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

In the Matter of the Accusation
Against:

DONNA ELIZABETH REDCROSS
353 Carmelita Drive
Mt. View, CA 94040

Vocational Nurse License
Number VN 124629

Respondent.

Case No. VN-1999-350

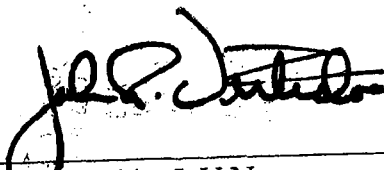
OAH No. N2007030255

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 October 4, 2007.

IT IS SO ORDERED this 4TH day of September, 2007.



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

BEFORE THE
BOARD OF VOCATIONAL NURSING AND
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DEPARTMENT OF CONSUMER AFFAIRS
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In the Matter of the Accusation Against:

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Mountain View, California 94040

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Respondent.

Case No. VN-1999-350

OAH No. N2007030255

PROPOSED DECISION

Administrative Law Judge Cheryl R. Tompkin, State of California, Office of Administrative Hearings heard this matter on June 15, 2007, in Oakland, California.

Kim M. Settles, Deputy Attorney General, represented the complainant, Teresa Bello-Jones.

Edgardo Gonzalez, Attorney at Law, 1300 Clay Street, Suite 600, Oakland, California 94612, represented respondent Donna Elizabeth Redcross, who was present at hearing.

The matter was submitted on June 15, 2007.

FACTUAL FINDINGS

1. Complainant Teresa Bello-Jones, J.D., M.S.N., R.N., made the Accusation in her official capacity as Executive Officer, Board of Vocational Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs.

2. On November 19, 1984, the Board issued vocational nurse license number VN 124629 to Donna Elizabeth Redcross (respondent). The license was in full force and effect at all times relevant to the subject proceeding. The license will expire on September 30, 2008, unless renewed.

3. On January 18, 2001, in the Superior Court of the State of California for the County of Alameda, respondent was convicted of violating Penal Code section 23152,

subdivision (b) (driving with a blood alcohol content of .08 percent or higher), a misdemeanor. Respondent was ordered to attend a first offender's drunk driving program, which she successfully completed on July 9, 2001.

The circumstances of the conviction are that on August 14, 2000, respondent drove a vehicle on a public roadway while under the influence of alcohol

4. On September 14, 1999, in the Superior Court of the State of California for the County of Santa Clara, respondent was convicted, on a plea of nolo contendere, of violating Penal Code section 666 (petty theft with priors - imprisonment as a condition of probation), a felony that bears a substantial relationship to the qualifications, functions and duties of a licensed vocational nurse (LVN). Respondent was sentenced to two years of formal probation on terms and conditions that included serving 90 days in jail and payment of fines and fees totaling \$370.50.

The circumstances of the conviction are that on March 15, 1999, respondent stole liquor and makeup from a Rite-Aid store in Mountain View, California.

5. On March 25, 1999, in the Municipal Court of the State of California for the County of Santa Clara, respondent was convicted, on a plea of nolo contendere, of violating Health and Safety Code section 11377, subdivision (a) (possession of a controlled substance), a misdemeanor that bears a substantial relationship to the qualifications, functions and duties of a LVN. Respondent was sentenced to two years of probation on terms and conditions that included serving 60 days in jail, random drug testing twice a month, completion of a drug rehabilitation program and payment of fines. Respondent represents she completed the drug program and otherwise complied with the conditions of her probation.

The circumstances of the conviction are that on November 27, 1996, respondent unlawfully possessed a controlled substance, methamphetamine.

6. On December 19, 1996, in the Municipal Court of the State of California for the County of Santa Clara, respondent was convicted, on a plea of nolo contendere, of violating Penal Code section 666 (petty theft with a prior), a misdemeanor that bears a substantial relationship to the qualifications, functions and duties of a LVN. Respondent was sentenced to three years of probation on terms and conditions that included serving 25 days in jail, performing 60 hours of volunteer work, participation in a "theft awareness" program and payment of fines and penalties totaling \$405.

