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Board of Vocational Nursing and Psychiatric Technicians

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

In the Matter of the Accusation Against: ROBERT ARTHUR MARCHETTA 25308 Via Pacifica Valencia, CA 91355 Vocational Nurse License No. VN 178022 Respondent.	Case No. VN-2004-1502 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about September 13, 1996, the Board of Vocational Nursing and Psychiatric Technicians issued Vocational Nurse License No. VN 178022 to Robert Marchetta (Respondent). The Vocational Nurse License was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2010, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board of Vocational Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise

indicated.

STATUTORY PROVISIONS

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

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

6. Section 2878 of the Code states:

> The Board may suspend or revoke a license issued under this chapter [the Vocational Nursing Practice Act (Bus. & Prof. Code, § 2840, et seq.)] for any of the following:
>
> (a) Unprofessional conduct, which includes, but is not limited to, the following:
>
> (1) Incompetence, or gross negligence in carrying out usual nursing functions.
>
> . . . .
>
> (d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter.

7. California Code of Regulations, title 16, section 2519, states:

As set forth in Section 2878 of the Code, gross negligence is deemed unprofessional conduct and is a ground for disciplinary action. As used in Section 2878 'gross negligence' means a substantial departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent licensed vocational nurse,

and which has or could have resulted in harm to the consumer. An exercise of so slight a degree of care as to justify the belief that there was a conscious disregard or indifference for the health, safety, or welfare of the consumer shall be considered a substantial departure from the above standard of care.

8. California Code of Regulations, title 16, section 2520, states:

As set forth in Section 2878 of the Code, incompetence is deemed unprofessional conduct and is a ground for disciplinary action. As used in Section 2878 'incompetence' means the lack of possession of and the failure to exercise that degree of learning, skill, care and experience ordinarily possessed and exercised by responsible licensed vocational nurses.

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

Patient J. M

10. On April 10, 2002, patient J.M., an 18 month old male infant, was brought to Northridge Hospital Medical Center complaining of symptoms of vomiting and diarrhea. At or around 10:30 a.m., Respondent administered an adult dose of Demerol (75 mg.) and Vistaril (25 mg.) to the patient without a physician order in place authorizing him to do so. Shortly thereafter, the patient's mother approached Respondent and informed him that the infant "did not appear to be ok" and that he had become sleepy and lethargic. At 10:50 a.m., the patient was administered a dose of Narcan and admitted to the Pediatric Intensive Care Unit for observation.

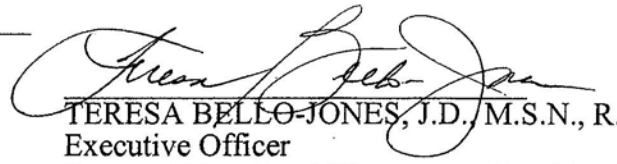
FIRST CAUSE FOR DISCIPLINE

(Incompetence)

11. Respondent is subject to disciplinary action under section 2878, subdivision (a)(1) of the Code on the grounds of unprofessional conduct as defined in California Code of Regulations, title 16, section 2520, in that on or about April 10, 2002, while on duty as a licensed vocational nurse at Northridge Hospital Medical Center, he committed acts of incompetence related to his care of patient J.M. as follows:

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

DATED: July 8, 2008



TERESA BELLO-JONES, J.D., M.S.N., R.N.
Executive Officer
Board of Vocational Nursing and Psychiatric Technicians
Department of Consumer Affairs
State of California

Complainant

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