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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 Petition to Revoke Probation Against: **CINDY RACHELLE SMITHSON,** **a.k.a. CINDY RACHELLE RODRIGUEZ,** **a.k.a. CINDY RODRIGUEZ,** **a.k.a. CINDY MONTEZ,** **a.k.a. CINDY MONTES** 137 Highland Avenue Vacaville, CA 95688 Registered Nurse License No. 664515 Public Health Nurse Certificate No. 69582 Respondent.	Case No. 2004-273 PETITION TO REVOKE PROBATION

Louise R. Bailey, M.Ed., RN ("Complainant") alleges:

PARTIES

1. Complainant brings this 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.

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Registered Nurse License

2. On or about August 29, 2005, the Board issued Registered Nurse License No. 664515 ("license") to Cindy Rachelle Smithson, also known as Cindy Rachelle Rodriguez, Cindy Rodriguez, Cindy Montez, and Cindy Montes ("Respondent"). The license will expire on January 31, 2011, unless renewed.

Public Health Nurse Certificate

3. On or about November 14, 2005, the Board issued Public Health Nurse Certificate No. 69582 to Respondent. The certificate will expire on January 31, 2011, unless renewed.

Prior Discipline

4. Effective December 4, 2004, pursuant to the Stipulated Settlement and Disciplinary Order in Statement of Issues No. 2004-273, the Board granted Respondent's application for licensure; however, upon issuance of Respondent's license, it was to be immediately revoked, the revocation stayed, and Respondent placed on probation for a period of three (3) years on terms and conditions. A copy of the Stipulated Settlement and Disciplinary Order is attached at Exhibit A and is incorporated herein by reference.

5. Respondent subsequently passed the National Council Licensure Examination ("NCLEX") and was issued her registered nurse license on August 29, 2005, as further set forth in paragraph 2, above.

6. On March 15, 2008, pursuant to Probation Condition 6, the Board granted Respondent a one-year extension of her probation, with a termination date of August 28, 2009, in order to complete the required six month work requirement.

7. On March 29, 2009, the Board requested the Attorney General's office to prepare a Petition to Revoke Probation against Respondent.

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STATUTORY PROVISIONS

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

9. Code section 118, subdivision (b), states:

> The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

10. California Code of Regulations, title 16, section 1490, subdivision (b), states:

> A Public Health Nurse Certificate shall remain valid as long as the person's license to practice as a registered nurse in California is active.

11. Grounds exist for revoking the probation and reimposing revocation of Respondent's Registered Nurse License No. 664515. Condition 2 of the Decision, Case No. 2004-273, states, 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 Probation Program.

12. Condition 11 of the Decision states:

> **Violation of Probation**
>
> If Respondent violates the conditions of her probation, the Board after giving Respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation/suspension) of Respondent's license If during the period of probation, an accusation or petition to revoke probation has been filed against Respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against Respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board. . .

13. Respondent has violated the Board's Probation Program, by failing to comply with Probation Condition No. 6, as more fully set forth below.

CAUSE TO REVOKE PROBATION

(Failure to Function as a Registered Nurse)

14. At all times after the effective date of Respondent's probation, Condition 6 states, in pertinent part:

> **Function as a Registered Nurse**
>
> Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.
>
> For purposes of compliance with the section, "engage in the practice of registered nursing" may include, when approved by the Board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.
>
> The Board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.
>
> If Respondent has not complied with this condition during the probationary term, and Respondent has presented sufficient documentation of her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of Respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation shall apply.

15. Respondent's probation is subject to revocation in that she failed to comply with Probation Condition 6, as she did not engage in the practice of registered nursing in California for a minimum of 24 hours per week for 6 consecutive months. Respondent was employed for approximately three months at North Bay Healthcare in Fairfield, California; however, she was terminated from the position after it was determined that her clinical skills development needed to be supported in a less demanding environment. As stated in paragraph 6, above, on March 15, 2008, Respondent was given a one year extension of her probation in order to locate a position approved by the Board. However, Respondent was unable to locate further employment prior to the expiration of the Board's extension.

