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

| | |
|---|---|
| In the Matter of the Petition to Revoke Probation Against:<br><br>**HARDEEP MUNDH**<br>**2520 Allen Street**<br>**Live Oak, CA 95953**<br>**Registered Nurse License No. 726288**<br><br>Respondent. | Case No. 2008-111<br><br>PETITION TO REVOKE PROBATION |

Complainant alleges:

**PARTIES**

1. Louise R. Bailey, M.Ed., RN ("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.

2. On or about May 12, 2008, the Board issued Registered Nurse License Number 726288 to Hardeep Mundh ("Respondent") on a probationary basis, as set forth in paragraph 3 below. Respondent's registered nurse license will expire on November 30, 2011, unless renewed.

3. On February 21, 2008, pursuant to the Proposed Decision of the Administrative Law Judge adopted by the Board as its Decision in the disciplinary proceeding titled *In the Matter of the Statement of Issues Against: Hardeep Mundh*, Case No. 2008-111, the Board granted Respondent's application for licensure as a registered nurse effective March 21, 2008. The Board

further ordered that upon successful completion of the licensure examination and all other licensing requirements, a license shall be issued to Respondent. The license shall immediately be revoked, the order of revocation stayed, and Respondent placed on probation for a period of three (3) years on certain conditions, including those conditions specified below. A true and correct copy of the Board's Decision is attached hereto as Exhibit A and incorporated herein.

4. Condition 12 of Respondent's probation states:

> 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/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 the 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.

5. Condition 17 of Respondent's probation states, in pertinent part, that Respondent, at his expense, shall participate in a random, biological fluid testing or a drug screening program which the Board approves. Any confirmed positive finding shall be reported immediately to the Board by the program and the Respondent shall be considered in violation of probation.

6. Grounds exist to revoke Respondent's probation and reimpose the order of revocation of his registered nurse license in that he has violated the terms and conditions of his probation as follows:

## FIRST CAUSE TO REVOKE PROBATION

### (Failure to Comply with the Board's Probation Program)

7. Condition 2 of Respondent's probation states, in pertinent part, that Respondent shall fully comply with the conditions of the Probation Program established by the Board.

8. Respondent's probation is subject to revocation in that he failed to fully comply with the conditions of his Probation Program, as set forth in paragraph 10 below.

## SECOND CAUSE TO REVOKE PROBATION

### (Failure to Abstain from Use of Alcohol)

9. Condition 16 of Respondent's probation states, in pertinent part, that 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.

10. Respondent's probation is subject to revocation in that he failed to completely abstain from the consumption of alcohol, as follows: On the evening of March 17, 2009, Respondent went to a club with some friends to have a few drinks to celebrate St. Patrick's Day. On March 18, 2009, Respondent tested positive for alcohol. Respondent tested positive for alcohol again on August 7, 2009.

**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 probation and reimposing the order of revocation of Registered Nurse License Number 726288, issued to Hardeep Mundh;

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

DATED: 01/13/2010

Louise R. Bailey

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

SA2009102327

# Exhibit A

Decision and Order

Board of Registered Nursing Case No. 2008-111

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

| In the Matter of: | Case No. 2008-111 |
| --- | --- |
| HARDEEP MUNDH | OAH No. N2007100199 |
| Respondent. | |

**DECISION**

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

This Decision shall become effective on March 21, 2008.

IT IS SO ORDERED February 21, 2008.

LaFrancine W Tate

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

| | |
|---|---|
| In the Matter of the Statement of Issues Against:<br><br>HARDEEP MUNDH<br>Davis, California<br><br>Respondent. | Case No. 2008-111<br><br>OAH Case No. N2007110199 |

## PROPOSED DECISION

Administrative Law Judge Marilyn A. Woollard, Office of Administrative Hearings (OAH), State of California, heard this matter in Sacramento, California, on December 28, 2007.

