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

In the Matter of the Accusation and Petition to Revoke Probation Against, **MATTHEW WAYNE DAVIS** **7950 Foothills Boulevard, #180** **Roseville, California 95747** **Registered Nurse License No. RN 514175** Respondent.	Case No. 2010-130 **ACCUSATION AND** **PETITION TO REVOKE PROBATION**

Louise R. Bailey, M.Ed., R.N. ("Complainant") alleges:

PARTIES

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

License History

2. On or about August 10, 1995, the Board issued Registered Nurse License Number RN 514175 ("license") to Matthew Wayne Davis ("Respondent"). The license expired on June 30, 2009.

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3. In a disciplinary action entitled "*In the Matter of Accusation Against Matthew Wayne Davis,*" Case No. 2007-48, the Board issued a decision, effective April 12, 2007, in which Respondent's license was revoked. However, the revocation was stayed and Respondent's license was placed on probation for a period of five (5) years with certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

JURISDICTION

3. 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 Code section 2750) of the Nursing Practice Act.

4. Code section 2764 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.

5. Code section 118, subdivision (b), provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

STATUTORY PROVISIONS

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, 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 of the Health and Safety Code, or any dangerous drug as defined Section 4022.

(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.

COST RECOVERY

8. 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.

ACCUSATION

FIRST CAUSE FOR DISCIPLINE

(Criminal Convictions)

9. Respondent has subjected his license to disciplinary action under Code section 2761, subdivision (f), in that Respondent was convicted of crimes substantially related to the qualifications, functions, and duties of a registered nurse, as follows:

a. On or about May 8, 2008, in the Superior Court of California, County of Sacramento, in the case entitled, *People of the State of California v. Matthew Wayne Davis* (Super. Ct. Sacramento County, 2008, Case No. 08F01938), Respondent was convicted on his plead of nolo contendere of violating Health and Safety Code section 11377, subdivision (a) (Possession of a Controlled Substance, to wit: Methamphetamine), a felony. The circumstances of the crime are that on or about March 11, 2008, Respondent did willfully and unlawfully possess a controlled substance.

b. On or about October 22, 2008, in the Superior Court of California, County of Placer, in the case entitled, *People of the State of California v. Matthew Wayne Davis* (Super. Ct. Placer County, 2008, Case No. 62-83007), Respondent was convicted on his plea of nolo contendere of

violating Penal Code sections 368(d) (Embezzlement, Forgery, Fraud or Identity Theft from an Elder or Dependent Adult), 487(a) (Grand Theft of Personal Property), and 484(g) (Fraudulent Use of Access Card), all felonies, in violation of probation in Case Nos. 62-57375, 62-50571 and 62-5958. The circumstances of the crimes are that on or about June 25, 2008, while being the caretaker of L.D., Respondent did willfully and unlawfully take personal identifying information belonging to L.D. to commit embezzlement, forgery, fraud or identify theft from an Elder or Dependent Adult.

SECOND CAUSE FOR DISCIPLINE

(Criminal Conviction Involving a Controlled Substance)

10. 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 a crime involving the possession of a controlled substance, as set forth in paragraph 9, subparagraph (a), above.

THIRD CAUSE FOR DISCIPLINE

(Possessed a Controlled Substance)

11. Respondent is subject to disciplinary action under Code section 2762, subdivision (a), on the grounds of unprofessional conduct, as defined in Code section 2762, subdivision (a), in that on or about March 11, 2008, Respondent possessed a controlled substance in violation of law, as set forth paragraph 9, subparagraph (a), above.

PETITION TO REVOKE PROBATION

12. Grounds exist for revoking the probation and reimposing the order of revocation of Respondent's Registered Nurse License No. 51475. Condition No. 11 of the Decision and Order states:

> If Respondent violates the conditions of his/her probation the Board after giving the respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation/suspension) of the respondent's license.
>
> If during the period of probation, an accusation or petition to revoke probation has been filed against respondent's license or the Attorney General's Officer has been requested to prepare and accusation or petition to revoke probation against the respondent's license, the probationary

period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

13. Respondent has violated the Probation Program, as more particularly set forth in the following paragraphs.

FIRST CAUSE TO REVOKE PROBATION

(Comply with the Board's Probation Program)

