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

In the Matter of the Accusation Against: JACQUELIN DEE DUNCAN 8116 Desert Ave Sacramento, CA 95628 Registered Nurse License No. 546675 Respondent.	Case No. 2012-200 OAH No. 2011110571

DECISION

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

This Decision shall become effective on January 2, 2013.

IT IS SO ORDERED this 3rd day of December, 2012.

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

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

In the Matter of the Accusation Against: JACQUELIN DEE DUNCAN Citrus Heights, California 95610 Registered Nurse Lic. No. 546675 Respondent.	Case No. 2012-200 OAH No. 2011110571

PROPOSED DECISION

This matter was heard before Dian M. Vorters, Administrative Law Judge, Office of Administrative Hearings, State of California, on August 17, 2012, in Sacramento, California.

Anahita S. Crawford, Deputy Attorney General (DAG), represented Louise R. Bailey, M.Ed., R.N. (complainant), Executive Officer, Board of Registered Nursing (Board), Department of Consumer Affairs.

Jeffrey Kravitz, Attorney at Law,[1] represented respondent, who was present.

Evidence was received and the record was closed on August 17, 2012.

FACTUAL FINDINGS

1. On August 11, 1998, the Board issued Registered Nurse (RN) License Number 546675 to respondent. Respondent's license will expire on April 30, 2014, unless revoked or renewed. The Accusation seeks to revoke respondent's license based upon her history of abusing controlled substances and failing to comply with diversion.

2. Respondent was also licensed in the State of Idaho as an RN (Lic. No. N-31680), from October 2002 to November 2008. Her Idaho license is no longer active.

[1] Jeffrey Kravitz, Attorney at Law, Law Office of Jeffrey Kravitz, 6747 Fair Oaks Boulevard, Carmichael, California 95608.

3. Respondent has suffered from "periodic limb movement" which is similar to "restless leg syndrome" since age 10, and migraines since age 12. She has related poor sleeping habits. After moving to Idaho in 2002, she obtained a hospital nursing position. She stated that Demerol was commonly used at this facility. Instead of "wasting" unused doses, respondent began self-medicating with injectable Demerol meant for patients. She testified that she became addicted. Ultimately the hospital discovered her personal use of prescription drugs and discharged her. In 2008, respondent decided to return to California. She contacted the Idaho Nursing Board and disclosed her licensing options. The Idaho Nursing Board recommended that she voluntarily surrender her Idaho license, contact the Board, and voluntarily enter the nursing diversion program. After relocating to California, respondent obtained a job as a medical assistant in a physician's office in Napa. The California Board referred respondent to the Maximus Diversion Program (Maximus).

Maximus Diversion Program

4. Maximus is a corporation that contracts with government entities, in this case, the Department of Consumer Affairs, to provide recovery treatment for addiction, substance abuse, and psychological problems. Stephanie Trumm is the clinical case manager for health professionals in the Maximus program. She has been employed at Maximus since 2003. According to Ms. Trumm, Maximus has the highest success rate in the country.
Ms. Trumm is a licensed RN and since 1997 has been a Certified Addiction RN. Ms. Trumm's job is to assess clients, compile documents, monitor progress, provide clinical input to the Maximus Diversion Evaluation Committee (DEC), attend DEC meetings, maintain electronic Case Log Notes, and act as a liaison between the Board, the DEC, and the client

5. Ms. Trumm explained that clients either self-refer to diversion or the Board refers them after a compliant is filed. The goal of the program is to treat health professionals who want to reclaim their lives and maintain or return to safe practice. After an eligibility assessment, a compliance monitor will schedule an appointment for an evaluation which will determine the type of treatment needed. The DEC consists of a physician, three RNs, and a public member (usually with a mental health background). The DEC makes determinations about restrictions from practice, termination from the program, the level of risk to the public, and treatment components which include testing, residential or out-patient treatment, and counseling. Maximus monitors progress but does not provide direct services. Clients sign a release which allows their clinical case worker to communicate with providers.

6. Maximus utilizes First Labs to coordinate computerized random drug testing. Patients call in daily at set times. If they are directed to test, they must visit a lab that day and provide a urine sample by 11:59 p.m. The lab tests for numerous substances and for indications of adulteration such as invalid temperature, pH levels (to ensure the sample is human), and creatine (an indicator that the sample is diluted).[2] First Lab reports test results daily to Maximus. Split samples allow First Lab to re-test and confirm results.

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[2] Creatine is a byproduct of muscle. For testing purposes, the level of creatine present in the sample needs to be over 20 mg (which is low). The creatine level is diluted (or lowered) by drinking a large quantity of fluid.