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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 the probation that was granted by the Board of Registered Nursing in Case No. 2004-273, and imposing the disciplinary order that was stayed thereby revoking Registered Nurse License No. 664515, issued to Cindy Rachelle Smithson, also known as Cindy Rachelle Rodriguez, Cindy Rodriguez, Cindy Montez, and Cindy Montes;

2. Revoking or suspending Registered Nurse License No. 664515, issued to Cindy Rachelle Smithson, also known as Cindy Rachelle Rodriguez, Cindy Rodriguez, Cindy Montez, and Cindy Montes;

3. Revoking or suspending Public Health Nurse Certificate No. 69582, issued to Cindy Rachelle Smithson, also known as Cindy Rachelle Rodriguez, Cindy Rodriguez, Cindy Montez, and Cindy Montes; and

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

DATED: 8/18/09

Stacie Berum

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 Statement of Issues Against: **CINDY RACHELLE SMITHSON** CINDY RACHELLE RODRIGUEZ Aka CINDY RODRIGUEZ Aka CINDY MONTEZ AKA CINDY MONTES 137 Highland Avenue Vacaville, CA 95688 Respondent	Case No. 2004-273

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 **December 4, 2004**.

IT IS SO ORDERED **November 4, 2004**.

Sandra L. Erickson

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

ORIGINAL

BILL LOCKYER, Attorney General
of the State of California
MAUREEN MCKENNAN STRUMPFER, State Bar No. 161571
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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 Statement of Issues Against: **CINDY RACHELLE SMITHSON,** AKA CINDY RACHELLE RODRIGUEZ, AKA CINDY RODRIGUEZ, AKA CINDY MONTEZ, AKA CINDY MONTES 137 Highland Avenue Vacaville, CA 95688 Applicant/Respondent.	Case No. 2004-273 OAH No. N2004 05 0642 **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 Maureen McKennan Strumpfer, Deputy Attorney General.

2. Respondent CINDY RACHELLE SMITHSON (Respondent) is represented in this proceeding by attorney Bruce W. Ebert, PhD, JD, whose address is McCloskey, Hubbard, Ebert & Moore, LLP, 775 Sunrise Ave., Suite 160, Roseville, CA 95661 .

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JURISDICTION

3. Statement of Issues No. 2004-273 was filed before the Board of Registered Nursing (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Statement of Issues and all other statutorily required documents were properly served on Respondent on April 20, 2004. Respondent timely filed her Notice of Defense contesting the Statement of Issues. A copy of Statement of Issues No. 2004-273 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

4. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Statement of Issues No. 2004-273. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

5. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Statement of Issues; the right to be represented by counsel at her own expense; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her 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.

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

CULPABILITY

7. Respondent admits the truth of each and every charge and allegation in Statement of Issues No. 2004-273.

8. Respondent agrees that her application for a license as a registered nurse is subject to denial and she agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

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CIRCUMSTANCES IN MITIGATION

9. Respondent CINDY RACHELLE SMITHSON has submitted documentation regarding her rehabilitation. Respondent's last criminal conviction was nearly 10 years ago. Respondent has been candid, accountable and remorseful regarding her prior criminal convictions. She has completed counseling to make healthy changes, is active in her community, church and volunteer services. She has been gainfully employed without incident. In May 1998, she graduated from Dominican University with a double major in Nursing and Psychology. As part of her nursing training, she completed additional clinical practice at the Chico Rural Preceptorship Internship and an ICU rotation at Lodi Memorial Hospital where she received excellent evaluations. She is currently enrolled in a Master's degree program. Respondent has submitted numerous letters of support from past employers, co-workers and others in support of her rehabilitation. (Exhibit B, attached Mitigation Documents.)

RESERVATION

10. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Board of Registered Nursing or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

11. 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 Registered Nursing may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or her counsel. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

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 the application of Respondent CINDY RACHELLE SMITHSON for licensure as a registered nurse is hereby granted. Upon successful completion of the licensure examination and all other licensing requirements, a license shall be issued to Respondent. Said license shall immediately be revoked, the order of revocation stayed and Respondent placed on probation for a period of 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.

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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 probation time period. Respondent's probation is tolled, if and when she resides outside of California. Respondent must provide written notice to the Board within 15 days of any change of residency or practice outside the state, and within 30 days prior to re-establishing residency or returning to practice in this state.

Respondent shall provide a list of all states and territories where she has ever been licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide information regarding the status of each license and any changes in such license status during the term of probation. Respondent shall inform the Board if she applies for or obtains a new nursing license during the term of probation.

5. **Submit Written Reports.** Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to Respondent's compliance with all the conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

Respondent shall provide a copy of this Decision to the nursing regulatory agency in every state and territory in which she has a registered nurse license.

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

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

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

If Respondent has not complied with this condition during the probationary term, and Respondent has presented sufficient documentation of her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of Respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation shall apply.

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

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

In addition to the above, Respondent shall notify the Board in writing within seventy-two (72) hours after she obtains any nursing or other health care related employment. Respondent shall notify the Board in writing within seventy-two (72) hours after she is terminated or separated, regardless of cause, from any nursing, or other health care related

employment with a full explanation of the circumstances surrounding the termination or separation.