16. At all times after the effective date of Respondent's probation, Condition 2 states, in pertinent part:

> Comply with the Board's Probation Program - Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the respondent's compliance with the Board's Probation Program

17. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 2, referenced above, as set forth below:

SECOND CAUSE TO REVOKE PROBATION

(Obey All Laws)

14. At all times after the effective date of Respondent's probation, Condition 1 states, in pertinent part:

> Obey All Laws and Court Orders – Respondent shall obey all federal, state and local laws. A full and detailed account of any violations of law shall be reported by the respondent to the Board in writing within seventy-two (72) hours of occurrence.
>
> If Respondent violates any condition of court ordered probation or any court order, said violation shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

15. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 1, referenced above. The facts and circumstances regarding this violation are as follows:

A. Respondent failed to obey all laws as set forth in paragraph 9, above, and failed to notify the Board of his convictions.

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THIRD CAUSE TO REVOKE PROBATION

(Submit Written Reports)

18. At all times after the effective date of Respondent's probation, Condition 5 states, in pertinent part:

> Submit Written Reports – Respondent, during the period of probation, shall submit or cause to be submitted such written report/sdeclarations and verification of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to respondent's compliance with all the conditions of the Board's Probation Program.

19. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 5, referenced above. The facts and circumstances regarding this violation are as follows:

A. Respondent failed to submit the following quarterly reports to the Board:

Report:	Due Date:
October – December 2007	January 2008
January – March 2008	April 2008
April – June 2008	July 2008
July – September 2008	October 2008
October – December 2008	January 2009
January – March 2009	April 2009
April – June 2008	July 2009

FOURTH CAUSE TO REVOKE PROBATION

(Employment Approval and Reporting Requirements)

20. At all times after the effective date of Respondent's probation, Condition 7 states, in pertinent part:

> Employment Approval and Reporting Requirements – Respondent shall obtain prior approval from the Board from commencing or continuing any employment, paid or voluntary, as a registered nurse (other than the employment specified in Condition 6). Respondent shall cause to be submitted to the Board all performance evaluations and other employment related reports as a registered nurse upon request of the Board.

21. Respondent' probation is subject to revocation because he failed to comply with Probation Condition 7, referenced above. The facts and circumstances regarding this violation are as follows:

A. Respondent failed to notify the Board that he was terminated from the Department of Health Care Services on March 11, 2008.

FIFTH CAUSE TO REVOKE PROBATION

(Complete a Nursing Course(s)

22. At all times after the effective date of Respondent's probation, Condition 9 states, in pertinent part:

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

23. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 9, referenced above. The facts and circumstances regarding this violation are as follows:

A. Respondent failed to complete the following required course work:

Course:	Due Date:
Relapse Prevention and Plan Development	May 2008
Professional Ethics and legal Aspects of Nursing	May 2009
General Nursing Practice (Category 1-5)	May 20009

SIXTH CAUSE TO REVOKE PROBATION

(Participate in Treatment/Rehabilitation Program for Chemical Dependency)

24. At all times after the effective date of Respondent's probation, Condition 13 states, in pertinent part:

> Participate in Treatment/Rehabilitation Program for Chemical Dependency – Respondent, at his/her expense, shall successfully complete during the probationary period or shall have successfully completed prior to commencement of probation 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.

25. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 13, referenced above. The facts and circumstances regarding this violation are as follows:

A. Respondent has failed to submit verification of attendance for Nurse Support Group and AA/NA meetings. The last received verification attendance was on October 10, 2007.

SEVENTH CAUSE TO REVOKE PROBATION

(Abstain from Use of Psychotropic (Mood Altering) Drugs)

26. At all times after the effective date of Respondent's probation, Condition 14 states, in pertinent part:

> Abstain from Use of Psychotropic (Mood Altering) Drugs – Respondent shall complete abstain from the possession, injection or consumption by any route of all psychotropic (mood alterting) drugs, including alcohol, except when the same are ordered by health care professional authorized to do so as part of documented medical treatment.

27. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 14, referenced above. The facts and circumstances regarding this violation are as follows:

A. Respondent was convicted of possession of a controlled substance, to wit: Methamphetamine, as set forth in paragraph 9, subparagraph (a), above. Further, on February 5, 2008, Respondent tested positive for Methamphetamine.