7. Respondent completed her diversion intake on December 11, 2008, and was formally accepted into Maximus on February 23, 2009. The terms of respondent's Maximus Recovery Contract included that she abstain from alcohol and all mind altering substances not prescribed by a physician, abstain from over-the-counter drugs not approved by Maximus, attend 12-step meetings, obtain a sponsor, attend Nurse Support meetings, submit to random testing, meet with the DEC every four months, and undergo a psychological evaluation. Respondent was also required to complete monthly feedback forms for Maximus. Ms. Trumm was respondent's case manager from May through July 17, 2010, when respondent was terminated from diversion.

8. Ms. Trumm reviewed respondent's urinalysis results for the 19 months respondent was with Maximus. During that time, respondent tested 30 times and produced two positive tests. On May 19, 2009, respondent produced a dilute test. Her creatine level was 8.6 mg which was below the minimally accepted level of 20 mg. Also, her "specific gravity" test was 1.001 which was below the minimally accepted level of 1.003. When both of these measurements are low, there is a concern that the client attempted to flush their system. When questioned, respondent denied using unauthorized drugs. The case manager scheduled follow-up tests which were normal.

On April 16, 2010, respondent produced a confirmed positive test for Demerol (Meperidine Metabolite) which was deemed a "relapse." Demerol is respondent's drug of choice. It is a Schedule II controlled substance that is used to manage severe post surgical pain. (Health & Saf. Code, § 11055.) It comes in oral and injectable form. According to Ms. Trumm, it is "mind-altering." The DEC required respondent to enter residential treatment for 28 days. After completing residential treatment she resumed her out-patient diversion program.

Three months later, on July 17, 2010, respondent produced a confirmed positive test for Tramadol which was deemed a second "relapse." Additionally, respondent's Creatine level was vey low at 12.9 mg, indicating sample dilution. Tramadol is a dangerous drug under California law. (Bus. & Prof. Code, § 4022.) It is a non-narcotic analgesic that affects opioid paths or receptors in the brain and has a mood altering effect. Like Demerol, it is a central nervous system depressant. Hence, it tends to slow people down. Signs are lethargy, anxiety, and dulling of critical thinking skills. Both Demerol and Tramadol stay in the system for 72 hours.

9. Ms. Trumm promptly notified the DEC about respondent's July test and recommended that she be terminated from diversion as a "public risk." The "public risk" designation was made because respondent was a licensed RN who was able to practice without restriction outside of diversion. A quorum vote of five DEC members was held which was unanimous for termination. The effective date of respondent's termination from Maximus was July 23, 2010. Ms. Trumm stated that most treatment programs have a "three-strike rule" regarding termination from treatment. With Maximus, respondent had two relapses in three months. However, in Ms. Trumm's opinion, respondent did not have a large degree of sobriety to support her continuance in the program.

Respondent's Evidence

10. Patricia Washington has been an RN since 2001 and is Director of Nursing at Windsor Care Center in Sacramento (Windsor), where respondent is employed. Ms. Washington was involved with the decision to hire respondent in April 2011. Respondent initially applied for a position as an Assistant Activity Director, responsible for exercise and recreation programs. Because of her nursing background, she was recruited into an on-call charge nurse position. In July 2011, she was promoted into a nurse supervisor position. Respondent's duties at Windsor include supervising other licensed nurses and Licensed Vocational Nurses (LVNs), reviewing charts, patient care, and providing clinical expertise. Ms. Washington sees respondent daily, they collaborate on diagnosis, on residents' physical condition, and they walk rounds together.

11. Respondent told Ms. Washington about her history of Demerol abuse a year ago. Respondent disclosed that she had been in diversion in Idaho and California and was terminated from Board diversion after taking Ultram (Tramadol), a prohibited drug. In 2011, Ms. Washington copied and read the Accusation filed by Complainant. Ms. Washington stated that she knows the objective signs of narcotic intoxication and can detect if a person is abusing drugs. Indicators include behavioral changes such as coming in late, slow speech, altered gait, making errors, forgetfulness, and diminished ability to do the job. Ms. Washington has never suspected respondent of being under the influence of drugs and has not received any such reports. She has never seen any inappropriate behavior or received any such reports. She rated respondent as "a wonderful nurse, a great advocate for our elderly population, a great support for our nurses." Respondent does not have access to drugs as she does not have charge nurse keys. She would be able to obtain them if needed.

