

FILED

MAR 29 2007

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

Board of Vocational Nursing
and Psychiatric Technicians

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In the Matter of the Accusation
Against:

Case No. 6856

Inette Schwam Linstead
210 Indio Drive
Shell Beach, CA 93449

OAH No. L2006090665

Vocational Nurse License
Number VN 163659

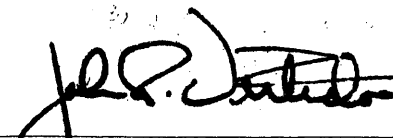
Respondent.

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 April 28, 2007.

IT IS SO ORDERED this 29th day of March 2007.



John P. Vertido, LVN
President

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

In the Matter of the Accusation Against:

INETTE SCHWAM
AKA INETTE SCHWAN
AKA INETTE GRAZIA
AKA INETTE GRAZIA-SCHWAM
231 N. College Drive, Apt. E7
Santa Maria, CA 93454

Vocational Nurse License No. VN 163659

Respondent.

Case No. 6856
OAH No. L2006090665

PROPOSED DECISION

This matter was heard by Humberto Flores, Administrative Law Judge with the Office of Administrative Hearings, on January 23, 2007, in Santa Maria, California.

Gregory J. Salute, Deputy Attorney General, represented complainant.

Inette Schwam (respondent) appeared personally and was represented by Jay A. Hieatt, Attorney at Law.

Evidence was received and the matter was submitted. The Administrative Law Judge finds as follows:

FACTUAL FINDINGS

1. On July 16, 1993, the Board issued vocational nurse license (LVN) number VN 163659 to respondent. Said license is current and active with an expiration date of November 30, 2008.

2. On February 14, 2006, Teresa Bella-Jones, J.D., M.S., R.N., (Complainant) made the Accusation in her official capacity as Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs (Board).

3. In a Default Decision and Order effective May 17, 2006, the Board revoked respondent's LVN license. On August 31, 2006, the Board issued an Order Nunc Pro Tunc vacating the Default Decision and granted respondent a hearing on the merits.

4. On December 18, 2003, in the Superior Court of California, County of San Luis Obispo, Case No. F000349514, respondent entered a plea of no contest and was convicted of violating Health and Safety Code section 11377, subdivision (a), felony possession of a controlled substance – methamphetamine) a crime substantially related to the duties, functions and qualifications of an LVN. The facts of the case were that respondent was arrested after police officers determined that respondent was under the influence of narcotics, and was in possession of numerous baggies containing methamphetamine. Imposition of sentence was suspended and respondent was placed on supervised probation for three years on certain conditions pursuant to Proposition 36, including completion of a counseling program; payment of fines and restitution totaling \$862.50; submit to chemical testing; and registration under Health and Safety Code section 11590.

5. On August 19, 2003, in the Superior Court of California, County of San Luis Obispo, Case No. F000342848, respondent entered a plea of nolo contendere and was convicted of violating Business and Professions Code section 4230.¹ The facts and circumstances underlying the conviction were that, during a search of respondent's purse, arresting officers found three containers, which contained numerous pills later determined to be controlled substances. The offense is substantially related to the duties, functions and qualifications of an LVN. The court placed respondent on probation for two years on certain conditions, which included serving 30 days in the county jail, payment of a fine of \$300, and ordering respondent to submit to chemical testing.

6. On February 4, 2002, in the Superior Court of California, County of San Luis Obispo, Case No. M000321167, respondent entered a plea of nolo contendere and was convicted of violating Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol or drugs, a misdemeanor that is substantially related to the duties, functions and qualifications of an LVN. Imposition of sentence was suspended and respondent was placed on probation for three years on certain conditions, which included serving eight days in the county jail, payment of a fine of \$1,280, and ordering respondent to complete a first offender drug and alcohol program.

¹ Business and Professions Code section 4230, which was repealed in 1997, created a committee for the continuing education of pharmacists. Former section 4230, relating to possession of a drug without a prescription, was repealed in 1996. Business and Professions Code section 4060, enacted in 1996, and amended in 1997, provides in pertinent part, "No person shall possess any controlled substance except that furnished upon the prescription of a physician . . ."

7. On February 4, 2002, in the Superior Court of California, County of San Luis Obispo, Case No. F000320687, respondent entered a plea of no contest and was convicted of violating Business and Professions Code section 4324, subdivision (a), forgery of a prescription, a misdemeanor that is substantially related to the duties, functions and qualifications of an LVN. The facts and circumstances underlying the conviction were that respondent willfully and unlawfully forged two prescriptions to obtain the drug Soma at a pharmacy located in Arroyo Grande, California. Imposition of sentence was suspended and respondent was placed on probation for 18 months on certain conditions, which included serving six days in the county jail, payment of a fine of \$ 250, and ordering respondent to attend 10 sessions of drug and alcohol counseling.

8. On September 28, 1987, in the Municipal Court of the Los Angeles Judicial District, State of California, Case No. 87M25647, respondent entered a plea of nolo contendere and was convicted of violating Penal Code section 470, forgery, a misdemeanor that is substantially related to the duties, functions and qualifications of an LVN. Respondent was placed on probation for 24 months on certain conditions, which included serving 12 days in the county jail, and payment of a fine of \$350.

9. On December 22, 1992, respondent, on her initial application for licensure, knowingly failed to disclose the criminal conviction set forth in Factual Finding 8. Respondent submitted a renewal application for licensure on November 6, 2002. In her renewal application, respondent failed to disclose the convictions set forth in Factual Findings 6 and 7. Respondent admitted that she lied on her initial application because of her belief that she would not be licensed if she disclosed her 1987 conviction, and failed to disclose her February 4, 2002 convictions because she was fearful of losing her LVN license.