EIGHTH CAUSE TO REVOKE PROBATION

(Submit to Tests and Samples)

28. At all times after the effective date of Respondent's probation, Condition 15 states, in pertinent part:

> Submit to Tests and Samples – Respondent, at his expense, shall participate in a random, biological fluid testing or a drug screening program which the Board approved.

29. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 15, referenced above. The facts and circumstances regarding this violation are as follows:

A. Respondent failed to comply with the random biological fluid testing or drug testing program, as follows:

Call Date:	Results:
September 10, 2007	Missed test/ did not call.
November 17, 2007	Missed test.
December 17, 2007	Missed test/account on hold.
February 5, 2008	Positive for Methamphetamine
February 8, 2008	Missed test/did not call.

NINTH CAUSE TO REVOKE PROBATION

(Therapy or Counseling Program)

30. At all times after the effective date of Respondent's probation, Condition 16 states:

> Therapy or Counseling Program – Respondent, at his own expense, shall participate in an on-going counseling program until such time as the Board releases him from this requirement and only upon the recommendation of the counselor. Written progress reports from the counselor will be required at various intervals.

31. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 16, referenced above. The facts and circumstances regarding this violation are as follows:

A. Respondent has failed to submit verification of on-going counseling.

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PRAYER

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

1. Revoking the probation that was granted by the Board in Case No. 2007-48 and imposing the disciplinary order that was stayed thereby revoking Registered Nurse License No. RN 514175 issued to Matthew Wayne Davis;

2. Revoking or suspending Registered Nurse License No. RN 514175 issued to Matthew Wayne Davis; and,

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

DATED: 8/28/09

Louise R. Bailey

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

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

In the Matter of the Accusation Against: MATTHEW WAYNE DAVIS 7950 Foothills Boulevard Roseville, CA 95747 Registered Nurse License No. 514175 Respondent.	Case No. 2007-48 OAH No. N2006100371

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 APRIL 12, 2007.

IT IS SO ORDERED MARCH 12, 2007.

LaTrancine Tate

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

In the Matter of the Accusation Against:	Case No. 2007-48
MATTHEW WAYNE DAVIS	OAH No. N2006100371
Registered Nurse License No. 514175	
Respondent.	

PROPOSED DECISION

On December 21, 2006, in Sacramento, California, Ann Elizabeth Sarli, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Complainant was represented by Elena L. Almanzo, Deputy Attorney General.

Respondent, Matthew Wayne Davis, represented himself.

The record was closed and the matter submitted on December 21, 2006.

FACTUAL FINDINGS

1. On August 24, 2006, complainant and petitioner Ruth Ann Terry, M.P.H., R.N., made and filed the Accusation in her official capacity as Executive Officer, Board of Registered Nursing (Board), Department of Consumer Affairs, State of California. Respondent timely requested a hearing by filing a Notice of Defense. A hearing was held pursuant to Government Code section 11505.

2. On August 10, 1995, the Board issued Registered Nurse License number 514175 to respondent. At all times relevant the license was in full force and effect.

3. On May 27, 2005, in the Superior Court of California, County of Placer, respondent was convicted on his plea of nolo contendere of violating Vehicle Code section 23103.5 (Driving Under the Influence of a Drug), a misdemeanor. He was also convicted on

his plea of nolo contendere of a violation of Health and Safety Code section 11377, subdivision (a), (Possession of a Controlled Substance, to wit, Methamphetamine), a felony. Respondent was sentenced to serve 60 days in jail, pay fines and assessments, and was placed on formal probation for three years. He was permitted to attend an outpatient treatment center for 120 days in lieu of serving the jail time.

4. Respondent's conviction arose from his conduct on March 14, 2005. That evening he was driving at night without headlights. A police officer stopped him and noticed alcohol on his breath. He also appeared to be under the influence of a central nervous system stimulant. When searching respondent, the police officer found 3.84 grams of methamphetamine in his pocket. He found a glass smoking pipe with white residue in it in the car.

5. On May 9, 2006, in the Superior Court of California, County of Placer, respondent was convicted on his plea of guilty of violating Penal Code section 1202, subdivision (a)(1), (Possession of a Firearm by a Felon), a felony. He was also convicted on his plea of guilty of a violation of Health and Safety Code section 11377, subdivision (a), (Possession of a Controlled Substance, to wit, Methamphetamine), a misdemeanor. Respondent was sentenced to serve 65 days in jail, pay fines and assessments and was placed on formal probation for three years.

