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

In the Matter of the Accusation Against: JANA RUTH BABCOCK 8521 Massery Ln Santee, CA 92071 Registered Nurse License No. 491993 Respondent.	Case No. 2011-943 OAH No. 2011061365

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective on July 26, 2012.

IT IS SO ORDERED this 26th day of June, 2012.

Board of Registered Nursing
Department of Consumer Affairs
State of California

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In the Matter of the Accusation Against:	Case No. 2011-943
JANA RUTH BABCOCK	OAH No. 2011061365
Registered Nurse License No. RN 491993	
Respondent.	

PROPOSED DECISION

Robert Walker, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Diego, California, on February 21, 2012.

Lauro Paredes, Deputy Attorney General, Department of Justice, State of California, represented the complainant, Louise R. Bailey, M.Ed., R.N., Executive Officer of the Board of Registered Nursing.

The respondent, Jana Ruth Babcock, appeared in propria persona.

The record was closed on February 21, 2012.

SUMMARY

Respondent is licensed as a registered nurse. In 2010, respondent was convicted of driving under the influence of alcohol. The complainant seeks suspension or revocation of respondent's license.

Complainant also seeks cost recovery, and there are issues concerning the prayer for cost recovery.

In this decision, it is determined that respondent's license should be revoked but that the revocation should be stayed and that respondent should be placed on probation subject to appropriate conditions.

FACTUAL FINDINGS

Background

1. On August 31, 1993, the Board of Registered Nursing issued license number RN 491993 to the respondent, Jana Ruth Babcock. Since 1998, respondent has worked as a nurse at Sharp Healthcare. Since 2000 she has worked in the women's center at Sharp Grossmont Hospital. She has worked as a surgical nurse and as a recovery nurse. Recently, respondent was promoted to the position of advanced clinician.

2. Early in November of 2009 respondent was placed on disability leave because of sciatica in her back. She returned to work the second week of January 2010. She testified that, since returning to work, she has not had sciatica.

3. Respondent is married. She and her husband have one daughter and one son.

Criminal Conviction

4. On March 5, 2010, in the Superior Court of California for the County of San Diego, respondent was convicted of violating Vehicle Code section 23152, subdivision (b), driving with a blood alcohol concentration of 0.08 percent or more, a misdemeanor. The conviction was on a plea of guilty. The court suspended the imposition of sentence and placed respondent on summary probation for five years. As conditions of probation, the court required respondent to pay fines and fees of $1,972, perform eight days of community service, complete a nine-month first conviction program, attend a Mothers Against Drunk Driving presentation, attend one 12-step program meeting each week for three months, and not drive a vehicle without an ignition interlock device (IID) for 18 months. The court imposed other standard conditions of probation.

5. Respondent's driver's license was suspended for two months. After that, the Department of Motor Vehicles issued a restricted license, which authorized respondent to drive to and from work and to and from appointments she was required to attend in order to comply with the conditions of her probation. After respondent completed the nine-month program, her driver's license was restored.

6. Respondent's criminal probation is scheduled to expire on March 5, 2015.

7. The circumstances that resulted in respondent's conviction occurred on December 2, 2009. As noted above, respondent was on disability leave at that time because of sciatica. On December 2, 2009, respondent was experiencing substantial pain. She took a pain medication but got no relief from the pain. She decided to self-medicate with alcohol. She consumed a substantial quantity of alcohol and fell asleep. Respondent testified that it was unusual for her to be inebriated. She said she usually drinks alcohol only on holidays or special occasions. Respondent's son missed the last school bus of the day and called respondent for a ride home. Respondent set out in her car to pick up her son. It was

approximately 3:30 in the afternoon. Respondent got only a short distance from home when a sheriff's deputy observed respondent's vehicle stopped in the middle of heavy traffic. The officer approached respondent and asked whether she was having difficulty driving. She said she was. The officer asked respondent to get out of her vehicle, and when she did, she almost fell. After administering field sobriety tests, the officer arrested respondent.

8. At the time the officer was administering field sobriety tests, he asked respondent whether she had been drinking alcoholic beverages. She said she had not. She said she might have taken a Vicodin tablet. Respondent testified that she thinks she had not taken a Vicodin. She said her doctor had given her a limited prescription for Vicodin but that she believes she had finished taking them before the beginning of December.

9. The crime of which respondent was convicted is one that is substantially related to the qualifications, functions, or duties of a registered nurse.