The circumstances of the conviction are that on November 27, 1996, respondent stole retail merchandise from a Target store.

7. On September 21, 1994, in the Municipal Court of the State of California for the County of Santa Clara, respondent was convicted, on a plea of nolo contendere, of violating Penal Code sections 484/488 (petty theft), a misdemeanor that bears a substantial

relationship to the qualifications, functions and duties of a LVN. Respondent was placed on probation for a period of 18 months on terms and conditions that included serving 10 days in jail (which she was allowed to complete through a weekend work program) and payment of \$595 in fines.

The circumstances of the conviction are that on July 1, 1994, respondent took a shopping cart full of items, valued at \$213.96, from a Safeway store in Mountain View, California, without making any attempt to pay for said items.

8. On December 30, 1992, in the Municipal Court of the State of California for the County of Santa Clara, respondent was convicted, on a plea of guilty, of violating Vehicle Code section 12500, subdivision (a) (driving without a license with priors), a misdemeanor. Respondent was placed on eighteen months of probation on terms and conditions that included payment of fines, fees and assessments totaling \$196.

The circumstances of the conviction are that on September 30, 1992, respondent was cited by a Santa Clara Deputy Sheriff for driving without a license in her possession and for speeding.

8. On July 18, 1991, in the Municipal Court of the State of California for the County of Santa Clara, respondent was convicted, on a plea of guilty, of violating Vehicle Code section 12500 (driving without a license). Respondent was required to pay fines totaling \$93.

9. On May 2, 1990, in the Municipal Court of the State of California for the County of Santa Clara, respondent was convicted, on a plea of guilty, of violating Vehicle Code section 14601.1, subdivision (a) (driving when privileges suspended or revoked). Respondent was placed on three years probation on terms and conditions that included payment of fines, fees and assessments totaling \$355.

10. Respondent was also convicted on November 1, 1995, of disturbing the peace. According to respondent, she got into a fight with a former roommate at a boarding house. The roommate attacked respondent after respondent asked her not to touch her possessions. The police were called but respondent declined to press charges. Respondent testified she thought the matter had been dismissed and was not aware of this conviction prior to hearing.

11. Respondent's multiple convictions demonstrated a pattern of repeated and willful disregard for the law, and therefore collectively bear a substantial relationship to the qualifications, functions, or duties of a LVN. (See *In re Kelley* (1990) 52 Cal.3d 487; *People v. Forster* (1994) 29 Cal.App.4th 1746; *Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394.)

12. On October 8, 2002, the Board sent a letter to respondent, by certified mail, requesting that she submit Live Scan fingerprints. On April 6, 2006, and again on October 16, 2006, the Board sent certified letters to respondent requesting that she submit Live Scan

fingerprints, documentation that she had completed her court ordered drug program, documentation of rehabilitation and a list of her employers from January 2004 to the present. Respondent failed to timely submit the requested fingerprints or documentation. Respondent did not submit Live Scan fingerprints or employment information until June 2007. Other documentation was not submitted until the day of hearing.

13. Respondent does not contest any of the convictions described above. She does not recall the details of her earlier Vehicle Code violations, but acknowledges that she drove without a license and while her license was suspended. With respect to her 2001 drunk driving conviction, respondent represents that it was a one time occurrence and that she successfully completed the first offenders program.

Respondent characterizes the circumstances of her 1994 theft conviction as a "very dumb move." She also testified that she was told her felony theft conviction would be reduced to a misdemeanor after she served her 90 day jail sentence. She is in the process of finding out why the conviction was never reduced. Respondent did not provide an explanation regarding her other theft convictions.

With respect to her conviction for possession of methamphetamine, respondent testified that she was going through a bad period in her life. Her boyfriend at the time repeatedly told her that she was fat, unattractive and worthless. She briefly used methamphetamine in an unsuccessful effort to lose weight. Following her conviction for drug possession, respondent successfully completed the court ordered drug program. The program required her to submit to random drug testing, attend weekly program sessions, and attend Alcoholics Anonymous. She also attended Narcotics Anonymous meetings on her own and continued attending the drug program for about six months after completion of the court ordered portion of program. Respondent represents she never had a "dirty test" during the drug program and that she does not currently use drugs. Respondent acknowledges that she did not provide timely proof of completion of the drug program to the Board, but explains that the notice of completion was sent directly to the court, and despite repeated requests she has not been provided with a copy.

