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

In the Matter of the Accusation Against: ROGER PARNESS 225C Washington Street Coalinga, CA 93210 Registered Nurse License No. 549876 Respondent.	Case No. 2010-66 OAH No. 2009090653

DECISION

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

This Decision shall become effective on **July 14, 2010**.

IT IS SO ORDERED this 14**th** day of **June**, 2010.

Board of Registered Nursing
Department of Consumer Affairs
State of California

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

In the Matter of the Accusation and Petition to Revoke Probation Against: ROGER PARNESS Coalinga, California 93210 Registered Nurse License No. 549876 Respondent.	Case No. 2010-66 OAH No. 2009090653

PROPOSED DECISION

Administrative Law Judge Cheryl R. Tompkin, State of California, Office of Administrative Hearings, heard this matter on January 11, 2010, in Oakland, California.

Leslie Brast, Deputy Attorney General, represented complainant Louise R. Bailey, M.Ed., R.N.

Lauro Paredes, Attorney at Law, represented respondent Roger Parness, who was present at the hearing.

The matter was submitted for decision on January 11, 2010.

FACTUAL FINDINGS

1. Complainant Louise R. Bailey, M.Ed., R.N., made the Accusation and Petition to Revoke Probation in her official capacity as Interim Executive Officer of the Board of Registered Nursing (board).

2. On November 17, 1998, the board issued registered nurse license number 549876 to Roger Parness (respondent). The license will expire on June 30, 2010, unless renewed.

3. On June 20, 2003, respondent was convicted, on a plea of guilty, of violating Health and Safety Code section 11366 (opening or maintaining a place for the purpose of unlawfully selling, giving away or using any controlled substance.) The facts underlying the conviction are that on September 7, 2001, respondent maintained marijuana plants ranging in height from three to eight feet at his residence in Lower Lake, California.

4. On March 8, 2006, a First Amended Accusation was filed against respondent in Case No. 2006-41. The Accusation alleged that respondent's license was subject to discipline under Business and Professions Code section 2761, subdivision (f) (conviction of a criminal offense), and Business and Professions Code section 2761, subdivision (a) (unprofessional conduct), in conjunction with Business and Professions Code section 2762, subdivision (b) (unlawful possession of a controlled substance - marijuana). Effective July 3, 2006, the Board issued a decision in Case No. 2006-41, revoking respondent's license to practice nursing based on his criminal conviction. The revocation was stayed and respondent was placed on three years probation on stated terms and conditions.

5. In 2007 respondent was employed as a staff nurse in the psychiatric unit at San Mateo Medical Center (SMMC). The SMMC psychiatric unit is where chronically mentally ill patients who are in crisis receive treatment. Respondent was on probation to the Board at all times while employed at SMMC.

6. On November 5, 2007, respondent was issued a letter of reprimand for negligence in the performance of his duties as a staff nurse at SMMC. The letter was issued based on the following incidents:

a. On September 18, 2007, respondent threatened to have a patient placed in restraints if he did not return to his room for a time-out. Respondent's threat violated the facility's policy prohibiting use of restraints for purposes of coercion or punishment. It also violated the standard of care which requires that restraints only to be used when a patient poses a threat to himself or to others. A nurse is expected to seek to establish rapport with the patient and deescalate the situation rather than resort to punitive measures.

b. On October 13, 2007, respondent failed to immediately make his rounds or confer with out-going day staff at the start of his shift, which would have allowed him to identify patients assigned to his care, including a suicidal teenage patient. As a result, two patients, including the suicidal teenager, succeeded in convincing staff that the suicidal teenager was a visitor rather than a patient and the teen was permitted to leave the locked psychiatric unit. He was subsequently returned to the unit by his family. The standard of care requires a nurse to identify the patients assigned to his care at the start of his shift.

c. On October 23, 2007, respondent withdrew a controlled substance for one of his patients from the facility's automated medication dispensing system (Pyxis) under another registered nurse's name and access code. The patient reported to another nurse that respondent had administered medication to the patient while the patient was asleep and then left the medication at the patient's bedside. Respondent failed to record that he had

administered the medication on the patient's medication administration record (MAR). The standard of care requires a nurse to only remove medications under his own Pyxis number and controlled substances must be secured and not left accessible to patients or others. The standard of care also requires that all medications administered to a patient be recorded in the patient chart.

d. On November 27, 2007, while working as a registered nurse on the psychiatric unit at SMMC, respondent observed a teenage patient lying on the floor near the nurses' station with a blanket covering her head. Respondent was seated alone at a desk at the nurses' station approximately three feet from the patient. The patient, who was assigned to respondent's care, had been hospitalized after a suicide attempt and was placed on the psychiatric unit for her own protection. The patient had a diagnosis of Borderline Personality Disorder (BPD) and a history of attention-seeking and self-injurious behavior (i.e., the patient had made prior suicide attempts to get attention).