Respondent's Recent Promotion

10. As noted above, respondent recently was promoted to the position of advanced clinician. In that position, she helps to develop policies, supervises in emergencies, and is responsible for surgery room and recovery room training. She is on call weekends and holidays. Respondent testified that it was quite an honor to be chosen to fill that position.

11. Respondent testified that she is concerned that, if her license is disciplined, she might not be able to continue in her new position.

Mitigating Circumstance

12. At the time of the incident that led to respondent's conviction, she was not working as a nurse. She was on medical leave.

Rehabilitation

13. There was no evidence of any other disciplinary proceeding against respondent. Respondent testified that she has never been terminated from a position and that there has never been a formal inquiry regarding her work.

14. Respondent testified that she is ashamed of and mortified by having driven while intoxicated. She said she is particularly embarrassed to have her children know that she did that because she has told them that one must not drink and drive. Respondent said she hears news accounts of drivers who injure or kill people and is reminded of the fact that she might have done that. Respondent said, "I am remorseful and ashamed, and I will live with that for a long time." Respondent is grateful that she did not injure anyone and did not cause any property damage. Respondent's expression of remorse was very credible.

15. Respondent satisfied conditions of her criminal probation before the deadlines the court set. As noted above, the conviction was on March 5, 2010. On March 9, 2010, respondent attended the Mothers Against Drunk Driving presentation. On March 28, 2010, she completed her community service. On April 2, 2010, she had an IID installed on her vehicle. On March 28, 2011, she completed the nine-month first conviction program. She attended the 12-step meetings. The court originally conditioned respondent's probation on her not driving a vehicle without an IID was for 18 months. However, after 12 months, respondent petitioned the court to remove that condition, and by an order dated April 13, 2011, the court granted her petition.

Performance Reviews

16. Respondent presented evidence of her annual performance reviews at Sharp Healthcare from 1998 through 2011. From 1998 through 2007, respondent received very good reviews. For the years 2008 through 2011, she received the highest possible rating. The definition of that rating is as follows:

> Exceptional Performer
> Performance is in the top 20% of employees
> Minimal direction/supervision
> Provides high quality service/product
> Promotes organization's goals/values
> Exceptional communication skills
> Generates and implements new ideas as a general course of their work

Character References

17. Respondent submitted five letters attesting to her good character. The authors of four letters knew of respondent's conviction and knew that the letters they were writing were to be offered as evidence in a disciplinary proceeding before the board. Eric L. Schook, the author of the fifth letter, did not know about respondent's conviction and did not know about the disciplinary proceeding.

18. Leslie A. LaVardera, RN, BSN, has worked with respondent for 16 years. Ms. LaVardera wrote a letter dated January 26, 2012. The following is a paraphrased summary of part of her letter. Over time, Jana and I became personal friends. She is kind, compassionate, and hardworking. She is a loving, caring mother. Her husband was deployed serving our country, and she worked the long hours nurses work at the same time she was a full-time mother. Jana is an experienced, skilled, and expert nurse. When faced with a crisis, she is quick, cool, and calm. Her knowledge of operating room protocol and practice is unsurpassed. She quickly offers assistance. Driving under the influence was very out of character for her.

19. Gail D. Henderson, RN, CCRV, has known respondent professionally for over 13 years. Over the years, she and respondent have become personal friends. Ms. Henderson wrote a letter dated January 28, 2012. The following is a paraphrased summary of part of her letter. Jana is honest and hardworking. Surgeons, anesthesiologists, and other nurses like and respect Jana. She consistently demonstrates her professionalism, clinical acumen, and reliability. As a nurse, she is well organized, efficient, and extremely competent. She is consistent and caring in her support of surgical patients. Jana's nursing skills are top notch.

20. Linda Hamel, RN, has worked with respondent for almost 13 years. Ms. Hamel wrote a letter dated February 2, 2012. The following is a paraphrased summary of part of her letter. Jana and I have worked together for many years; I recently became her supervisor. We work in an operating room, and I have the utmost trust and confidence in Jana. She is hardworking and dedicated. She never leaves a job unfinished. Jana has great leadership ability. In the role of a charge nurse, she functions with a sense of calm and clarity, even when faced with chaotic situations. Jana is a person of very good moral character.