14. With respect to failing to respond to the letters from the Board, respondent testified that each time she received a letter she contacted the Board by telephone, orally provided information, and was told to ignore the letters. She claims she did not promptly submit fingerprints because she did not know what Live Scan was until very recently. Respondent's testimony on this point was not very credible since each of the Board letters specifically refers to "Live Scan fingerprints."

In September 2006 respondent went to KR Services LLC to obtain Live Scan fingerprints. She could not find her Live Scan form so she obtained one at KR Services. The form she used listed the address for the Board of Registered Nursing rather than the address for the Board of Vocational Nursing and Psychiatric Technicians. Respondent noticed this discrepancy after leaving KR Services and called KR Services shortly thereafter. She left several messages. Rajesh Singh, who had taken her fingerprints, finally returned her call.

He told her to change the address on her copy and mail it to the correct Board. Respondent testified she did as instructed by Singh and also called the Board and told Board staff what had occurred. Respondent never followed up to see if the form or her fingerprints had been received by the Board. She realized the prints had not been received when she received the accusation. Respondent submitted another request for Live Scan on June 4, 2007, and mailed a copy of the Live Scan form to the Board.

15. Rajesh Singh is the owner and operator of KR Services LLC, a business that provides notary, paralegal, legal document assistance and fingerprinting services. Live Scan is one type of fingerprinting that Singh provides. Singh's records reflect that on September 26, 2006, respondent had her fingerprints taken at his business. After she left, she called back and left a message for him. Singh eventually spoke with respondent on October 13, 2006, at which time she advised him that the address on the Live Scan form was incorrect. Singh told her to mail a copy of the form with the correct address to the LVN Board and to call him back if she had any problems. Singh testified that it normally takes about 10 days for the Department of Justice (DOJ) and/or FBI to process fingerprints and mail the results to the requesting agency. However, if the quality of the fingerprints is unacceptable, the address on the Live Scan form is wrong or the DOJ or FBI has to search for records, there can be a delay in processing the fingerprints.

16. Respondent graduated from nursing school in the state of New York and obtained her nursing license shortly thereafter. She worked as a LVN in New York for approximately a year and then moved to California. She worked as a nurse's aide for several years before obtaining her California nursing license in 1984. Upon obtaining her California LVN license respondent began working through an agency. She has worked through nurse placement agencies a majority of her career. Her employing agencies include Professional Health Nurses, Manpower, Infinity and Maxim Health Care Services. Respondent has provided nursing care in a variety of settings, including Sequoia Hospital, Kaiser Hospital, Ronald McDonald House, Stanford Hospital and private patient residences. In 2002 respondent quit working as a nurse in order to care for a handicapped baby. She cared for the baby until 2004, when the baby's parents reconciled. She was not paid during this three year period. Respondent returned to nursing in 2004. On February 23, 2006, respondent quit nursing again to care for a baby girl, who was born under the influence of drugs. Respondent received the baby when the baby was two months old. The baby is now 17 months old. Respondent cares for the child full-time and is not currently employed as a LVN.

17. Respondent is 46 years old. She lives with her common law husband and the 17-month-old girl for whom she provides care. She and the child are supported by respondent's husband. Respondent last worked as an LVN in 2006. She anticipates returning to work as an LVN soon because the baby is now older and respondent wants to help reduce the financial load on her husband. Respondent admits she made a lot of mistakes in the past, including failing to promptly respond to letters from the Board. She maintains that she has learned from her mistake and she represents that in the future she will promptly comply with all Board requests. She also represents that she will not engage in illegal conduct. She notes that it has been over six years since her last conviction.