12. Ms. Washington understands that respondent is at risk of license discipline. She testified at hearing because she wants respondent to continue nursing. Ms. Washington brought respondent's annual employee performance review to hearing. It was signed by respondent in May 2012. In the evaluation, respondent exceeded or met all expectations. The comments state that respondent displays a "person-centered approach" with all residents and their families and that she is "extremely valuable" in their acute care skilled nursing setting.

13. Margaret Wilkinson is respondent's Alcoholics Anonymous (AA) sponsor. Alcohol was her substance of choice and she has been sober for ten and one-half years. She met respondent at a meeting in April 2010. Ms. Wilkinson is also the Activity Director at Windsor and she recruited respondent for an Assistant Activity Director vacancy. However, when management learned about respondent's nursing background, they recruited her for a nursing job. Respondent shared her entire history of drug and alcohol abuse with Ms. Wilkinson. According to Ms. Wilkinson, respondent attends AA meetings two to three times a week. They attend the same Saturday meeting and meet weekly to work the steps. She is aware that respondent relapsed in July 2012 on Ultram and was consequently terminated from diversion. Respondent admitted taking the analgesic for migraine relief. Ms. Wilkinson sees respondent five days a week at work and twice through AA practice. Ms.

Wilkinson needs to know the condition of patients in order to plan appropriate recreational activities. As such, they meet every morning at work to go over the last 24 hours for each patient.

14. Ms. Wilkinson has sponsored approximately 30 individuals over the last nine years. She currently sponsors two other individuals. Respondent is working on Step Four, "making a fearless inventory of ourselves." Ms. Wilkinson knows the objective signs of substance abuse both at work and in those she sponsors. She stated that respondent is compliant with her suggestions, goes to meetings, and is of service through AA. Respondent told Ms. Wilkinson about her April and July 2010 use of medication. Ms. Wilkinson considers Demerol to be a narcotic and counted respondent's use in April 2010 as a relapse. Because Ultram is a non-narcotic pain killer, Ms. Wilkinson had not considered respondent's use in July 2010 to be a relapse. After learning at hearing that a prescription was required for Ultram, she testified that respondent should abstain from Demerol, alcohol, and all prescription pain-killers.

Mitigation/Rehabilitation

15. Respondent is 48 years of age and has three children including two adult sons and her 14 year old daughter who lives at home. Her ex-husband lives in Northern California. Her sobriety date is July 18, 2010, the date she ingested Ultram. She has not consumed alcohol for more than three years. She drank alcohol socially but never liked the taste and drank it only for effect. She would then have to lie down. She first used Demerol in 2008. It relaxed her so that she could sleep. At that time her husband had moved to Washington to study, she was helping to support him, and she was "financially and emotionally" distressed. She relapsed in April 2010, after another participant in her out-patient program twice approached her with Demerol. She declined the first offer but accepted the second. Her Ultram use was prompted by an extreme migraine for which she knew over-the-counter medication would not alleviate. At the time, she had no health insurance and no access to a physician for migraine management. For pain, she took an old Ultram sample that she had in her possession. She accepts this as a relapse because she did not have a valid prescription for it at the time.

16. Today, respondent's periodic limb movement syndrome is well-managed with approved medication through a physician. She still has fitful sleep but does not take substances. Respondent's mother, two sisters, brother, ex-husband, and children are a "great support" to her. She realizes that her family was always there but she "never used them before." Her attitude has changed in that she knows that she "can't escape life" and that substances offer only a "temporary reprieve." In addition to her sponsor, she has four close friends on whom she relies on for support. She copes with stress by calling her sponsor and sharing at meetings with others who can relate to her experiences. She confirmed attending three 12-step meetings a week and meets weekly with her sponsor.

17. Respondent has obtained and maintained stable employment, was promoted, and is considered to be a valued team member. Her workplace at Windsor is unique in that the Director, Ms. Washington, is aware of and supportive of respondent's recovery efforts,

and her sponsor, Ms. Wilkinson, sees respondent on the job daily. Respondent submitted proof of continuing education as of May 27, 2012, including Clostriduium Difficile (five-hour course), Autoimmune Diseases (15-hour course), and A Review of Infertility (10-hour course).

18. Respondent's credibility has been assessed. At hearing, she admitted her substance abuse issues and 2010 lapses in a forthright manner. When asked if she took the substances during diversion, she respondent, "absolutely." There was no effort on her part to minimize or deny her failings. She was candid in sharing the circumstances leading to her two relapses. It is clear that her attitude is one of acceptance and resolve to remain sober. She continues to take only the prescribed medication, approved while on diversion, for her leg and thyroid conditions (Armour thyroid and Mirapex). During her testimony, she presented as calm, pleasant, and respectful of the administrative process.

19. Respondent clearly demonstrated a change in attitude, professional stability, family and personal supports, regular attendance at 12-step meetings, and commitment to sobriety. As such, it would not present a risk to the public to allow her to continue practice as a licensed RN, with appropriate terms and conditions

Costs

20. Pursuant to Business and Professions Code section 125.3, complainant has requested costs of investigation and enforcement in the amount of $1,577.50. This amount was billed to the Board by the Attorney General's Office for legal services rendered through May 22, 2012. An additional two hours of attorney time, totaling $340.00, was anticipated but not billed as of the hearing date for a grand total of $1,917.50 in prosecution costs. The deputy attorney general submitted a Certification of Prosecution Costs and a Declaration of counsel in support of professional time billed.

The Accusation consisted of allegations stemming from respondent's termination from diversion based on two positive tests. Respondent did not contest the requested costs or provide evidence of her ability to pay. As such, total billed costs of $1,577.50 are reasonable.

LEGAL CONCLUSIONS

1. Complainant must prove cause for disciplinary action by clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 855-856.)

2. The Board may discipline a licensee who has engaged in "unprofessional conduct." (Bus. & Prof. Code, § 2761, subd. (a).) The Board may discipline a licensee who has used "any controlled substance ... or any dangerous drug..." (Bus. & Prof. Code, § 2762, subd. (b).)

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3. Respondent's use of controlled substances and dangerous drugs without a valid prescription, as set forth in Factual Findings 3 through 9, constitutes unprofessional conduct. As such, cause exists to discipline respondent's license. (Bus. Prof. Code, §§ 2761, subd. (a), & 2762, subd. (b).)

4. As set forth in Factual Findings 15-19, respondent has taken positive steps in recovery since July 2010, such that would not be contrary to the public health, safety, and welfare, to allow respondent to maintain her license, with probationary terms and conditions as set forth below.

Cost Analysis

5. Pursuant to Business and Professions Code section 125.3, a licensee found to have violated the licensing act may be ordered to pay the reasonable costs of investigation and prosecution of a case. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. 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 or her 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 in light of the alleged misconduct.

Complainant seeks $1, 577.50, in billed costs. When all the *Zuckerman* factors are considered, this cost amount is reasonable. (Factual Finding 20.) Respondent did not present evidence of her ability to pay. However, respondent should be allowed to pay these costs over time according to a payment plan acceptable to the Board.

ORDER

Registered Nurse License Number 546675 issued to respondent Jacquelin Dee Duncan, is REVOKED. However, the revocation is stayed and respondent is placed on probation for three (3) 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 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 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 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 six 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 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 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 she obtains any nursing or other health care related employment. Respondent shall notify the Board in writing within seventy-two (72) hours after she 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.

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10. COMPLETE A NURSING COURSE(S) - Respondent, at her 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.

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 $1,577.50. 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.

12. VIOLATION OF PROBATION - If respondent violates the conditions of her 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 she ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, respondent may surrender 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.

14. PARTICIPATE IN TREATMENT/REHABILITATION PROGRAM FOR CHEMICAL DEPENDENCE - Petitioner, at 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 Petitioner has not completed a Board-approved treatment/rehabilitation program prior to commencement of probation, Petitioner, 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 Petitioner in violation of probation.

Based on Board recommendation, each week Petitioner 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. Petitioner shall submit dated and signed documentation confirming such attendance to the Board during the entire period of probation. Petitioner shall continue with the recovery plan recommended by the treatment/rehabilitation program or a licensed mental health examiner and/or other ongoing recovery groups.

15. ABSTAIN FROM USE OF PSYCHOTROPIC (MOOD-ALTERING) DRUGS -Petitioner 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. Petitioner 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 Petitioner's prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

Petitioner shall identify for the Board a single physician, nurse practitioner or physician assistant who shall be aware of Petitioner's history of substance abuse and will coordinate and monitor any prescriptions for Petitioner 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 Petitioner'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.

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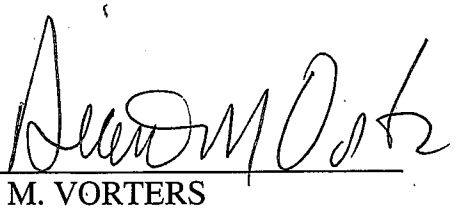
16. SUBMIT TO TESTS AND SAMPLES - Petitioner, at her expense, shall participate in a random, biological fluid testing or a drug screening program which the Board approves. The length of time and frequency will be subject to approval by the Board. The Petitioner is responsible for keeping the Board informed of Petitioner's current telephone number at all times. Petitioner shall also ensure that messages may be left at the telephone number when he 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 Petitioner shall be considered in violation of probation.

