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

In the Matter of the Accusation Against: **EMMA RAMIREZ** 223 Terrace Drive Vista, California 92804 Registered Nurse License No. RN 506809 Respondent.	Case No. 2009-157 **FIRST AMENDED ACCUSATION**

Ruth Ann Terry, M.P.H., R.N. ("Complainant") alleges:

PARTIES

1. Complainant brings this Accusation solely in her official capacity as the Executive Officer of the Board of Registered Nursing ("Board"), Department of Consumer Affairs.

License History

2. On or about November 28, 1994, the Board issued Registered Nurse License Number RN 506809 ("license") to Emma Ramirez ("Respondent"). The license will expire on May 31, 2010, unless renewed.

3. On or about January 26, 2009 Accusation No. 2009-157 was filed against Respondent Emma Ramirez. This First Amended Accusation supersedes and replaces the former Accusation that was filed on January 26, 2009, in this case.

STATUTORY PROVISIONS

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

5. Code section 2764 provides, in pertinent part, that the lapsing or suspension 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.

6. Code section 2761 states, in pertinent part:

> The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:
>
> (a) Unprofessional conduct, . . .
>
> . . . .
>
> (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.

7. Code section 2762 states, in pertinent part:

> 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, ... 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 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.
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> (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.
>
> . . . .

8. Section 490 of the Code states:

A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

9. Section 493 of the Code states:

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.

. . . .

10. California Code of Regulations, title 16, section 1444, subsection (a) 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:

. . .

11. Section 482, subsection (b), 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 the applicant or licensee.

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12. Section 1445 of the Regulations 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.

COST RECOVERY

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

FIRST CAUSE FOR DISCIPLINE

(September 8, 2008: Conviction for Driving Under the Influence, on April 11, 2008)

14. Respondent is subject to disciplinary action under Code sections 490 and 2761, subdivision (f), in that on or about September 9, 2008, in the Superior Court of California, County of Los Angeles, in the case entitled, *People of the State of California v. Emma Ramirez* (Superior Court Los Angeles County, Downey Courthouse, Case No. 8DY03761), Respondent was convicted on her plea of *no lo condere* of violating Vehicle Code section 23152, subdivision (a) (driving while under the influence of an alcoholic beverage or drugs), and of violating Vehicle Code section 14601.5, subdivision (a) (driving while driver's license was suspended or

revoked), both misdemeanors. Respondent's two previous criminal convictions for similar driving under the influence offences, as described in detail below, were pled as factors in aggravation. The circumstances of the crime are that on or about April 11, 2008, Respondent drove a vehicle while under the influence of alcohol and/or drugs, and while her driver's license was suspended. Such crimes are substantially related to the functions, duties, and qualifications of a registered nurse.

a. Respondent was sentenced to 210 days of custody in Los Angeles County Jail, 228 hours of community service, fines, restitution, and five (5) years summary probation.

SECOND CAUSE FOR DISCIPLINE

(February 22, 2008: Conviction for
Driving Under the Influence with Blood/Alcohol Content Over .08% on December 15, 2007)

15. Respondent is subject to disciplinary action under Code sections 490 and 2761, subdivision (f), in that on or about February 22, 2008, in the Superior Court of California, County of San Diego, in the case entitled, *People of the State of California v. Emma Ramirez* (Superior Court of San Diego County, Vista Courthouse, Case No. CN240101), Respondent was convicted on her plea of guilty of violating Vehicle Code section 23152, subdivision (b) (Driving With Blood Alcohol Content of .08% or Higher, with Admissions of One Prior), a misdemeanor. The circumstances of the crime are that on or about December 15, 2007, Respondent did unlawfully, while under the influence of alcohol, drive a vehicle with a .15% or higher B.A.C. Such crime is substantially related to the functions, duties, and qualifications of a registered nurse.

a. The circumstances of the crime were that Respondent made an unsafe u-turn from the east-bound shoulder of Old Highway 395 and caused a west-bound motorhome driver to veer right in an effort to avoid colliding with Respondent's vehicle. Respondent's vehicle hit the right rear of a Jeep being pulled behind the motorhome. A west-bound vehicle was almost hit by the motorhome while it veered to avoid Respondent's vehicle. Respondent did not stop or attempt to communicate with the motorohome's driver. Instead, Respondent continued driving at an unsafe speed, turned onto a different road, proceeded to pass other

vehicles by driving over solid double-yellow lines and into oncoming traffic, almost hit an oncoming vehicle, swerved right to avoid the oncoming vehicle, drove onto the road's westbound dirt shoulder, lost control of her vehicle, crossed through oncoming traffic, and crashed her car into a dirt drainage ditch at the east-bound side of the road.

