

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. VN-2002-148

DAVID LELAND LOWE
19594 Dover Drive
Hilmar, CA 95324

OAH No. N2007010652

Vocational Nurse License
Number VN 142647

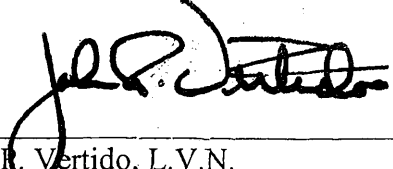
Respondent.

DECISION

The attached Proposed Decision of the Administrative Law Judge 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, 2006.



John R. Vertido, L.V.N.
President

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

In the Matter of the Accusation Against:

DAVID LELAND LOWE
19594 Dover Drive
Hilmar, California 95324

Vocational Nurse License No. VN 142647,

Respondent.

Case No. VN-2002-148

OAH No. N2007010652

PROPOSED DECISION

This matter was heard before Michael C. Cohn, Administrative Law Judge, State of California, Office of Administrative Hearings, in Oakland, California, on March 29, 2007.

Complainant Teresa Bello-Jones, J.D., M.S.N., R.N., Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians, was represented by Leslie E. Brast, Deputy Attorney General.

Respondent David Lowe represented himself.

The matter was submitted for decision on March 29, 2007.

FACTUAL FINDINGS

1. On January 9, 1989, the Board of Vocational Nursing and Psychiatric Technicians issued Vocational Nurse License Number VN 142647 to respondent David Leland Lowe. The license has been renewed through April 30, 2008.

2. On November 15, 2001, respondent was convicted in Lake County, on his plea of guilty, of a felony violation of Penal Code section 288, subdivision (c)(1), lewd or lascivious act upon a child of 14 or 15 by a person at least 10 years older. This is a crime that is substantially related to the qualifications, functions and duties of a licensed vocational nurse because to a substantial degree it evidences a potential unfitness to practice. (Cal. Code Regs., tit. 16, § 2521.)

3. Upon conviction, respondent was committed to San Quentin State Prison for evaluation as a pedophile. Respondent spent about 50 days at San Quentin and was then returned to jail in Lake County. He was released from incarceration in March 2002. On November 22, 2002, imposition of sentence was suspended and respondent was placed on three years' probation, retroactive to May 2, 2002. Conditions of probation included a 91-day jail sentence with credit for 61 days served and 30 days for good behavior, fines and fees totaling \$270, restitution in an amount to be determined, 300 hours of community service, participation in counseling as directed by his probation officer, and registration as a sex offender under Penal Code section 290.

4. The incidents that resulted in respondent's conviction occurred in 1995 and 1996. They first came to light in December 2000 when the victim of respondent's crime reported it to the Lake County Sheriff's Department. The victim, who was then 19 years old, had apparently first revealed the incident in marriage counseling. She told the interviewing deputy that she had been on vacation with her family in Lake County over the Labor Day weekend in 1995. She had been drinking with some friends when she was introduced to respondent. She was then 14 years old and respondent was 31. He began flirting with her and kissing her, and they then had intercourse. She had no further contact with respondent that weekend. Over the Memorial Day weekend in 1996, the victim went on a horseback ride with a woman she knows. Coincidentally, respondent was also on that ride and they briefly discussed what had happened the prior summer. Later in the summer of 1996 the victim went on another horseback ride with respondent. Respondent had brought some beer but she did not say whether she drank any. When they stopped during the ride, the victim performed oral sex on respondent. She had no further sexual contact with respondent after that summer.

5. Respondent was first contacted by the investigating Lake County deputy sheriff in March 2001. During this interview, which occurred in the emergency department at Kaweah Medical Center in Visalia where he was then working, respondent admitted he had been sexually active with the victim on at least two occasions. He stated that the victim was the aggressor in both instances. During the first incident, they were both intoxicated. In his report, the deputy sheriff wrote, "[Respondent] appeared somewhat remorseful, stating that he knew he had made bad decisions, and that alcohol had been a contributing factor. [Respondent] told me that he knew [the victim] was under age each time sexual activity took place with her, but maintained she was the aggressor."

6. On August 16, 2001, respondent was arrested at his home by a Visalia police officer acting at the request of the Lake County Sheriff's Department. Respondent told the arresting officer that he was supposed to work in the emergency room later that day and asked if he could call his supervisor to advise her he would not be coming to work. The officer overheard respondent telling his supervisor that he was being arrested for the incident about which detectives had questioned him at work several months earlier. The officer wrote that respondent told his supervisor "that he had made a mistake and had sexual relations with a 'promiscuous' girl that was under age at the time."

