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

In the Matter of the Accusation Against: JENNIFER JOANNE MARTINEZ a.k.a. JENNIFER WOODWARD MARTIN 3401 Par Four Drive El Cajon, CA 92019 Registered Nurse License No. 503068 Nurse Practitioner Certificate No. 10262 Nurse Practitioner Furnishing Certificate No. 10262 Respondent.	Case No. 2012-370 OAH No. 2012010374

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 January 15, 2013.

IT IS SO ORDERED this 15th day of December, 2012.

Raymond Mallel, President
Board of Registered Nursing
Department of Consumer Affairs
State of California

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PROPOSED DECISION

Susan J. Boyle, Administrative Law Judge, Office of Administrative Hearings, in San Diego, California, heard this matter on September 12 and 13, 2012, in San Diego, California.

Deputy Attorney General Adrian R. Contreras represented complainant, Louise R. Bailey, M.Ed., R.N., Executive Officer, Board of Registered Nursing, Department of Consumer Affairs, State of California (board).

Suzy C. Moore, Attorney at Law, represented respondent Jennifer Joanne Martinez (respondent) who was present throughout the proceedings.

Oral and documentary evidence was presented, and the matter was submitted on September 12, 2012.

FACTUAL FINDINGS

1. On September 2, 1994, the board issued respondent Registered Nurse License Number 503068. Respondent's license expired on May 31, 2012.

Respondent was also issued Nurse Practitioner Certificate Number 10262 on September 21, 1998. She was issued Furnishing Certificate Number 10262 on October 12, 1999. These certificates expired on May 31, 2012.

2. On December 15, 2011, the Accusation, Case No. 2012-370, was signed by Louise R. Bailey, M.Ed., R.N., in her official capacity as Executive Officer of the board. The Accusation and other required jurisdictional documents were served upon respondent on December 15, 2011.

The Accusation sought to revoke respondent's license based upon her failing to complete the board's diversion program (first cause for discipline), unlawfully obtaining and/or self –administering a controlled substance (second cause for discipline), using a controlled substance (third cause for discipline), and falsifying an entry in a record pertaining to dangerous drugs (fourth cause for discipline).

3. On July 3, 2011, respondent submitted her Notice of Defense and this hearing was set.

4. Prior to the presentation of evidence, the department's motion to amend the Accusation at paragraphs 16 and 17 was granted.

Paragraph 16 was amended by inserting the sentence "Respondent entered into a contract with the Board by which she agreed to participate in the Maximums program and adhere to its rules and regulations." as the first sentence.

Paragraph 17 was amended by adding the phrase "after signing a contract agreeing that she would comply" before the phrase "as set forth in paragraph 16 above . . ."

5. After the presentation of certain evidence, the board's motion to file an amended Accusation to conform to proof was granted. The First Amended Accusation added a fifth cause for discipline alleging that respondent was dishonest in her dealing with the board. The amended Accusation incorporates the amendments requested in the board's prior motion.

Stipulations of the Parties

6. The parties stipulated to the following facts:

a. Respondent wrote the prescriptions contained in the board's Exhibit No. 5.

b. Respondent filled the prescriptions contained in the board's Exhibit No. 5 at the Rite Aid pharmacy.

c. Respondent voluntarily left the Maximus diversion program.

Respondent Writes Furnishing Orders for Vicodin in 2009

7. On January 21, 2010, pharmacist Anthony Kingkade (Kingkade) was working at the Rite Aid pharmacy on Jamacha Boulevard in El Cajon. Kingkade was licensed as a pharmacist in 1977 and has worked for Rite Aid and its predecessor company since 1981. Kingkade testified that he received a telephone call from respondent requesting the refill of a prescription in the name of Elman Martinez (Martinez) for 120 tablets of Vicodin. Kingkade pulled the original prescription, noticed it contained irregularities, and determined to verify the authenticity of the prescription.

The prescription was written on a California Security Prescription blank issued to the Johnson Medical Group (Johnson Group) in National City. Prescription blanks are issued by a company registered by the Board of Pharmacy and various authenticating methods are utilized to insure that persons unauthorized to write prescriptions cannot do so. Respondent's name was checked on the prescription blank, however, the telephone and facsimile numbers for the Johnson Group were crossed out and a different telephone number was handwritten on the prescription. Kingkade testified that it was "irregular" for a prescription blank to contain a handwritten telephone number; in his years of working in pharmacology he had not seen that before. Kingkade also opined that the amount of tablets ordered in the prescription was high.[1] When Kingkade attempted to reach the Johnson Medical Group, he was told that the Johnson Medical Group had been dissolved.

8. Nurse Practitioners may write prescriptions, but only when they and the physician they work under have a written protocol describing the kinds of drugs the nurse is authorized to prescribe. Additionally, a patient protocol is created between the nurse practitioner and the physician which outlines the type of patient and medical conditions for which the nurse practitioner can prescribe controlled substances.

9. When a woman came to the pharmacy to pick up the prescription for Martinez, Kingkade requested that she provide identification. The woman said she did not have any identification with her and stated that her name was JoAnne Martinez, Jennifer's sister. Kingkade advised the woman that he could not give her the medication. The woman had a young child with her and, after Kingkade refused to give her the medication, they continued to shop in the store. Kingkade reviewed computer records for Martinez and discovered that his wife was Jennifer and he had a young daughter about the same age as the child with "JoAnne." Armed with this information, Kingkade approached the woman and told her he believed she was Jennifer. He addressed the child and asked if her name was Jordan. The child said "yes." Kingkade then attempted to ask the child if her mother's name was Jennifer, but at the same time, the woman interjected "JoAnne."

Kingkade told the woman, that he believed her to be Jennifer Martinez and requested from her the protocol under which she was writing the prescription for Vicodin to Martinez. The woman, identified at hearing as being respondent, told Kingkade that she worked for Minute Clinic. Kingkade believed that respondent advised him that the Minute Clinic did not dispense controlled substances. He advised respondent that she must provide him with the protocols under which she was writing prescriptions or he would have to file a report about her activities. Respondent left the store.