Respondent did not immediately go to the patient's aid, did not call for assistance and did not assess the patient's airway, breathing or consciousness (the ABCs of CPR [cardiopulmonary resuscitation]). Instead he stood by for approximately two to three minutes until another registered nurse, Nora Torrea, arrived on the scene. Respondent pointed to the patient and asked Torrea if they should call security. Torrea knelt to check the patient's condition. She touched the patient and determined that the patient was breathing. Torrea shook the patient, called her name and told her she was going to reposition her. Torrea then went to retrieve a pillow for the patient's head. While Torrea was away, psychiatric technician Jackie Jenkins observed the patient lying on the ground as he walked through the unit. He assumed staff knew the patient was there. On his way back, Jenkins noticed the patient was still lying on the floor and he went over to her. Jenkins knelt beside the patient and uncovered her head. Jenkins noted that the patient's color was poor and upon further examination discovered a cord wrapped around the patient's neck multiple times and tied. He held the cord off the patient's windpipe and yelled that there was something around the patient's neck. Respondent began assisting in the patient's care when Jenkins yelled for assistance. Torrea brought scissors and the cord was cut. The patient was taken to the emergency department for assessment. She was later returned to the psychiatric unit. Respondent was placed on leave following this incident. He resigned shortly thereafter.

7. Respondent admits that he did not immediately go to the patient after he observed her lying on the floor. Respondent was hesitant to touch the patient because of her BPD, which he felt made it likely that she would make false allegations about where she was touched. However, respondent asserts that he was confident at the time that the patient was breathing and that she was lying on the floor for attention. When Torrea arrived, respondent asked her about calling security because he wanted as many witnesses as possible to the patient's acting out. And he immediately jumped into action when a cord was discovered around the patient's neck. Respondent asserts his delay in responding was consistent with SMMC policy at the time to have patients assessed by nurses of the same sex. However, evidence at hearing established that this policy was typically applied with respect to activities

of daily living in nonemergency situations. Respondent now asserts that he would immediately assess the patient if placed in a similar situation in the future.

8. Complainant alleges respondent's failure to assess and ensure the safety of a psychiatric patient found lying on the floor with her head covered by a blanket constituted gross negligence and/or incompetence. Complainant's expert witness Susanne Killing testified that the standard of care required respondent to immediately assess the patient because the patient had been hospitalized after a suicide attempt, was placed on the psychiatric unit for her own protection, was known to have a borderline personality disorder and was known to engage in suicide gestures. Killing opined that under such circumstances, which she defined as a emergency given the patient's BPD diagnosis and history of prior suicide attempts, it was gross negligence for respondent not to take the situation seriously and immediately assess the patient.

The assessment of a down patient must include an assessment of the airway, breathing and consciousness of the patient. Such an assessment is a basic nursing skill. Killing opined that it constituted incompetence for respondent to not immediately perform the ABC's of CPR on the patient. Killing explained that the fact the nurse was a male and the patient a female who might make false allegations against a male nurse, did not relieve the male nurse, in an emergency situation, of the obligation to first ensure the safety of the patient. Killing opined that the safety of the patient required respondent to remove the blanket from the patient's head and perform an assessment to determine whether the patient was safe, and that respondent's failure to do so constituted incompetence. Killing's analysis is persuasive. It is therefore found that respondent's failure to immediately assess and ensure the safety of the psychiatric patient constituted gross negligence and incompetence and was an extreme departure from the standard of care.

9. Condition 1 of respondent's probation requires him to "obey all federal, state and local laws" and to provide to the Board in writing "a full and detailed account of any and all violations of law" within seventy-two (72) hours of occurrence.

Respondent failed to fully disclose or detail the circumstances of his discipline at SMMC in his October-December 2007 Quarterly Report, which he signed under penalty of perjury and dated December 19, 2007. Question 1 under the Disciplinary Record section of the Quarterly Report asks: "In this quarter were you disciplined by your employer in any manner, i.e., adverse action, counseling, reprimand, suspension, demotion termination? . . . If you answered yes, provide a detailed explanation (attach all documentation relating to the imposed discipline)." Respondent answered "Yes" and wrote: LPT allowed an AWOL & we were reprimanded. Pt returned safely."

Question 2 under the Disciplinary Record section of the Quarterly Report asks: "In this quarter, were you the subject of a complaint, review or investigation by your employer? . . . If you answered yes, provide a detailed explanation of the incident that led to the filing of a complaint/investigation. Include the status of the investigation." Respondent answered "Yes" and wrote: "AWOL investigated." Respondent failed to fully disclose or fully detail the basis for his discipline, which included all of the events set forth in Factual Finding 5.

Respondent also failed to attach all documentation relating to the discipline to his Quarterly Report. Respondent's omissions constitute a violation of Condition 1 of his probation.