7. Respondent reported his conviction to the board when he filed his application for license renewal in April 2002. He reported it again on his renewal application in April 2004. On June 30, 2004, the board sent respondent a letter asking him to provide a detailed description of his crime, certified court documents, and certified police reports. The letter stated that a similar request had been made on July 30, 2002, but that respondent had not responded. In an undated letter, respondent provided the board a detailed description of the 1995 and 1996 incidents, explained that he had been unable to obtain the requested documents but provided contact information for the Lake County Sheriff's Department, and asserted he had not received the board's request of July 30, 2002. In April 2006, respondent's license was renewed for the third time since his conviction. On November 1, 2006, complainant filed the accusation seeking to discipline respondent's license based upon his conviction.

8. At the hearing, respondent testified about his crime consistent with his statements to the investigating deputy sheriff. He also said that while he knew the victim was under age he did not know exactly how old she was. He again said the victim was the aggressor and asserted that he tried to "say no" but did not do so "hard enough." Respondent testified credibly that he regrets his conduct, which he described as "severely wrong" and "a grievous error in judgment." While he recognizes he will be labeled a sex offender for the rest of his life, respondent maintains that he is not a pedophile, a sexual deviant, or a threat to society. He believes the "circle [for the sex offender label] has been drawn far too large" and he has been included in it, painting him as something he is not. He has no doubt that he will never again engage in sexual conduct with a minor.

9. Respondent has been employed by a nursing registry, Vital Signs Nursing Services, Inc., for the past four or five years. Lisa Cady, R.N.-C., is owner and director of nursing services for Vital Signs. She wrote that respondent "is, by far, the best Licensed Vocational Nurse we have ever employed." She went on to state:

Integrity and ownership of one's actions is hard to find. Of the 300 nurses we have employed over the last six years, [respondent] best represents these rare qualities. In 2004, Vital Signs awarded him Licensed Vocational Nurse of the Year. In 2005, he was awarded Nurse of the Year. In December, it was our great honor to present him our highest award; Employee of the Year. . . .

Nursing is a profession based on standards of practice and a code of ethics. [Respondent] has never violated these standards or ethics. He has been forthcoming about his past. His honesty and work ethic best represents the model Licensed Vocational Nurse.

10. During the time of his employment by Vital Signs respondent has worked exclusively at Mercy Medical Center in Merced. He initially worked in the emergency room

and on 3 West, an integrated medical/surgical and pediatric unit. (Mercy is a "relatively small" hospital that does not have a separate pediatric unit.) For the past three years he has been supervised by Sydney Ayotte, R.N., director of the hospital's surgical, endoscopy and infusion services. Respondent spends most of his time working in the recovery room – the Post-Anesthetic Care Unit – where he performs one-on-one critical care nursing for both adult and pediatric patients. He is sometimes assigned to the endoscopy unit and sometimes to the infusion unit. Ayotte testified on respondent's behalf. She finds him to be an exceptionally skilled nurse. She has never heard of his engaging in any inappropriate conduct with a patient. In a letter that supplemented her testimony, Ayotte wrote that respondent "has demonstrated only the most professional behavior while providing safe and competent patient care."

11. Ayotte learned of respondent's conviction after she had hired him to work in surgical services. He came to her to tell her he was on "Megan's List." He described to her the circumstances leading to his conviction. Ayotte then had respondent make the same disclosures to Kathleen Dawson, R.N., B.S.N., the medical center's chief nurse executive and vice president for nursing. Dawson has also written a letter of support for respondent. She stated that, "In all his actions [respondent] displays the hospital's core values and has always functioned at our highest standard of performance." Respondent has been forthcoming about his conviction with his co-workers. Many of them wrote letters in support of him. They variously describe respondent as compassionate, caring, enthusiastic, dependable, dedicated, and hard-working. In a letter signed by about 40 employees of Mercy Medical Center, including physicians, nurses, and other professionals, it is said, "He is the consummate professional. His behavior is beyond reproach with all of his patients regardless of age or sex. He is sensitive to all of his patients' needs and maintains their privacy and dignity. We would not hesitate to have him care for any of our family members. In the scope of his license we cannot think of a better nurse, not only in this department but in the whole hospital."

12. Respondent has paid fines and restitution totaling \$1,406.09. He maintains that the evaluation he underwent at San Quentin found him not to be a pedophile, and although his probation conditions required him to undergo counseling as recommended by his probation officer, no counseling was ever recommended. While respondent's probation was scheduled to end in May 2005, he remains on probation because he has not yet completed 300 hours of community service. He has completed about 100 hours.

13. Respondent is now 43. He has been married for two years. He has a nine-year-old son from a prior union for whom he pays court-ordered child support.

14. The board has incurred legal fees in the prosecution of this matter in the amount of \$2,689.75. These costs, representing 12.75 hours of attorney services and 7.25 hours of legal assistant services, are found to be reasonable.