18. Respondent submitted letters of reference from Estrellita, the mother of the child for whom she currently provides care, and respondent's husband Dennis Ikebe. Estrellita writes that she met respondent through a friend who had a handicapped child for whom respondent provided care. Estrellita was very impressed with the care respondent provided to the child. When Estrellita got in trouble and needed someone to care for her daughter, she had police call respondent. Estrellita describes respondent as caring, knowledgeable and dedicated to caring for others. She writes that she is at peace while undergoing [drug] treatment in the knowledge that respondent is caring for her daughter. Estrellita notes that respondent does not receive any compensation for caring for her daughter.

Ikebe writes that respondent has all of the characteristics one would expect from someone in her occupation. He describes her as thoughtful, caring, knowledgeable and willing to share and apply that knowledge. He opines she is a lady of good moral standing and a very caring individual.

19. Pursuant to Business and Professions Code section 125.3, the Board may request that "a licentiate found to have committed a violation or violations of the licensing act [be required] to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case." The Board certifies that the following costs were incurred in connection with the investigation and prosecution of the accusation through June 8, 2007:

Attorney General's costs:

2006-2007	28.75 hours at \$158/hour	\$ 4,542.50
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Legal Assistant costs:

2006-2007	2 hours at \$101/hour	<u>\$ 202.00</u>
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TOTAL COSTS INCURRED:	\$4,744.50
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20. Respondent requests a reduction in costs stating that it would be a financial hardship for her to pay all of the costs since she is currently unemployed.

LEGAL CONCLUSIONS

1. Cause for license discipline exists under Business and Professions Code section 2878, subdivision (f), in that respondent has been convicted of crimes that are substantially related to the qualifications, functions and duties of a licensed vocational nurse, as set forth in Findings 3 through 11.

2. Cause for license discipline exists under Business and Professions Code section 2878, subdivision (j), in that respondent has committed acts involving dishonesty that are related to the duties and functions of a licensed vocational nurse, as set forth in Findings 4, 6 and 7.

3. Cause for license discipline exists under Business and Professions Code section 2878, subdivision (a), for unprofessional conduct, as defined in section 2878.5, subdivision (a), in that respondent possessed a controlled substance in violation of the law, as set forth in Finding 5.

4. Cause for license discipline exists under Business and Professions Code section 2878, subdivision (a), for unprofessional conduct, as defined in section 2878.5, subdivision (c), in that respondent was convicted of a criminal offense involving possession of a narcotic or dangerous drug, as set forth in Finding 5.

5. Cause for license discipline exists under Business and Professions Code section 2878, subdivision (a), for unprofessional conduct, in that respondent failed or refused to timely respond to repeated Board requests for Live Scan fingerprints and other employment related documentation, as set forth in Finding 12.

6. Respondent has taken positive steps toward her rehabilitation, as demonstrated by the fact that she admits her past mistakes and accepts responsibility for her actions. However, it is of concern that respondent has suffered multiple criminal convictions while licensed as a nurse, including convictions related to alcohol and drug use, and petty theft. In mitigation, all of the convictions are over six years old and there is no evidence that respondent ever performed less than satisfactorily in any of her assignments as a LVN. She has successfully completed both a drug program and a first offender's driving under the influence program. And despite past failures to promptly respond to Board requests for information, respondent expresses a current willingness to do whatever is necessary to retain her license. Discipline is clearly warranted for respondent's past illegal conduct. However, it is determined that the public interest can be adequately protected by placing respondent's license on probation for a period of time so that the Board can closely monitor her practice.

7. The reasonable costs of investigating and enforcing this matter under Business and Professions Code section 125.3 are \$4,744.50 by reason of the matters set forth in Finding 19. Respondent requests a reduction in costs due to financial hardship. After due consideration of respondent's ability to pay, it is determined that the costs should be reduced somewhat to \$3,744.50. Such consideration is mandated by the recent case of *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32¹ which requires the Board to determine

¹ *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 sets forth the factors to be considered in determining the reasonableness of costs. Factors to be considered include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge