

BEFORE THE
BOARD OF VOCATIONAL NURSING
AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

Case No. 6861

DAVID JOSEPH ROBERGE
162 West Wabash Street, Apt B
San Bernardino, CA 92405

OAH No. L-2006031021

Vocational Nurse License No.
VN 152569

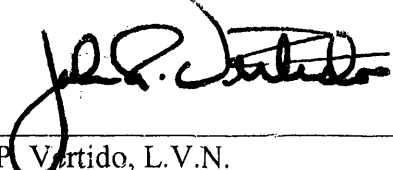
Respondent.

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Vocational Nursing and Psychiatric Technicians as the Final Decision in the above entitled matter.

This Decision shall become effective on June 15, 2007.

IT IS SO ORDERED this 16TH day of May, 2007.



John P. Vartido, L.V.N.
President

BILL LOCKYER, Attorney General
of the State of California
MICHAEL A. CACCIOTTI, State Bar No. 129533,
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California Department of Justice
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Attorneys for Complainant

**BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

DAVID JOSEPH ROBERGE
162 West Wabash Street, Apt. C
San Bernardino, CA 92405

Vocational Nurse License No. VN 152569

Respondent.

Case No. 6861

OAH No. L-2006031021

**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. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) is the Executive
Officer of the Board of Vocational Nursing and Psychiatric Technicians. 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 Michael A. Cacciotti, Deputy Attorney General.

2. Respondent David Joseph Roberge (Respondent) is representing himself
in this proceeding and has chosen not to exercise his right to be represented by counsel.

3. On or about June 3, 1991, the Board of Vocational Nursing and
Psychiatric Technicians issued Vocational Nurse License No. VN 152569 to Respondent. The
License was in full force and effect at all times relevant to the charges brought in Accusation No.

1 6861 and will expire on September 30, 2006, unless renewed.

2 JURISDICTION

3 4. Accusation No. 6861 was filed before the Board of Vocational Nursing
4 and Psychiatric Technicians (Board) , Department of Consumer Affairs, and is currently pending
5 against Respondent. The Accusation and all other statutorily required documents were properly
6 served on Respondent on February 21, 2006. Respondent timely filed his Notice of Defense
7 contesting the Accusation. A copy of Accusation No. 6861 is attached as exhibit A and
8 incorporated herein by reference.

9 ADVISEMENT AND WAIVERS

10 5. Respondent has carefully read, and understands the charges and allegations
11 in Accusation No. 6861. Respondent has also carefully read, and understands the effects of this
12 Stipulated Settlement and Disciplinary Order.

13 6. Respondent is fully aware of his legal rights in this matter, including the
14 right to a hearing on the charges and allegations in the Accusation; the right to be represented by
15 counsel at his own expense; the right to confront and cross-examine the witnesses against him;
16 the right to present evidence and to testify on his own behalf; the right to the issuance of
17 subpoenas to compel the attendance of witnesses and the production of documents; the right to
18 reconsideration and court review of an adverse decision; and all other rights accorded by the
19 California Administrative Procedure Act and other applicable laws.

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

22 CULPABILITY

23 8. Respondent admits the truth of each and every charge and allegation in
24 Accusation No. 6861.

25 9. Respondent agrees that his Vocational Nurse License is subject to
26 discipline and he agrees to be bound by the Board 's imposition of discipline as set forth in the
27 Disciplinary Order below.

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1 1996. Respondent shall also submit a recent 2" x 2" photograph of himself within thirty (30)
2 days of the effective date of the decision.

3 **2. Compliance With Probation Program And Quarterly Report**

4 **Requirements.** Respondent shall fully comply with terms and conditions of the probation
5 established by the Board and shall cooperate with the representatives of the Board in its
6 monitoring and investigation of the Respondent's compliance with the Probation Program.

7 Respondent shall submit quarterly reports, under penalty of perjury, in a form
8 required by the Board. The reports shall certify and document compliance with all the conditions
9 of probation.

10 **3. Notification of Address And Telephone Number Change(s).**

11 Respondent shall notify the Board, in writing, within five (5) days of a change of residence or
12 mailing address, of his new address and any change in his work and/or home telephone numbers.

13 **4. Notification of Residency or Practice Outside of State.** Respondent

14 shall notify the Board, in writing, within five (5) days, if he leaves California to reside or practice
15 in another state.

16 Respondent shall notify the Board, in writing, within five (5) days, upon his return
17 to California.

18 The period of probation shall not run during the time Respondent is residing or
19 practicing outside California.

20 **5. Notification to Employer(s).** When currently employed or applying for

21 employment in any capacity in any health care profession, Respondent shall notify his employer
22 of the probationary status of Respondent's license. This notification to the Respondent's current
23 health care employer shall occur no later than the effective date of the Decision. Respondent
24 shall notify any prospective health care employer of his probationary status with the Board prior
25 to accepting such employment. This notification shall be by providing the employer or
26 prospective employer with a copy of the Board's Accusation and Disciplinary Decision.

27 The Health Care Profession includes, but is not limited to: Licensed Vocational
28 Nurse, Psychiatric Technician, Registered Nurse, Medical Assistant, Paramedic, Emergency

1 Medical Technician, Certified Nursing Assistant, Home Health Aide, and all other ancillary
2 technical health care positions.

3 Respondent shall cause each health care employer to submit quarterly reports to
4 the Board. The reports shall be on a form provided by the Board, shall include a performance
5 evaluation and such other information as may be required by the Board.

6 Respondent shall notify the Board, in writing, within five (5) days of any change
7 in employment status. Respondent shall notify the Board, in writing, if he is terminated from any
8 nursing or health care related employment with a full explanation of the circumstances
9 surrounding the termination.

10 6. **Interviews/meetings With Board Representative(s).** Respondent,
11 during the period of probation, shall appear in person at interviews/meetings as directed by the
12 Board, or its designated representatives.

13 7. **Employment Requirements And Limitations.** During probation,
14 Respondent shall work in his licensed capacity in the State of California. This practice shall
15 consist of no less than six (6) continuous months and of no less than twenty (20) hours per week.

16 While on probation, Respondent shall not work for a nurses' registry or in any
17 private duty position, a temporary nurse placement agency, as a faculty member in an accredited
18 or approved school of nursing, or as an instructor in a Board approved continuing education
19 course except as approved, in writing, by the Board. Respondent shall work only on a regularly
20 assigned, identified and predetermined work site(s) and shall not work in a float capacity except
21 as approved, in writing, by the Board.

22 8. **Supervision Requirements.** Respondent shall obtain prior approval from
23 the Board, before commencing any employment, regarding the level of supervision provided to
24 Respondent while employed as a licensed vocational nurse or psychiatric technician.

25 Respondent shall not function as a charge nurse (i.e., work in any healthcare
26 setting as the person who oversees or directs licensed vocational nurses, psychiatric technicians,
27 certified nursing assistants or unlicensed assistive personnel) or supervising psychiatric
28 technician during the period of probation except as approved, in writing, by the Board.

1 9. **Completion of Educational Course(s).** Respondent, at his own expense,
2 shall enroll and successfully complete a course(s) substantially related to the violation(s) no later
3 than the end of the first year of probation; or Respondent shall be suspended from practice, until
4 he has enrolled in and has successfully completed the specified coursework.

5 The coursework shall be in addition to that required for license renewal. The
6 Board shall notify Respondent of the course content and number of contact hours required.
7 Within thirty (30) days of the Board's written notification of assigned coursework, Respondent
8 shall submit a written plan to comply with this requirement. The Board shall approve such plan
9 prior to enrollment in any course of study.

10 Upon successful completion of the course, Respondent shall cause the instructor
11 to furnish proof to the Board within thirty (30) days of course completion.

12 10. **Maintenance of Valid License.** Respondent shall, at all times while on
13 probation, maintain an active current license with the Board, including any period during which
14 suspension or probation is tolled.

15 Should respondent's license, by operation of law or otherwise, expire, upon
16 renewal or reinstatement respondent's license shall be subject to any and all terms of this
17 probation not previously satisfied.

18 11. **Cost Recovery Requirements.** Respondent shall pay to the Board
19 pursuant to Business and Professions Code Section 125.3 the costs of investigation and
20 enforcement in this matter in the amount of \$5,000.00. Respondent shall be permitted to pay
21 these costs in a payment plan approved by the Board, with the payments to be completed no later
22 than three months prior to the end of the probation term. Failure to complete payment of cost
23 recovery within this time frame shall constitute a violation of probation which may subject
24 Respondent's license to outright revocation.

25 The Board may conditionally renew or reinstate, for a maximum of one year, the
26 license of any respondent who demonstrates financial hardship. Respondent shall enter into a
27 formal agreement with the Board to reimburse the unpaid costs within that one year period.

28 Except as provided above, the Board shall not renew or reinstate the license of any

1 Respondent who has failed to pay all the costs as directed in a Decision.

2 12. **Violation of Probation.** If Respondent violates the conditions of his
3 probation, the Board after giving Respondent notice and an opportunity to be heard, may set
4 aside the stay order and impose the stayed discipline (revocation) of the Respondent's license. If
5 during the period of probation, an accusation or petition to revoke has been filed against the
6 Respondent's license or the Attorney General's Office has been requested to prepare an
7 accusation or petition to revoke probation against the Respondent's license, the probationary
8 period shall automatically be extended and shall not expire until the accusation or petition has
9 been acted upon by the Board. Upon successful completion of probation, the Respondent's
10 license will be fully restored.

11 13. **Chemical Dependency Support/recovery Groups.** Within five (5) days
12 of the effective date of the Decision, Respondent shall begin attendance at a chemical
13 dependency support group (e.g. Alcoholics Anonymous, Narcotics Anonymous, Nurse Support
14 Group). Verified documentation of attendance shall be submitted by Respondent with each
15 quarterly report. Respondent shall continue attendance in such a group for the duration of
16 probation.

17 14. **Abstain From Controlled Substances.** Respondent shall completely
18 abstain from the personal use or possession of controlled substances, as defined in the California
19 Uniform Controlled Substances Act, and dangerous drugs as defined in Section 4021 and 4022 of
20 the Business and Professions Code, except when lawfully prescribed by a licensed practitioner
21 for a bona fide illness.

22 15. **Abstain From Use of Alcohol.** Respondent shall completely abstain from
23 the use of alcoholic beverages during the period of probation.

24 16. **Submit Biological Fluid Samples.** Respondent shall immediately submit
25 to biological fluid testing, at Respondent's cost, upon request by the Board or its designee. There
26 will be no confidentiality in test results; positive test results will be immediately reported to the
27 Board and the Respondent's current employer.

28 ///

1 ACCEPTANCE

2 I have carefully read the Stipulated Settlement and Disciplinary Order. I
3 understand the stipulation and the effect it will have on my Vocational Nurse License. I enter
4 into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently,
5 and agree to be bound by the Decision and Order of the Board of Vocational Nursing and
6 Psychiatric Technicians.

7 DATED: 11 July 2006

8 
9 DAVID JOSEPH ROBERGE
10 Respondent

11
12
13 ENDORSEMENT

14 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
15 submitted for consideration by the Board of Vocational Nursing and Psychiatric Technicians of
16 the Department of Consumer Affairs.

17
18 DATED: July 13, 2006

19 BILL LOCKYER, Attorney General
20 of the State of California

21 
22 MICHAEL A. CACCIOTTI
23 Deputy Attorney General

24 Attorneys for Complainant

Exhibit A

Accusation No. 6861

1 BILL LOCKYER, Attorney General
of the State of California
2 MICHAEL A. CACCIOTTI, State Bar No. 129533
Deputy Attorney General
3 California Department of Justice
300 So. Spring Street, Suite 1702
4 Los Angeles, CA 90013
Telephone: (213) 897-2932
5 Facsimile: (213) 897-2804

6 Attorneys for Complainant

7
8 **BEFORE THE**
9 **BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 6861

12 DAVID JOSEPH ROBERGE
162 West Wabash Street, Apt. C
13 San Bernardino, CA 92405

A C C U S A T I O N

14 Vocational Nurse License No. VN 152569

15 Respondent.

16
17 Complainant alleges:

18 PARTIES

- 19 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this
20 Accusation solely in her official capacity as the Executive Officer of the Board of Vocational
21 Nursing and Psychiatric Technicians, Department of Consumer Affairs (Board).
- 22 2. On or about June 3, 1991, the Board issued Vocational Nurse License No.
23 VN 152569 to David Joseph Roberge (Respondent). The Vocational 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, 2006, unless renewed.

26 JURISDICTION

- 27 3. This Accusation is brought before the Board under the authority of the
28 following laws. All section references are to the Business and Professions Code unless otherwise

1 indicated.

2 4. Section 2875 provides, in pertinent part, that the Board may discipline the
3 holder of a vocational nurse license for any reason provided in Article 3 (commencing with
4 section 2875) of the Vocational Nursing Practice Act.

5 5. Section 2878 states, in pertinent part:

6 "The Board may suspend or revoke a license issued under this chapter [the
7 Vocational Nursing Practice Act (Bus. & Prof. Code, § 2840, et seq.)] for any of the following:

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

9

10 "(d) Violating or attempting to violate, directly or indirectly, or assisting in or
11 abetting the violating of, or conspiring to violate any provision or term of this chapter [the
12 Vocational Nursing Practice Act].