LEGAL CONCLUSIONS

1. Business and Professions Code section 2878, subdivision (f), provides that the board may suspend or revoke a license if the licensee has been convicted of a crime that is substantially related to the qualifications, functions and duties of a licensed vocational nurse. Respondent is subject to discipline under this section by reason of the conviction set forth in Finding 2.

2. In California Code of Regulations, title 16, section 2522.5, the board has adopted criteria to be considered when evaluating the rehabilitation of a licensee convicted of a crime. Those criteria include the nature and severity of the offense, the total criminal record, the time elapsed since the offense, whether the licensee has complied with conditions of probation, and any other evidence of rehabilitation submitted by the licensee.

The incidents that resulted in respondent's conviction occurred 11 and 12 years ago. There is no indication respondent has any other criminal record. Except for completion of his community service, respondent has complied with the terms of his probation. In addition, in the time since his conviction respondent has shown himself to be a dedicated, caring, and responsible nurse. He has established an enviable reputation at Mercy Medical Center and has earned the respect and support of co-workers across a spectrum of professions. Respondent has established a stable family life and is meeting his responsibilities to his son.

Complainant argues, however, that respondent cannot be considered rehabilitated because he has not shown true recognition of his wrongdoing – he continues to blame the 14-year-old victim, labeling her as the aggressor – and has not, therefore, taken full responsibility for his actions. In addition, complainant points out that respondent has undergone no treatment or therapy to deal with his crime, and that he remains on probation even though that should have ended in 2005. Therefore, complainant argues, it would be premature to place respondent on probation and his license should be revoked.

Despite the arguments made by complainant, it is determined that respondent has sufficiently rehabilitated himself that it would not be against the public interest to allow him to continue practicing as a licensed vocational nurse upon probationary terms and conditions. Respondent has not been shown to be a sexual predator. Although he does place some blame on the victim, he sincerely recognizes that his conduct was “severely wrong” and represented “a grievous error in judgment.” While he may not have used the words complainant may have wanted to hear, respondent has recognized, and taken responsibility for, his wrongdoing. He has led what appears to be an exemplary life since the last incident in 1996 and should be allowed the opportunity to continue working in his profession.

3. Complainant requests that, if probation is granted, it include a restriction on respondent's practice that would limit him to treating only adults. It is determined that such a condition is neither warranted nor practical. To begin with, because of the size and structure of Mercy Medical Center, it would not be feasible to restrict respondent from

working with children. But such a restriction is not necessary in that, as the evidence showed, respondent has never acted unprofessionally with a patient of any age, is not a sexual predator, and is not a danger to young patients. The standard terms of probation include a prohibition against working for a nurses' registry except upon the board's written approval. Because respondent has been successfully working for the Vital Signs Nursing Services, Inc., registry for several years, employment with that agency is approved.

4. Business and Professions Code section 125.3 provides that a licentiate found to have violated the licensing law may be ordered to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. Pursuant to that section, cause exists to order respondent to reimburse the board the sum of \$2,689.75. Respondent shall be permitted to pay this sum through monthly, semi-annual or annual payments, as determined by the board or its designee. Respondent shall have the entire probationary period in which to complete payments.

ORDER

Vocational Nurse License Number VN 142647 issued to respondent David Leland Lowe is revoked; provided, however, that the revocation is stayed and respondent is placed on probation to the Board for five years upon the following terms and conditions:

1. Obey All Laws – Respondent shall obey all federal, state and local laws, including all statutes and regulations governing the license. Respondent shall submit, in writing, a full and detailed account of any and all violations of the law to the board within five days of occurrence. To ensure compliance with this term, respondent shall submit two completed fingerprint cards and the applicable fingerprint processing fees to the board within 30 days of the effective date of the decision, unless the board determines that fingerprint cards were already submitted by respondent as part of his licensure application process effective July 1, 1996. Respondent shall also submit a recent 2" x 2" photograph of himself within 30 days of the effective date of the decision.
2. Compliance With Probation Program and Quarterly Report Requirements – Respondent shall fully comply with terms and conditions of the probation established by the board and shall cooperate with the representatives of the board in its monitoring and investigation of respondent's compliance with the probation program.

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

3. Notification of Address and Telephone Number Change(s) – Respondent shall notify the board, in writing, within five days of a change of residence or

mailing address, of his new address and any change in his work and/or home telephone numbers.

4. Notification of Residency or Practice Out of State – Respondent shall notify the board, in writing, within five days, if he leaves California to reside or practice in another state.

Respondent shall notify the board, in writing, within five days, upon his return to California.

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

5. Notification to Employer(s) – When currently employed or applying for employment in any capacity in any health care profession, respondent shall notify his employer of the probationary status of his license. This notification to respondent's current health care employer shall occur no later than the effective date of this decision. Respondent shall notify any prospective health care employer of his probationary status with the board prior to accepting such employment. This notification shall be by providing the employer or prospective employer with a copy of the board's accusation and this decision.

