

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 BRIAN G. WALSH, State Bar No. 207621
Deputy Attorney General
4 California Department of Justice
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2535
6 Facsimile: (213) 897-2804

7 Attorneys for Complainant

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. *2008-182*

12 SCOTT THOMAS BERTRAND
1504 Benedict Avenue
13 Claremont, CA 91711

A C C U S A T I O N

14 Registered Nurse License No. 538006
Nurse Anesthetist License No. 2676

Respondent.

17 Complainant alleges:

18 **PARTIES**

- 19 1. Ruth Ann Terry, M.P.H, R.N (Complainant) brings this Accusation solely
20 in her official capacity as the Executive Officer of the Board of Registered Nursing (Board),
21 Department of Consumer Affairs.
- 22 2. On or about October 23, 1997, the Board issued Registered Nurse License
23 No. 538006 to Scott Thomas Bertrand (Respondent). The Registered Nurse License was in full
24 force and effect at all times relevant to the charges brought herein and will expire on
25 September 30, 2009, unless renewed.
- 26 3. On or about November 7, 2000, the Board issued Anesthetist License
27 No. 2676 to Respondent. The Anesthetist License was in full force and effect at all times
28 relevant to the charges brought herein and will expire on September 30, 2009, unless renewed.

1 **JURISDICTION**

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

5 **STATUTORY PROVISIONS**

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

10 6. Section 2750 of the Business and Professions Code (Code) provides, in
11 relevant part, that the Board may discipline any licensee, including a licensee holding a
12 temporary or an inactive license, for any reason provided in Article 3 (commencing with section
13 2750) of the Nursing Practice Act.

14 7. Section 2761 of the Code states:

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

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

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

21 (d) Violating or attempting to violate, directly or indirectly, or
22 assisting in or abetting the violating of, or conspiring to violate any provision or
23 term of this chapter [the Nursing Practice Act] or regulations adopted pursuant to
24 it.

25 8. Section 2762 of the Code states:

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

(a) Obtain or possess in violation of law, or prescribe, or except as
directed by a licensed physician and surgeon, dentist, or podiatrist administer to
himself or herself, or furnish or administer to another, any controlled substance as
defined in Division 10 (commencing with Section 11000) of the Health and Safety
Code or any dangerous drug or dangerous device as defined in Section 4022.

1
2 (b) Use any controlled substance as defined in Division 10 (commencing
3 with Section 11000) of the Health and Safety Code, or any dangerous drug or
4 dangerous device as defined in Section 4022, or alcoholic beverages, to an extent
or in a manner dangerous or injurious to himself or herself, any other person, or
the public or to the extent that such use impairs his or her ability to conduct with
safety to the public the practice authorized by his or her license.”

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

10 10. Health and Safety Code section 11170 states: “No person shall prescribe,
11 administer, or furnish a controlled substance for himself.”

12 11. Health and Safety Code section 11171 states: “No person shall prescribe,
13 administer, or furnish a controlled substance except under the conditions and in the manner
14 provided by this division.”

15 12. Health and Safety Code section 11173, subdivision (a) states:

16 No person shall obtain or attempt to obtain controlled substances, or
17 procure or attempt to procure the administration of or prescription for controlled
18 substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the
concealment of a material fact.

19 13. **CONTROLLED SUBSTANCES**

20 A. “Demerol,” is a brand of meperidine hydrochloride, a derivative of
21 pethidine. It is a Schedule II controlled substance as designated by Health and Safety Code
22 section 11055(c)(17) and is categorized as a “dangerous drug” pursuant to Business and
23 Professions Code section 4022.

24 B. “Fentanyl,” is generic for Innovar. It is a Schedule II controlled substance
25 as designated by Health and Safety Code section 11055(c)(8) and is categorized as a “dangerous
26 drug” pursuant to Business and Professions Code section 4022.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Unlawfully Obtaining and Possessing a Controlled Substance)**

3 14. Respondent's license is subject to disciplinary action under Code
4 section 2761, subdivision(a); Code section 2762, subdivision (a); Health and Safety Code
5 section 11171; and Health and Safety Code section 11173, subdivision (a), for unlawfully
6 obtaining and possessing controlled substances.

7 15. On or about August 10, 2005, while on duty as a nurse anesthetist during a
8 surgery at the Modern Institute of Plastic Surgery, in Beverly Hills, California, Respondent
9 unlawfully and fraudulently obtained and possessed Fentanyl (a Schedule II controlled substance)
10 and/or Demerol (a schedule II controlled substance) when he injected himself in the left wrist
11 with Fentanyl and/or Demerol, medication that was intended for the surgical patient.

12 16. After Respondent was observed injecting himself, police were called and
13 Respondent was arrested. The arresting officers observed a fresh injection mark on
14 Respondent's wrist. With Respondent's permission, police officers subsequently searched
15 Respondent's car and discovered various bottles of medication and loose syringes that allegedly
16 contained Fentanyl and Demerol.

17 **SECOND CAUSE FOR DISCIPLINE**

18 **(Use of a Controlled Substance in a Manner Dangerous to Self and Others)**

19 17. Respondent's license is subject to disciplinary action under section 2761,
20 subdivisions (a) and (d), and section 2762, subdivision(b), in that on or about August 10, 2005,
21 while on duty as a nurse anesthetist during a surgical operation at the Modern Institute of Plastic
22 Surgery, in Beverly Hills, California, Respondent used and was under the influence of Fentanyl, a
23 controlled substance, and/or Demerol, a controlled substance, in a manner dangerous or injurious
24 to himself, the patient, and others, as set forth above in paragraphs 14 through 16. Additionally,
25 Respondent was observed to have constricted pupils and slurred speech.

26 18. Respondent's danger to self and others is further demonstrated by his
27 termination from the Board's diversion program, due to the Project Manager's determination that
28

1 Respondent presented a "public risk." While in the program, Respondent had tested positive
2 twice for the use of alcohol. He was terminated from the diversion program due to these two
3 positive test results, and a history of diverting, relapsing, and lying.

4 **THIRD CAUSE FOR DISCIPLINE**

5 **(Incompetence or Gross Negligence)**

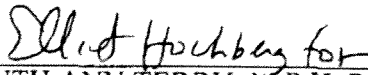
6 19. Respondent's license is subject to disciplinary action under Code section
7 2761, subdivision (a)(1) in that Respondent's actions of August 10, 2005, when he injected
8 himself with Fentanyl and/or Demerol while working as a nurse anesthetist, amounted to
9 *incompetence and/or negligence, as more fully set forth in paragraphs 14 through 17, above.*

10 **PRAYER**

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

- 13 1. Revoking or suspending Registered Nurse License No. 538006, issued to
14 Respondent;
- 15 2. Revoking or suspending Anesthetist License No. 2676, issued to
16 Respondent;
- 17 3. Ordering Respondent to pay the Board the reasonable costs of the
18 investigation and enforcement of this case, pursuant to Business and Professions Code section
19 125.3; and
- 20 4. Taking such other and further action as deemed necessary and proper.

21
22 DATED: 12/5/07

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24 
25 _____
26 RUTH ANN TERRY, M.P.H., R.N.
27 Executive Officer
28 Board of Registered Nursing
State of California
Complainant