

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

In the Matter of the Accusation Against:

MARK ERWIN HARDERS
1003 Sea Cliff Way
Oceanside, CA 92056

Registered Nurse License No. 625916

Respondent

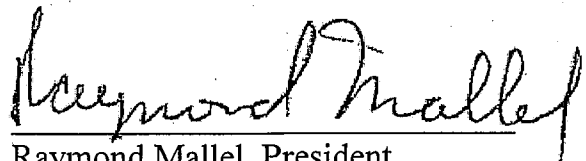
Case No. 2013-216

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on **April 11, 2013.**

IT IS SO ORDERED **April 11, 2013.**



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

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Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
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9 **BEFORE THE**
10 **BOARD OF REGISTERED NURSING**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:
13 **MARK ERWIN HARDERS**
14 **Registered Nurse License No. 625916**
15 Respondent.

Case No. 2013-216
**STIPULATED SURRENDER OF
LICENSE AND ORDER**

17 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
18 proceeding that the following matters are true:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) is the Executive Officer of the Board of
21 Registered Nursing. She brought this action solely in her official capacity and is represented in
22 this matter by Kamala D. Harris, Attorney General of the State of California, by Amanda Dodds,
23 Senior Legal Analyst.

24 2. Mark Erwin Harders (Respondent) is representing himself in this proceeding and has
25 chosen not to exercise his right to be represented by counsel.

26 3. On or about September 12, 2003, the Board of Registered Nursing issued Registered
27 Nurse License No. 625916 to Mark Erwin Harders (Respondent). The Registered Nurse License
28 expired on September 30, 2005, and has not been renewed.

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JURISDICTION

4. Accusation No. 2013-216 was filed before the Board of Registered Nursing (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on September 26, 2012. Respondent timely filed a notice contesting the Accusation. A copy of Accusation No. 2013-216 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in Accusation No. 2013-216. Respondent also has carefully read, and understands the effects of this Stipulated Surrender of License and 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 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 Accusation No. 2013-216, agrees that cause exists for discipline and hereby surrenders his Registered Nurse License No. 625916 for the Board's formal acceptance.

9. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Registered Nurse License without further process.

CONTINGENCY

10. This stipulation shall be subject to approval by the Board of Registered Nursing. Respondent understands and agrees that counsel for Complainant and the staff of the Board of

1 Registered Nursing may communicate directly with the Board regarding this stipulation and
2 surrender, without notice to or participation by Respondent. By signing the stipulation,
3 Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the
4 stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this
5 stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of
6 no force or effect, except for this paragraph, it shall be inadmissible in any legal action between
7 the parties, and the Board shall not be disqualified from further action by having considered this
8 matter.

9 11. The parties understand and agree that facsimile copies of this Stipulated Surrender of
10 License and Order, including facsimile signatures thereto, shall have the same force and effect as
11 the originals.

12 12. This Stipulated Surrender of License and Order is intended by the parties to be an
13 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
14 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
15 negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order
16 may not be altered, amended, modified, supplemented, or otherwise changed except by a writing
17 executed by an authorized representative of each of the parties.

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

20 **ORDER**

21 IT IS HEREBY ORDERED that Registered Nurse License No. 625916, issued to
22 Respondent Mark Erwin Harders, is surrendered and accepted by the Board of Registered
23 Nursing.

24 1. The surrender of Respondent's Registered Nurse License and the acceptance of the
25 surrendered license by the Board shall constitute the imposition of discipline against Respondent.
26 This stipulation constitutes a record of the discipline and shall become a part of Respondent's
27 license history with the Board of Registered Nursing.

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1 2. Respondent shall lose all rights and privileges as a Registered Nurse in California as
2 of the effective date of the Board's Decision and Order.

3 3. Respondent shall cause to be delivered to the Board his pocket license and, if one was
4 issued, his wall certificate on or before the effective date of the Decision and Order.