Sterling A. Smith, Deputy Attorney General, represented complainant Ruth Ann Terry, in her official capacity as the Executive Officer of the Board of Registered Nursing (Board), Department of Consumer Affairs.

Hardeep Mundh (respondent) appeared and represented himself.

Oral and documentary evidence was received. At the conclusion of the hearing, the parties made closing arguments. The record remained open until January 9, 2008, for respondent to submit a letter from his past employer and for response by complainant. On December 31, 2007, OAH received a letter from Karen Nivison, Director of Nurses, Cottonwood Healthcare Center, on behalf of respondent that was marked and admitted as exhibit N. No response to this letter was received from complainant. On January 9, 2008, the record was closed, and the matter was submitted for decision.

## FACTUAL FINDINGS

1. On February 28, 2007, the Board received an application for licensure by examination from respondent.

2. On March 12, 2007, the Board denied respondent's application, pursuant to Business and Professions Code section 480, subdivisions (a)(1) and (a)(3), section 2761, subdivisions (a) and (f), and section 2762, subdivision (c). The factual basis for the denial of respondent's application was his misdemeanor convictions relating to driving under the influence of alcohol and the revocation of his Certified Nursing Assistant (CNA) license.

The Board advised respondent that, if he filed a written appeal of the denial, it would allow him to take the National Council Licensing Examination (NCLEX) for registered nursing, without waiving its grounds for application denial.

3. On April 20, 2007, respondent filed a document with the Board which it interpreted as his appeal of the denial of his application for licensure.

4. Thereafter, respondent took, and successfully passed the NCLEX.

*Respondent's Convictions*

5. On February 22, 2000, in *People of the State of California vs. Hardeep Mundh* (Case No. 00001010), the Yolo County Superior Court convicted respondent of misdemeanor violations of Vehicle Code sections 20002, subdivision (a) (hit and run, property damage), and 23103 (reckless driving)/23103.5 (wet reckless).[1]

Respondent's driver's license was suspended for 12 months. Respondent was placed on 12 months of summary probation (through February 22, 2001), ordered to obey all laws, to pay a fine or serve 12 days in county jail, not to drive after consuming alcohol within 4 hours or with blood alcohol over .4 percent, and to participate in the County's 12-hour alcohol education program.

Respondent advised the Board that his jail time was converted to a fine of $1,181, which he paid in full, and that he successfully completed a 6-week drug and alcohol program.

6. On January 14, 2002, in *People of the State of California vs. Hardeep Mundh* (Case No. 01006197), the Yolo County Superior Court convicted respondent of a misdemeanor violation of Vehicle Code section 23152, subdivision (b) (driving under the influence [DUI] with a blood alcohol of 0.08 percent or more), with a prior violation of Vehicle Code section 23103.5.

---

[1] Respondent was originally charged with driving under the influence of alcohol in violation of Vehicle Code section 23152, subdivision (a). Pursuant to section 23103.5, by pleading guilty or no contest to reckless driving, this conviction operated as a prior offense for the purposes of Vehicle Code sections 23540, 23546, 23550, 23560, 23566, or 23622. (Veh. Code § 23203.5, subd. (c).)

Respondent's driver's license was restricted for 18 months (work and alcohol program driving only). Respondent was placed on 48 months of summary probation (through January 14, 2006), ordered to obey all laws, to pay a fine of $1,412 or serve seven days in county jail, not to drive after consuming alcohol within 4 hours or with blood alcohol over .4 percent, and to participate in the County's 18-month alcohol education program.

Respondent advised the Board that he completed the ordered education program on April 23, 2002, that he paid all fines, and completed 11 days work program in lieu of jail time on October 8, 2002.

7. On January 21, 2003, in *People of the State of California vs. Hardeep Mundh* (Case No. CRTR-02-3320), the Yolo County Superior Court convicted respondent of a misdemeanor violation of Vehicle Code section 14601.5, subdivision (a) (knowingly driving while license suspended or revoked), with one prior violation of section 14601 (driving while license suspended for reckless driving) in Solano County on October 21, 2002. At the time of the underlying offense, respondent was still on probation for his 2002 conviction.