In addition, Petitioner, 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 Petitioner 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 Petitioner 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 Petitioner fails to participate in a random, biological fluid testing or drug screening program within the specified time frame, the Petitioner 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 Petitioner 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.

DATED: September 17, 2012



DIAN M. VORTERS
Administrative Law Judge
Office of Administrative Hearings

Exhibit A

Accusation Case No. 2012-200

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

In the Matter of the Accusation Against: **JACQUELIN DEE DUNCAN** **7996 Marsala Court** **Citrus Heights, CA 95610** **Registered Nurse License No. 546675** Respondent.	Case No. 2012-200 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about August 11, 1998, the Board issued Registered Nurse License Number 546675 to Jacquelin Dee Duncan ("Respondent"). The license was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2012, unless renewed.

JURISDICTION

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

STATUTORY PROVISIONS

5. Code section 2761(a) states, in pertinent part, that the board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for unprofessional conduct.

6. 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 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.

7. Code section 2770.11 states:

> (a) Each registered nurse who requests participation in a diversion program shall agree to cooperate with the rehabilitation program designed by the committee and approved by the program manager. Any failure to comply with the provisions of a rehabilitation program may result in termination of the registered nurse's participation in a program. The name and license number of a registered nurse who is terminated for any reason, other than successful completion, shall be reported to the board's enforcement program.
>
> (b) If the program manager determines that a registered nurse, who is denied admission into the program or terminated from the program, presents a threat to the public or his or her own health and safety, the program manager shall report the name and license number, along with a copy of all diversion records for that registered nurse, to the board's enforcement program. The board may use any of the records it receives under this subdivision in any disciplinary proceeding.

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8. Code section 4022 states:

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following:

(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.

9. Code section 4060 states:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either Section 4052.1 or 4052.2. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer. Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices.

COST RECOVERY

10. 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.

DRUGS

11. "Tramadol" is the generic name for Rybix ODT, Ryzolt, and Ultram and is a dangerous drug within the meaning of Business and Professions Code section 4022, in that it requires a prescription under federal law. It is a narcotic-like pain reliever used for treatment of moderate to severe pain.

12. "Demerol," a brand of meperidine hydrochloride, a derivative of pethidine, is a Schedule II controlled substance as designated by Health and Safety Code section 11055(c)(17).

RESPONDENT'S TERMINATION

FROM BOARD'S DIVERSION PROGRAM

13. Between December 11, 2008, and July 23, 2010, Respondent participated in the Board's Diversion Program. On or about April 16, 2010, Respondent tested positive for Demerol and was mandated to enter a residential treatment program for a minimum of 28 days. Respondent completed the 28 day stay and resumed her treatment/requirements with the Board's Diversion Program. On or about July 17, 2010, Respondent tested positive for Tramadol. On or about July 23, 2010, Respondent was terminated from the Diversion Program as a public safety risk for failing to comply with the program.

FIRST CAUSE FOR DISCIPLINE

(Possessed and Self-Administered a Controlled Substance)

14. Respondent is subject to discipline under Code section 2761(a), on the grounds of unprofessional conduct as defined in Code section 2762(a), in that on or about April 16, 2010, while a registered nurse, Respondent did the following:

a. Respondent possessed Demerol, a controlled substance, in violation of Code section 4060, in that she did not have a prescription for that controlled substance.

b. Respondent self-administered Demerol, a controlled substance, without direction to do so from a licensed physician and surgeon, dentist or podiatrist.

SECOND CAUSE FOR DISCIPLINE

(Possessed and Self-Administered a Dangerous Drug)

15. Respondent is subject to discipline under Code section 2761(a), on the grounds of unprofessional conduct as defined in Code section 2762(a), in that on or about July 17, 2010, while a registered nurse, Respondent did the following:

a. Respondent possessed Tramadol, a dangerous drug, in violation of Code section 4022, in that she did not have a prescription for that controlled substance.

b. Respondent self-administered Tramadol, a dangerous drug, without direction to do so from a licensed physician and surgeon, dentist or podiatrist.

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 546675, issued to Jacquelin Dee Duncan;

2. Ordering Jacquelin Dee Duncan to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

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

DATED: October 4, 2011

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

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