b. A California Highway Patrol officer arrived soon after Respondent's final collision into the ditch as she was walking along the side of the road. In response to his inquiries, Respondent falsely stated her name was "Emm Ramires," falsely stated that her driver's license was back inside her vehicle, was unable to remember and state the name of the street where she lived, denied consuming any alcohol during the past 24 hours, stated that she woke up in her car and did not remember how she ended up in the ditch. Respondent also denied any knowledge regarding the hit and run accident that she was involved in on Old Highway 396. Respondent failed the officer's field sobriety test and displayed objective signs and symptoms of intoxication, such as slurred speech, watery eyes, unsteady balance, and a strong odor of alcohol emanating from her person.

c. Respondent was sentenced to ninety-six (96) hours in custody of the Vista Detention Facility, community service, complete a multiple conviction program, restitution, fines, and five (5) years summary probation.

THIRD CAUSE FOR DISCIPLINE

(July 8, 2005: Conviction for
Driving Under With Blood/Alcohol Content Over .08% on March 19, 2005)

16. Respondent is subject to disciplinary action under Code sections 490 and 2761, subdivision (f), in that in or about 2005, in the Superior Court of California, County of Los Angeles, in the case entitled, *People of the State of California v. Emma Ramirez* (Superior Court Los Angeles County, Bellflower Courthouse, Case No. 5LC01938), Respondent was convicted on her plea of *no lo condere* of violating Vehicle Code section 23152, subdivision (b) (Driving With Blood Alcohol Content of .08% or Higher), a misdemeanor. Such crime is substantially related to the functions, duties, and qualifications of a registered nurse.

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a.) Respondent was sentenced to five (5) years summary probation, complete a six-month first offender counseling program, restitution and fines.

b.) On or about February 9, 2006, Respondent filed proof of completion of the first offender six-month program

c.) On or about June 6, 2008, the court received notice from the Los Angeles Superior Court, Downey Courthouse, of a possible probation violation by Respondent.

d.) On or about June 27, 2008, Respondent failed to appear for a court ordered probation violation hearing. A bench warrant in the amount of $50,000.00 was issued for Respondent's arrest.

e.) On or about September 9, 2008, Respondent appeared at the Bellflower Courthouse and the $50,000.00 bench warrant was recalled. The court ordered Respondent's probation reinstated and terminated, in conjunction with Respondent's guilty plea and sentence in criminal case No. 8DY03761, described above at paragraph 13.

FOURTH CAUSE FOR DISCIPLINE

(August 10, 1989: Conviction for
Driving Under Influence of Alcohol or Drugs on November 3, 1988)

17. Respondent is subject to disciplinary action under Code sections 490 and 2761, subdivision (f), in that on or about November 30, 1988, in the Superior Court of California, County of Los Angeles, in the case entitled, *People of the State of California v. Emma Ramirez* (Superior Court Los Angeles County, Torrance Courthouse, Case No. 88M10501), Respondent was convicted on her plea of guilty of violating Vehicle Code section 23152, subdivision (a) (driving while under the influence of an alcoholic beverage or drugs) Such crime is substantially related to the functions, duties, and qualifications of a registered nurse.

FIFTH CAUSE FOR DISCIPLINE

(Use an Alcoholic Beverage and/or Drug in a Manner Dangerous or Injurious)

18. Respondent is subject to disciplinary action under Code section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined in Code section 2762, subdivision (b), in that Respondent used an alcoholic beverage to an extent or in a manner

dangerous or injurious to herself, any other person, or to the public, as set forth in paragraphs 13 through 16 above.

SIXTH CAUSE FOR DISCIPLINE

(Criminal Convictions Involving the Consumption of Alcohol)

19. Respondent is subject to disciplinary action under Code section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined in Code section 2762, subdivision (c), in that Respondent was convicted of crimes involving the consumption of an alcoholic beverage, as set forth in paragraphs 13 through 16 above.

PRAYER

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

1. Revoking or suspending Registered Nurse License Number RN 506809 issued to Emma Ramirez;

2. Ordering Emma Ramirez to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,

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

DATED: 3/5/09

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