10. Respondent's long history of drug abuse was the major factor in her convictions. Respondent began the process of rehabilitation after her felony conviction in December 2003. Respondent's participation in the court ordered Proposition 36 rehabilitation program was a major factor in rehabilitation. Court ordered drug counseling pursuant to Proposition 36 consists of a rigorous program specifically designed to address the problems and behaviors of long-term drug users. The program includes chemical testing. Respondent successfully completed this program, and on November 9, 2005, the court terminated respondent's probation and reduced respondent's felony conviction to a misdemeanor pursuant to Penal Code section 17, subdivision (b).

11. Respondent has continued her rehabilitation by regularly attending Alcoholics Anonymous (AA) meetings. She attends several meetings a week. L. Z., respondent's sponsor, testified that respondent is one of the more committed AA members she has sponsored and believes in respondent's commitment to sobriety. L.Z. has been a sober member of AA for 18 years and has been a sponsor for 17 of those years. During her testimony, L.Z. exhibited a no-nonsense demeanor of a firm yet understanding sponsor who provides outstanding moral support but would not put up with deception. Her vast experience in sponsoring addicted substance abusers lends great weight to her testimony.

12. In addition to the support she receives from AA, respondent enjoys the complete support of her husband, who has also been a long term sober member of AA. A supportive and stable family life is an important factor in the rehabilitation process.

13. The evidence established that respondent is a competent LVN. Numerous colleagues and respondent's supervisor attested to the professional and caring manner in which respondent discharges her duties as an LVN. From December 2004, to July 2006, respondent worked as a charge nurse at Country Care Convalescent Hospital, where she supervised a staff of eight. Her supervisor at Country Care wrote a reference letter attesting to respondent's performance as an LVN, her excellent attendance record, and of her ability to relate to staff and patients. Since July 2006, respondent has worked at Mission View Health Center. Ellen McDonald R.N., respondent's direct supervisor at Mission View, testified that respondent's performance as an LVN has been outstanding, specifically citing respondent's competence and commitment to patient care. It is also noted that respondent disclosed her convictions and past drug abuse to Ms. McDonald when she applied for the job at Mission View.

14. Complainant submitted evidence of enforcement costs totaling \$6,325.75. Since the original decision in this matter was vacated and the matter was rescheduled for hearing, the deputy attorney general and other staff who helped prosecute this case were required to prepare twice for the hearing on the merits. Therefore, the total amount is deemed reasonable under Business and Professions Code section 125.3.

DISCUSSION

15. This matter presents a set of circumstances where one must consider the entire record to determine the appropriate discipline. First of all, respondent suffered four drug related convictions and one theft conviction, then lied on two separate applications for licensure in that she failed to disclose certain convictions as set forth in Factual Finding 9. There is little doubt that respondent's addiction and her abuse of drugs was the major factor in her actions which resulted in her convictions. However, respondent established substantial rehabilitation over the past three years as set forth in Factual Findings 10 through 13. Respondent was honest in her testimony and did not attempt to rationalize past behavior. She accepted responsibility for her past misconduct. The evidence also proved that respondent has made great strides in her recovery efforts. Respondent is a completely different person when she does not use drugs or alcohol. This is evidenced by respondent's employment record as an LVN over the past three years since she has been clean and sober. Respondent presented substantial evidence which proved that she is a competent and caring LVN who provides excellent care. If punishment were the goal of disciplinary proceedings for professional licensees, then revocation would be the appropriate discipline in this case. But the courts have held otherwise. The California Supreme Court has held that the purpose of licensing statutes and administrative enforcement proceedings is not to punish a licensee, but to protect the public. (*Hughes v. Board of Architectural Examiners*, 17 Cal.4th 763, 784-786.).

16. In this case, there is cause for revocation. But there is also substantial evidence of rehabilitation. One might argue that three years of sobriety is not long enough to establish rehabilitation. However, the concept of rehabilitation does not lend itself to precise calculations of time. Rather, one must look to the effort made by the individual. Here, the evidence was overwhelming that respondent has made a serious effort over the last three years. Her testimony was corroborated by her supervisors, co-workers, character witnesses, and her sponsor at AA. Based on the entire record of this case, including respondent's demeanor, comportment and honesty while testifying, the Board's duty to protect the public would be properly discharged by placing respondent on probation under strict conditions that would address past drug abuse issues.

LEGAL CONCLUSIONS

1. Cause exists to suspend or revoke respondent's LVN license, under Business and Professions Code sections 490, 2878, subdivision (f), and 2878.5, subdivisions (a) through (d), and California Code of Regulations, title 16, section 2521, for the convictions set forth in Factual Findings 4 through 8.

2. Cause exists to suspend or revoke respondent's LVN license, under Business and Professions Code section 2878, subdivisions (a), (b) and (e), for failing to disclose her convictions in her initial and renewal applications for licensure, as set forth in Factual Finding 9.

3. Cause exists to order respondent to pay \$6,325.75 to the Board as costs of enforcement pursuant to Business and Professions Code section 125.3.

ORDER

Licensed Vocational Nurse No. VN 163659 previously issued to respondent Inette Schwam aka Inette Schwan aka Inette Grazia aka Inette Grazia-Schwam aka Inette Schwam Linstead, is revoked. However, said revocation is stayed for a period of five (5) years on 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 (5) days of occurrence. To ensure compliance with this term, respondent shall submit two (2) completed fingerprint cards and the applicable fingerprint processing fees to the Board within thirty (30) days of the effective date of the decision, unless the Board determines that fingerprint cards were already submitted by the Respondent as part of his licensure application process effective July 1, 1996.