Respondent was placed on 24 months of summary probation (through January 21, 2005), ordered to serve 10 days in county jail or participate in work project, obey all laws, and pay total fines of $1,560.

Respondent reported that he completed the requirements of this sentence.

8. On February 21, 2006, in *People of the State of California vs. Hardeep Mundh* (Case No. 06000665), the Yolo County Superior Court convicted respondent of a misdemeanor violation of Vehicle Code section 23152, subdivision (a)/(b) (DUI; DUI with a blood alcohol of 0.08 percent or more), with two prior violations of Vehicle Code sections 23152 or 23103/23103.5. The underlying offense occurred on December 28, 2005, while respondent was still on probation for his 2002 conviction.

Respondent's driver's license was revoked for 36 months and he was ordered to use an ignition interlock device. Respondent was placed on 60 months of summary probation (through February 22, 2011). He was ordered to served 120 days in county jail; however, this was stayed pending proof of enrollment in home detention for 120 days. Respondent was ordered to obey all laws, and to pay a fine of $2,220 plus additional fees.

Respondent advised the Board that he regularly pays $100 a month toward fulfillment of these fines, that he completed his house arrest, and that his jail time was converted to 111 days of LCA SCRAM alcohol monitoring program which he completed on June 8, 2006.

*Respondent's Certified Nursing Assistant License*

9. On December 14, 2005, respondent received a Nurse Assistant Certificate (CNA) from the Department of Health Services (DHS). Upon becoming aware of respondent's convictions, DHS initiated disciplinary proceedings. On November 21, 2006, respondent's CNA certificate was revoked, and respondent appealed.

On June 14, 2007, Administrative Law Judge Tays, of the DHS Office of Administrative Hearings and Appeals, issued a final decision regarding this appeal. Respondent's three DUI convictions were found to be substantially related to the qualifications, functions, and duties of a CNA. Revocation of respondent's CNA certificate was set side; however, respondent's CNA certificate was suspended for two years based upon his convictions. The suspension was stayed, and respondent's CNA certificate was issued on a probationary basis for seventeen (17) months. It was anticipated that, with successful completion of probation, respondent's CNA certificate would be restored to full status on November 21, 2008.

*Evidence of Rehabilitation*

10. Respondent, who is currently 28 years old, began the nursing program at American River College in August of 2004.

11. In December 2005, at the time of the offense underlying his last conviction, respondent was struggling in school as well as drinking alcohol.

12. Respondent's December 2005 arrest was a turning point in his life. Since this time, respondent has moved back into his parents' home and has changed his previous lifestyle and friends. He now sees his family as his strongest support system. Several of his family members are doctors, who have reinforced for him the importance of "staying on the right track."

13. Respondent renewed his commitment to becoming a nurse, and he repeated a semester. Respondent testified that, during his last two semesters in nursing school, he achieved a score of 89 percent.

14. In May 2007, respondent obtained an Associate Degree in nursing from American River College.

15. Respondent passed the nursing NCLEX-RN examination on his first attempt.

16. Respondent's "sobriety date" is December 26, 2005. Since that time, respondent has not consumed any alcohol. He has participated in weekly meetings of Alcoholics Anonymous (AA), and he has a sponsor who wrote a letter in his support.

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Respondent has recently received his two-year "chip," a coin from AA that commemorates his length of sobriety. In addition to his AA sponsor, respondent has developed friends through AA who help him to maintain his sobriety.

Respondent testified that, with the help of AA and his family support network, he is not powerless over alcohol.

17. Respondent has been engaged in community volunteer activities over the past two years.

As indicated in the January 29, 2007, letter from Service Center Coordinator, Lauren Pandolfe, respondent regularly volunteered at Loaves and Fishes homeless program in Sacramento, for approximately one year. Respondent testified that he had to stop this volunteer activity, due to lack of transportation.

