

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

In the Matter of the Accusation Against:

**CHARLES H. ROSALES**  
**a.k.a. CHARLES HORATIO ROSALES**  
1829 Marney Avenue  
Los Angeles, CA 90032

Registered Nurse License No. 541012  
Public Health Nurse No. 67837

Respondent.

Case No. 2010-23

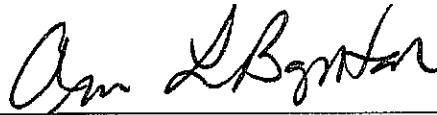
OAH No. 2009080641

**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 **March 22, 2010**

IT IS SO ORDERED this **17th** day of **February, 2010**.



\_\_\_\_\_  
President  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California

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BOARD OF REGISTERED NURSING  
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CHARLES H. ROSALES, a.k.a.  
CHARLES HORATIO ROSALES  
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Los Angeles, California 90032

Registered Nurse License No. 541012  
Public Health Nurse No. 67837,

Respondent.

Case No.: 2010-23

OAH No.: 2009080641

PROPOSED DECISION

This matter came on for hearing before Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California, on December 1, 2009.

Linda L. Sun, Deputy Attorney General, represented the Complainant.

Respondent appeared in person and was represented by Valerie Alvarez, Attorney at Law.

Oral and documentary evidence and evidence by way of official notice was received and the matter then argued.

The Administrative Law Judge now finds, concludes and orders as follows:

FACTUAL FINDINGS

*Parties*

1. Heidi J. Goodman, Complainant herein, brought the Accusation in her official capacity as the Assistant Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs.

2. On February 27, 1998, the Board issued Registered Nurse License Number 541012 to Charles H. Rosales, also known as Charles Horatio Rosales, Respondent herein. The registered nurse license is in full force and effect and will expire on April 30, 2011, unless renewed.

3. On July 7, 2004, the Board issued Public Health Nurse License Number 67837 to Respondent. The public health nurse license is in full force and effect and will expire on April 30, 2011, unless renewed.

### *Criminal Conviction*

4. On April 11, 2007 Respondent and his wife, sitting in a car in a parking lot about to go shopping, engaged in a verbal argument. The argument escalated into a physical confrontation when the couple exchange blows while Respondent drove the vehicle from the lot to the streets. Respondent punched her in the face several times while driving causing red marks on her face and swelling to the right side of her face. Respondent also made verbal threats to his wife such that she had to leave the moving vehicle from the open passenger window exposing herself to risk of injury. Alhambra police were dispatched to the scene following a radio call of domestic battery. After investigation the police determined that Respondent was the primary aggressor and he was placed under arrest. Thereafter, on September 5, 2007, in the Superior Court, County of Los Angeles, California, in the matter entitled *People v. Charles Horatio Rosales*, Case No. GA070608, (2007), Respondent was convicted by the court, following his plea of nolo contendere<sup>1</sup> to violations of Penal Code section 273.5, subdivision (a) (corporal injury to spouse/cohabitant/child's parent), and Penal Code section 422 (criminal threats), both misdemeanors.

5. The conviction evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety or welfare. Accordingly, the conviction is substantially related<sup>2</sup> to the qualifications, functions or duties of a registered nurse.

### *Rehabilitation and Character*

6. As a result of the conviction Respondent was placed on a three year summary probation on September 5, 2007. He timely completed all conditions of probation including a 52 week domestic violence program and intervention counseling with perfect attendance. The provider's completion report included the following:

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<sup>1</sup> Those pleas constituted conclusive evidence of the charged crimes (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449).

<sup>2</sup> California Code of Regulations, title 16, section 1444.

. . . Mr. Rosales has taken responsibility for his actions, and has demonstrated the ability to communicate effectively with others. . . (he) is now practicing several techniques acquired during the year long intervention program.

7. In recognition of his compliance with probation the court, on Respondent's petition, terminated probation early on November 5, 2009 and dismissed the criminal complaint pursuant to Penal Code section 1203.4.

8. On his own initiative Respondent did complete a 12 week Nurturing Parenting Program on April 2, 2008 under the aegis of Children's Center, Inc. He had perfect attendance and actively participated. He and his wife, since divorced, are parents of a six year old son and share custody. Respondent is cordial to his ex-wife when he picks up his son every other weekend. Respondent's father is deceased and Respondent remains close to his 93 year old mother who suffers from Alzheimer's disease. He visits her each Sunday. Respondent has stability of family life with his son and fulfills familial and parental obligations.