21. Linda A. Malarkey, respondent's neighbor of 27 years, wrote a letter dated January 30, 2012. The following is a paraphrased summary of part of Ms. Malarkey's letter. Jana goes out of her way to help others. I had a hip replacement and do not know what I would have done without her help. Jana is industrious. She worked, cared for her two children, and went to college to become a nurse – all at the same time. There is no excuse for Jana's lapse of judgment in driving under the influence, but other than that, I have never known of her doing anything to raise a question about her good morals and excellent character. She is a good, conscientious person.

22. Mr. Schook, who has known respondent for 35 years, wrote a letter dated January 21, 2012. The following is a paraphrased summary of part of Mr. Schook's letter. Jana's husband had a career in the Navy and was away from home for substantial periods. Jana worked as a nurse and reared two children. She has been an excellent wife and mother. She has helped her mother and her brother when they needed help.

Costs

23. Business and Professions Code section 125.3, subdivision (a), provides, in part:

> [T]he administrative law judge may 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.

24. California Code of Regulations, title 1, section 1042, subdivision (b), provides, in part:

> Except as otherwise provided by law, proof of costs at the Hearing may be made by Declarations that contain specific and sufficient facts to support findings regarding actual costs incurred and the reasonableness of the costs, which shall be presented as follows:
>
> (1) For services provided by a regular agency employee, the Declaration may be executed by the agency or its designee and shall describe the general tasks performed, the time spent on each task and the method of calculating the cost. For other costs, the bill, invoice or similar supporting document shall be attached to the Declaration.
>
> (2) For services provided by persons who are not agency employees, the Declaration shall be executed by the person providing the service and describe the general tasks performed, the time spent on each task and the hourly rate or other compensation for the service. In lieu of this Declaration, the agency may attach to its Declaration copies of the time and billing records submitted by the service provider.

25. In an award for costs, an essential finding is that the costs incurred were reasonable. Business and Professions Code section 125.3, subdivision (d), specifies "reasonable costs." California Code of Regulations, title 1, section 1042, subdivision (b), provides that declarations are to contain facts to support findings regarding actual costs and "the reasonableness of the costs." Subdivision (b)(1) requires a description of "the time spent on each task." This is required so that the judge can assess whether the time spent on various tasks was reasonable.

26. Complainant submitted a certification of costs for work performed by the Office of the Attorney General. The certification concerns work performed by attorneys and by a paralegal in 2011 and 2012 at a cost of $3,745. Attached to that certification is a form entitled "Matter Time Activity By Professional Type." The attachment contains a general description of the tasks performed, the time spent on the tasks, and the hourly rate of compensation. The certification satisfies the requirements of section 1042, subdivision (b). And the certification supports a finding that those costs are reasonable.

27. It is found that, within the terms of Business and Professions Code section 125.3, subdivision (a), the reasonable costs are $3,745.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Complainant has the burden of proof, and the standard is clear and convincing evidence.

Cause to Discipline Respondent's License

2. By reason of the matters set forth in Findings 4 through 9, it is determined that respondent has been convicted of an offense substantially related to the qualifications, functions, or duties of a registered nurse. Thus, pursuant to Business and Professions Code section 490, subdivision (a), and section 2761, subdivision (f), there is cause to suspend or revoke respondent's license.

3. By reason of the matters set forth in Findings 4 through 9, it is determined that respondent engaged in unprofessional conduct in that she used alcoholic beverages to an extent or in such a manner dangerous or injurious to herself or the public. Thus, pursuant to Business and Professions Code section 2761, subdivision (a), and section 2762, subdivision (b), there is cause to discipline respondent's license.

4. By reason of the matters set forth in Findings 4 through 9, it is determined that respondent engaged in unprofessional conduct in that she has been convicted of a criminal offense involving the consumption of alcoholic beverages. Thus, pursuant to Business and Professions Code section 2761, subdivision (a), and section 2762, subdivision (c), there is cause to discipline respondent's license.

Disciplinary Guidelines

5. The board's disciplinary guidelines recommend various levels of discipline. Business and Professions Code section 2762, subdivisions (b) and (c), specifically address alcohol related offenses. Business and Professions Code section 2761, subdivision (f), is much broader, and the examples provided in the guidelines suggest that the discipline recommended for that subdivision is not appropriate in this case. The recommendations regarding Business and Professions Code section 2762, subdivisions (b) and (c), are the same. In cases of a first-time offense, with documented evidence of an on-going rehabilitation program, the recommendation is a stayed revocation with three years of probation.

6. It is determined that the recommendation regarding Business and Professions Code section 2762, subdivisions (b) and (c), is the appropriate discipline in this case but that there is good reason to deviate from certain standard conditions of probation.

