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

In the Matter of the Petition for Reinstatement of: VALERIE SALLY 75 Perry Street, #104 Redwood City, CA 94063 Vocational Nurse License No. VN 132852 Petitioner.	OAH No. 2010070848

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 November 13, 2010.

IT IS SO ORDERED this 14th day of October, 2010.

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

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

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In the Matter of the Petition for Reinstatement of: VALERIE SALLY, Vocational Nurse License No. VN 132852 Petitioner.	OAH No. 2010070848

PROPOSED DECISION

This matter was heard before Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings, State of California, on July 28, 2010, in Sacramento, California.

Elena Almanzo, Deputy Attorney General, appeared pursuant to Government Code section 11522.

Valerie Sally (petitioner) appeared on her own behalf. She was accompanied by her husband, Herman Sally, Jr.

Evidence was received, the record was closed, and the matter was submitted for decision on July 28, 2010.

FACTUAL FINDINGS

1. On May 16, 1986, the Board of Vocational Nursing and Psychiatric Technicians (Board) issued vocational nurse license number VN 132852 (license) to petitioner.

2. On July 22, 2002, an accusation (Accusation) was issued against petitioner. The Accusation sought to revoke petitioner's license for the following wrongdoing committed on or about October 30, 2000: (1) possessing and self-administering cocaine; and (2) possessing and self-administering Paxil without a valid prescription. Petitioner did not file a notice of defense to the Accusation. On December 4, 2002, the Board issued a Default Decision and Order revoking petitioner's license, effective January 3, 2003.

3. On July 18, 2006, petitioner filed a petition for reinstatement (first petition). On October 5, 2006, the Board denied petitioner's first petition, effective October 20, 2006, finding that there were "many inconsistencies in her presentation in support of her [first petition], and/or lack of evidence of rehabilitation or current abilities, such as: inexact evidence of a sobriety date; many different addresses; no evaluations from any jobs; no continuing education except as noted; and no confirmation of completion of the Operation Dignity program."

4. At the hearing on her current petition, petitioner admitted that she used cocaine. She denied, however, that she ever illegally took or used Paxil.

5. Petitioner did not know exactly when she stopped using drugs and alcohol, although she believed that it was in or about January 2002. Her current petition states that her sobriety date was January 4, 2002. She testified that she has not used any drugs or alcohol since then.

6. Petitioner's current petition states that she entered Operation Dignity, an in-patient alcohol/drug rehabilitation program, in May 2004, and successfully completed that program in August 2005. She did not, however, submit any written proof showing completion of that program or a description of the services provided.

7. Petitioner is a veteran. She suffers from post-traumatic stress disorder (PTSD). She is currently being treated for this condition at the Menlo Park Mental Health Clinic run by the Veterans Administration (VA) Health Care System. Dr. Judith Stevens is her psychiatrist. Kathleen A. Lee, LCSW, is her case manager. Dr. Stevens and Ms. Lee wrote a letter dated April 8, 2010, in support of petitioner's petition. In their letter, Dr. Stevens and Ms. Lee state that petitioner attends monthly supportive sessions and receives antidepressant medications. In addition, they state that petitioner has "maintained her sobriety for the past 8 years." They have found petitioner to be "a highly motivated individual who works hard to cope with her symptoms." According to Dr. Stevens and Ms. Lee, petitioner has "established a stable support system" and "attends church regularly," which "strengthens her desire to remain clean and sober." They "strongly support" the reinstatement of petitioner's license. According to Dr. Stevens and Ms. Lee, petitioner will continue to receive services from the VA for "as long as necessary."

8. For approximately two months, on Monday evenings, petitioner has met with a support group called "Emotions." This group is run by Ms. Lee. Each week, the group members write down important occurrences in their lives, including relapses or events that may have caused emotions, and then discuss these matters at the meeting. Petitioner did not, however, submit written documentation to attest to her attendance in this support group.