8. **Supervision.** Respondent shall obtain prior approval from the Board regarding Respondent's level of supervision and/or collaboration before commencing or continuing any employment as a registered nurse, or education and training that includes patient care.

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

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

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

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

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

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

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

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

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

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

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

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

10. **Complete a Nursing Course(s).** Respondent, at her own expense, shall enroll and successfully complete a course(s) relevant to the practice of registered nursing no later than six months prior to the end of her probationary term.

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

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

If during the period of probation, an accusation or petition to revoke probation has been filed against Respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against Respondent's license, the

probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

12. **License Surrender.** During Respondent's term of probation, if she ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, Respondent may surrender her license to the Board. The Board reserves the right to evaluate Respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent will no longer be subject to the conditions of probation.

Surrender of Respondent's license shall be considered a disciplinary action and shall become a part of Respondent's license history with the Board. A registered nurse whose license has been surrendered may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

(1) Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or

(2) One year for a license surrendered for a mental or physical illness.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Bruce W. Ebert, Ph.D., J.D. I understand the stipulation and the effect it will have on my license as a registered nurse. 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 of Registered Nursing.

DATED: August 07, 2004

CINDY RACHELLE SMITHSON
Respondent

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

DATED: Aug 7, 2004.

BRUCE W. EBERT, Ph.D., J.D.
Attorney for Respondent

ENDORSEMENT

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

DATED: Aug. 12, 2004.

BILL LOCKYER, Attorney General
of the State of California

MAUREEN MCKENNAN STRUMPFER
Deputy Attorney General

Attorneys for Complainant

BILL LOCKYER, Attorney General
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Attorneys for Complainant

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

ORIGINAL

In the Matter of the Statement of Issues Against: **CINDY RACHELLE SMITHSON,** **A.K.A. CINDY RACHELLE RODRIGUEZ,** **A.K.A. CINDY RODRIGUEZ,** **A.K.A. CINDY MONTEZ,** **A.K.A. CINDY MONTES** 137 Highland Avenue Vacaville, CA 95688 Applicant/Respondent.	Case No.2004-273 **STATEMENT OF ISSUES**

Complainant alleges:

PARTIES

1. Ruth Ann Terry, M.P.H., R.N. ("Complainant") brings this Statement of Issues solely in her official capacity as the Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs.

2. On or about May 15, 2003, the Board of Registered Nursing ("Board") received an Application For Licensure by Examination from Cindy Rachelle Smithson, also known as Cindy Rachelle Rodriguez, also known as Cindy Rodriguez, also known as Cindy Montez, also known as Cindy Montes ("Applicant/Respondent"). On or about May 1, 2003, Applicant/Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. On or about December 3, 2003, pursuant to section 485, subdivision (b) of the Business and Professions Code ("Code"), the application of

Applicant/Respondent was denied, and Applicant/Respondent was notified of the right to a hearing to appeal that denial. On or about January 12, 2004, the Board received a request from Applicant/Respondent appealing the denial of that application.

3. Effective, June 8, 2000, in a disciplinary matter entitled: "In the Matter of the Statement of Issues re: Cindy Rachelle Smithson, aka Cindy Rachelle Rodriguez, Cindy Rodriguez, Cindy Montez, Cindy Montes," in Case Number 2000-45, The State of California Board of Registered Nursing denied Applicant/Respondent's application for licensure as a registered nurse, dated August 5, 1998. The specific grounds for denial of that application were as follows:

a. On September 18, 1979, Applicant/Respondent was convicted of violating penal code section 484 (petty theft), in *People v. Cindy Rachelle Rodriguez* (Muni. Ct. San Mateo County, 1979, No. 102849). The crime of which Applicant/Respondent was convicted was substantially related to the qualifications, functions and duties of a registered nurse.

b. On June 24, 1982, Applicant/Respondent was convicted of violating Penal code section 476(A) (passing non-sufficient funds checks), in *People v. Cindy Rachelle Rodriguez* (Muni. Ct. San Mateo County, 1982, No F-76902. The crime of which Applicant/Respondent was convicted was substantially related to the qualifications, functions and duties of a registered nurse.

c. On April 18, 1983, Applicant/Respondent was convicted of violating Penal Code section 484(petty theft), in *People v. Cindy Rachelle Rodriguez* (Muni. Ct. San Mateo County, 1983, No. 123381). The crime of which Applicant/Respondent was convicted was substantially related to the qualifications, functions and duties of a registered nurse.