Deviation from Certain Standard Conditions of Probation

7. By reason of the matters set forth in Findings 10 through 22, it is determined that there is good reason to deviate from certain standard conditions of probation in order to try to accommodate respondent's desire to continue in her new position as an advanced clinician.

8. Respondent's crime was serious. She put her own life and the life of others in jeopardy. Nevertheless, it is determined that deviation is appropriate. The incident did not involve potential harm to a patient. There is no evidence that, at this time, respondent needs other than minimal supervision. Respondent has practiced nursing for more than 17 years, and no evidence was presented of any discipline or disciplinary proceedings against her. No evidence was presented of any other criminal conviction. There is evidence of substantial progress toward rehabilitation. Respondent has complied with the conditions of her criminal probation. Respondent sincerely affirmed her determination not to reoffend.

9. The letters from the three nurses who have worked with respondent for many years also support a determination that deviations from the standard conditions are in order. As noted above, the three nurses knew of respondent's conviction and knew that the letters they were writing were to be offered as evidence in a disciplinary proceeding before the board. Ms. LaVardera wrote that respondent is an experienced, skilled, and expert nurse and that her knowledge of operating room protocol and practice is unsurpassed. Ms. Henderson wrote that respondent consistently demonstrates her professionalism, clinical acumen, and reliability. Ms. Henderson said respondent is well organized, efficient, and extremely competent and that her nursing skills are top notch. Ms. Hamel, who has become respondent's supervisor, wrote that she has the utmost trust and confidence in respondent. Ms. Hamel said respondent has great leadership ability and is a person of very good moral character.

10. There should be a deviation from the requirement regarding the level of supervision respondent must have. The condition of probation should provide for the minimum level of supervision at this time. The condition should further provide that, in the event the board later determines that a higher level of supervision is required, the board may require a higher level.

11. There should be a deviation from the prohibition against respondent's supervising registered nurses. Instead of an outright prohibition, the condition of probation should provide that the board may restrict respondent from supervising registered nurses.

12. There should be a deviation from the treatment program requirement to permit respondent to request the board to accept the program she completed in satisfaction of the requirement of her criminal probation.

Cost Recovery

13. By reason of the matters set forth in Findings 26 and 27, it is determined that the board's costs in this matter were $3,745 and that, within the terms of Business and Professions Code section 125.3, those costs were reasonable.

14. In *Zuckerman v. State Board of Chiropractic Examiners,*[1] a case in which the State Board of Chiropractic Examiners had disciplined a license, the Supreme Court of California dealt with the issue of cost recovery. The court held that "the Board must exercise its discretion to reduce or eliminate cost awards in a manner that will ensure that . . . [cost recovery] does not deter chiropractors with potentially meritorious claims or defenses from exercising their right to a hearing." The court established five rules that an agency must observe in assessing the amount to be charged. To some extent, these rules are similar to matters one would consider in determining whether costs are reasonable. The court's rules, however, go beyond considerations of whether the costs are reasonable. The court said:

> [T]he 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 and prosecution to prove that a chiropractor engaged in relatively innocuous misconduct.[2]

15. In this case, respondent did engage in the conduct that is the primary focus of the accusation. Respondent, however, had a legitimate interest in pursuing a hearing. She established that she has demonstrated sufficient progress toward rehabilitation and that she is sufficiently responsible that there should be deviations from the standard conditions of probation in order to try to accommodate respondent's desire to continue in her new position as an advanced clinician. Respondent, however, offered no evidence that assessing the full costs of investigation and prosecution would constitute an unfair penalty.

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1 *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32.

2 *Id.* at p. 45.

16. It is determined that this was not a case in which the agency conducted a disproportionately large investigation and prosecution to prove relatively innocuous misconduct.

17. Respondent did not present evidence that would support a finding that she will be unable to pay the cost recovery.

18. *Zuckerman* requires that, in assessing costs, an agency must consider a licensee's "subjective good faith belief in the merits of his or her position" and must consider whether the licensee has raised a "colorable challenge" to the proposed discipline. In compliance with this requirement, it is determined that the cost recovery in this case should be reduced to $3,000.

19. Further, the board, as is required by *Zuckerman,* must determine whether a payment schedule is necessary so that respondent will be financially able to pay the board's costs.

ORDER

Respondent's license is revoked. The revocation, however, is stayed for three years, and a probationary license shall be issued on the following conditions:

1. Each condition of probation is a separate and distinct condition. If any condition, 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.

