full force and effect at all times relevant to the charges brought in Accusation No. 2005-58 and will expire on August 31, 2005, unless renewed.

JURISDICTION

4. Accusation No. 2005-58 was filed before the Board of Registered Nursing (Board) , Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on September 23, 2004. Respondent timely filed her Notice of Defense contesting the Accusation. A copy of Accusation No. 2005-58 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in Accusation No. 2005-58. Respondent has also carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at her own expense; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

///

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 2005-58.

9. Respondent agrees that her Registered Nurse license is subject to discipline and she agrees to be bound by the Board 's imposition of discipline as set forth in the Disciplinary Order below.

CIRCUMSTANCES IN MITIGATION

10. Respondent has never been the subject of any disciplinary action. She is admitting responsibility at an early stage in the proceedings.

RESERVATION

11. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Board of Registered Nursing or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

12. This stipulation shall be subject to approval by the Board of Registered Nursing. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Registered Nursing may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

13. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Registered Nurse license No. 469421 issued to Respondent Esperanza Brown, a.k.a. Esperanza Lopez, is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

Severability Clause. Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

1. **Obey All Laws.** Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by Respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, Respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

Criminal Court Orders: If Respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

2. **Comply with the Board's Probation Program.** Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate

with representatives of the Board in its monitoring and investigation of the Respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

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

3. **Report in Person.** Respondent, during the period of probation, shall appear in person at interviews/meetings as directed by the Board or its designated representatives.

4. **Residency, Practice, or Licensure Outside of State.** Periods of residency or practice as a registered nurse outside of California shall not apply toward a reduction of this probation time period. Respondent's probation is tolled, if and when she resides outside of California. Respondent must provide written notice to the Board within 15 days of any change of residency or practice outside the state, and within 30 days prior to re-establishing residency or returning to practice in this state.

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

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

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

6. **Function as a Registered Nurse.** Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

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

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

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

7. **Employment Approval and Reporting Requirements.** Respondent shall obtain prior approval from the Board before commencing or continuing any employment, paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all performance evaluations and other employment related reports as a registered nurse upon request of the Board.

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

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

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

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

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

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

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

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

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

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

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been

approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

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

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

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

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

10. **Complete a Nursing Course(s).** Respondent, at her own expense, shall enroll and successfully complete a course(s) relevant to the practice of registered nursing no later than six months prior to the end of her probationary term.

Respondent shall obtain prior approval from the Board before enrolling in the course(s). Respondent shall submit to the Board the original transcripts or certificates of completion for the above required course(s). The Board shall return the original documents to Respondent after photocopying them for its records.

11. **Cost Recovery.** Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of $7,265.00. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than three months prior to the end of the probation term.

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

order to comply with this condition. During the one year extension, all original conditions of probation will apply.

12. **Violation of Probation.** If Respondent violates the conditions of her probation, the Board after giving Respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed revocation of Respondent's license.

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

13. **License Surrender.** During Respondent's term of probation, if she 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, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent will no longer be subject to the conditions of probation.

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

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

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

ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Registered Nurse license. I enter

into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Registered Nursing.

DATED: 1/10/05.

ESPERANZA BROWN
a.k.a. Esperanza Lopez
Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Registered Nursing of the Department of Consumer Affairs.

DATED: 1/13/05.

BILL LOCKYER, Attorney General
of the State of California

ASPASIA A. PAPAVASSILIOU
Deputy Attorney General

Attorneys for Complainant

DOJ Matter ID: SF2004400682

Exhibit A

Accusation No. 2005-58

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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 Accusation Against: **ESPERANZA BROWN** **a.k.a. ESPERANZA LOPEZ** 3185 Garrity Way #925 Richmond, CA 94806 Registered Nurse License No. 469421 Respondent.	Case No. 2005-58 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about August 31, 1991, the Board of Registered Nursing issued Registered Nurse License Number 469421 to Esperanza Lopez, now known as Esperanza Brown (Respondent). The Registered Nurse license was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2005, unless renewed.

JURISDICTION

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

STATUTORY PROVISIONS

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

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

6. Section 2761(a)(1) of the Code provides that the board may take disciplinary action against a certified or licensed nurse for unprofessional conduct and that unprofessional conduct includes incompetence, or gross negligence in carrying out usual certified or licensed nursing functions.

7. California Code of Regulations, Title 16, section 1442, states:

"As used in Section 2761 of the code, 'gross negligence' includes an extreme departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent registered nurse. Such an extreme departure means the repeated failure to provide nursing care as required or failure to provide care or to exercise ordinary precaution in a single situation which the nurse knew, or should have known, could have jeopardized the client's health or life."

8. California Code of Regulations, Title 16, section 1443, states:

"As used in Section 2761 of the code, 'incompetence' means the lack of possession of or the failure to exercise that degree of learning, skill, care and experience ordinarily possessed and exercised by a competent registered nurse as described in Section 1443.5."

9. California Code of Regulations, Title 16, section 1443.5 states:

"A registered nurse shall be considered to be competent when he/she consistently demonstrates the ability to transfer scientific knowledge from social, biological and physical

sciences in applying the nursing process, as follows:

"(1) Formulates a nursing diagnosis through observation of the client's physical condition and behavior, and through interpretation of information obtained from the client and others, including the health team.

"(2) Formulates a care plan, in collaboration with the client, which ensures that direct and indirect nursing care services provide for the client's safety, comfort, hygiene, and protection, and for disease prevention and restorative measures.

"(3) Performs skills essential to the kind of nursing action to be taken, explains the health treatment to the client and family and teaches the client and family how to care for the client's health needs.