10. Condition 7 of respondent's probation requires him to "obtain prior approval from the Board before commencing or continuing any employment, paid or voluntary, as a registered nurse." Respondent failed to obtain prior board approval before commencing employment as an auditor in Central Nursing Services at Coalinga State Hospital. On December 20, 2007, the board approved respondent to work in direct patient care in the medical acute (MA-2) unit at Coalinga State Hospital (CSH). CSH is a State mental health hospital for the forensically-committed. On or about January 2, 2009, board probation monitor Mariann Fagunes received a letter from CSH Acting Nurse Administrator Kiran Hundal which stated that respondent was working as an RN auditor in CSH Central Nursing Services. Further investigation by Fagunes revealed that respondent had been working as an auditor for several months and that Central Nursing Services was a separate unit from MA-2. MA-2 does not have an auditing unit. Respondent had not obtained approval from the board to work as an auditor in Central Nursing Services.

Respondent denies that he switched nursing classifications, changed positions or intentionally violated his probation. He contends that his work as a registered nurse auditor was just another aspect of his staff nurse position at CSH. However, the issue is not whether respondent was acting as a staff nurse when he functioned as a registered nurse auditor, but rather whether he was performing the duties the board had authorized him to perform. Respondent was only authorized to work in direct patient care, under maximum supervision on the MA-2 unit. Respondent's work as an auditor in Central Nursing Services therefore constitutes a violation of Condition 7 of his probation.

11. Condition 8 of respondent's probation requires respondent to "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." Respondent failed to obtain prior approval from the board regarding his level of supervision while working as an auditor in Central Nursing Services at Coalinga State Hospital. Respondent was under the maximum level of supervision while working on the MA-2 unit, which required him work under the direction of a supervisor or worksite monitor. Respondent's level of supervision had not been decreased when he began working as an auditor in Central Nursing Services. Fagunes learned from CSH Acting Nurse Administrator Hundal that there was no supervision in the audit section and that respondent was allowed to float throughout various units in the facility in his capacity as an auditor. Respondent did not have the required maximum level of supervision while serving as an auditor, which is a violation of Condition 8 of his probation.

12. Condition 2 of respondent's probation requires him to "fully comply with the conditions of the Probation Program established by the Board and cooperate fully with representatives of the Board in its monitoring and investigation of the Respondent's compliance with the Board's Probation Program." Respondent failed to fully comply with

the Board's Probation Program in that he violated probation conditions 1, 7 and 8, as described above. Respondent's conduct constitutes a violation Condition 2 of his probation.

13. On August 3, 2009, the complainant filed the subject accusation and petition to revoke respondent's probation. Complainant seeks revocation of respondent's probation and of respondent's license based on respondent's gross negligence and incompetence in failing to immediately assess the psychiatric patient at SMMC and/or respondent's failure to comply with the terms of his probation.

14. Respondent admits he made mistakes in providing patient care and in complying with the terms of his probation, but seeks to minimize those mistakes. With respect to the AWOL patient at SMMC, respondent acknowledges he failed to ensure that he knew the identity of the patients under his care, but asserts the vocational nurse acted improperly in releasing the patient before the patient's identity was established. With respect to the medication issue, respondent acknowledges he withdrew medication under another nurse's name but maintains it was simply a mistake. Respondent states that he thought he was the one who had left the Pyxis machine open and that he was accessing the medication under his own name and number. With respect to the psychiatric patient lying on the floor with a blanket over her head, respondent agrees, in retrospect, that he should have immediately assessed the patient, but asserts his failure to do so was consistent with SMMC policy at the time. Although respondent admits making mistakes, he insists that he is "a quality nurse who made some errors."

With respect to the probation violations, respondent maintains there has been substantial compliance with the conditions of his probation. He notes that he reported being disciplined by his employer, although he failed to provide details, and that he was working for a board approved employer, CSH, when he served as a registered nurse auditor. Respondent denies any intent to change positions or violate the terms of his probation by working as an auditor.

15. Respondent has been a nurse for a 25 years, and a registered nurse in California for over 11 years. He is certified in psychiatric and mental health nursing and in advanced cardiac life support (ACL). Respondent has no prior history of discipline related to patient care and his employee evaluations have always been satisfactory overall. Respondent is employed on the MA-2 unit at CSH, which is the medical unit for mentally disordered offenders, including sexually violent predators. He has been so employed since February 2008. Respondent enjoys the challenge of his current assignment and would like to continue in his current position. Respondent indicates that is he is willing to accept an additional probationary term if he is allowed to retain his license and that he will fully comply with the terms of his probation.

16. James Willoughby, supervising registered nurse at CSH, testified on respondent's behalf at hearing. Willoughby has both worked with and supervised respondent. He has observed that respondent interacts well with and is liked by the patients, is skillful in deescalating confrontations, and is well organized. Willoughby has found respondent to be an excellent nurse and a team player.

Respondent also offered six letters of reference from coworkers and supervisors at CSH. All of the letters attest to respondent's excellent nursing skills, safe, compassionate and professional nursing care, rapport with clients and value as a staff member at CSH.