6. The May 9, 2006, convictions arose from a probation search of respondent's home on December 29, 2005. Police officers, responding to a tip that respondent had a stolen weapon, searched his garage and discovered a .25 Raven Arms brand handgun inside the glove box of his car. He told police officers that he had purchased the gun in order to commit suicide. A glass smoking pipe and two spoons with methamphetamine residue were found inside the garage.

7. On May 9, 2006,[1] in the Superior Court of California, County of Placer, respondent was convicted on his plea of guilty of violating Health and Safety Code section 11364, (Unlawful Possession of a Device, Contrivance Instrument, and Paraphernalia Used for Smoking a Controlled Substance), a misdemeanor. Respondent was sentenced as described in Factual Finding 6.

8. This conviction arose from an April 7, 2006 probation search of respondent's garage. Police discovered a methamphetamine pipe in a tool chest inside his garage. Respondent admitted to officers that he had relapsed.

9. Methamphetamine is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (d)(2).

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[1] Respondent was sentenced on May 9, 2006 for the convictions stemming from both the December 29, 2005 arrest and the April 7, 2006 arrest.

10. Driving under the influence of an illegal substance and possession of an illegal substance are crimes of moral turpitude that are substantially related to the qualifications and duties of a registered nurse. Possession of a handgun by a felon is a crime of moral turpitude which is substantially related to the qualifications and duties of a registered nurse. Repeated violations of the law and of conditions of probation are acts of moral turpitude and are substantially related to the qualifications and duties of a registered nurse.

Aggravation and Mitigation

11. In aggravation, on May 9, 2006, respondent admitted that he had violated probation. He had violated the terms and conditions of probation by submitting a urine sample positive for methamphetamine to his probation officer on February 24, 2006, and by his December 29, 2005 possession of a handgun. The court reinstated his probation for three years and he was sentenced to 145 days in jail.

12. Respondent produced as evidence of mitigation the fact that he had a history of uncontrolled major depression which was poorly managed, and he attempted to self medicate with methamphetamine.

Rehabilitation

13. Respondent was a sincere and very credible witness. He related his path to rehabilitation. Respondent became involved in methamphetamine use four to five years ago and recognizes he was a "serious addict." He had been very depressed over the deaths of three close friends, two of whom had committed suicide. He had been a medic in the military and felt he had let his friends down. A construction worker at his home introduced him to methamphetamine, and he became addicted.

14. Respondent became involved in a recovery program in earnest in late July 2006. The program is run through the court and is a year long. The program has a counseling component that requires attendance at Narcotic Anonymous (NA) meetings and routine drug testing. Respondent is very active in NA, but does not yet have enough "clean time" in to hold a NA service position; however, this is his goal. He is completing his "third step" of the program. He has clinical depression and a regimen of psychotropic medications has been helping quite a bit. His depression is in control, and he continues psychological counseling. He is grateful he had the chance to go through this recovery program. The program has "shown him a new way of life." He has been clean and sober for five months and 11 days.

15. Respondent's current employment is with the State of California Department of Health Services. His job requires that he be licensed as a registered nurse, but does not involve patient care. Nor does he handle medications. He does utilization review in the Medi-Cal Operations Division and has worked in this position for the last six years. His supervisor is aware of his methamphetamine addiction.

Respondent took an entire year leave from work between 2004 and 2005. He was depressed and not functioning well. He was treating with a psychiatrist who advised him to go back to work part time. He now works six hours a day, four days a week. His job involves looking at and processing requests for medical services and transportation, and evaluating what level of services and transportation patients require. When he first began the job, he worked in case management, managing individuals who had traumatic brain injuries requiring life support and medical support.

Respondent submitted an undated letter from Pamela Grundy NE III Supervisor of the Department of Health Services, State of California. She wrote that respondent has been employed since 1999 and is a valued employee. He has been on limited duty since 2003. But since his return to duty in February 2006 he has consistently demonstrated an improvement in his work and handles his share of the workload.