9. Since July 2007, petitioner has been employed by Geriatric Home Care as a caregiver. In this job, she provides care for elderly, disabled and hospice patients. Petitioner did not submit a recommendation or evaluation from Geriatric Home Care. According to petitioner, Geriatric Home Care does not give evaluations or recommendations.

10. From August 2006 to January 2008, petitioner worked for Sunrise Assisted Living. Petitioner submitted a letter from Banisha Wysiger, one of her lead supervisors at Sunrise. Ms. Wysiger's letter states that she provided on-the-job training to petitioner. Petitioner cared for 12 to 15 residents. Her work consisted of bathing, dressing and grooming the residents; doing light housekeeping and laundry; and assisting in the kitchen and dining room. Ms. Wysiger describes petitioner's performance as "excellent." According to Ms. Wysiger, petitioner's attendance was "great," and she "always came to work on time," assisted others when needed, and communicated well with both staff and residents.

11. Petitioner submitted a certificate of completion from Cañada College showing that she completed the requirements for a Medical Coding Specialist in December 2008. In addition, she submitted a certificate dated May 15, 2007, from Cañada College showing that she completed 30 hours of authorized training in the use of Medisoft, a computerized insurance billing, administrative and financial management program. If her license is reinstated, petitioner would like to work for the VA doing medical coding.

12. Petitioner does volunteer work at her church and helps serve meals at a shelter. She also takes care of a grandniece and grandnephew. She testified that she has a strong support network.

13. Since September 3, 2008, petitioner has been married to Herman Sally, Jr. She has an adult daughter, Danielle Hancock, who completed a certified nursing course and is now working for John Muir Hospital. Both Mr. Sally and Ms. Hancock wrote letters attesting to petitioner's commitment to sobriety.

14. In addition, Mr. Sally testified at the hearing. Mr. Sally is an Outreach Specialist, Domiciliary Service, for the VA Palo Alto Health Care System. Mr. Sally described himself as a former "dope fiend." He has been clean and sober since August 17, 1999. He is employed by the VA working with incarcerated veterans. He described petitioner as "diligent," "caring," and a "hard worker." He testified that petitioner is a veteran with PTSD who is receiving "top notch" care from the VA clinic. He stated that she is "religiously" attending the Emotions support group. He regularly attends church with her.

15. There was no evidence that petitioner has ever been convicted of a crime. Since her license was revoked, petitioner has received two traffic violations – a red light violation and a U-turn violation. Both of these violations were paid and cleared.

16. Petitioner was previously licensed as a practical nurse in Kentucky. On January 29, 1996, petitioner entered into an Agreed Order (Kentucky Order) with the Kentucky Board of Nursing (Kentucky Board). The Agreed Order states that, on August 22, 1994, while she was assigned to provide in-home care to a ventilator-dependent infant, she was found to be asleep. Pursuant to the Agreed Order, petitioner agreed to a reprimand issued by the Kentucky Board. She also agreed to complete by August 31, 1996, 30 contact hours of continuing education on legal and ethical issues in nursing. At the hearing, petitioner could not remember whether she ever complied with the Agreed Order. She

testified that she has not been in Kentucky for over 10 years and did not renew her Kentucky license.

17. In California Code of Regulations, title 16, section 2522, the Board has adopted rehabilitation criteria to be considered when determining whether a petition for reinstatement should be granted.[1]

18. At the hearing, petitioner testified in a candid and straightforward fashion. Although she did not present written documentation of her sobriety date, her attendance at Operation Dignity, her attendance at Emotions, or her current employment, the testimony of her husband and the letters she submitted from Dr. Stevens and Ms. Lee, Ms. Wysiger, and her daughter were positive and supportive. There was no evidence that petitioner has ever been convicted of a crime. Other than traffic violations, there was no evidence that petitioner has engaged in any wrongful activities since October 2000. She has participated in

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[1] California Code of Regulations, title 16, section 2522 provides:

