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

In the Matter of the Accusation Against: **MELISSA M. MCCABE** **16211 Parkside Lane, Apt. 161** **Huntington Beach, CA 92647** **Registered Nurse License No. 551562** Respondent.	Case No. 2010-370 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about February 2, 1999, the Board of Registered Nursing issued Registered Nurse License Number 551562 to Melissa M. McCabe (Respondent). The Registered Nurse License was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2010, unless renewed.

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JURISDICTION

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

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

STATUTORY PROVISIONS

6. Section 2761 of the Code states:

> 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:
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> (a) Unprofessional conduct, which includes, but is not limited to, the following:
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> . . . .
>
> (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.
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> . . . .

7. Section 2762 of the Code states:

> In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:
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> . . . .
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> (b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof.

. . . .

8. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

9. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'

REGULATORY PROVISIONS

10. California Code of Regulations, title 16, section 1444, states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

(b) Failure to comply with any mandatory reporting requirements.

(c) Theft, dishonesty, fraud, or deceit.

(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

11. California Code of Regulations, Title 16, section 1445 states in part:

. . . .

(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee.

COSTS

12. 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.

FIRST CAUSE FOR DISCIPLINE

(April 9, 2009 Criminal Conviction for DUI on October 19, 2008)

13. Respondent has subjected her license to disciplinary action under sections 490 and 2761, subdivision (f) of the Code in that Respondent was convicted of a crime that is substantially related to the qualifications, functions, and duties of a registered nurse. The circumstances are as follows.

14. On or about April 9, 2009, in a criminal proceeding entitled *People of the State of California v. Mellissa McCabe*, in Orange County Superior Court, case number 09WM00277, Respondent was convicted on her plea of guilty of violating Vehicle Code section 23152, subdivision (b), driving a vehicle while having a blood alcohol content in excess of .08 percent, a misdemeanor. Respondent's plea included an enhancement under Vehicle Code section 23538 subdivision (b) (2) in that her blood alcohol content was in excess of .20 percent.

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15. As a result of the conviction, on or about April 9, 2009, Respondent was sentenced to three years informal probation, completion of a nine month Level II First Offender Alcohol Program, completion of a MADD Victim's Impact panel and payment of fees and fines.

16. The facts that led to the conviction were that on or about the early morning of October 19, 2008, a patrol officer with the Huntington Beach Police Department was called to the scene of an automobile accident on Beach Boulevard in the City of Huntington Beach, California. Respondent was identified as the driver of a vehicle that had rear ended a pick up truck at a red light. The officer noted that upon contact with Respondent she had glassy and watery eyes, her speech was slurred, and she had a strong odor of an alcoholic beverage on her breath. Due to respondent's injuries she was unable to complete the field sobriety tests. Based on his observations, the officer arrested Respondent for driving under the influence of alcohol. She was transported to a hospital and her blood was drawn. The blood alcohol level for the Respondent was .21 percent.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Use of Alcohol in a Dangerous Manner)

17. Respondent has subjected her license to disciplinary action under sections 2761, subdivision (a) and 2762, subdivision (b) of the Code in that on or about October 19, 2008, as described in the First Cause for Discipline, above, Respondent used alcoholic beverages to an extent or in a manner that was potentially dangerous or injurious to herself and to others in that she operated a motor vehicle while impaired by alcohol. Such unprofessional conduct posed a significant threat to public safety.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Conviction of Alcohol- Related Criminal Offense)

18. Respondent has subjected her license to disciplinary action under sections 2761, subdivision (a) and 2762, subdivision (c) of the Code in that on or about April 9, 2009, as described in the First Cause for Discipline, above, Respondent was convicted of a criminal offense involving the consumption and/or self-administration of alcohol, which constitutes unprofessional conduct.

FOURTH CAUSE FOR DISCIPLINE

(June 29, 2009 Criminal Conviction for Driving With a Suspended License on January 20, 2009)

19. Respondent has subjected her license to disciplinary action under sections 490 and 2761, subdivision (f) of the Code in that Respondent was convicted of a crime that is substantially related to the qualifications, functions, and duties of a registered nurse. The circumstances are as follows.

20. On or about June 29, 2009, in a criminal proceeding entitled *People of the State of California v. Mellissa McCabe*, in Orange County Superior Court, case number 09HM02147, Respondent was convicted on her plea of guilty of violating Vehicle Code section 14601.5, subdivision (a), driving a vehicle while having a suspended license, when that suspension is as a result of driving while under the influence with a blood alcohol content in excess of .08, a misdemeanor.

21. As a result of the conviction, on or about June 29, 2009, Respondent was sentenced to three years informal probation and payment of fees and fines.

22. The facts that led to the conviction were that on or about January 20, 2009, Respondent was driving a vehicle after her driver's license had been suspended by the Department of Motor Vehicles following her arrest for driving under the influence with a blood alcohol level content in excess of .08, to wit, .21.

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 551562, issued to Melissa M. McCabe.

2. Ordering Melissa M. McCabe 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;

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

DATED: 2/4/10

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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