16. Christopher Eggleston, M.D., J.D. University of California Medical Center wrote a letter dated March 1, 2006. He wrote that he has been treating respondent since July 2003, on a weekly basis. He wrote that respondent suffers from chronic depression and anxiety. "He has put forth tremendous effort and has made significant progress." Dr. Eggleston wrote that respondent's "use of methamphetamine was very much connected to his underlying psychological difficulties." He does not believe that respondent poses a risk to others. Currently, his depression is controlled with Cymbalta and Respirion. This combination of medications works much better at controlling his depression than those medications he was taking prior to his use of methamphetamine.

17. Respondent believes he would never divert drugs from a patient or consume other drugs. His wife has a prescription for Vicodin and he is never tempted to take any. He has never consumed alcohol to excess, but he refrains from drinking alcohol so that he can be completely clean and sober. His problem has been methamphetamine. When he was sentenced for his last conviction, the Court offered him the opportunity to participate in the drug court program in lieu of serving jail time. Drug court was the turning point in his life. Respondent testified persuasively that NA was the turning point in his life. The drug court program randomly tests him for drugs use. The last time he was tested was the day before his hearing. All of his tests have been negative. Respondent's plan is to go back to school and get a degree in psychology, with the long term goal of finding a position counseling in drug rehabilitation and therapy.

18. Respondent provided documents to support his progress in rehabilitation. His attendance records for counseling, NA attendance, and drug testing support his testimony that he is meeting his rehabilitation obligations.

19. Respondent submitted an October 2, 2006, letter from Ioana Popescu, M.D., a Resident Psychiatrist at the University of California Davis Medical Center. Dr. Popescu wrote that respondent has been treated in his clinic since May of 2003, with a diagnosis of Major Depressive Disorder, recurrent. He is treated weekly for medication management and

individual psychotherapy. Dr. Popescu wrote that respondent is compliant with both treatment modalities.

20. Respondent submitted a December 13, 2006 letter from Michele Neeb, M.A., Client Services Practitioner for the County of Placer Department of Health and Human Services. Ms. Neeb wrote that respondent is participating in the County's drug court program, with daily drug testing, and four weekly drug and alcohol groups for 12 months. Ms. Neeb reported that she is respondent's case manager and that his progress is excellent, and that "he is determined to rectify his drug problem."

21. Respondent submitted a December 11, 2006, letter from Melissa Hempel, RASi Program Manager of the Rocklin Community Counseling Center. Ms. Hempel wrote that respondent has completed 36 groups of a required 48 Level II groups and is ahead of schedule in his treatment program. He is an asset to the group and provides significant insightful feedback for peers and shares openly about himself.

22. Respondent submitted a March 7, 2006, letter from Connie French, Program Manager, Out Client Services. She wrote that respondent had anxiety and depression for most of his life and these problems went largely untreated. He resorted to self medication. His legal problems have provided him an opportunity to obtain the help he needed. She wrote that he is a caring husband and step-father, an avid member of his church and a contributing member of society. His mental health conditions are being treated, and he has developed healthy coping strategies to deal with his problems.

Costs

23. The parties were advised that the Administrative Law Judge would take evidence relating to the factors set forth in *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32. The parties were advised that these factors would be considered in determining the reasonableness of costs. These factors include; whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate to the alleged misconduct.

Complainant established that the reasonable costs of investigation and prosecution of this matter were $3,053. Complainant established that the scope of the investigation was appropriate to the alleged misconduct.

Respondent established that he worked part time and that he had numerous expenses connected with his probation and his rehabilitation programs. Thus, if he was able to retain his employment, he could make installment payments on the costs.

LEGAL CONCLUSIONS

1. Cause exists to subject respondent's license to disciplinary action under Business and Professions Code[2] section 2761, subdivision (f), in that he was convicted of crimes substantially related to the qualifications, functions and duties of a registered nurse, as set forth in Factual Finding 2 through 10.

2. Cause exists to subject respondent's license to disciplinary action under Business and Professions Code section 2761, subdivision (a), on the grounds of unprofessional conduct as defined in section 2762, subdivision (a), in that he possessed Methamphetamine, without a valid prescription, in violation of section 4060, as set forth in Factual Finding 2 through 10.