9. Respondent's present employer is the Rand Schrader Health and Research Center, LAC & USC Medical Center (Center). Respondent has apprised the Center's administrator and his supervisors of his conviction. By Declaration of November 25, 2009 Andres C. Martinez, administrator of the Center attested as follows:

- - -

Mr. Charles Rosales has been an employee of our Center for the last six years. During this period I have become well acquainted with Mr. Rosales. From the day we hired Mr. Rosales, he has taken on a leadership role and has served as a role model for our other employees. He began with us by taking charge of our clinic's chemotherapy infusion center. He continued to demonstrate the ability to take on responsibilities beyond what was expected of his normal duties. He also expressed in (sic) desire to expand his role as a clinic leader and taken on further responsibilities. He has proved himself as a valuable asset and an integral part of our health-care team.

Back in August 2007 Mr. Rosales immediately informed me of the circumstances surrounding his personal life.

At no time was I concerned about how he would conduct himself while on duty. I was never concerned regarding the safety of my staff or the clinic's clients while Mr. Rosales was on duty.

Stella Quan, by Declaration of November 25, 2009, attested as follows:

I am currently employed at LAC+USC Rand Schrader Health and Research Center as a Senior Health Educator. As the Program Coordination for the Rapid HIV Testing Program, I have observed Mr. Rosales perform pre and post-testing counseling for the past two years.

Mr. Rosales has been working at the Rand Schrader Clinic for the past seven years. He is a highly trusted nurse who exhibits a strong work ethic and excellent leadership skills. In addition to providing nursing case management to four of our physicians, Mr. Rosales runs the Chemo/Infusion Clinic for our department and performs pre and post-testing counseling for Rapid HIV among his many duties.

Mr. Rosales develops a great rapport with his patients and is a very reliable individual who can be counted on to help with testing even on days when the clinic is very busy.

Mr. Rosales is very knowledgeable and well versed on policy matters, nursing responsibilities, and the proper protocols and procedures regarding our clinic operations. The staff members at our clinic know that they can rely on Mr. Rosales to assist with any problems that may arise during the course of the workday. If a difficult situation occurs involving a patient, the staff will often seek assistance from Mr. Rosales.

Mr. Rosales is a very dependable nurse who is highly skilled at interviewing in a crisis situation and providing mitigation when necessary. Mr. Rosales has a very pleasant personality and gets along well with everyone at our clinic.

Mr. Rosales is an important asset to our clinic. Please take this into consideration when reviewing this case.

10. In addition to the Declarations referenced in Finding 9 a number of Center employees familiar with Respondent's work ethic and character proffered character letters on his behalf. The employees included an MD, RNs and others. They, credibly, opined as to Respondent's competence, his caring and compassionate nature, his leadership skills, and to his trustworthiness.

11. In addition to the Declarations (Finding 9) and character letters (Finding 10), five persons with knowledge of Respondent's conviction willingly gave credible testimony as to Respondent's work ethic and character. One HIV/AIDS patient credits Respondent with saving him from homelessness and described Respondent as "... outstanding nurse ... epitome of bedside manner ... awesome nurse ...". Another HIV/AIDS patient credited Respondent with saving his life and described Respondent as "... highly skilled and compassionate ... by the book ... honest, trustworthy ...". One colleague described his calm demeanor when dealing with confrontational patients. Another stated Respondent is "... conscientious ... works in high skill area ... highly skilled, attentive, caring ...". Another described Respondent as "... empathic ... well liked ... caring ...".

12. Respondent gave testimony in his own behalf. He was open, honest and candid in his testimony. He is contrite and remorseful about his conduct on April 11, 2007. Prior to that time he was in conformity to society's norms and rules. Subsequent to that time he has been in conformity to society's norms and rules. Respondent's sole conviction in his life is an aberration in an otherwise professionally and socially responsible life. Respondent is a safe nurse and has been a safe nurse over the course of his career as a nurse.

#### *Costs*

13. The Bureau incurred costs, including attorney fees, in the total sum of \$1,861.25, in connection with the investigation and prosecution of this action. The costs are deemed just and reasonable.

### LEGAL CONCLUSIONS

#### *Applicable Law*

1. Business and Professions Code (Code) section 2750 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.

2. 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:

\* \* \*

“(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.

3. 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.

#### *Violations*

4. Cause exists to discipline Respondent’s licenses pursuant to Code sections 2750 and 2761, subdivision (f), as defined in California Code of Regulations, title 16, section 1444, for conviction of a substantially related crime, as set forth in Findings 3 and 4.

5. Cause exists for an order of costs in the amount of \$1,861.25 pursuant to Code section 125.3 by reason of Finding 13.

#### *Disposition*

6. 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.

7. California Code of Regulations, title 16, section 1445, subdivision (b) states:

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.