2. Respondent shall obey all federal, state, and local laws. Respondent shall comply with all court orders and all conditions of probation or parole. Respondent shall make a full and detailed account of any violation of law to the board in writing within 72 hours of the violation. To permit monitoring of compliance with this term, respondent shall submit completed fingerprint cards and fingerprint fees within 45 days of the effective date of this decision unless respondent previously submitted those as part of a license application.

3. If respondent is under criminal court orders, including probation or parole, and the order is violated, the violation shall be deemed a failure to satisfy these conditions of probation and may result in the filing of an accusation or petition to revoke probation.

4. Respondent shall fully comply with the terms and conditions of the board's probation program and shall cooperate with representatives of the board in all matters, including monitoring and investigation of respondent's compliance. Respondent shall inform the board in writing within no more than 15 days of any address change. At all times,

including during any period of suspension, respondent shall maintain an active, current license.

5. Respondent shall appear in person for interviews or meetings as directed by the board or its representatives.

6. Periods of residency or practice outside of California will not apply to the reduction of the probationary term. Respondent must provide written notice to the board within 15 days of any change of residency or practice outside the state. Respondent must provide written notice to the board within 30 days prior to reestablishing residency or returning to practice in California.

7. Respondent shall submit a list of all states and territories in which respondent has ever been licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall advise the board of the status of each license respondent has ever held as a registered nurse, vocational nurse, or practical nurse. If, at any time during the period of probation, the status of any such license changes, respondent immediately shall advise the board of the change. If, at any time during the period of probation, respondent applies for or obtains a license as a nurse, vocational nurse, or practical nurse, respondent immediately shall advise the board of the application or license.

8. Respondent shall submit or cause to be submitted such written reports, declarations, and verifications as the board requires. These shall contain statements relative to respondent's compliance with the terms and conditions of the board's probation program. Respondent shall immediately execute all release of information forms that the board or its representatives require.

9. Respondent shall provide a copy of this decision to the nursing regulatory agency in every state or territory in which respondent has a registered nurse license.

10. Respondent, at some time 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 directed by the board. For purposes of compliance with this condition, "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 directed by the board. If respondent has not complied with this condition during the probationary term but has presented documentation of respondent's good faith efforts to comply, the board, in its discretion, may grant an extension of the probation period up to one year in order to provide respondent with a further opportunity to comply with this condition.

11. 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 on the board's request.

12. Respondent shall provide a copy of this decision to respondent's employer and immediate supervisor prior to commencement or continuation of any nursing or other health care related employment.

13. Respondent shall notify the board in writing within 72 hours after respondent obtains any nursing or other health care related employment. Respondent shall notify the board in writing within 72 hours after respondent is terminated from any nursing or health care related employment with a full explanation of the circumstances surrounding the termination.

14. Respondent shall obtain prior approval from the board regarding respondent's level of supervision or collaboration before commencing or continuing any employment as a registered nurse.

15. Respondent shall practice only under the direct supervision of a registered nurse in good standing and with no current discipline, unless the board approves of alternative methods of supervision or collaboration. The individual providing supervision or collaboration must have person-to-person communication with respondent at least twice during each shift worked.

16. In the event the board determines that respondent needs a higher level of supervision, the board may require a higher level. Examples of the levels of supervision or collaboration that the board may require are as follows:

(a) The individual providing supervision or collaboration must be present in the patient care area or in any other work setting at all times.

(b) The individual providing supervision or collaboration must be present in the patient care unit or in any other work setting at least one-half of the hours respondent works.

(c) If respondent is approved to work in the home health care setting, the individual providing supervision or collaboration shall have person-to-person communication with respondent as required by the board each workday. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision or collaboration as required by the board during each workday. The individual providing supervision or collaboration shall conduct, as required by the board, periodic, on-site visits to patients' homes visited by respondent.

17. Respondent shall not work for a nurse's registry, a temporary nurse placement agency, or an in-house nursing pool. Respondent shall not work as a traveling nurse or in any private duty position as a registered nurse. Respondent shall not work for a licensed home health agency as a visiting nurse unless the board has approved the registered nursing

supervision and other protections for home visits. Respondent shall not work in any other registered nursing occupation in which home visits are required. The board may restrict respondent from supervising registered nurses. The board may restrict respondent from supervising licensed vocational nurses or unlicensed assistive personnel. 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 work site 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 require documentation to determine whether there should be restrictions on the hours of work.