3. Cause exists to subject respondent's license to disciplinary action under section 2761, subdivision (a), on the grounds of unprofessional conduct as defined in section 2762, subdivision (b). As set forth in Factual Finding 2 through 13, respondent used Methamphetamine to the extent and in a manner dangerous or injurious to himself and others.

4. Cause exists to subject respondent's license to disciplinary action under section 2761, subdivision (a), on the grounds of unprofessional conduct as defined in section 2762, subdivision (c). As set forth in Factual Finding 2 through 10, respondent was convicted of crimes involving the consumption of Methamphetamine.

5. Pursuant to section 125.3, and Factual Finding 23, complainant is entitled to reimbursement from respondent for the reasonable costs of investigation and prosecution of this matter in the sum of $3,053.

6. Respondent's evidence of rehabilitation was weighed and balanced against the number and severity of his convictions and his conduct. Although respondent has made admirable progress and is clearly dedicated to his recovery, only eight months have passed since his last conviction. He has not had the opportunity to demonstrate sustained sobriety. Ordinarily, a registered nurse with the history of drug use respondent displayed would pose a serious risk to the patient population. Ordinarily, it would also be unwise to allow a person with respondent's history to work as a registered nurse because of the availability of drugs. However, this is a unique case, where respondent for many years has worked in an administrative capacity in an administrative agency, with no patient contact and no access to drugs. Respondent must be licensed to remain in this position.

At hearing, complainant argued that it would not be possible to restrict respondent's nursing license sufficiently to prevent him from patient contact. Complainant was not persuasive on this point. It is appropriate, given these unique circumstances, to restrict respondent's licensed activity to the position he now holds with the Department of Health

[2] All statutory references are to the California Business and Professions Code unless otherwise indicated.

Services. Thus, a probationary license with terms and conditions tailored to respondent's situation will be sufficient to protect the public.

ORDER

1. Registered Nurse License Number 2514175 issued to respondent Matthew Wayne Davis is revoked. However, the revocation is stayed and respondent is placed on probation for five years on the following conditions.

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

If respondent violates any condition of court ordered probation or any court order, said violation shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

(2) **COMPLY WITH THE BOARD'S PROBATION PROGRAM** - Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

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

(3) **REPORT IN PERSON** - Respondent, during the period of probation, shall appear in person at interviews/ meetings as directed by the Board or its designated representatives.

(4) **RESIDENCY, PRACTICE, OR LICENSURE OUTSIDE OF STATE** - Periods of residency or practice as a registered nurse outside of California shall not apply toward a reduction of this probation time period. Respondent's probation is tolled, if and when he or she resides outside of California. The respondent must provide written notice to the Board within 15 days of any

change of residency or practice outside the state, and within 30 days prior to re-establishing residency or returning to practice in this state.

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

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

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

(6) **EMPLOYMENT LIMITATIONS** – Respondent's employment is limited to employment with the California Department of Health Services Medi-Cal operations Division and is limited to utilization review. Respondent is barred from employment in patient care and employment in which he has access to controlled substances. Respondent shall not participate in education or training that involves provision of patient care. 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.

(7) **EMPLOYMENT APPROVAL AND REPORTING REQUIREMENTS** - Respondent shall obtain prior approval from the Board before commencing or continuing any employment, paid or voluntary, as a registered nurse (other than the employment specified in Condition 6). Respondent shall cause to be submitted to the Board all performance evaluations and other employment related reports as a registered nurse upon request of the Board.

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

In addition to the above, respondent shall obtain approval of the board for any change in employment duties or employers. Respondent shall notify the Board

in writing within seventy-two (72) hours after he is terminated or separated, regardless of cause, from any nursing, or other health care related employment with a full explanation of the circumstances surrounding the termination or separation.

(8) SUPERVISION - Respondent shall obtain prior approval from the Board regarding respondent's level of supervision and/or collaboration before commencing or continuing any employment as a registered nurse.

(9) COMPLETE A NURSING COURSE(S) - Respondent, at his own expense, shall enroll and successfully complete a course(s) relevant to the practice of registered nursing no later than six months prior to the end of his probationary term.
Respondent shall obtain prior approval from the Board before enrolling in the course(s). Respondent shall submit to the Board the original transcripts or certificates of completion for the above required course(s). The Board shall return the original documents to respondent after photocopying them for its records.