17. The board certifies that the following costs were incurred in connection with the investigation and prosecution of this Accusation as of January 8, 2010:

Deputy Attorney General:

2009-2010	27.0 hours @ $170/hour	$4,632.50
2008-2009	3.75 hours @ $158/hour	592.50

Legal Assistant:

2008-2009	2.25 hours @ $101/hour	227.25
	TOTAL COSTS INCURRED:	$5,452.25

18. Respondent did not object to the board's costs.

LEGAL CONCLUSIONS

1. "The purpose of an administrative proceeding concerning the revocation or suspension of a license is not to punish the individual; the purpose is to protect the public from dishonest, immoral, disreputable or incompetent practitioners." (*Ettinger v. Board of Medical Quality Assurance* (1982) 139 Cal.App.3d 853, 856.)

2. Absent a statute to the contrary, the burden of proof in disciplinary administrative proceedings rests upon the party making the charges. (*Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99, 113; Evid. Code § 115.) The burden of proof in this proceeding is thus on complainant.

3. The standard of proof in administrative disciplinary proceedings brought against professional licensees is "clear and convincing proof to a reasonable certainty." (*James v. Board of Dental Examiners* (1985) 172 Cal.App.3d 1096, 1105.) "The key element of clear and convincing evidence is that it must establish a high probability of the existence of the disputed fact, greater than proof by a preponderance of the evidence." (*People v. Mabini* (2001) 92 Cal.App.4th 654, 662.) This standard is less stringent than proof beyond a reasonable doubt. (*Ettinger v. Board of Medical Quality Assurance, supra*, 135 Cal.App.3d at 856.)

4. Business and Professions Code section 2761, subdivision (a), authorizes a board to take disciplinary action against a license for unprofessional conduct. Subdivision (a)(1) of section 2761, defines unprofessional conduct to include incompetence or gross negligence in carrying out usual certificated or licensed nursing functions.

California Code of Regulations, title 16, section 1442, defines gross negligence to include "an extreme departure from the standard of care, which under similar circumstances, would ordinarily have been exercised by a competent registered nurse." An extreme departure is defined to include "failure to provide care or to exercise ordinary precaution in a single situation which the nurse knew, or should have known, could have jeopardized the client's life or health."

California Code of Regulations, title 16, section 1443, defines incompetence to include "lack of possession of or the failure to exercise the degree of learning, skill, care and experience ordinarily possessed and exercised by a competent registered nurse . . ."

5. Cause for disciplinary action against respondent exists under Business and Professions Code section 2761, subdivision (a)(1), for unprofessional conduct, by reason of the matters set forth in Findings 6d and 8.

6. Business and Professions Code section 2750 authorizes a board to discipline the license of any licensee, including a licensee holding a temporary or and inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

Cause to revoke respondent's probation exists pursuant to Business and Professions Code section 2750, and the Decision and Order in Case No. 2006-41, by reason of the matters set forth in Findings 9 through 12, individually and collectively, in that respondent has violated and failed to comply with the terms and conditions of his probation.

7. Although respondent made mistakes in providing patient care at SMMC and failed to strictly comply with the terms of the probation imposed by the board in 2006, it is nevertheless determined that revocation of his nursing license is not required. Respondent has been a nurse for 25 years and a registered nurse in California for 11 years. He has no prior history of discipline in California with respect to patient care. And respondent's current employer has found respondent to be an excellent nurse and seeks to continue his employment. Respondent's current coworkers and supervisors speak highly of his nursing skills. Respondent acknowledges his mistakes in providing patient care at SMMC and has shown a willingness to improve. He also expresses a willingness to serve a new probationary term, and an intent to fully comply with the terms of the probation. The above evidence indicates that respondent is capable of practicing nursing safely and that the public interest can be adequately protected by a period of probation with appropriate terms and conditions.

8. Business and Professions Code section 125.3 provides that respondent may be ordered to pay the board "a sum not to exceed the reasonable costs of the investigation and enforcement of the case." That section also provides that the board's certification of the actual costs constitutes prima facie evidence of the reasonable costs. The costs set forth in Finding 17 were established by such a certification. Respondent did not object to the costs. The reasonable costs of investigation and enforcement are therefore determined to be $5,452.25.

ORDER

IT IS HEREBY ORDERED that registered nurse license number 549876 issued by the Board of Registered Nursing to respondent Roger Parness is revoked, and the probation that was granted by the Board in Case No. 2006-41 is also hereby revoked. However, revocation of the license is stayed and respondent is placed on a new three (3) year term of probation 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 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 shall 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 he 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 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 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 six consecutive months or as determined by the board.

For purposes of compliance with this 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 his 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 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 72 hours after he obtains any nursing or other health care related employment. Respondent shall notify the board in writing within 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 the respondent with or without respondent present.