5 4. If Respondent ever files an application for licensure or a petition for reinstatement in
6 the State of California, the Board shall treat it as a petition for reinstatement. Respondent must
7 comply with all the laws, regulations and procedures for reinstatement of a revoked license in
8 effect at the time the petition is filed, and all of the charges and allegations contained in
9 Accusation No. 2013-216 shall be deemed to be true, correct and admitted by Respondent when
10 the Board determines whether to grant or deny the petition.

11 5. Should Respondent's license be reinstated, he shall pay to the Board costs associated
12 with its investigation and enforcement pursuant to Business and Professions Code section 125.3
13 in the amount of \$792.50. Respondent shall be permitted to pay these costs in a payment plan
14 approved by the Board. Nothing in this provision shall be construed to prohibit the Board from
15 reducing the amount of cost recovery upon reinstatement of the license.

16 6. If Respondent should ever apply or reapply for a new license or certification, or
17 petition for reinstatement of a license, by any other health care licensing agency in the State of
18 California, all of the charges and allegations contained in Accusation, No. 2013-216 shall be
19 deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of
20 Issues or any other proceeding seeking to deny or restrict licensure.

21 7. Respondent shall not apply for licensure or petition for reinstatement for two (2)
22 years from the effective date of the Board of Registered Nursing's Decision and Order.

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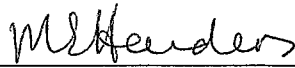
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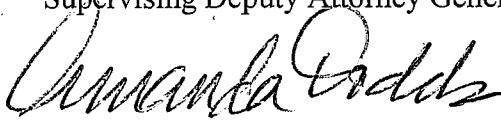
ACCEPTANCE

I have carefully read the Stipulated Surrender of License and Order. I understand the stipulation and the effect it will have on my Registered Nurse License. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Registered Nursing.

DATED: 10/17/2012 
MARK ERWIN HARDERS
Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board of Registered Nursing of the Department of Consumer Affairs.

Dated: 10/24/12 Respectfully submitted,
KAMALA D. HARRIS
Attorney General of California
LINDA K. SCHNEIDER
Supervising Deputy Attorney General

AMANDA DODDS
Senior Legal Analyst
Attorneys for Complainant

SD2012703885



Exhibit A

Accusation No. 2013-216

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2 LINDA K. SCHNEIDER
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3 State Bar No. 101336
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10 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**

12
13 In the Matter of the Accusation Against:

Case No. *2013-216*

14 **MARK ERWIN HARDERS**
1003 Sea Cliff Way
15 Oceanside, CA 92056

ACCUSATION

16 **Registered Nurse License No. 625916**

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

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

24 2. On or about September 12, 2003, the Board of Registered Nursing issued Registered
25 Nurse License Number 625916 to Mark Erwin Harders (Respondent). The Registered Nurse
26 License expired on September 30, 2005, and has not been renewed.

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1 **JURISDICTION**

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

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

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

13 **STATUTORY PROVISIONS**

14 6. Section 482 of the Code states:

15 Each board under the provisions of this code shall develop criteria to evaluate
16 the rehabilitation of a person when:

17 (a) Considering the denial of a license by the board under Section 480; or

18 (b) Considering suspension or revocation of a license under Section 490.

19 Each board shall take into account all competent evidence of rehabilitation
20 furnished by the applicant or licensee.

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

25 8. Section 493 of the Code states:

26 Notwithstanding any other provision of law, in a proceeding conducted by a
27 board within the department pursuant to law to deny an application for a license or to
28 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

1 may inquire into the circumstances surrounding the commission of the crime in order
2 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.

3 As used in this section, "license" includes "certificate," "permit," "authority,"
4 and "registration."

5 9. Section 2761 of the Code states:

6 The board may take disciplinary action against a certified or licensed nurse or
7 deny an application for a certificate or license for any of the following:

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

9

10 (4) Denial of licensure, revocation, suspension, restriction, or any other
11 disciplinary action against a health care professional license or certificate by another
12 state or territory of the United States, by any other government agency, or by another
California health care professional licensing board. A certified copy of the decision
or judgment shall be conclusive evidence of that action.