The Health Care Profession includes, but is not limited to: Licensed Vocational Nurse, Psychiatric Technician, Registered Nurse, Medical Assistant, Paramedic, Emergency Medical Technician, Certified Nursing Assistant, Home Health Aide, and all other ancillary technical health care positions.

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

Respondent shall notify the board, in writing, within five days of any change in employment status. Respondent shall notify the board, in writing, if he is terminated from any nursing or health care related employment with a full explanation of the circumstances surrounding the termination.

6. Interviews/Meetings with Board Representative(s) – Respondent, during the period of probation, shall appear in person at interviews/meetings as directed by the board, or its designated representatives.
7. Employment Requirement and Limitations – During probation, respondent shall work in his licensed capacity in the State of California. This practice

shall consist of no less than six continuous months and of no less than 20 hours per week.

While on probation, respondent shall not work for a nurses' registry or in any private duty position, a temporary nurse placement agency, as a faculty member in an accredited or approved school of nursing, or as an instructor in a board-approved continuing education course except as approved, in writing, by the board. By this decision, employment by Vital Signs Nursing Services, Inc., is approved. Respondent shall work only on a regularly assigned, identified and predetermined work site(s) and shall not work in a float capacity except as approved, in writing, by the board.

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

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

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

The coursework shall be in addition to that required for license renewal. The board shall notify respondent of the course content and number of contact hours required. Within 30 days of the board's written notification of assigned coursework, respondent shall submit a written plan to comply with this requirement. The board shall approve such plan prior to enrollment in any course of study.

Upon successful completion of the course, respondent shall cause the instructor to furnish proof to the board within 30 days of course completion.

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

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

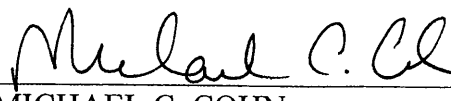
11. Cost Recovery Requirements – Pursuant to Business and Professions Code Section 125.3, respondent shall make timely payment of \$2,689.75 in accordance with Legal Conclusion 4 of this decision. Failure to make payments in accordance with any formal agreement entered into with the board or pursuant to any decision by the board shall be considered a violation of probation.

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

Except as provided above, the board shall not renew or reinstate the license of any respondent who has failed to pay all the costs as directed in a decision.

12. Violation of Probation – 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 revocation of respondent's license. If during the period of probation, an accusation or petition to revoke 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. Upon successful completion of probation, respondent's license will be fully restored.

DATED: April 5, 2007


MICHAEL C. COHN
Administrative Law Judge
Office of Administrative Hearings

1 BILL LOCKYER, Attorney General
of the State of California
2 FRANK H. PACOE, State Bar No. 91740
Supervising Deputy Attorney General
3 California Department of Justice
455 Golden Gate Avenue, Suite 11000
4 San Francisco, CA 94102-7004
Telephone: (415) 703-5556
5 Facsimile: (415) 703-5480

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. VN-2002-148

12 **DAVID LELAND LOWE**
19594 Dover Drive
13 Hilmar, California 95324

A C C U S A T I O N

14 Vocational Nurse License No. VN 142647

15 Respondent.

16
17 Teresa Bello-Jones, J.D., M.S.N., R.N. ("Complainant") alleges:

18 **PARTIES**

19 1. Complainant brings this Accusation solely in her official capacity as the
20 Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians, Department
21 of Consumer Affairs.

22 **Vocational Nurse License**

23 2. On or about January 9, 1989, the Board of Vocational Nursing and
24 Psychiatric Technicians issued Vocational Nurse License Number VN 142647 ("license") to
25 David Leland Lowe ("Respondent"). The license will expire on April 30, 2008 unless
26 otherwise renewed.

27 ///

28 ///

1

2

6

11

12

14

15

17

18

22

23

24

25

26

27

38

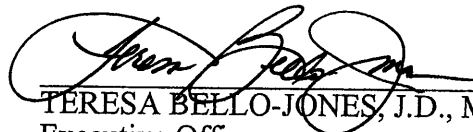
1 year old), a felony. Such conduct is substantially related to the qualifications, functions, or duties
2 of a license vocational nurse.

3 **PRAYER**

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

- 7 1. Revoking or suspending Vocational Nurse License Number VN 142647,
8 issued to David Leland Lowe;
- 9 2. Ordering David Leland Lowe to pay the Board of Vocational Nursing and
10 Psychiatric Technicians the reasonable costs of the investigation and enforcement of this case,
11 pursuant to Code section 125.3; and,
- 12 3. Taking such other and further action as deemed necessary and proper.

13 DATED: November 1, 2006

14
15 

16 TERESA BELLO-JONES, J.D., M.S.N., R.N.
17 Executive Officer
18 Board of Vocational Nursing and Psychiatric Technicians
19 Department of Consumer Affairs
20 State of California
21 Complainant
22
23
24
25
26