10. Later the same day, respondent telephoned Kingkade and told him she was very concerned that she had made a "huge mistake" and asked what would happen to her. Kingkade told respondent that she could contact her licensing agency and cooperate with them to have a better chance of a favorable outcome. He also mentioned that some licensing agencies have diversion programs, although he had no knowledge of whether respondent was

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[1] Kingkade acknowledged that he did not have any information concerning whether Martinez had a condition that warranted the medication prescribed by respondent.

using the drugs prescribed or giving them to her husband. Kingkade had no knowledge of whether respondent presented a danger to the public.

11. Respondent wrote the following prescriptions for Martinez:

a. May 14, 2009	120 tablets of Vicodin 5/500	One refill
b. July 9, 2009	120 tablets of Vicodin 5/500	One refill
c. September 1, 2009	120 tablets of Vicodin 5/500	One refill
d. October 26, 2009	120 tablets of Vicodin 5/500	One refill
e. November 25, 2009	120 tablets of Vicodin 5/500	One refill

Respondent's Entry into the Maximus Diversion Program

12. The board offers a highly regulated program of diversion, Maximus Program (Maximus), for licensees with chemical dependency and/or mental health concerns. The program was implemented to assist health care professionals overcome their dependency and/or mental health issues, but its primary goal is to protect the public from unfit health care professionals. When the board receives a complaint that suggests a condition suitable for diversion, the licensee may opt to enter the program. Successful completion of the program results in expungement of the complaint. If the complainant declines diversion, the complaint is investigated and action taken that is commensurate with the outcome of the investigation.

When a licensee requests diversion, the initial intake interview is conducted by telephone. After the intake interview, a clinical assessment is performed by a licensed psychologist.

Once the intake process is completed the licensee is advised of the contractual guidelines they must agree to in order to be accepted in the diversion program. The guidelines include that the licensee's license is suspended during the time he or she is in the diversion program. The licensee is provided a comprehensive list of what medications and other items the participant may or may not ingest.

The first part of the diversion program is intensive outpatient treatment for nine hours a week for nine weeks. The program includes required attendance at Alcoholics/Narcotics Anonymous (AA), random drug testing and counseling. To accomplish random drug testing, the participant must call in daily to learn if he or she has been selected to be tested that day. A failure to call in as required is considered "severe non-compliance." A "Diversion Program Recovery Contract" (Contract) must be signed monthly. The Contract includes an agreement to "[a]bstain from use of over-the-counter drugs (except those listed on the provided Maximus approved list) . . ."

13. Teresa Zielinski, R.N. (Zielinski), is a Clinical Case Manager employed in the Maximus program. She has been licensed since 1994 and is qualified to work with patients who have chemical addictions. Her job duties include monitoring participants' progress and confirming compliance with contractual obligations imposed upon entry into the program.

Zielinski was assigned to respondent's initial intake. She provided respondent a "Self Assessment" which respondent completed on May 6, 2010. In the Self Assessment respondent stated, "I was given the opportunity to enter diversion program by the board of nursing to seek help for substance abuse that was reported by a pharmacist. I was taking Vicodin on a fairly regular basis which was affecting my home life and personality and self esteem. I want to stop taking this medication and have agreed to stop alcohol as well . . ." In response to the question asking her to describe the effects substance abuse has on her life, respondent stated:

> It has started to affect my family in that I have less patience, I am easily angered and stay angry for longer periods of time, making me want to take something to get rid of the anger (but in fact all feelings). I was not sleeping well do (sic) to substances or taking more substance (like [illegible]) to got (sic) sleep. Physically it has affected my blood pressure, negative effect on my self image and self confidence, decrease in intimacy.

Respondent further stated during the intake that the most important thing to her now is "stopping abuse and maintaining sobriety by any means." When asked if there was anything important that had not been covered by the self assessment, respondent stated that "over the last year I often felt that I would and needed to stop taking Vicodin for all kinds of reasons . . . however I seem to have received a push and I believe that is why this has occurred to me. I think I set myself up to be caught. Fortunately the substance abuse never carried over into my work but I think it would have if it wasn't stopped."

14. Zielinski testified that she conducted an intake interview with respondent and that respondent did not say that she prescribed Vicodin for her husband. Instead, respondent told Zielinski "she was writing false prescriptions under her husband's name for obtaining Vicodin for her own personal use." Respondent also told Zielinski that "she has been abusing Vicodin for the last year and a half. She was taking between two and 6 pills daily."

15. While in the diversion program, respondent was required to provide a urine sample in 39 random drug tests. Between June 2010 and August 2011, respondent was notified she was out of compliance with her contractual agreements on six occasions; twice because she failed to call in to the lab by the time required for a daily check in, and four times because she tested positive for some substance in her random drug tests. Two of the failed drug tests were for an out of range result for creatinine. The level of creatinine could be affected by diet and respondent was advised to eat more protein and reduce certain other food intake. A continued out of range result would have caused Maximus to take further action.

One of the failed drug tests was attributed to respondent taking a muscle relaxer (soma) to help her sleep after straining her back the day before. She professed that she did not know this medication could result in a positive test. Respondent was apologetic and "humbled" and stated that "[n]ot only had a (sic) breeched my contract and put my program

on the line, I inadvertently put my sobriety at risk, and therefore my life." She further thanked Maximus "for allowing me to continue in Diversion and move forward with my recovery program. I am truly grateful." For this non-compliant test result, respondent was given the benefit of the doubt and received a warning.

In a random drug test performed on August 15, 2011, respondent tested positive for ethyl sulfate, a metabolite that is present when alcohol is ingested. Over-the-counter cough syrups, like Nyquil, can also obtain a positive test result for ethyl sulfates, and because of that, Nyquil is on the list of medications that participants in the diversion program are not permitted to take. Substitute remedies for colds and flu are provided to participants. If the participant feels it necessary to take something not on the accepted list, the participant is to contact the on-call case manager for approval. A case manager is available 24 hours a day. Respondent told program personnel that she took Nyquil even though she knew it was not permitted.