(9) EMPLOYMENT LIMITATIONS

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

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 in 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 $5,452.25. 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 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 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) 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 or health reasons, or is otherwise unable to satisfy the conditions of probation, respondent may surrender his 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: February 11, 2010

CHERYL R. TOMPKIN
Administrative Law Judge
Office of Administrative Hearings

FEB 16 2010
BOARD OF REGISTERED NURSING

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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, **ROGER PARNESS** **255C Washington Street** **Coalinga, California 93210** **Registered Nurse License No. 549876** Respondent.	Case No. 2010-66 ACCUSATION AND PETITION TO REVOKE PROBATION

Complainant alleges:

PARTIES

1. Louise R. Bailey, M.Ed., RN (Complainant), brings this Accusation and 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.

2. On or about November 17, 1998, the Board issued Registered Nurse (RN) License Number 549876 to Roger Parness (Respondent). The license was in effect at all times relevant to the charges brought herein and will expire on June 30, 2010, unless renewed.

3. In a disciplinary action entitled "In the Matter of the Accusation Against Roger Parness," Case No. 2006-41, the Board issued a decision, effective July 3, 2006, in which Respondent's RN license was revoked. However, the revocation was stayed and Respondent's

license was placed on probation for a period of three (3) years with certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

JURISDICTION

4. This Accusation and Petition to Revoke Probation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

5. 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.

6. 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.

STATUTORY/REGULATORY PROVISIONS

7. 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, which includes, but is not limited to, the following:

"(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions."

8. California Code of Regulations, title 16, section 1442, states:

"As used in Section 2761 of the code, 'gross negligence' includes an extreme departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent registered nurse. Such an extreme departure means the repeated failure to provide nursing care as required or failure to provide care or to exercise ordinary precaution in a single situation which the nurse knew, or should have known, could have jeopardized the client's health or life."

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9. California Code of Regulations, title 16, section 1443, states:

"As used in Section 2761 of the code, 'incompetence' means the lack of possession of or the failure to exercise that degree of learning, skill, care and experience ordinarily possessed and exercised by a competent registered nurse as described in Section 1443.5."

10. California Code of Regulations, title 16, section 1443.5 states:

"A registered nurse shall be considered to be competent when he/she consistently demonstrates the ability to transfer scientific knowledge from social, biological and physical sciences in applying the nursing process, as follows:

"(1) Formulates a nursing diagnosis through observation of the client's physical condition and behavior, and through interpretation of information obtained from the client and others, including the health team.

"(2) Formulates a care plan, in collaboration with the client, which ensures that direct and indirect nursing care services provide for the client's safety, comfort, hygiene, and protection, and for disease prevention and restorative measures.

"(3) Performs skills essential to the kind of nursing action to be taken, explains the health treatment to the client and family and teaches the client and family how to care for the client's health needs.

"(4) Delegates tasks to subordinates based on the legal scopes of practice of the subordinates and on the preparation and capability needed in the tasks to be delegated, and effectively supervises nursing care being given by subordinates.

"(5) Evaluates the effectiveness of the care plan through observation of the client's physical condition and behavior, signs and symptoms of illness, and reactions to treatment and through communication with the client and health team members, and modifies the plan as needed.

"(6) Acts as the client's advocate, as circumstances require, by initiating action to improve health care or to change decisions or activities which are against the interests or wishes of the client, and by giving the client the opportunity to make informed decisions about health care before it is provided."

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COST RECOVERY

11. 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.

FACTUAL BACKGROUND

12. Effective July 3, 2006, Respondent's RN license was revoked, revocation stayed, pursuant to a Stipulated Settlement and Disciplinary Order adopted by the Board in Case No. 2006-41. Pursuant to the stipulation, Respondent's RN license was placed on a three-year term of probation subject to the Board's Standard Conditions of Probation 1 through 13, plus the additional requirements that he submit to a physical examination, a mental health examination, and a substance abuse assessment. His term of probation was set to expire on July 2, 2009.

13. On or about November 5, 2007, and while on probation with the Board, Respondent was issued a Letter of Reprimand for negligence in the performance of his duties as a staff nurse at San Mateo Medical Center (SMMC) in San Mateo, California. Copies of the Letter of Reprimand were directed to his civil service and SMMC Human Resources Department personnel files. The circumstances that gave rise to the letter's issuance are as follows:

a. On or about September 18, 2007, Respondent threatened to have a patient placed in restraints if the patient did not immediately return to his room for a time-out, a violation of the facility's policy prohibiting the use of restraints for purposes of coercion or punishment.

b. On or about October 13, 2007, Respondent failed to immediately make his rounds or confer with out-going day staff to identify his assigned patients, including a suicidal teenage patient, at the start of his shift. As a result, two patients, including Respondent's suicidal teenage patient, succeeded in convincing staff that the suicidal teen was a visitor rather than a psychiatric patient and the teen was permitted to leave the locked psychiatric unit.

c. On or about October 23, 2007, Respondent withdrew a controlled substance for one of his patients from the facility's automated medication dispensing system (Pyxis) under another RN's name and access code, left the medication at his patient's bedside, and failed to

record the medication on the patient's MAR (medication administration record).