18. Respondent, at respondent's expense, shall successfully complete a course relative to the practice of registered nursing no later than six months prior to the end of respondent's probationary term. Respondent's completion of a course will satisfy this condition only if, prior to enrolling in the course, respondent obtained the board's approval of the course. Respondent shall submit to the board the original transcripts or certificates of completion for the course. The board shall return the original documents to respondent after photocopying them for its records.

19. Respondent shall pay to the board costs associated with the board's investigation and enforcement in the amount of $3,000. Respondent shall be permitted to pay those costs in a payment plan approved by the board. In establishing a payment plan, the board, as is required by *Zuckerman,* will consider respondent's financial ability to pay the costs. Respondent shall complete the payment of costs no later than three months prior to the end of the probation term. If respondent has not satisfied this condition during the probationary term, if respondent has presented sufficient documentation of respondent's good faith efforts to satisfy it, and if all other conditions have been satisfied, the board, in its discretion, may grant an extension of respondent's probation period up to one year without further hearing in order to provide respondent with an additional opportunity to comply with this condition. During the one year extension, all original conditions of probation will apply.

20. If respondent violates the conditions of respondent's probation, the board, after giving respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline.

21. If, during the period of probation, a petition to revoke probation or an accusation is filed against respondent's license or the Attorney General's Office is requested to prepare a petition to revoke probation or an accusation, the probationary period shall not expire until the board has acted on the petition or accusation.

22. If respondent ceases to practice due to retirement, health reasons, or because respondent otherwise is unable to satisfy the conditions of probation, respondent may request permission to surrender respondent's license to the board. The board may evaluate the request and exercise its discretion in deciding whether to grant the request, deny it, or take other action the board deems appropriate. If the board formally accepts respondent's tender

of respondent's license and wall certificate, respondent no longer will be subject to the conditions of probation. Surrender of respondent's license will be considered a disciplinary action and shall become part of respondent's license history. 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 board's decision to accept the surrender: Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness or one year for a license surrendered because of a mental or physical illness.

23. Within 45 days of the effective date of this decision, respondent, at her expense, shall have a licensed physician, nurse practitioner, or physician assistant, who was approved by the board before the assessment was performed, submit an assessment of respondent's physical condition and capability to perform the duties of a registered nurse. Such an assessment shall be submitted in a format acceptable to the board. If the person performing the assessment recommends a treatment program, respondent shall obtain the treatment and have the provider send written reports to the board on forms the board provides.

24. If respondent is determined to be unable to practice safely, the licensed physician, nurse practitioner, or physician assistant making this determination shall immediately notify the board and respondent by telephone, and the board shall request that the Attorney General's office prepare a petition to revoke probation or an accusation. Respondent shall immediately cease practice and shall not resume practice until notified by the board in writing that a medical determination permits respondent to resume practice. During this period of suspension, respondent shall not engage in any practice for which a license issued by the board is required. This period of suspension will not apply to the reduction of the probationary period.

25. If respondent fails to have the above assessment submitted to the board within the 45-day requirement, respondent shall immediately cease practice and shall not resume practice until the board notifies her in writing that she may do so. This period of suspension will not apply to the reduction of the probationary period. The board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish respondent's good faith efforts to obtain the assessment, and respondent must provide a specific date for compliance. Only one such waiver or extension will be permitted.

26. During the probationary period or prior to commencement of probation, respondent, at her expense, shall successfully complete a board-approved treatment/rehabilitation program of at least six months duration. As required, reports shall be submitted by the program on forms provided by the board. If respondent has not completed a board-approved treatment/rehabilitation program prior to commencement of probation, respondent, within 45 days from the effective date of this decision, shall enroll in a program. If respondent fails to successfully complete a program within the first nine months of probation, the board shall consider respondent to be in violation of probation. Respondent

may request the board to accept the program she completed in satisfaction of the requirement of her criminal probation; whether to accept that program, however, is completely within the board's discretion.

27. Respondent, as the board directs, shall attend at least one, but no more than five, 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse support group each week. If a nurse support group is not available, an additional 12-step meeting or equivalent shall be added. Respondent shall submit to the board dated and signed documentation confirming such attendance. Respondent shall continue with any recovery plan recommended by the treatment/rehabilitation program or a licensed mental health examiner.