16. The failed test on August 15, 2011, was deemed a "relapse" and it was determined that respondent did not successfully pass the out-patient diversion program. As an alternative, respondent was offered the option of residential treatment. Respondent rejected residential treatment and withdrew from the diversion program. She was thereafter notified that she was terminated from the diversion program and classified as a public risk because there was no evidence that she remained sober.

17. For the first time, in response to the request that she enter residential treatment, respondent asserted that she did not have a drug or alcohol problem, she was writing prescriptions for her husband and not herself, and she had done nothing wrong.

Her case with Maximus was closed as of August 22, 2011.

Evidence in Mitigation and of Rehabilitation

18. Respondent testified at hearing that her registered nurse license has been inactive since April 2010. She has completed a program for medical transcription as a career step that utilizes her nurse's training. She has also been accepted to the Pacific College of Oriental Medicine's masters program for acupuncture and massage. She stated that she has always been interested in holistic nursing and is excited about this opportunity.

19. Respondent worked for a variety of different medical care providers in her nursing career in the capacities of Family Nurse Practitioner and emergency and intensive care nurse. In 2003, respondent went to work for the Johnson Group as a nurse practitioner. In that capacity she "work[ed] independently as a primary care provider . . . in collaboration with Dr. Charlie Johnson who owns the practice." As a nurse practitioner with the Johnson Group, respondent was authorized to write prescriptions that fell within the protocol implemented by Dr. Johnson, and her name and Drug Enforcement Administration authorization number appear on the Johnson Group script pads. Under the Johnson Group protocol, respondent was authorized to prescribe Vicodin to patients with chronic pain.

Dr. Johnson began to cut back his practice from full time to three days a week. Respondent needed to work more hours, so in November of 2007, she left the Johnson Group and went to work for Minute Clinic.

Respondent stated that she did not know Dr. Johnson had closed his practice when she wrote the prescription, although she knew he was headed towards doing that. Respondent indicated she could have written the prescription on a Minute Clinic script pad, but their protocol was very specific and not as lenient as Dr. Johnson, so she used the script pad from the Johnson Group. Under the Minute Clinic protocol, patients are referred to their personal doctor after one appointment, so respondent could only have written one prescription for her husband under that protocol.

20. Respondent felt her prescribing Vicodin for Martinez was entirely justified as he was presenting with pain from knee surgery. Respondent testified that she knew his history, examined his knee, assessed his range of motion, and determined that he did have pain. She therefore felt it was proper to prescribe Vicodin for him.

Respondent denied misrepresenting herself to Kingkade and instead said that she told him she was Jennifer Joanne, using her middle name. She further alleges that Kingkade was very aggressive, repeatedly using the words "fraud," "felony," and told her that she would be going to jail for her actions. Respondent testified that when she called Kingkade later in the day, she told him that she was writing the prescription for her husband and not for herself. She tried to get the protocol from Dr. Johnson to provide to Kingkade but learned that his practice had closed. She was unable to get a protocol from Minute Clinic because her husband was not a patient there.

Respondent also defended her writing of the prescription on the basis that Martinez's doctors had prescribed Vicodin for him after he had surgery, but the prescription had run out. Martinez had also received a prescription for Vicodin from a doctor he established care with in November of 2010, after respondent had the complaint filed against her.

21. Although respondent lied to get into diversion, she stated that she complied with all of the requirements of the program, including calling the lab, attending AA every day, participating in nine weeks of intensive treatment in addition to aftercare meetings once a week for three hours. She had a sponsor, attended a nurse support group once a week, and called her case manager each month as required. Respondent stated that it was hard for her to participate in these activities because they did not pertain to her and she was living a lie.

Respondent expressed dismay because she believed that she could return to work as a registered nurse after three months in the diversion program. She continued to be denied the ability to return to work through the time she left the diversion program. Respondent admitted that she was not told she would be released to work after three months in the program, but that the earliest she could be released to work was three months. Respondent understood that the diversion program required a three year commitment.

22. Respondent testified that she learned from her experience how important protocols are and to follow them. She also learned that she does want to be a nurse and is willing to be monitored and undergo random drug tests as a condition of returning back to nursing. Respondent also committed to never writing a prescription for husband again.

23. Martinez, respondent's husband, testified at hearing. He is employed with Customs and Border Protection, Department of Homeland Security. In 1991 his leg was crushed by a gun tube while serving in the Kuwait Conflict. He received pain medication for this injury. Four or five years ago, Martinez tore a meniscus in his knee which required surgery. He went to his personal physician and received pain medications for this condition as well.

Martinez was also treated by Dr. Johnson relative to a prior surgery and Martinez believes he received pain medication from Dr. Johnson.

Martinez testified that the Vicodin prescriptions written by respondent were for him for pain in his leg. He stated that he has a high threshold of pain, but the pain had gotten so strong that he would be brought to tears. Martinez stated that he did not go to his own physician to obtain a prescription for pain medication in May 2009 through January 2010 because his workload and hours of work are such that he did not have time to go to a doctor. Nonetheless, Martinez testified that he sees a chiropractor for his back and sees Dr. Kwok who performed his surgery.

Martinez testified that respondent did not take any of the Vicodin that was prescribed for him and that he never saw her take a medication that was not specifically prescribed for her. He is aware that respondent entered the diversion program to save her license. Martinez said he was not entirely clear why respondent withdrew from the diversion program except that she was "tired of living a lie." Martinez stated that it would not be possible for respondent to go into a 30 day residential treatment program due to his schedule and the need to care for their two young children.