14. On or about November 27, 2007, while working as an RN on the psychiatric unit at SMMC, Respondent came across a teenage patient lying on the floor near the nurses station with a blanket covering her head. The patient had a diagnosis of Borderline Personality Disorder and a history of attention-seeking and self-injurious behavior. Respondent did not go to her aid, did not call for assistance, and did not assess the patient's airway, breathing, or consciousness—the ABCs of CPR (cardiopulmonary resuscitation). Instead, Respondent stood by for approximately two to three minutes until another RN (RN2) arrived on the scene, at which point Respondent indicated the patient and asked RN2 if they should call security. RN2 briefly knelt to check the patient and then left her to retrieve a pillow. While RN2 was away, a licensed psychiatric technician came to the patient's aid, knelt at her side, and uncovered her head. Noting that the patient's color was poor, he discovered a cord wrapped and tied around the patient's neck. Staff cut the cord and the patient was transported to the emergency department where she was assessed and returned to the psychiatric unit. Respondent was on probation with the Board at the time. SMMC placed him on administrative leave following the incident; he resigned shortly thereafter.

15. In his October-December 2007 Quarterly Report, signed under penalty of perjury and dated December 19, 2007, Respondent indicated a "yes" answer to the following question: "In this quarter were you disciplined by your employer in any manner, i.e., adverse action, counseling, reprimand, suspension, demotion, termination?" In response to a directive to "provide a detailed explanation" and "attach all documentation relating to the imposed discipline," Respondent wrote: "LPT allowed an AWOL & we were reprimanded. Pt returned safely." In response to a directive to "provide a detailed explanation of the incident that led to the filing of a complaint/investigation," Respondent wrote: "AWOL investigated."

16. On or about June 29, 2009, Board staff served on Respondent a letter notifying him that the Board had requested of the Attorney General's Office the preparation of an Accusation and Petition to Revoke Probation and that, pursuant to Condition 12 of Respondent's probation, his probationary term was automatically extended until resolution of this matter.

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CAUSE FOR DISCIPLINE

(Gross Negligence and/or Incompetence)

17. Respondent is subject to disciplinary action for gross negligence and/or incompetence pursuant to Code section 2761, subdivision (a)(1), in that he failed to assess and ensure the safety of a psychiatric patient found lying on the floor, her head covered with a blanket, as described in paragraph 14, above.

FIRST CAUSE TO REVOKE PROBATION

(Failure to Obey All Laws)

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

> **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

19. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 1, referenced above, in that he failed to fully disclose and/or detail the circumstances of his discipline in his October-December 2007 Quarterly Report, signed under penalty of perjury and dated December 19, 2007, as described in paragraphs 12 through 15, above.

SECOND CAUSE TO REVOKE PROBATION

(Failure to Comply with the Terms and Conditions of Probation)

20. At all times after the effective date of Respondent's probation, Condition 2 stated, 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.

21. Respondent's probation is subject to revocation for failure to comply with Probation Condition 2, referenced above, in that he failed to fully comply with Probation Conditions 1, 7, and 8, as set forth herein.

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THIRD CAUSE TO REVOKE PROBATION

(Failure to Obtain Board Approval Before Commencing Employment)

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

> **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.

23. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 7, referenced above, in that he failed to obtain prior Board approval before commencing employment as an auditor in Central Nursing Services at Coalinga State Hospital, as follows:

24. On or about December 20, 2007, Respondent was approved to work in direct patient care in the MA-2 (medical acute) unit at Coalinga State Hospital (CSH), a State mental health hospital for the forensically-committed in Coalinga, California. On or about January 27, 2009, Board staff learned from a CSH nursing administrator that Respondent had been working in one of two positions as an auditor in Central Nursing Services for several months without approval from the Board. The nursing administrator contacted the Board after Respondent informed her he was seeking to commence employment as an RN on the Positive Behavior Support (PBS) team. The Board had not approved Respondent to work as an auditor in Central Nursing Services or on the PBS team.

FOURTH CAUSE TO REVOKE PROBATION

(Failure to Obtain Prior board Approval for Supervision Level)

25. At all times after the effective date of Respondent's probation, Condition 8 stated, in pertinent part:

> **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 . . .

26. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 8, referenced above, in that he failed to obtain prior approval from the Board

regarding his level of supervision while working as an auditor in Central Nursing Services at Coalinga State Hospital, as described in paragraph 24, above.