As indicated in the February 4, 2007, letter from Sikh Temple President Balbir Dhillon, respondent has provided weekly volunteer services at the Temple, where he prepares meals and helps with general maintenance. Because his family regularly attends this Temple, respondent has not experienced any transportation problems that interfere with this volunteer activity, which he currently continues.

18. Respondent provided letters from two of his nursing professors, which he asserts demonstrate his ability to work safely as a nurse. At the beginning of the semester, respondent told each of these professors that he had a substance abuse problem with drinking alcohol and that he was involved with a DUI. He did not itemize each conviction for them.

Professor Candace Furlong, RN, MSN, who teaches clinical classes at American River, wrote that, in the fall of 2006, respondent let her know that he had "a legal situation of a DUI." Respondent told Professor Furlong that he was attending AA and he was aware that he needed to continue treatment. Ms. Furlong wrote that:

> At no time during his psych clinical rotation with me, nor during any of the classroom experiences that I am aware of, did he appear under the influence of alcohol or other drugs. He provided safe and effective care to the patients he was assigned to during the psych clinical rotation for the ten shifts I had with him.

Similarly, Professor David Adcock never observed respondent to be under the influence of alcohol or other drugs. Respondent provided "safe and effective care to the patients he was assigned to" during the 15-week spring 2007 semester.

19. From December 2005 through the fall of 2006, respondent worked as a CNA at Sierra Health Care and at Cottonwood Healthcare Center, without any

problems. As indicated in the DHS Final Decision, footnote 4, and in exhibit N, respondent's supervisors gave positive reports of respondent's skills, professionalism and ability to work with residents. There were no concerns that he was under the influence of alcohol.

20. Due to requirements of his nursing program, respondent last worked as a CNA in late 2006, before this certificate was suspended. Since receiving his probationary CNA license, respondent has not sought work as a CNA, but he intends to do so if he does not obtain a probationary nurse's license.

21. Respondent testified in a mature, thoughtful, and direct manner. Respondent's attitude has changed significantly since the conduct underlying his last conviction. Respondent understands that his past conduct reflected extremely poor decisions on his part. He understands that his behavior posed a real risk of harm to the public. Respondent further understands that the responsibilities of a nurse are much greater than those of a CNA and require consistent good judgment. Respondent believes that his recommendations from nursing professors demonstrate that he is capable of safely working as a registered nurse. Nevertheless, respondent requested a probationary license to further assure the Board that he is capable of performing safely as a registered nurse.

In a further effort to demonstrate that he is committed to sobriety, respondent has voluntarily enrolled in an 18-month DUI program with the Yolo County Alcohol, Drug & Mental Health Services. This program began on December 18, 2007, and involves weekly meetings for twelve months, and monthly meetings for six months. Random urinalysis tests will be conducted throughout the program.

22. The potential for harm from respondent's past conduct with alcohol, especially with repeated violations, was extremely high. Respondent has complied with his past probation requirements; however, he remains on criminal probation for his most recent conviction until 2011.

Nevertheless, since December 2005, respondent has changed his friendships, completed nursing school, earned positive recommendations from clinical nursing professors cognizant of his alcohol problem, passed his NCLEX-RN examination, and consistently engaged in AA meetings and fellowship. Respondent's understanding of the nature of his problem and the consequences it poses to himself, to his family, and to the larger community, has deepened. Respondent has consistently engaged in volunteer community efforts, and he is now voluntarily participating in further alcohol abuse education and random urine testing to demonstrate his ongoing commitment to sobriety. Respondent's clinical training during his nursing school, as reflected in the recommendations of Professors Furlong and Adcock, demonstrate that he can safely and competently care for patients. Under these circumstances, it would not be contrary to the public interest to allow respondent to work as a registered nurse under a probationary license, subject to the conditions outlined below.

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## LEGAL CONCLUSIONS

1. *Burden of Proof*: The burden of proof is on the applicant for a license. (*Martin v. Alcohol Beverage Control Appeals Bd.* (1959) 52 Cal.2d 238.) In addition, rehabilitation is akin to an affirmative defense; the burden of proof of establishing an affirmative defense is on the proponent of that defense. (*Whetstone v. Board of Dental Examiners* (1927) 87 Cal.App. 156, 164.)

2. Pursuant to Business and Professions Code section 2736, subdivision (c), an applicant for licensure as a registered nurse must not only satisfy educational requirements, but "not be subject to denial of licensure under Section 480."[2]

3. Section 480, subdivision (a), establishes that a licensing board may deny an application for licensure upon one of the following grounds, including where the applicant has:

> (1) Been convicted of a crime. . .
>
> [¶]. . . [¶], 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. . .

4. Pursuant to section 2761, the Board may deny an application for a certificate or license for any of the following, including:

> (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.
>
> [¶]. . . [¶]

---

[2] Unless otherwise indicated, all statutory references are to the California Business and Professions Code.

5. Section 2762 provides that it is unprofessional conduct for a person to:

> (b) Use . . .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 . . .consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, . . . , in which event the record of the conviction is conclusive evidence thereof.
>
> [¶]. . . [¶]

6. California Code of Regulations, title 16, section 1444, provides that 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." The abuse of alcohol to an extent that results in repeated alcohol related convictions evidences both real and potential unfitness of a nurse to safely practice the profession. Consequently, respondent's convictions are substantially related to the qualifications, functions or duties of a registered nurse.

As set forth in the Factual Findings and Legal Conclusions as a whole, and specifically in Factual Findings 5 through 8, respondent's convictions establish legal cause for the Board's denial of his application under Business and Professions Code sections 480, subdivision (a)(1) and (a)(3); section 2736, subdivision (c); section 2761, subdivisions (a) and (f); and 2762, subdivisions (b) and (c).

7. California Code of Regulations, title 16, section 1445, subdivision (a), provides that:

> When considering the denial of a license under Section 480 of the code, the board, in evaluating the rehabilitation of the applicant and his/her present eligibility for a license will consider the following criteria:
>
> (1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
>
> (2) Evidence of any act(s) committed subsequent to the act(s)

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or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the code.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

(4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant.

8. As set forth in the Factual Findings and Legal Conclusions as a whole, and particularly in Factual Findings 9 through 22, respondent has taken substantial steps toward rehabilitation. While he remains on criminal probation, it would not be contrary to the public interest to grant him a probationary license at this time, subject to his strict compliance with the terms and conditions outlined below.

ORDER

The application of respondent Hardeep Mundh for licensure 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 conditions:

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 the 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: A violation of criminal court orders, including probation or parole, 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 probation time period. Respondent's probation is tolled, if and when he or she resides outside of California. The 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 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 nondirect 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.

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If respondent has not complied with this condition during the probationary term, and the 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 the respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation 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 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.

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, 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 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

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certificates of completion for the above required course/(s). The Board shall return the original documents to respondent after photocopying them for its records.

12. VIOLATION OF PROBATION - If respondent violates the conditions of his probation, the Board after giving the respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation/suspension) of the 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 the 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 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. 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 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.

15. 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 or 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, unless the approved program is of a duration longer than nine months.

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.

16. ABSTAIN FROM USE OF PSYCHOTROPIC (MOOD-ALTERING) DRUGS - Respondent shall completely abstain from the possession, injection or

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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.

17. SUBMIT TO TESTS AND SAMPLES - Respondent, at his 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 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.

18. 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 capability to perform the duties of a registered nurse. 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.

19. THERAPY OR COUNSELING PROGRAM - Respondent, at his expense, shall participate in an on-going counseling program until such time as the Board releases him 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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20. 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.