28. Respondent shall completely abstain from the possession, injection, or consumption by any route of all psychotropic (mood altering) drugs, including alcohol, except when the same are ordered by a health care professional legally authorized to do so as part of documented medical treatment. Respondent shall have sent to the board, in writing and within 14 days, by the prescribing health professional, a report identifying the medication, dosage, the date the medication was prescribed, respondent's prognosis, the date the medication will no longer be required, and the effect on the recovery plan.

29. Respondent shall identify a single physician, nurse practitioner, or physician assistant who shall be aware of respondent's history of substance abuse and will coordinate and monitor any prescriptions for respondent for dangerous drugs, controlled substances, or mood-altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall submit quarterly reports to the board regarding respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time-limited use of such substances. The board may require the single coordinating physician, nurse practitioner, or physician assistant to be a specialist in addictive medicine or to consult with a specialist in addictive medicine.

30. Respondent, at respondent's expense, shall participate in a random, biological fluid testing or drug screening program that the board has approved. The length of time and frequency will be subject to the board's approval. Respondent is responsible for informing the board of respondent's current telephone number at all times. Respondent shall also ensure that messages may be left at the telephone number when she is not available and ensure that reports are submitted directly by the testing agency to the board, as directed. The program shall report any confirmed, positive finding to the board immediately, and respondent shall be considered in violation of probation.

31. Respondent shall fully cooperate with the board and its representatives and shall, when requested, submit to such tests and samples as the board or its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances.

32. If respondent has a positive drug screen for any substance not legally authorized and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the board files a petition to revoke probation or an accusation, the board may suspend respondent from practice pending the final decision on the petition or accusation. The period of suspension will not apply to the reduction of the probationary term.

33. If respondent fails to participate in a random, biological fluid testing or drug screening program within the specified time, respondent shall immediately cease practice and shall not resume practice unless the board authorizes that in writing. If the board files a petition to revoke probation or an accusation, the board may suspend respondent from practice pending the final decision on the petition or accusation. The period of suspension will not apply to the reduction of the probationary term.

34. Respondent, within 45 days of the effective date of this decision, shall have a mental health examination, including psychological testing as appropriate, to determine her capability to perform the duties of a registered nurse. The examination will be performed by a psychiatrist, psychologist, or other licensed mental health practitioner whom the board has approved. The examining mental health practitioner will submit a written report of the assessment and recommendations to the board. All costs are the responsibility of the respondent. Respondent shall institute and follow all recommendations for treatment, therapy, or counseling.

35. If the examining mental health practitioner determines that respondent is unable to practice safely as a registered nurse, the practitioner shall immediately notify the board and respondent by telephone, and the board shall request that the Attorney General's office prepare a petition to revoke probation or an accusation. Respondent shall immediately cease practice and may not resume practice unless the board notifies respondent in writing that, based on a mental health determination, respondent is permitted to resume practice. During the period of suspension, respondent shall not engage in any practice for which a license issued by the board is required. The period of suspension will not apply to the reduction of the probationary term.

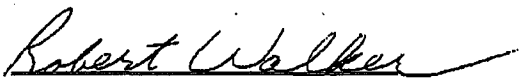
36. If respondent fails to have the above assessment submitted to the board within the 45-day requirement, respondent shall immediately cease practice and shall not resume practice unless the board authorizes that in writing. The period of suspension will not apply to the reduction of the probationary term. The board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish respondent's good faith efforts to obtain the assessment, and respondent must provide a specific date for compliance. Only one such waiver or extension will be granted.

37. Respondent, at respondent's expense, shall participate in an on-going counseling program until such time as the board, on the recommendation of the counselor, releases her from this requirement. The board will require written progress reports from the counselor at various intervals.

38. If there are conditions of probation that would make it difficult or impossible for respondent to function in her new position as an advanced clinician, respondent may request that those conditions be modified. Whether to grant such a request, however, is completely within the board's discretion.

39. If respondent successfully completes probation and satisfies all other conditions for licensure, a regular, non-probationary license shall be issued.

DATED: March 19, 2012



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

In the Matter of the Accusation Against: **JANA RUTH BABCOCK** **8521 Massery Lane** **Santee, CA 92071** **Registered Nurse License No. RN 491993** Respondent.	Case No. 2011-943 **ACCUSATION**

Complainant alleges:

PARTIES

1. Louise R. Bailey, M.Ed., RN (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, 1993, the Board of Registered Nursing issued Registered Nurse License Number RN 491993 to Jana Ruth Babcock (Respondent). The Registered Nurse License was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2012, unless renewed.