PRAYER

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

1. Revoking or suspending Registered Nurse License No. 549876, issued to Roger Parness;

2. Revoking the probation that was granted by the Board of Registered Nursing in Case No. 2006-41 and imposing the disciplinary order that was stayed, thereby revoking Registered Nurse License No. 549876 issued to Roger Parness;

3. Ordering Roger Parness 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,

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

DATED: 8/3/09

Louise R. Bailey

LOUISE R. BAILEY, M.Ed., RN
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: ROGER PARNESS 2600 San Leandro Blvd, #1120 San Leandro, CA 94578 Registered Nurse License No. 549876 Respondent	Case No. 2006-41

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as it's Decision in the above entitled matter.

This Decision shall become effective on July 3, 2006.

IT IS SO ORDERED June 1, 2006.

La Francine W Tate

Vice-President
Board of Registered Nursing
Department of Consumer Affairs
State of California

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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: **ROGER PARNESS** 1679 Center Road Novato, California 94947 Registered Nurse License No. 549876 Respondent.	Case No. 2006-41 OAH No. N2006010450 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

PARTIES

1. Ruth Ann Terry, M.P.H., R.N., (Complainant) is the Executive Officer of the Board of Registered Nursing. She brought this action solely in her official capacity and is represented in this matter by Bill Lockyer, Attorney General of the State of California, by Carol S. Romeo, Deputy Attorney General.

2. Respondent Roger Parness is represented in this proceeding by attorney Randolph E. Daar, whose address is Pier 5 Law Offices, 500 Broadway, San Francisco, California 94133, telephone number (415) 986-5591.

3. On or about November 17, 1998, the Board of Registered Nursing issued Registered Nurse License Number 549876 to ROGER PARNESS (Respondent). The Registered

Nurse License was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2006, unless renewed.

JURISDICTION

4. Accusation No. 2006-41 was filed before the Board of Registered Nursing (Board). The Accusation and all other statutorily required documents were properly served on Respondent on September 27, 2005. Respondent timely filed his Notice of Defense contesting the Accusation. The First Amended Accusation No. 2006-41 was filed before the Board, and is currently pending against Respondent. The First Amended Accusation and all other statutorily required documents were properly served on Respondent on March 9, 2006. A copy of First Amended Accusation No. 2006-41 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in First Amended Accusation No. 2006-41. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the First Amended Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him, the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in First Amended Accusation No. 2006-41.

9. Respondent agrees that his Registered Nurse License No. 549876 is

subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

CONTINGENCY

10. The parties hereto acknowledge that this Stipulated Settlement constitutes an offer in settlement to the Board and is not effective until adoption by said agency.

11. The parties hereto stipulate that in the event that this Stipulated Settlement is not adopted by the Board, nothing herein recited shall be construed as a waiver of respondents' right to a hearing or as an admission of the truth of any of the matters charged in the accusation.

12. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Registered Nurse License No. 549876, issued to Respondent Roger Parness, is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and 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 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 probationary time period. Respondent's probation is tolled, if and when he 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 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 this condition, "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 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 employer and immediate supervisors at Best Staff Health Care Registry and at San Francisco General Hospital, prior to

continuation of any employment as a registered nurse through the registry. In addition, Respondent shall provide a copy of this Decision to his employer and immediate supervisors prior to commencement or continuation of any other nursing or health care related employment.

In addition to the above, Respondent shall notify the Board in writing within seventy-two (72) hours after he 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. This includes any employment through Best Staff Health Registry at San Francisco General Hospital.

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. This includes any employment through Best Staff Health Care Registry at San Francisco General Hospital.

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 any in-house nursing pool, with the following exception. Respondent may work through the Best Staff Health Care Registry where he is currently employed, and through that registry he shall work solely at San Francisco General Hospital located at 1001 Potrero Avenue, San Francisco, California 94110, telephone number (415) 206-6300, and only in the Behavioral Health Center.

Respondent shall not work for any other registry or at any other placement through that registry. Respondent's employment as a registered nurse through such registry at any location other than at San Francisco General Hospital, Behavioral Center, or any other employment as a registered nurse shall require prior approval by the Board. Should respondent not receive prior approval, this shall constitute a violation of probation.

Respondent shall not work for a licensed home heath 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 the 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 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 $5,603.00 (five thousand six hundred three dollars). 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 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 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) 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 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. **Physical Examination.** Within 45 days of the effective date of this decision, respondent, at his/her expense, shall have a licensed physician, nurse practitioner, or physician assistant, who is approved by the Board before the assessment is performed, submit an assessment of the respondent's physical condition and capability to perform the duties of a registered nurse, including a determination as set forth below in Condition 16, "Rule-Out Substance Abuse Assessment." Such an assessment shall be submitted in a format acceptable to the Board. If medically determined, a recommended treatment program will be instituted and followed by the respondent with the physician, nurse practitioner, or physician assistant providing written reports to the Board on forms provided by the Board.