DATED: January 14, 2008

MARILYN A. WOOLLARD
Administrative Law Judge
Office of Administrative Hearings

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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:<br><br>**HARDEEP MUNDH**<br>2324 Shasta Drive, #41<br>Davis, California 95616<br><br>Applicant/Respondent: | Case No. 2008-111<br><br>**STATEMENT OF ISSUES** |

Ruth Ann Terry, M.P.H, R.N ("Complainant") alleges:

**PARTIES**

1. Complainant brings this Statement of Issues solely in her official capacity as the Executive Officer of the Board of Registered Nursing ("Board"), Department of Consumer Affairs.

**Application History**

2. On or about February 28, 2007, the Board received an Application for Licensure by Examination from Hardeep Mundh ("Respondent"). On or about February 28, 2007, Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on March 12, 2007.

## STATUTORY PROVISIONS

3. Section 2736 of the Business and Professions Code (Code) provides, in pertinent part, 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.

4. Code section 480 states, 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.
>
> (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.

5. 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:
>
> (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.

6. Section 2762 of the Code states, in pertinent part:

> In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:
>
> (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 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.

## FIRST CAUSE FOR DENIAL OF APPLICATION

### (Criminal Convictions)

7. Respondent's application is subject to denial under Code sections 2736, 2761, subdivision (f), and 480, subdivision (a)(1), in that Respondent was convicted of crimes substantially related to the qualifications, functions and duties of registered nurse, as follows:

a. On or about February 22, 2000, in the Superior Court of California, County of Yolo, in the case entitled, *People of the State of California v. Hardeep Mundh* (Super. Ct. Yolo County, 2000, Case No. CRM00001010), Respondent was convicted on his plea of no contest of violating Vehicle Code sections 20002, subdivision (a) (Hit and Run Property Damage) and 23103/23103.5 (Wet Reckless), both misdemeanors.

b. On or about January 14, 2002, in the Superior Court of California, County of Yolo, in the case entitled, *People of the State of California v. Hardeep Mundh* (Super. Ct. Yolo County, 2001, Case No. CRM100006197), Respondent was convicted on his plea of no contest of violating Vehicle Code section 23152, subdivision (b) (Driving Under the Influence of .08% or More), a misdemeanor.

c. On or about January 23, 2003, in the Superior Court of California, County of Sutter, in the case entitled, *People of the State of California v. Hardeep Mundh* (Super. Ct. Sutter County, 2002, Case No. CRTR02-3320), Respondent was convicted on his plea of guilty of violating Vehicle Code section 14601.5, subdivision (a) With a Prior [10/21/2002] (Driving with a Suspended License), a misdemeanor.

d. On or about February 21, 2006, in the Superior Court of California, County of Yolo, in the case entitled, *People of the State of California v. Hardeep Mundh* (Super. Ct. Yolo County, 2006, Case No. CRM060000665), Respondent was convicted on his plea of no contest of violating Vehicle Code section 23152, subdivision (a) (Driving Under the Influence of Alcohol With Enhancements), a misdemeanor.

## SECOND CAUSE FOR DENIAL OF APPLICATION

**(Any Acts by a Licentiate)**

8. Respondent's application is subject to denial under Code sections 2736 and 480, subdivision (a)(3), in that Respondent committed acts that if done by a licentiate of the business or profession, would be grounds for suspension or revocation of a license, pursuant to and Code sections 2761, subdivision (a), and 2762, as follows:

a. Respondent used alcohol to an extent or in a manner dangerous or injurious to himself or others, as set forth in paragraph 7, subparagraphs (a), (b), and (d), above, in violation of Code section 2762, subdivision (b).

b. Respondent was convicted of crimes involving the consumption of alcohol, as set forth in paragraph 7, subparagraphs (a), (b), and (d), above, in violation of Code section 2762, subdivision (c).

## 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. Denying the application of Hardeep Mundh for a registered nurse's license; and,

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

DATED: 10/4/07

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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