(10) COST RECOVERY - Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 125.3 in the amount of $3,053.00. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than three months prior to the end of the probation term.

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

(11) VIOLATION OF PROBATION - If a respondent violates the conditions of his/her probation, the Board after giving the respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation/suspension) of the respondent's license.

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

(12) **LICENSE SURRENDER** - During respondent's term of probation, if he or she ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, respondent may surrender his or her license to the Board. The Board reserves the right to evaluate respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, respondent will no longer be subject to the conditions of probation.

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

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

(13) **PARTICIPATE IN TREATMENT/REHABILITATION PROGRAM FOR CHEMICAL DEPENDENCE** - Respondent, at his/her expense, shall successfully complete during the probationary period or shall have successfully completed prior to commencement of probation 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 the decision, shall be enrolled in a program. If a program is not successfully completed within the first nine months of probation, the Board shall consider respondent in violation of probation.

Based on Board recommendation, each week respondent shall be required to 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 as approved and directed by the Board. If a nurse support group is not available, an additional 12-step meeting or equivalent shall be added. Respondent shall submit dated and signed documentation confirming such attendance to the Board during the entire period of probation. Respondent shall continue with the recovery plan recommended by the treatment/rehabilitation program or a licensed mental health examiner and/or other ongoing recovery groups.

(14) <u>ABSTAIN FROM USE OF PSYCHOTROPIC (MOOD-ALTERING) DRUGS</u> -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 fourteen (14) days, by the prescribing health professional, a report identifying the medication, dosage, the date the medication was prescribed, the respondent's prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

Respondent shall identify for the Board 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 report to the Board on a quarterly basis 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 any 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.

(15) <u>SUBMIT TO TESTS AND SAMPLES</u> - Respondent, at his expense, shall participate in a random, biological fluid testing or a drug screening program which the Board approves. The length of time and frequency will be subject to approval by the Board. The respondent is responsible for keeping the Board informed of respondent's current telephone number at all times. Respondent shall also ensure that messages may be left at the telephone number when he/she is not available and ensure that reports are submitted directly by the testing agency to the Board, as directed. Any confirmed positive finding shall be reported immediately to the Board by the program and the respondent shall be considered in violation of probation.

In addition, respondent, at any time during the period of probation, shall fully cooperate with the Board or any of 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.

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 to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

If respondent fails to participate in a random, biological fluid testing or drug screening program within the specified time frame, the respondent shall immediately cease practice and shall not resume practice until notified by the Board. After taking into account documented evidence of mitigation, 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 to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

(16) THERAPY OR COUNSELING PROGRAM – Respondent, at his own expense, shall participate in an on-going counseling program until such time as the Board releases him from this requirement and only upon the recommendation of the counselor. Written progress reports from the counselor will be required at various intervals.

2. Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 125.3 in the amount of $3,053. As set forth in condition 10 of the terms and conditions of probation, respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than three months prior to the end of the probation term. In the event respondent violates the terms or conditions of his probation to the Board or surrenders his license, he is ordered to pay the balance of the costs, within 10 days of the surrender or of the Board's revocation of license following a violation of probation.

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

Dated: January 23, 2007

ANN ELIZABETH SARLI
Administrative Law Judge
Office of Administrative Hearings

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Attorneys for Complainant

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

In the Matter of the Accusation Against: **MATTHEW WAYNE DAVIS** 7950 Foothills Boulevard, #180 Roseville, California 95747 Registered Nurse License No. 514175 Respondent.	Case No. 2007-48 **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 August 10, 1995, the Board issued Registered Nurse License Number 514175 to MATTHEW WAYNE DAVIS ("Respondent"). The license will expire on June 30, 2007, unless renewed.

STATUTORY PROVISIONS

3. 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.

4. Code section 2764 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 Code section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.

5. Code section 118, subdivision (b), provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

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, 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 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. Code section 4060 states, in pertinent part:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, . . . or furnished pursuant to a drug order issued by a certified nurse-midwife . . . , a nurse practitioner . . . , or a physician assistant. . . .

9. 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.

10. **Drug**

"Methamphetamine," a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (d)(2).