"(4) Delegates tasks to subordinates based on the legal scopes of practice of the subordinates and on the preparation and capability needed in the tasks to be delegated, and effectively supervises nursing care being given by subordinates.

"(5) Evaluates the effectiveness of the care plan through observation of the client's physical condition and behavior, signs and symptoms of illness, and reactions to treatment and through communication with the client and health team members, and modifies the plan as needed.

"(6) Acts as the client's advocate, as circumstances require, by initiating action to improve health care or to change decisions or activities which are against the interests or wishes of the client, and by giving the client the opportunity to make informed decisions about health care before it is provided."

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

FACTUAL BACKGROUND

11. Respondent was the primary nurse for Patient "A" when he went into a fatal cardiac arrest on the morning of June 8, 2003 at Good Samaritan Hospital in San Jose. The

patient was pronounced dead at or about 09:55 hours. Respondent failed to attempt cardiopulmonary resuscitation (CPR) on him because she erroneously thought he was a "No Code."[1] The error stemmed from the fact that when the patient was admitted into the hospital on June 1, 2003, the admission nurse wrongly designated the patient as "No Code" instead of "Full Code" when he entered the admission information via computer into the Kardex system.[2] Respondent looked at the Kardex, but she failed to check the physician's "History & Physical" admission report, which read: "Please note the patient is full-code. Discussed the code status with the patient in the presence of daughter and son."

12. Respondent provided the following treatment to Patient A on June 8, 2003, as she later documented in the patient's chart:

a. At or about 08:00 hours Respondent noted that the patient was responsive and his breathing was even and unlabored. However, his pulse was tachycardic with a rate of 135.

b. At or about 09:30 hours Respondent noted that the patient was unresponsive and had a respiratory rate of 8, blood pressure at 68/51, and a pulse of 60. Respondent states that she paged the house Supervisor and that the Charge nurse was not on the unit.

c. Also at or about 09:30 hours, Respondent informed the patient's daughter that the patient was taking his last breaths.

d. At or about 09:38 hours, Respondent noted that the patient was no longer breathing. She states she paged the patient's physician but she did not receive a return call.

e. At or about 09:45 hours, Respondent states she paged the physician again.

f. Also at or about 09:45 hours, the patient's son was asking "why aren't we doing anything." She notified him that the patient was "No Code" and explained the meaning of

---

1. Patients are designated as "No Code," "Modified Code," or "Full Code," depending on whether and to what extent resuscitation measures would be taken.

2. The Kardex is a card-filing system used to allow quick reference to the particular needs of each patient for certain aspects of care.

that code status.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Gross Negligence)

13. Respondent is subject to disciplinary action under section 2761(a)(1) of the Code in that she demonstrated gross negligence within the meaning of California Code of Regulations, Title 16, sections 1442 and 1443.5(1) when she failed to adequately monitor her patient while his condition was deteriorating, as is described in paragraphs 11 through 12, above.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Gross Negligence)

14. Respondent is subject to disciplinary action under section 2761(a)(1) of the Code in that she demonstrated gross negligence within the meaning of California Code of Regulations, Title 16, section 1442 when she failed to contact her patient's physician in a timely manner, as is described in paragraphs 11 through 12, above.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Negligence and/or Incompetence)

15. Respondent is subject to disciplinary action under section 2761(a)(1) of the Code in that she demonstrated negligence and/or incompetence within the meaning of California Code of Regulations, Title 16, sections 1443 and 1443.5(1) when she failed to follow the proper chain of command to report her patient's change in condition, as is described in paragraphs 11 through 12, above.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Gross Negligence and/or Incompetence)

16. Respondent is subject to disciplinary action under section 2761(a)(1) of the Code in that she demonstrated gross negligence and/or incompetence within the meaning of California Code of Regulations, Title 16, sections 1442 and 1443 when she failed to ascertain her patient's correct code status and thereby withheld restorative measures, as is described in paragraphs 11 through 12, above.

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FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Gross Negligence and/or Incompetence)

17. Respondent is subject to disciplinary action under section 2761(a)(1) of the Code in that she demonstrated gross negligence and/or incompetence within the meaning of California Code of Regulations, Title 16, sections 1442 and 1443 when she failed to check the physician's orders as to her patient's resuscitation status, as is described in paragraphs 11 through 12, above.

SIXTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Gross Negligence and/or Incompetence)

18. Respondent is subject to disciplinary action under section 2761(a)(1) of the Code in that she demonstrated gross negligence and/or incompetence within the meaning of California Code of Regulations, Title 16, sections 1442 and 1443 when she failed to heed requests for intervention made by her patient's family, as is described in paragraphs 11 through 12, above.

SEVENTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Gross Negligence)

19. Respondent is subject to disciplinary action under section 2761(a)(1) of the Code in that she demonstrated gross negligence within the meaning of California Code of Regulations, Title 16, section 1442 when she abandoned her patient by failing to intervene after his condition began deteriorating, despite the requests for intervention made by the patient's family, as is described in paragraphs 11 through 12, above.

EIGHTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Gross Negligence)

20. Respondent is subject to disciplinary action under section 2761(a)(1) of the Code in that she demonstrated gross negligence within the meaning of California Code of Regulations, Title 16, section 1442 when she failed to initiate CPR (cardiopulmonary resuscitation) for her patient despite the fact the physician's orders stated the patient was "Full Code," as is described in paragraphs 11 through 12, above.

PRAYER

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

1. Revoking or suspending Registered Nurse license Number 469421, issued to Esperanza Brown, a.k.a. Esperanza Lopez

2. Ordering Esperanza Brown, a.k.a. Esperanza Lopez, to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 9/17/04

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

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