24. By email correspondence dated September 12, 2012, Dr. Johnson provided support for respondent[2]. His letter included:

> My oponion (sic) then and now is that Ms. Martinez was a perfect representative and reflection of my own personal delivery of healtcare (sic). . . . She was compassionate, knowlegable (sic) and efficient. Please understand that only two of these qualities can be learned, compassion cannot be taught, you must be born with it. . . .It is clear to me that everyone makes judgement (sic) errors and apparently Jennifer has made

[2] After the present matter was submitted, counsel for respondent sought to introduce a declaration from Dr. Johnson that was represented to be substantially the same as his email correspondence. The declaration having been submitted after the close of the record in this case was not admitted in evidence and was not considered in this decision.

hers. It is clear to me that to destroy in a human being, that which cannot be taught, is a sad loss to society.

25. By declaration, Martha Wolfson, District Manager of Operations for San Diego Minute Clinic/CVS Caremark (Wolfson) stated that she hired respondent as a Family Nurse Practitioner in November of 2007. Wolfson found respondent to be "extremely professional, responsible, accountable and a personable employee." Wolfson denied ever observing respondent to be under the influence of any medication. Wolfson further stated that in April of 2010, respondent requested a leave to "attend a Diversion Program because she had written prescriptions for her husband." Wolfson indicated she would re-hire respondent if she is able to return to nursing and that she was willing to serve as probation monitor to the board should respondent's license be put on a probationary status.

26. By declaration JoAnn Wells (Wells), an owner of a salon who has known respondent for over twenty-five years, and who was a former patient of the Johnson Group when respondent worked there, provided a character reference for respondent. Wells attested to respondent's devotion to her children and stated that she has never observed respondent to be under the influence of any medication.

27. No authority was presented suggesting that it is against California law for a wife to prescribe a controlled substance to a family member, including her husband, if the prescription was medically warranted and proper protocols were followed. Kingkade testified, however, that while that practice is not a violation of law, it is generally "frowned upon." Kingkade stated that the standard of practice would be for the family member prescriber to ask another prescriber to issue the prescription, particularly if the family member prescriber was going to pick up the prescription. Nonetheless, had respondent written a prescription for Vicodin to her husband on Minute Clinic script and the prescription comported with written protocols developed by Minute Clinic, she would not have violated any California laws or regulations.

28. Zielinski testified that respondent was not deemed to be a danger to the public because she failed to call in to the lab on two occasions. Respondent testified that on both occasions she was unable to call the lab before the required time, she was not on the list of participants who were required to be tested. Further Zielinski testified that she did not, and could not, determine if respondent was a public health risk due to her non-compliant drug tests. Respondent did not test positive for substance abuse in any of the random drug tests she took during her time in diversion

29. There is no evidence that respondent was the subject of any complaints concerning medical care provided other than the present ones.

Costs

31. The reasonable costs of investigation and prosecution of the instant matter against respondent total $8,670.00 and complainant is seeking recovery of those costs pursuant to Business and Professions Code section 125.3.

LEGAL CONCLUSIONS

Standard of Proof

1. The standard of proof in an administrative disciplinary action seeking the suspension or revocation of a professional license is "clear and convincing evidence." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) "Clear and convincing evidence" requires a high probability of the existence of the disputed fact, greater than proof by a preponderance of the evidence. Evidence of a charge is clear and convincing as long as there is a high probability that the charge is true. (*People v. Mabini* (2001) 92 Cal.App.4th 654, 662.)

Applicable Statutory and Regulatory Provisions

2. Business and Professions Code section 2761 provides that the "board may take disciplinary action against a certified or licensed nurse" for unprofessional conduct, including, but not limited to "(a) [u]unprofessional conduct . . .."

3. Business and Professions Code section 2762 provides in part:

> In addition to other acts constituting unprofessional conduct within the meaning of this chapter, it is unprofessional conduct for a person licensed under this chapter to do any of the following:
>
> (a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.
>
> (b) Use any controlled substance . . . or any dangerous drug or dangerous device . . . 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.

¶ ¶

(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to the substances described in subdivision (a) of this section.

4. Business and Professions Code section 4324 provides:

(a) Every person who signs the name of another, or of a fictitious person, or falsely makes, alters, forges, utters, publishes, passes, or attempts to pass, as genuine, any prescription for any drugs is guilty of forgery and upon conviction thereof shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or by imprisonment in a county jail for not more than one year.

(b) Every person who has in his or her possession any drugs secured by a forged prescription shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or by imprisonment in the county jail for not more than one year.

5. Business and Professions Code section 2770.7 provides

(a) The board shall establish criteria for the acceptance, denial, or termination of registered nurses in the diversion program. Only those registered nurses who have voluntarily requested to participate in the diversion program shall participate in the program.

(b) A registered nurse under current investigation by the board may request entry into the diversion program by contacting the board. Prior to authorizing a registered nurse to enter into the diversion program, the board may require the registered nurse under current investigation for any violations of this chapter or any other provision of this code to execute a statement of understanding that states that the registered nurse understands that his or her violations that would otherwise be the basis for discipline may still be investigated and may be the subject of disciplinary action.

(c) If the reasons for a current investigation of a registered nurse are based primarily on the self-administration of any controlled substance or dangerous drug or alcohol under Section 2762, or the illegal possession, prescription, or nonviolent procurement of any controlled substance or dangerous drug for self-administration that does not involve actual, direct harm to

the public, the board shall close the investigation without further action if the registered nurse is accepted into the board's diversion program and successfully completes the requirements of the program. If the registered nurse withdraws or is terminated from the program by a diversion evaluation committee, and the termination is approved by the program manager, the investigation shall be reopened and disciplinary action imposed, if warranted, as determined by the board.

(d) Neither acceptance nor participation in the diversion program shall preclude the board from investigating or continuing to investigate, or taking disciplinary action or continuing to take disciplinary action against, any registered nurse for any unprofessional conduct committed before, during, or after participation in the diversion program.

(e) All registered nurses shall sign an agreement of understanding that the withdrawal or termination from the diversion program at a time when the program manager or diversion evaluation committee determines the licentiate presents a threat to the public's health and safety shall result in the utilization by the board of diversion treatment records in disciplinary or criminal proceedings.