FIRST CAUSE FOR DISCIPLINE

(Conviction of Crimes)

11. Respondent is subject to disciplinary action under Code section 2761, subdivision (f), in that Respondent was convicted of crimes substantially related to the qualifications, functions, or duties of a registered nurse. The circumstances are as follows:

A. On or about May 27, 2005, in the Superior Court of California, County of Placer, in the case entitled, *People of the State of California v. Matthew Wayne Davis* (Super. Ct. Placer County, 2005, Case No. 62-050571), Respondent was convicted by the court on his plea of nolo contendere of violating Vehicle Code section 23103.5 (Driving Under the Influence of a Drug), a misdemeanor, and Health and Safety Code section 11377, subdivision (a) (Possession of a Controlled Substance, to wit, Methamphetamine), a felony. Such crimes are substantially related to the qualifications, duties, and functions of a licensed registered nurse. The circumstances of the crime are that on or about March 15, 2005, Respondent did willfully and unlawfully drive a vehicle while under the influence of a drug, to wit, Methamphetamine, and did

willfully and unlawfully possess a controlled substance, to wit, Methamphetamine.

B. On or about May 9, 2006, in the Superior Court of California, County of Placer, in the case entitled, *People of the State of California v. Matthew Wayne Davis* (Super. Ct. Placer County, 2006, Case No. 62-57375), Respondent was convicted by the court on his plea of guilty to a violation of Penal Code section 1202 subd. (a)(1), a felony, possession of a firearm by a felon, and a violation of Health and Safety Code section 11377(a), a misdemeanor, possession of a controlled substance, to wit, Methamphetamine. Both crimes are substantially related to the qualifications, functions, or duties of a registered nurse. The circumstances were that on or about December 29, respondent was found in possession of a .25 caliber Raven Arms brand handgun and wilfully and unlawfully in possession of a controlled substance, to wit, methamphetamine.

C. On or about May 9, 2006, in the Superior Court of California, County of Placer, in the case entitled, *People of the State of California v. Matthew Wayne Davis* (Super. Ct. Placer County, 2006, Case No 62-59587), Respondent was convicted of his plea of guilty to a violation of Health and Safety Code section 11364, a misdemeanor, unlawful possession of a device, contrivance instrument, and paraphernalia used for smoking a controlled substance. A crime substantially related to the qualifications, functions, or duties of a registered nurse. The circumstances were that on or about April 7, 2006, respondent was unlawfully in possession of a device, contrivance, instrument, and paraphernalia for smoking a controlled substance.

SECOND CAUSE FOR DISCIPLINE

(Possession of a Controlled Substance)

12. 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 (a), in that Respondent possessed Methamphetamine, a Schedule II controlled substance, without a valid prescription, in violation of Code section 4060, as set forth in paragraph 11, above.

THIRD CAUSE FOR DISCIPLINE

(Use of Alcohol/Drugs in a Dangerous Manner)

13. 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 Methamphetamine, a Schedule II controlled substance, to an extent or in a manner dangerous or injurious to himself, others, or to the public, as set forth in paragraph 11, above.

FOURTH CAUSE FOR DISCIPLINE

(Conviction of a Crime Involving the Consumption of Alcohol and/or Drugs)

14. 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 Methamphetamine, a Schedule II controlled substance, as set forth in paragraph 11, above.

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

15. Respondent is subject to disciplinary action under Code section 2761, subdivision (a), in that Respondent committed acts of unprofessional conduct as set forth in paragraphs 11 through 14, above.

OTHER MATTERS

In order to determine the degree of penalty to be imposed, if any, complainant alleges the following as a factor in aggravation:

A. On or about May 9, 2006, in People v. Matthew Wayne Davis; Placer County Superior Court; Case No. 62-50571, respondent admitted that he was in violation of his criminal probation and was sentenced to 145 days of county jail and his probation was reinstated for a period of three years. The circumstances leading to the violation of probation were that on February 24, 2006, respondent submitted a urine sample which tested positive for the use of methamphetamine and on December 29, 2005, he violated Penal Code section 12021.1 (a) when the Roseville Police Department found a .25 caliber handgun in respondent's garage during a probation search.

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PRAYER

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

1. Revoking or suspending Registered Nurse License Number 514175 issued to MATTHEW WAYNE DAVIS;

2. Ordering MATTHEW WAYNE DAVIS 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: August 24, 2005

Elliot Hochberg for

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

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