13

14 "(f) Conviction of a crime substantially related to the qualifications, functions,
15 and duties of a licensed vocational nurse, in which event the record of the conviction shall be
16 conclusive evidence of the conviction.

17

18 "(j) The commission of any act involving dishonesty, when that action is related
19 to the duties and functions of the licensee. . . ."

20 6. Section 2878.5 states, in pertinent part:

21 "In addition to other acts constituting unprofessional conduct within the meaning
22 of this chapter, it is unprofessional conduct for a person licensed under this chapter to do any of
23 the following:

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

28 "(b) Use any controlled substance as defined in Division 10 of the Health and

1 Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic beverages, to an
2 extent or in a manner dangerous or injurious to himself or herself, any other person, or the public,
3 or to the extent that the use impairs his or her ability to conduct with safety to the public the
4 practice authorized by his or her license.

5 "(c) Be convicted of a criminal offense involving possession of any narcotic or
6 dangerous drug, or the prescription, consumption, or self-administration of any of the substances
7 described in subdivisions (a) and (b) of this section, in which event the record of the conviction is
8 conclusive evidence thereof. . . ."

9 7. Section 490 provides, in pertinent part, that the Board may suspend or
10 revoke a license when it finds that the licensee has been convicted of a crime substantially related
11 to the qualifications, functions or duties of a licensed vocational nurse.

12 8. California Code of Regulations, title 16, section 2521, states, in pertinent
13 part:

14 "For the purposes of denial, suspension, or revocation of a license pursuant to
15 Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or
16 act shall be considered to be substantially related to the qualifications, functions or duties of a
17 licensed vocational nurse if to a substantial degree it evidences present or potential unfitness of a
18 licensed vocational nurse to perform the functions authorized by his license in a manner
19 consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be
20 limited to those involving the following:

21

22 "(c) Violating or attempting to violate, directly or indirectly, or assisting in or
23 abetting the violation of, or conspiring to violate any provision or term of Chapter 6.5, Division 2
24 of the Business and Professions Code.

25

26 "(e) Conviction of a crime involving fiscal dishonesty.

27 "(f) Any crime or act involving the sale, gift, administration, or furnishing of
28 "narcotics or dangerous drugs or dangerous devices" as defined in Section 4022 of the Business

1 and Professions Code."

2 9. Section 118, subdivision (b), provides, in pertinent part, that the expiration
3 of a license shall not deprive the Board jurisdiction to proceed with a disciplinary action during
4 the period within which the license may be renewed, restored, reissued or reinstated. Under
5 section 2892.1 of the Code, the Board may renew an expired license at any time within four years
6 after the expiration.

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

11 CONTROLLED SUBSTANCE / DANGEROUS DRUG

12 11. Methamphetamine, a stimulant, is a Schedule II controlled substance as
13 designated by Health and Safety Code section 11055, subdivision (d)(2), and is categorized as a
14 dangerous drug pursuant to Business and Professions Code section 4022.

15 FIRST CAUSE FOR DISCIPLINE

16 (Convictions of Crimes)

17 12. Respondent is subject to disciplinary action under sections 490 and 2878,
18 subdivisions (d) and (f), in conjunction with California Code of Regulations, title 16,
19 section 2521, subdivisions (c), (e) and (f), for having been convicted of crimes that are
20 substantially related to the qualifications, functions or duties of a licensed vocational nurse. The
21 circumstances regarding such convictions are as follows:

22 a. MANUFACTURE OF METHAMPHETAMINE - FELONY
23 IN PRESENCE OF CHILD UNDER AGE 16

24 On or about January 8, 2001, in a criminal proceeding entitled *The People of the*
25 *State of California v. David Joseph Roberge* in Riverside County Superior Court, Case No.
26 RIF094685, Respondent was convicted on his plea of *guilty* for violating Health and Safety Code
27 section 11379.6(a) (manufacturing chemical extraction controlled substance, to wit,
28 methamphetamine, a controlled substance and dangerous drug), a felony, and Respondent

1 admitted to the sentencing enhancement pursuant to Health and Safety Code section 11379.7(a)
2 (conviction of manufacturing methamphetamine within a structure with a child under age 16
3 present).

4 The circumstances concerning this conviction are that on or about December 12,
5 2000, Riverside Police Department (RPD) officers responded to a complaint resulting from an
6 anonymous call to their Narcotics Information Line regarding a methamphetamine lab at
7 Respondent's residence. The complaint included information that there was an infant and other
8 children between the ages of 3 and 10 living at the residence. RPD officers arrested Respondent
9 after they found methamphetamine producing lab equipment in his residence and storage shed.
10 Additional contaminated lab equipment was found pursuant to a search warrant at Respondent's
11 rented storage facility. The lab equipment was contaminated with methamphetamine and its
12 chemical compounds. Due to the large amount of lab equipment found, RPD's Hazardous Waste
13 Haulers and Technical Services Unit processed, marked and booked into evidence items and
14 samples of the methamphetamine and its production equipment. Child Protective Services took
15 charge of the juveniles at Respondent's residence.