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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.

4. 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.

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, subdivision (b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY PROVISION

6. Section 482 of the Code states:

> Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:
>
> ...
>
> (b) Considering suspension or revocation of a license under Section 490.
>
> Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground 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.

8. Section 493 of the Code states in pertinent part:

> Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary

action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

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

9. Section 2761 of the Code states:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

...

(a) Unprofessional conduct, which includes, but is not limited to, the following:

...

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

...

10. Section 2762 of the Code states:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

....

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

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

. . . .

REGULATORY PROVISIONS

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

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

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

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

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

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

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

. . .

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

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

(2) Total criminal record.

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

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

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

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

COSTS

13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of

the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(March 5, 2010 Criminal Conviction for DUI on December 12, 2009)

14. Respondent is subject to disciplinary action under sections 490 and 2761, subdivision (f), of the Code in that Respondent was convicted of a crime substantially related to the qualifications, functions, and duties of a registered nurse. The circumstances are as follows:

a. On or about March 5, 2010, in a criminal proceeding entitled *The People of the State of California v. Jana Ruth Babcock,* in San Diego County Superior Court, case number C296770, Respondent was convicted on her plea of guilty, for violating Vehicle Code section 23152, subdivision (b), driving with a blood alcohol concentration (BAC) of 0.08% or more, a misdemeanor. Respondent also admitted to a violation of Penal Code section 23578, driving with a blood alcohol level greater than 0.15% by weight.

b. As a result of her conviction Respondent, was sentenced to five years summary probation, ten days of community service, ordered to attend a nine-month DUI program, and ordered to pay $,1942 in fines, and ordered to install an Ignition Interlock Device for 18 months.

c. The facts that led to the conviction are that on or about December 12, 2009, Respondent drove her vehicle while under the influence of alcohol. A Deputy Sheriff from the San Diego County Sheriff's Department stopped Respondent for driving erratically on Fanita Drive in the City of Santee. Respondent was driving a silver Ford Focus and stopped her vehicle in a busy roadway, significantly delaying traffic. Although the vehicle was in sound operating condition, Respondent was unable to get it started. The responding Sheriff's Deputy noticed a strong odor of alcohol emanating from Respondent's breath and person. When Respondent exited her vehicle, she nearly fell down due to her intoxication. Respondent speech was slurred, her eyes were glassy and bloodshot, and her face was red and blushed. Respondent claimed to have only drank four or five non-alcoholic beers. Respondent was asked to complete a series of field sobriety tests. Respondent failed every field sobriety test administered. Respondent was unable to track an object smoothly with her eyes, she was unable to maintain her balance while

attempting to walk heel to toe, and when asked to stand on one foot, Respondent was unable to perform the task and repeatedly almost fell. Officers twice administered a preliminary alcohol screening test (PAS) to Respondent. The PAS recorded Respondent's BAC at .261% and .242%. After her arrest, Respondent later submitted to a whole blood draw and at the time of sentencing admitted to a blood alcohol level of .24 BAC, three times the legal limit. Respondent has admitted to self-medicating with alcohol to control physical pain.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Use of Alcohol in a Dangerous Manner)

15. Respondent has subjected her registered nurse license to disciplinary action under section 2762, subdivision (b) of the Code, for unprofessional conduct, in that on or about December 12, 2009, as described in paragraph 14 above, Respondent used alcoholic beverages to an extent or in a manner that was dangerous and injurious to herself, and potentially dangerous to others, in that she operated a motor vehicle with a significantly high blood alcohol level.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Conviction of Alcohol-Related Criminal Offenses)

16. Respondent has subjected her registered nurse license to disciplinary action under section 2762, subdivision (c) of the Code, for unprofessional conduct, in that on or about March 5, 2010, as described in paragraph 14 above, Respondent was convicted of a criminal offense involving the consumption and/or self-administration of alcohol.

PRAYER

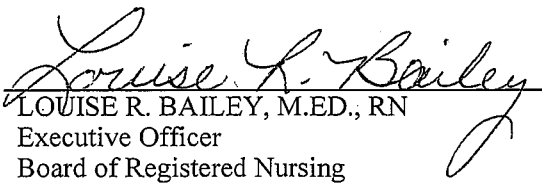
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number RN 491993, issued to Jana Ruth Babcock;

2. Ordering Jana Ruth Babcock 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: 5/27/2011



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

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