d. On October 6, 1983, Applicant/Respondent was convicted of violating Penal Code section 484 (petty theft with prior/retail merchandise), in *People v. Cindy Rachelle Rodriguez* (Muni. Ct. San Mateo County, 1983, No. 128574). The crime of which Applicant/Respondent was convicted was substantially related to the qualifications, functions

and duties of a registered nurse.

e. On July 28, 1987, Applicant/Respondent was convicted of violating Welfare and Institutions code section 11483 (obtaining aid by fraud), in *People v. Cindy Rachelle Montes* (Mini Ct. S. F. City and County, 1987, No. 1005563.) The crime of which Applicant/Respondent was convicted was substantially related to the qualifications, functions and duties of a registered nurse.

f. On February 17, 1995, Applicant/Respondent was convicted of violating Penal code section 470 (forgery), in *People v. Cindy Rodriguez* (Mini Ct. Napa County, 1995, No. 20259). The crime of which Applicant/Respondent was convicted was substantially related to the qualifications, functions and duties of a registered nurse.

4. On or about April 30, 2002, in *Cindy R. Smithson v. The Board of Registered Nursing Department of Consumer Affairs* (Super. Ct. Sac County, 2002, No. 00CS00871) Applicant/Respondent's Petition for Writ of Administrative Mandamus seeking to set aside the order of denial of licensure was denied.

5. A copy of the decision denying the application of Applicant/Respondent in Case Number 2000-45 is attached hereto as "Exhibit A" and is incorporated herein by reference. A copy of *Cindy R. Smithson v. The Board of Registered Nursing Department of Consumer Affairs* (Super. Ct. Sac County, 2002, No. 00CS00871) is attached hereto as Exhibit "B" and is incorporated herein by reference.

STATUTORY PROVISIONS

6. Section 2736 of the of the Code provides that the Board may deny a license when it finds that the applicant has committed any acts constituting grounds for denial of licensure under section 480 of that code.

7. Section 480 of the Code provides, in pertinent part:

"(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. 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.

(2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or

(3) Done any act which if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made."

8. Section 2761 of the Code provides, 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:

(4) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a health care professional license or certificate by another 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.

(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."

9. California Code of Regulations, title 16, section 1444 provides that a crime 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 present or potential unfitness of a registered nurse to perform the functions authorized by his/her license in a manner consistent

with the public health, safety, or welfare.

FIRST GROUND FOR DENIAL OF LICENSURE

(Conviction of Crime)

10. Grounds exist to deny Respondent's application under sections 480, subdivision (a)(1) and 2761, subdivision (f) of the Code in that, as set forth under paragraphs 3(a) through 3(f) above, Applicant/Respondent was convicted of crimes substantially related to the qualifications, functions or duties of a registered nurse, as defined under California Code of Regulations, title 16, section 1444.

SECOND GROUND FOR DENIAL OF LICENSURE

(Commission of a Dishonest, Fraudulent, or Deceitful Act)

11. Grounds exist to deny Respondent's application under section 480, subdivision (a)(2) of the Code in that, as set forth under paragraphs 3(a) through 3(f) above, Applicant/Respondent committed acts involving dishonesty, fraud or deceit.

THIRD GROUND FOR DENIAL OF LICENSURE

(Act as Grounds for Revocation or Suspension of Licensure)

12. Grounds exist to deny Respondent's application under section 480, subdivision (a)(3) of the Code in that, as set forth under paragraphs 3(a) through 3(f) above, Applicant/Respondent committed acts which if done by a licentiate would be grounds for suspension or revocation of that license under section 480, subdivisions (a)(1) and (a)(2), and section 2761, subdivision (f) of the Code.

FOURTH GROUND FOR DENIAL OF LICENSURE

(Prior Denial of Licensure)

13. Grounds exist to deny Respondent's application under section 2761, subdivision (a)(4) of the Code in that, as set forth under paragraph 3 above, the State of California Board of Registered Nursing denied Applicant/Respondent's application for licensure as a registered nurse, effective June 8, 2000, in a disciplinary matter entitled "In the Matter of the Statement of Issues re: Cindy Rachelle Smithson, aka Cindy Rachelle Rodriguez, Cindy Rodriguez, Cindy Montez, Cindy Montes," in Case Number 2000-45.

PRAYER

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

1. Denying the application of Cindy Rachelle Smithson, also known as Cindy Rachelle Rodriguez, also known as Cindy Rodriguez, also known as Cindy Montez, also known as Cindy Montes; and,

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

DATED: 3/29/04

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

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