16 b. SHOPLIFTING (SUDAFED) - MISDEMEANOR

17 On or about January 8, 2001, in a criminal proceeding entitled *The People of the*
18 *State of California v. David Joseph Roberge* in Riverside County Superior Court, Case No.
19 RIM371918, Respondent was convicted on his plea of *guilty* for violating Penal code section
20 484/490.5 (petty theft, to wit, sudafed), a misdemeanor.

21 The circumstances concerning this conviction are that on or about July 25, 1998,
22 RPD officers arrested Respondent after he was found and detained by Stater Bros. security
23 officers for stealing four (4) bottles of "Gold Crest" psudatabs (generic Sudafed) (30mg, 24
24 tablets). Sudafed, and or its derivative, is a chemical component of synthesizing
25 methamphetamine, a controlled substance and dangerous drug.

26 SECOND CAUSE FOR DISCIPLINE

27 (Conviction of Crime Involving Controlled Substances)

28 13. Respondent is subject to disciplinary action under section 2878,

1 subdivisions (a) and (d), for engaging in unprofessional conduct as defined in section 2878.5,
2 subdivision (c), in conjunction with California Code of Regulations, title 16, section 2521,
3 subdivisions (c) and (f), in that on or about January 8, 2001, Respondent was convicted of a
4 criminal offense involving methamphetamine, a controlled substance and dangerous drug, as
5 more fully set forth above in paragraph 12(a).

6 THIRD CAUSE FOR DISCIPLINE

7 (Unlawful Possession / Use of Methamphetamine)

8 14. Respondent is subject to disciplinary action under section 2878,
9 subdivisions (a) and (d), for engaging in unprofessional conduct as defined in section 2878.5,
10 subdivisions (a) and (b), in conjunction with California Code of Regulations, title 16, section
11 2521, subdivisions (c) and (f), by obtaining, possessing, or using methamphetamine, a controlled
12 substance and dangerous drug, in violation of law to an extent or in a manner dangerous or
13 injurious to himself, any other person, or the public, as more fully set forth above in paragraphs
14 12(a) and 13.

15 FOURTH CAUSE FOR DISCIPLINE

16 (Dishonest Acts)

17 15. Respondent is subject to disciplinary action under section 2878,
18 subdivisions (a), (d) and (j), in conjunction with California Code of Regulations, title 16, section
19 2521, subdivision (e) for committing dishonest acts which violated provisions or terms of the
20 Vocational Nursing Practice Act (Bus. & Prof. Code § 2840 et seq.), as more fully set forth
21 above in paragraph 12(b).

22 PRAYER

23 WHEREFORE, Complainant requests that a hearing be held on the matters herein
24 alleged, and that following the hearing, the Board of Vocational Nursing and Psychiatric
25 Technicians issue a decision:

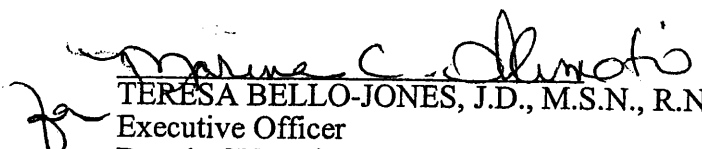
26 1. Revoking or suspending Vocational Nurse License No. VN 152569, issued
27 to David Joseph Roberge.

28 2. Ordering David Joseph Roberge to pay the Board of Vocational Nursing

1 and Psychiatric Technicians the reasonable costs of the investigation and enforcement of this
2 case, pursuant to Business and Professions Code section 125.3;

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

4
5 DATED: February 21, 2006

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7
8 
9 TERESA BELLO-JONES, J.D., M.S.N., R.N.
10 Executive Officer
11 Board of Vocational Nursing and Psychiatric Technicians
12 Department of Consumer Affairs
13 State of California

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ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Vocational Nurse License. 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 Vocational Nursing and Psychiatric Technicians.

DATED: _____

DAVID JOSEPH ROBERGE
Respondent

ENDORSEMENT

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

DATED: _____

BILL LOCKYER, Attorney General
of the State of California

MICHAEL A. CACCIOTTI
Deputy Attorney General

Attorneys for Complainant