If respondent is determined to be unable to practice safely as a registered nurse, the licensed physician, nurse practitioner, or physician assistant making this determination shall immediately notify the Board and respondent by telephone, and the Board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Respondent

shall immediately cease practice and shall not resume practice until notified by the Board. During this period of suspension, respondent shall not engage in any practice for which a license issued by the Board is required until the Board has notified respondent that a medical determination permits respondent to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If Respondent fails to have the above assessment submitted to the Board within the 45-day requirement, Respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by the respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

15. **Mental Health Examination.** The respondent shall, within 45 days of the effective date of this decision, have a mental health examination including psychological testing as appropriate to determine his/her capability to perform the duties of a registered nurse, including a determination as set forth below in Condition 16, "Rule-Out Substance Abuse Assessment." The examination will be performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by the Board. The examining mental health practitioner will submit a written report of that assessment and recommendations to the Board. All costs are the responsibility of the respondent. Recommendations for treatment, therapy or counseling made as a result of the mental health examination will be instituted and followed by the respondent.

If respondent is determined to be unable to practice safely as a registered nurse, the licensed mental health care practitioner making this determination shall immediately notify the Board and respondent by telephone, and the Board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall immediately cease practice and may not resume practice until notified by the Board. During this period of suspension, respondent shall not engage in any practice for which a license issued by the Board is

required, until the Board has notified respondent that a mental health determination permits respondent to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If the respondent fails to have the above assessment submitted to the Board within the 45-day requirement, respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by the respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

16. **Rule-Out Substance Abuse Assessment.** If the examiner conducting the physical and/or mental health examination determines that the respondent is dependent upon drugs or alcohol, or has had problems with drugs or alcohol (i.e. drug dependence in remission or alcohol dependence in remission), that might reasonably affect the safe practice of nursing, then the respondent must further comply with the following additional terms and conditions of probation.

(A) **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.

(B) **ABSTAIN FROM USE OF PSYCHOTROPIC (MOOD-ALTERING) DRUGS** - 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.

(C) **SUBMIT TO TESTS AND SAMPLES** - Respondent, at his/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 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.

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

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ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Randolph E. Daar. I understand the stipulation and the effect it will have on my Registered Nurse License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board.

DATED: 3/27/06

ROGER PARNESS
Respondent

I have read and fully discussed with Respondent Roger Parness the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 3/27/06

RANDOLPH E. DAAR
Attorney for Respondent

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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board.

DATED: 3/27/06.

BILL LOCKYER, Attorney General
of the State of California

Carol S. Romeo

CAROL S. ROMEO
Deputy Attorney General

Attorneys for Complainant

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Attorneys for Complainant

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

In the Matter of the Accusation Against: **ROGER PARNESS** 1679 Center Road Novato, CA 94947 Registered Nurse License No. 549876 Respondent.	Case No. 2006-41 **FIRST AMENDED ACCUSATION**

Complainant alleges:

PARTIES

1. Ruth Ann Terry, M.P.H., R.N., (Complainant) brings this First Amended Accusation solely in her official capacity as the Executive Officer of the Board of Registered Nursing.

2. On or about November 17, 1998, the Board of Registered Nursing issued Registered Nurse License Number 549876 to ROGER PARNESS (Respondent). The Registered Nurse License was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2006, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

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

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

6. Section 2761 of the Code states, in pertinent part, that "[t]he 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. Section 2762 of the Code states, in pertinent part, that "[i]n 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.

. . . .

8. Section 490 of the Code states, in pertinent part, that "[a] board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code."

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

DRUGS

10. **"Marijuana"** is a Schedule I controlled substance as designated by Health and Safety Code section 11054(d)(13).

FIRST CAUSE FOR DISCIPLINE

(Criminal Conviction)

11. Respondent is subject to discipline under sections 2761(f) and 490 of the Code in that he was convicted of a crime substantially related to the qualifications, functions or duties of a registered nurse in that on or about June 20, 2003, in the Superior Court of California, Lake County, Case Number LP 30515.02, entitled *The People of the State of California v. Roger Parness,* Respondent was convicted by the court on his plea of guilty of violating Health and Safety Code section 11366 (opening or maintaining place for the purpose of unlawfully selling, giving away, or using any controlled substance(s), to wit: marijuana). The factual circumstances

surrounding said conviction are as follows:

12. On or about September 7, 2001, Respondent maintained a place for the purpose of unlawfully selling, giving away, or using any controlled substance(s), to wit: 1,052 marijuana (cannabis) plants, at his residence located at 21120 Jerusalem Grade Road, Lower Lake, Lake County, California. These plants were three to eight feet tall.

SECOND CAUSE FOR DISCIPLINE

(Obtaining or Possessing Controlled Substance)

13. Respondent is subject to discipline under section 2761(a) of the Code on the grounds of unprofessional conduct as defined by Code section 2762(b) in that on or about July 5, 2001, Respondent unlawfully possessed a controlled substance, to wit: marijuana, as set forth above in paragraph 12.

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 549876, issued to ROGER PARNESS;

2. Ordering ROGER PARNESS 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;

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

DATED: 3/8/06

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

03579110SF2005400819
CSR:. 3/07/06