13

14 (f) Conviction of a felony or of any offense substantially related to the
15 qualifications, functions, and duties of a registered nurse, in which event the record of
the conviction shall be conclusive evidence thereof.

16

17 10. Section 2765 of the Code states:

18 A plea or verdict of guilty or a conviction following a plea of nolo contendere
19 made to a charge substantially related to the qualifications, functions and duties of a
20 registered nurse is deemed to be a conviction within the meaning of this article. The
21 board may order the license or certificate suspended or revoked, or may decline to
22 issue a license or certificate, 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
23 suspending the imposition of sentence, irrespective of a subsequent order under the
provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his
or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of
guilty, or dismissing the accusation, information or indictment.

24 **REGULATORY PROVISIONS**

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

26 A conviction or act shall be considered to be substantially related to the
27 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
28 manner consistent with the public health, safety, or welfare. Such convictions or acts
shall include but not be limited to the following:

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

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

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

5 (d) Any conviction or act subject to an order of registration pursuant to Section
6 290 of the Penal Code.

7 12. California Code of Regulations, title 16, section 1445 states:

8

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

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

14 (2) Total criminal record.

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

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

18 (5) If applicable, evidence of expungement proceedings pursuant to Section
19 1203.4 of the Penal Code.

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

21 **COST RECOVERY**

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

26 **FIRST CAUSE FOR DISCIPLINE**

27 **(May 12, 2011 Criminal Convictions for Indecent Liberties With a Child)**

28 14. Respondent has subjected his 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:

1 a. On or about May 12, 2011, in a criminal proceeding entitled *State of North*
2 *Carolina v. Mark Erwin Harders*, in the Wake County General Court of Justice, case number
3 09CRS206682, Respondent was convicted by a jury of violating two counts of North Carolina
4 General Statutes section 14-202.1, indecent liberties with a child, felonies.

5 b. As a result of the convictions, on or about May 12, 2011, Respondent was
6 sentenced a minimum term of 20 months, and a maximum term of 24 months in state prison.
7 Following release from prison, Respondent will be placed on 60 months supervised probation.
8 Terms of probation include a submission to warrantless searches of Respondent's person,
9 premises, and vehicle for controlled substances, contraband, and child pornography; a prohibition
10 against using, possessing, or controlling any illegal drug or controlled substance; submission to
11 drug testing; a requirement to register as a sex offender, and not reside in a household with any
12 minor children.

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Out-of-State Discipline of Respondent's Nursing License)**

15 15. Respondent has subjected his license to disciplinary action under section 2761,
16 subdivision (a)(4) of the Code in that his registered nurse license was disciplined by the North
17 Carolina Board of Nursing. In a certified letter to Respondent dated June 20, 2011, the Discipline
18 Proceedings Manager for the North Carolina Board of Nursing (NC Board) advised Respondent
19 that pursuant to General Statute 15A-130-1331A(b), upon conviction of a felony, Respondent
20 automatically forfeited his licensing privileges for the full term of any active sentence for the
21 offense. As a result of Respondent's convictions described in paragraph 14, above, the NC Board
22 revoked Respondent's registered nurse license. Respondent was ordered to immediately cease
23 and desist from representing himself as a licensed nurse. The NC Board advised Respondent that
24 in order to be considered for the reinstatement of his license, he would be required to successfully
25 complete any outstanding probation or parole that resulted from the convictions.

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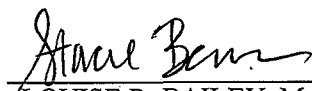
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PRAYER

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

1. Revoking or suspending Registered Nurse License Number 625916, issued to Mark Erwin Harders;
2. Ordering Mark Erwin Harders 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: September 26, 2012 for 
LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

SD2012703885