8. Using the same sequential order above:

- (1) Battering and threatening a spouse is a severe offense.
- (2) The conviction set forth in Finding 4 is a sole conviction.
- (3) The act occurred three and one half years ago (Finding 3).
- (4) Respondent's probation compliance has been exemplary (Finding 6).
- (5) The conviction has been expunged (Finding 7).
- (6) In the relatively short time since the conviction Respondent has been rehabilitated (Findings 6 through 12).

9. In light of Legal Conclusion 8 a deviation from the Guidelines recommended penalty is appropriate in the public interest. Respondent by his perseverance has established a record of clear and convincing rehabilitation as set forth in Findings 6 through 12. He is a person of good character and a safe and competent nurse. He is an asset to his employer and to his patients. Accordingly, a period of probation for a minimal term is consistent with the public interest and the public health and safety.

## ORDER

Registered Nurse License Number RN 541012, and Public health License Number 67837 issued to Respondent are revoked. However, the revocations are stayed and Respondent is placed on probation for two years on the following conditions:

### SEVERABILITY CLAUSE

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

#### (1) OBEY ALL LAWS

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

#### CRIMINAL COURT ORDERS:

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

#### (2) COMPLY WITH THE BOARD'S PROBATION PROGRAM –

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

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

#### (3) REPORT IN PERSON –

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

(4) RESIDENCY, PRACTICE, OR LICENSURE OUTSIDE OF STATE –

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

Respondent shall provide a list of all states and territories where he 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) FUNCTION AS A REGISTERED NURSE –

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

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

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

If Respondent has not complied with this condition during the probationary term, and Respondent has presented sufficient documentation of 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 Respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation shall apply.

(7) EMPLOYMENT APPROVAL AND REPORTING REQUIREMENTS –

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

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

In addition to the above, Respondent shall notify the Board in writing within seventy-two (72) hours after he or she obtains any nursing or other health care related employment. 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, or education and training that includes patient care.

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

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

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

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

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

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

(9) EMPLOYMENT LIMITATIONS -

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

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

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

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

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

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

(10) COMPLETE A NURSING COURSE(S) -

Respondent, at 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 or her probationary term.

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

(11) COST RECOVERY –

Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of \$1,861.25. 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 Respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation will apply.

(12) VIOLATION OF PROBATION –

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

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

(13) LICENSE SURRENDER –

During Respondent's term of probation, if he 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.

Dated: December 30, 2009



RICHARD J. LOPEZ  
Administrative Law Judge  
Office of Administrative Hearings

RJL:rfm

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 GLORIA A. BARRIOS  
Supervising Deputy Attorney General  
3 LINDA L. SUN  
Deputy Attorney General  
4 State Bar No. 207108  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-6375  
6 Facsimile: (213) 897-2804  
*Attorneys for Complainant*  
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12 **CHARLES HORATIO ROSALES**  
13 **1829 Marney Avenue**  
**Los Angeles, California 90032**

**ACCUSATION**

14 **Registered Nurse License No. 541012**  
15 **Public Health Nurse No. 67837**

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Heidi J. Goodman ("Complainant") brings this Accusation solely in her official  
21 capacity as the Assistant Executive Officer of the Board of Registered Nursing ("Board"),  
22 Department of Consumer Affairs.

23 **Registered Nurse License**

24 2. On or about February 27, 1998, the Board issued Registered Nurse License Number  
25 541012 to Charles H. Rosales, also known as Charles Horatio Rosales ("Respondent"). The  
26 registered nurse license was in full force and effect at all times relevant to the charges brought  
27 herein and will expire on April 30, 2011, unless renewed.

28 ///



1 Respondent was convicted by the court, following his plea of nolo contendere to violations of  
2 Penal Code section 273.5, subdivision (a) (corporal injury to spouse/cohabitant/child's parent),  
3 and Penal Code section 422 (criminal threats), both misdemeanors. The circumstances of the  
4 crime are that on or about August 11, 2007, during an argument with his wife, P.R., Respondent  
5 punched her in the face several times while driving. Respondent also made verbal threats to P.R.,  
6 such that P.R. had to jump out of the moving vehicle from the open passenger window in fear of  
7 her life.

8 **PRAYER**

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

11 1. Revoking or suspending Registered Nurse License Number 541012, issued to  
12 Charles H. Rosales, also known as Charles Horatio Rosales;

13 2. Revoking or suspending Public Health Nurse Number 67837, issued to Charles H.  
14 Rosales, also known as Charles Horatio Rosales;

15 3. Ordering Charles H. Rosales, also known as Charles Horatio Rosales to pay the  
16 Board of Registered Nursing the reasonable costs of the investigation and enforcement of this  
17 case, pursuant to Code section 125.3; and,

18 4. Taking such other and further action as deemed necessary and proper.  
19  
20

21 DATED: 7/22/09



HEIDI J. GOODMAN  
Assistant Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

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