(f) Any registered nurse terminated from the diversion program for failure to comply with program requirements is subject to disciplinary action by the board for acts committed before, during, and after participation in the diversion program. A registered nurse who has been under investigation by the board and has been terminated from the diversion program by a diversion evaluation committee shall be reported by the diversion evaluation committee to the board.

6. Business and Professions Code section 2770.11 provides:

(a) Each registered nurse who requests participation in a diversion program shall agree to cooperate with the rehabilitation program designed by the committee and approved by the program manager. Any failure to comply with the provisions of a rehabilitation program may result in termination of the registered nurse's participation in a program. The name and license number of a registered nurse who is terminated for any reason, other than successful completion, shall be reported to the board's enforcement program.

(b) If the program manager determines that a registered nurse, who is denied admission into the program or terminated from the program, presents a threat to the public or his or her own health and safety, the program manager shall report the name and license number, along with a copy of all diversion records for that registered nurse, to the board's enforcement program. The board may use any of the records it receives under this subdivision in any disciplinary proceeding.

7. Business and Professions Code section 2836.1 provides in part:

Neither this chapter nor any other provision of law shall be construed to prohibit a nurse practitioner from furnishing or ordering drugs or devices when all of the following apply:

(a) The drugs or devices are furnished or ordered by a nurse practitioner in accordance with standardized procedures or protocols developed by the nurse practitioner and the supervising physician and surgeon when the drugs or devices furnished or ordered are consistent with the practitioner's educational preparation or for which clinical competency has been established and maintained.

(b) The nurse practitioner is functioning pursuant to standardized procedure, as defined by Section 2725, or protocol. The standardized procedure or protocol shall be developed and approved by the supervising physician and surgeon, the nurse practitioner, and the facility administrator or the designee.

(c) (1) The standardized procedure or protocol covering the furnishing of drugs or devices shall specify which nurse practitioners may furnish or order drugs or devices, which drugs or devices may be furnished or ordered, under what circumstances, the extent of physician and surgeon supervision, the method of periodic review of the nurse practitioner's competence, including peer review, and review of the provisions of the standardized procedure. (2) In addition to the requirements in paragraph (1), for Schedule II controlled substance protocols, the provision for furnishing Schedule II controlled substances shall address the diagnosis of the illness, injury, or condition for which the Schedule II controlled substance is to be furnished.

(d) The furnishing or ordering of drugs or devices by a nurse practitioner occurs under physician and surgeon supervision. Physician and surgeon supervision shall not be construed to

require the physical presence of the physician, but does include (1) collaboration on the development of the standardized procedure, (2) approval of the standardized procedure, and (3) availability by telephonic contact at the time of patient examination by the nurse practitioner.

(e) For purposes of this section, no physician and surgeon shall supervise more than four nurse practitioners at one time.

(f) (1) Drugs or devices furnished or ordered by a nurse practitioner may include Schedule II through Schedule V controlled substances under the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code) and shall be further limited to those drugs agreed upon by the nurse practitioner and physician and surgeon and specified in the standardized procedure.
(2) When Schedule II or III controlled substances, as defined in Sections 11055 and 11056, respectively, of the Health and Safety Code, are furnished or ordered by a nurse practitioner, the controlled substances shall be furnished or ordered in accordance with a patient-specific protocol approved by the treating or supervising physician. A copy of the section of the nurse practitioner's standardized procedure relating to controlled substances shall be provided, upon request, to any licensed pharmacist who dispenses drugs or devices, when there is uncertainty about the nurse practitioner furnishing the order.

8. Health and Safety Code section 11164 sets forth the requirements that must be met before a controlled substance can be prescribed and before a prescription can be dispensed. Among other things, section 11164 requires that the prescription be made on an approved form and "shall contain the prescriber's address and telephone number . . .."

9. Health and Safety Code section 11173 provides in part:

(a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

(b) No person shall make a false statement in any prescription, order, report, or record, required by this division.

10. Health and Safety Code section 11368 provides:

> Every person who forges or alters a prescription or who issues or utters an altered prescription, or who issues or utters a prescription bearing a forged or fictitious signature for any narcotic drug, or who obtains any narcotic drug by any forged, fictitious, or altered prescription, or who has in possession any narcotic drug secured by a forged, fictitious, or altered prescription, shall be punished by imprisonment in the county jail for not less than six months nor more than one year, or in the state prison.

11. Health and Safety Code section 1105, subdivision (b), subsection (1)(I) provides that hydrocodone (Vicodin) is a schedule II controlled substance.

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

> A[n] . . . 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 . . . acts shall include but not be limited to the following:
>
> ¶ ¶
>
> (c) Theft, dishonesty, fraud, or deceit.

13. California Code of Regulations, title 16, section 1444.5 provides:

> In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), the Board shall consider the disciplinary guidelines entitled: "Recommended Guidelines for Disciplinary Orders and Conditions of Probation" (10/02) which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the board in its sole discretion determines that the facts of the particular case warrant such a deviation -for example: the presence of mitigating factors; the age of the case; evidentiary problems.

Application of Facts and Law

14. Public protection is the highest priority for the Board of Registered Nursing. The purpose of professional license discipline is not to punish the individual, but to protect the public. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

15. Cause does not exist for discipline of respondent's Registered Nurse License Number 503068, Nurse Practitioner Certificate Number 10262 or Furnishing Certificate Number 10262 pursuant to Business and Professions Code section 2761, subdivision (a), as alleged. Complainant alleges that respondent's licenses are subject to disciplinary action for unprofessional conduct because she did not successfully complete the diversion program she voluntarily entered into.

The statutes governing the administration of the diversion program contemplate the reopening of investigations into complaints that were pending when the licensee entered the program if the licensee withdrawals or is terminated from the program. (Bus. & Prof. Code §2770.7 (c) and (f).) The statutory scheme does not provide an independent basis of discipline for failure to successfully complete the program. Imposing disciplinary action solely for the failure to complete the diversion program could discourage participation in such programs as licensees would be facing the potential of discipline in addition to that which might be imposed on the basis of the charges in the original complaint. Under an analogous statute, the Court of Appeal held that "there is nothing in the language, statutory context, or apparent purpose of [the statute] that shows a legislative intent to define a failure to complete an agreed-on diversion successfully as unprofessional conduct requiring preventative discipline." *Medical Board of California v. Superior Court (Liskey)* (2003) 111 Cal. App. 4th 163, 179. The board has not met its burden of proof that respondent's failure to complete the diversion program subjects her to discipline on that basis.

16. Cause exists for discipline of respondent's Registered Nurse License Number 503068, Nurse Practitioner Certificate Number 10262 and Furnishing Certificate Number 10262 pursuant to Business and Professions Code section 2762, subdivision (a), because respondent wrote a prescription for, and obtained, the controlled substance hydrocodone (Vicodin) for herself and/or for her husband in violation of the law.

Respondent used prescription blanks issued to a former employer to obtain Vicodin on at least 5 occasions[3] in violation of the statutes governing proper prescription of medications and in violation of her obligations and responsibilities as a nurse practitioner. Respondent boldly defends her actions by proffering that she was able to prescribe Vicodin when she worked for Dr. Johnson, that she could have prescribed Vicodin when she worked for Minute Clinic, and that Martinez, who she now claims the prescriptions were for, was prescribed Vicodin by other doctors.

Respondent's justifications are misguided and suggest a lack of comprehension of the seriousness of her actions and failure to accept responsibility. Instead the facts proved are that respondent was permitted to prescribe medication when she worked for Dr. Johnson only under a written protocol approved and implemented by Dr. Johnson. (Bus. & Prof. Code § 2836.1.) It should go without saying that respondent was not authorized, under any circumstances, to write prescriptions on Johnson Group prescription pads years after she terminated her employment there.

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[3] Each of the five prescriptions in evidence allow for one refill. Respondent was attempting to obtain a refill of one of those prescriptions when she was confronted by Kingkade.

An additional concern is that respondent had access to prescription pads belonging to a doctor for whom she no longer worked, regardless of whether that doctor was in business or not.

Further, the evidence is undisputed that respondent could not have written five prescriptions for Vicodin as an employee of Minute Clinic. Respondent testified that she could not write a prescription for her husband because he was not a patient there, and that even if he were a patient, she could only write one prescription for him as he would then be referred to his primary doctor.

The fact that Martinez was prescribed Vicodin before and after respondent was caught writing prescriptions does not excuse respondent's unauthorized writing of the prescriptions and is irrelevant to these proceedings. Instead, that Martinez was otherwise able to obtain the prescription he said he needed is contrary to his testimony that he did not have time to go to doctors. Further, if Martinez could have obtained Vicodin legally, significant doubt is then cast upon why respondent put her career and licenses in jeopardy by unlawfully prescribing a medication that could have been obtained so easily.

Before a controlled substance can be prescribed and/or dispensed, the prescription must contain the prescriber's address. (Health & Safety Code § 11164.) The prescription written by respondent did not contain her address, but represented that her address and affiliation was with the Johnson Group. Respondent altered, and falsely passed as genuine, a prescription for drugs that she was not authorized to write. (Bus. & Prof. Code § 4324). Additionally she obtained controlled substances by fraud, deceit, and concealment of a material fact by issuing the altered prescription. (Health & Safety Code §§ 11173, 11368).

A registered nurse, particularly one who is qualified as a nurse practitioner, is in a position that requires honesty, trustworthiness, and impeccable compliance with the laws and regulations concerning prescribing medications. Respondent not only violated several laws and regulations, but she has not demonstrated an understanding of the seriousness and potential ramifications of her actions. Respondent initially lied about the prescriptions, then lied about her drug use in order to enter diversion, then, after flunking out, told a new lie to justify her expulsion. She told too many lies to be credible in this proceeding. Either she lied about her drug use or she lied about writing prescriptions for her spouse, in either scenario, she lied. Respondent's acts are substantially related to the qualifications, functions or duties of a registered nurse in that her actions involved dishonesty, fraud and deceit. (Cal. Code Regs., tit. 16, § 1444(c).)

17. Cause exists for discipline of respondent's Registered Nurse License Number 503068, Nurse Practitioner Certificate Number 10262 or Furnishing Certificate Number 10262 pursuant to Business and Professions Code section 2762, subdivision (b). Sufficient evidence was presented to support a finding that respondent used controlled substances despite her denials at hearing. The records from her participation in the diversion program contain multiple admissions of drug abuse; it is all too convenient for respondent to suggest they were lies made in an ill-conceived attempt to save her license. The statute requires a finding that the substance abuse is such that respondent is a danger to herself or others, or

that her ability to function safely as a nurse is impaired. Here, self-administering Vicodin without a legitimate medical diagnosis and because of a self-described substance abuse history is a danger to oneself. Additionally, issuing prescriptions in the absence of a physician directed protocol and without proper physician supervision and oversight, is a danger to others

18. Cause exists for discipline of respondent's Registered Nurse License Number 503068, Nurse Practitioner Certificate Number 10262 or Furnishing Certificate Number 10262 pursuant to Business and Professions Code section 2762, subdivision (e). Subdivision (e) defines unprofessional conduct to include "falsify[ing] or mak[ing] grossly incorrect . . .entries into any hospital, patient, or other record pertaining to the substances [wrongfully prescribed, obtained or administered]" Clearly a prescription is part of a medical record, it is intended to become part of the patient's history and a reference to it is included in a medical chart. As such, writing false prescriptions for self-use constitutes making false entries in a record. Additionally, writing unauthorized prescriptions and administering the medication prescribed constitutes unprofessional conduct relating to wrongfully prescribed, obtained and administered substances.

19. Cause exists for discipline of respondent's Registered Nurse License Number 503068, Nurse Practitioner Certificate Number 10262 and Furnishing Certificate Number 10262 pursuant to Business and Professions Code section 2761, subdivision (a) because respondent's conduct with respect to her entry into the diversion program, as admitted under oath at hearing, was blatantly unprofessional and entirely dishonest. Not only did respondent baldly lie to the board, she researched the diversion program and concocted a devious scheme to avoid deserved punishment for the unauthorized writing of prescriptions. Respondent admitted that the self assessment she completed, as excerpted above, and to which she certified that "the information provided is true to the best of my knowledge" was all lies. She stated that she knew she had to say she abused drugs in order to get into the diversion program. In addition to simply stating that she abused Vicodin, respondent embellished her story to add details that were unnecessary to complete the lie. For example, respondent entered three paragraphs of allegedly false information in answer to the wrap up question at the end of the self assessment that asks, "What is important to know about you or your situation that has not been asked about?"

By lying about her substance abuse, respondent squandered time and resources of the board that should have been devoted to licensees who require and seek help. When respondent grew weary of having to comply with the dictates of the diversion program, she simply withdrew and changed her story. The evidence established that respondent was willing to bend or break rules when she deemed it beneficial to her and to lie when necessary to get the result she desires.

At hearing, respondent claimed that she had a viable defense to her actions in presenting unauthorized prescriptions to the pharmacy. However, this begs the question that if she had such a good defense, why did she not respond to the complaint and explain her defense to the board. It is inconceivable that respondent, under any circumstances, could believe that falsely admitting to a serious substance abuse problem and committing to a three

year program that included undergoing intensive treatment, attending AA meetings every day, and submitting to random drug testing was an acceptable way to avoid discipline for bad acts. Instead, respondent committed significant, serious additional acts that warrant the imposition of strict discipline.

A registered nurse, particularly one who is qualified as a nurse practitioner, is in a position that requires honesty, trustworthiness, and a strong moral compass. The evidence at hearing was that these characteristics are lacking in respondent. Respondent has not demonstrated an understanding of the seriousness and ramifications of her actions. Respondent's acts are substantially related to the qualifications, functions or duties of a registered nurse in that her actions involved dishonesty, misrepresentations, fraud and deceit. (Cal. Code Regs., tit. 16, § 1444(c).)

Discipline Determination

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

21. The determination as to whether respondent's license should be revoked or suspended includes an evaluation of the factors contained in the board's Recommended Guidelines for Disciplinary Orders and Conditions of Probation (revised 10/02, effective 05/24/03) (Guidelines). As applicable to this matter, the factors include: the nature and severity of the acts or offenses; actual or potential harm to the public or to patients; number and variety of current violations; mitigation and/or rehabilitation evidence; and time passed since the acts or offenses occurred.

22. Respondent's conduct in this matter is egregious. She knowingly wrote prescriptions on a scripts pad belonging to a physician for whom she no longer worked. She either knew she was not authorized to write prescriptions unless they were in accordance with an established protocol and under a physician's supervision and did it anyway, or was ignorant of the regulations that govern her profession. Under either scenario, respondent's license is subject to discipline. By writing these unauthorized prescriptions, respondent exposed her husband to serious potential harm, as he was receiving a steady supply of Vicodin without a physician's oversight. To compound her expose to discipline, respondent lied to the pharmacist when she got caught, and then lied to the board so that she could enter a diversion program and escape punishment for her acts. By offering justifications and excuses for her conduct, respondent has not demonstrated rehabilitation that would warrant anything other than the outright revocation of her licenses.

The potential of harm resulting to the public is a foreseeable consequence of respondent's willingness to ignore the laws and regulations that govern her profession, and her lack of insight into her actions. Additionally, respondent has shown a propensity for dishonesty when she believes it will suit her purposes.

23. Upon consideration of the entirety of the facts and the application of the disciplinary criteria, it is concluded that respondent has not attained a degree of rehabilitation to enable her to practice registered nursing at this time. Granting respondent a probationary license would not satisfy the concerns of protecting the public. Thus, respondent's licenses must be revoked.

Cost Recovery

24. Complainant is seeking recovery of the reasonable costs of investigation and prosecution of the instant matter in the amount of $8,670. *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 held that a regulation imposing costs for investigation and enforcement under California Code of Regulations, title 16, section 317.5 (which is similar to Bus. & Prof. Code, § 125.3) did not violate due process. But, it was incumbent on the board in that case to exercise discretion to reduce or eliminate cost awards in a manner such that costs imposed did not "deter [licensees] with potentially meritorious claims or defenses from exercising their right to a hearing." The Supreme Court set forth four factors to consider in deciding whether to reduce or eliminate costs: (1) whether the licensee used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed; (2) whether the licensee had a "subjective" good faith belief in the merits of his/[her] position; (3) whether the licensee raised a "colorable challenge" to the proposed discipline; and (4) whether the licensee had the financial ability to make payments. The reasoning of *Zuckerman* must be applied to Business and Professions Code section 125.3 since the cost recovery regulation in *Zuckerman* contains substantially the same language as that is set forth in Business and Professions Code section 125.3.

Although respondent did not achieve the outcome she desired, she was successful in raising a colorable challenge to at least one of the causes for discipline in the Accusation. Further, the evidence supports a finding that respondent has not been working and lacks the financial ability to pay the full amount of costs sought. After applying the *Zuckerman* criteria in the instant matter, it is concluded that it is reasonable to require respondent to pay one-half of the costs to investigate and enforce the Accusation against respondent. That amount is reasonable pursuant to Business and Professions Code section 125.3, and respondent must therefore pay the sum of $4,335 to the board.

ORDER

1. Registered Nurse License Number 503068 issued to Jennifer JoAnne Martinez, aka Jennifer Woodward Martin is revoked.

2. Nurse Practitioner Certificate Number 10262 issued to Jennifer JoAnne Martinez, aka Jennifer Woodward Martin is revoked.

3. Furnishing Certificate Number 10262 issued to Jennifer JoAnne Martinez, aka Jennifer Woodward Martin is revoked.

4. Respondent shall pay the sum of $4,335 to the board.

DATED: October 16, 2012

SUSAN J. BOYLE
Administrative Law Judge
Office of Administrative Hearings

Exhibit A

Accusation Case No. 2012-370

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

In the Matter of the Accusation Against: **JENNIFER JOANNE MARTINEZ AKA JENNIFER WOODWARD MARTIN** **3401 Par Four Drive** **El Cajon, CA 92019** **Registered Nurse License No. 503068** **Nurse Practitioner Certificate No. 10262** **Nurse Practitioner Furnishing Certificate No. 10262** Respondent.	Case No. 2012-370 **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 September 2, 1994, the Board of Registered Nursing issued Registered Nurse License Number 503068 to Jennifer Joanne Martinez aka Jennifer Woodward Martin

(Respondent). The Registered Nurse License was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2012, unless renewed. On or about September 21, 1998, Respondent was issued Nurse Practitioner Certificate Number 10262. Nurse Practitioner Certificate Number 10262 was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2012, unless renewed. On or about October 12, 1999, Respondent was issued Nurse Practitioner Furnishing Certificate Number 10262. Nurse Practitioner Furnishing Certificate Number 10262 was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2012, 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.

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.

STATUTORY PROVISIONS

6. 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 . . .

". . . ."

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7. Section 2762 of the Code states:

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

"(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

"(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.

". . . ."

"(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to the substances described in subdivision (a) of this section."

8. Section 2770.11 of the Code states:

"(a) Each registered nurse who requests participation in a diversion program shall agree to cooperate with the rehabilitation program designed by the committee and approved by the program manager. Any failure to comply with the provisions of rehabilitation program may result in termination of the registered nurse's participation in a program. The name and license number of a registered nurse who is terminated for any reason, other than successful completion, shall be reported to the board's enforcement program.

"(b) If the program manager determines that a registered nurse, who is denied admission into the program or terminated from the program, presents a threat to the public or his or her own health and safety, the program manager shall report the name and license number, along with a

copy of all diversion records for that registered nurse, to the board's enforcement program. The board may use any of the records it receives under this subdivision in any disciplinary proceeding."

REGULATORY PROVISIONS

9. 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."

10. California Code of Regulations, title 16, section 1444.5, states:

"In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), the Board shall consider the disciplinary guidelines entitled: 'Recommended Guidelines for Disciplinary Orders and Conditions of Probation' (10/02) which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the board in its sole discretion determines that the facts of the particular case warrant such a deviation -for example: the presence of mitigating factors; the age of the case; evidentiary problems."

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

". . . .

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

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

"(2) Total criminal record.

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

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

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

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

DRUGS

12. Hydrocodone, when mixed with acetaminophen, is marketed under the trade name Vicodin and Norco. Hydrocodone is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b)(1)(I) and is a dangerous drug pursuant to Code section 4022.

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.

FACTS

14. On or about January 22, 2010, the Board received a written complaint from a registered pharmacist about Respondent. The witness complained that Respondent wrote furnishing orders for Vicodin for Respondent's husband, EM, on several occasions between April 2009 and December 2009. These prescriptions were filled at a Rite Aid Pharmacy in El Cajon. They were written on California Security Prescription blanks issued to Johnson Medical Group in National City. This medical group dissolved in 2008 and none of the physicians who worked there supervised Respondent during the dates when the orders were written.

15. On or about January 21, 2010, Respondent called the same Rite Aid Pharmacy and authorized the complaining witness to refill a Vicodin prescription for EM that had been

previously written on a prescription blank from Johnson Medical Group. Respondent picked up and signed for all of these dispensed prescriptions. That day, Respondent admitted that EM is her husband and that she knew she improperly wrote the prescriptions. She admitted she was a nurse practitioner and that no patient specific protocol was written for these prescriptions. In total, nine prescriptions had been dispensed for over 1,000 tablets. She later admitted she had been abusing Vicodin for over a year.

16. On or about May 27, 2010, the Diversion Evaluation Committee admitted Respondent into its Diversion Program. On or about August 22, 2011, Respondent was terminated from the program for non-compliance because she missed several required calls to a third party administrator, called First Lab, that managed the program's drug and alcohol testing programs; she tested positive for Soma; she had two separate "out of range" drug tests; she tested positive for alcohol when she used NyQuil even though she knew she was prohibited from taking NyQuil; and she was ordered to enter a residential treatment center but she refused to do so. Respondent was determined to be a threat to the public and/or her own health and safety at the time of her termination from the Board's Diversion Program.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Failure to Successfully Complete the Board's Diversion Program)

17. Respondent is subject to disciplinary action under Section 2761, subdivision (a) of the Code in that Respondent entered and then failed to successfully complete the Board's Diversion Program, as set forth in paragraph 16 above, which is incorporated herein by reference.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Obtain, Possess and/or Self-Administer Controlled Substances Unlawfully)

18. Respondent is subject to disciplinary action under Section 2762, subdivision (a) of the Code in that Respondent unlawfully obtained, possessed, or self-administered the controlled substance Vicodin as set forth in paragraphs 14-15 above, which are incorporated herein by reference.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Use of a Controlled Substance to an Extent Dangerous to Herself and the Public)

19. Respondent is subject to disciplinary action for unprofessional conduct under Section 2762, subdivision (b) of the Code in that Respondent used the controlled substance or dangerous drug Vicodin in a manner dangerous or injurious to herself or to the public or to the extent it impaired her ability to safely practice as a registered nurse, as set forth in paragraphs 14-16, which are incorporated herein by reference.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Falsifying an Entry in a Record Pertaining to Dangerous Drugs)

20. Respondent is subject to disciplinary action under section 2762, subdivision (e) of the Code in that Respondent falsified entries in a record pertaining to the narcotic and/or dangerous drug Vicodin as described in paragraphs 14-15, above, which are incorporated herein by reference.

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 503068, Nurse Practitioner Certificate Number 10262, and Nurse Practitioner Furnishing Certificate Number 10262, issued to Jennifer Joanne Martinez Aka Jennifer Woodward Martin;

2. Ordering Jennifer Joanne Martinez Aka Jennifer Woodward Martin to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

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

DATED: December 15, 2011

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

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