> Rehabilitation Criteria.
> When considering a) the denial of a license under Section 480 of the Business and Professions Code, b) the suspension or revocation of a license on the ground that a licensee has been convicted of a crime, or c) a petition for reinstatement of a license under Section 2787.7 of the Business and Professions Code, the Board in evaluating the rehabilitation of an individual and her present eligibility for a license, will consider the following criteria:
>
> (1) Nature and severity of the act(s), offense(s), or crime(s) under consideration.
>
> (2) Actual or potential harm to the public.
>
> (3) Actual or potential harm to any patient.
>
> (4) Overall disciplinary record.
>
> (5) Overall criminal actions taken by any federal, state or local agency or court.
>
> (6) Prior warnings on record or prior remediation.
>
> (7) Number and/or variety of current violations.
>
> (8) Mitigation evidence.
>
> (9) In case of a criminal conviction, compliance with terms of sentence and/or court-ordered probation.
>
> (10) Time passed since the act(s) or offense(s) occurred.
>
> (11) If applicable, evidence of proceedings to dismiss a conviction pursuant to Penal Code section 1203.4.
>
> (12) Cooperation with the Board and other law enforcement or regulatory agencies.
>
> (13) Other rehabilitation evidence.

continuing education. She has a strong support network. She has a husband who is committed to sobriety, and actively involved in support groups and their church. She is under the regular care of a social worker and a psychiatrist, who strongly support her reinstatement. When all the evidence and the factors set forth in California Code of Regulations, title 16, section 2522 are considered, petitioner presented clear and convincing evidence that it would not be contrary to public health, safety or welfare to reinstate her license on a probationary basis for three years. Because petitioner's license was revoked in January 2003 and she has not practiced as a licensed vocational nurse since then, in accordance with Business and Professions Code section 2892.4, her probationary license shall be conditioned on her first passing the licensing examination.[2]

LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 2878.7, subdivision (a)(1), a licensed vocational nurse whose license has been revoked may petition the Board for reinstatement three years after the effective date of the disciplinary order. Section 2878.7, subdivision (b), provides that, "The petitioner shall at all times have the burden of proof to establish by clear and convincing evidence that he or she is entitled to the relief sought in the petition."

2. As set forth in the Finding 18, petitioner presented clear and convincing evidence that it would not be contrary to public health, safety or welfare to reinstate her license on a probationary basis for three years pursuant to the terms and conditions set forth below. Because petitioner's license was revoked in January 2003 and she has not practiced as a licensed vocational nurse since then, in accordance with Business and Professions Code section 2892.4, her probationary license shall be conditioned on her first passing the licensing examination.[3]

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[2] Business and Professions Code section 2892.4, in relevant part, provides:

> A license which is not renewed within four years after its expiration may not be renewed, restored, reissued, or reinstated thereafter, but the holder of the license may apply for and obtain a new license if all of the following conditions are met:
>
> (a) No fact, circumstance, or condition exists which, if the license were issued, would justify its revocation or suspension.
>
> (b) The applicant pays all of the fees that would be required of an applicant for a new license.
>
> (c) The applicant takes and passes the examination which would be required of an applicant for a new license. The examination may be waived in any case in which the applicant establishes to the satisfaction of the board that, with due regard for the public interest, the applicant is qualified to engage in the practice of vocational nursing.

[3] Business and Professions Code section 2892.4, in relevant part, provides:

> A license which is not renewed within four years after its expiration may not be renewed, restored, reissued, or reinstated thereafter, but the holder of the license

ORDER

The Petition for Reinstatement of petitioner Valerie Sally is GRANTED and Vocational Nurse License No. VN 132852 is reinstated, but the reinstated license is revoked, the revocation is stayed for three (3) years, and petitioner is placed on probation on following and conditions:

1. **TAKE AND PASS LICENSURE EXAMINATION**. Prior to resuming practice, petitioner shall take and pass the licensure exam currently required of new applicants within two (2) years from the effective date of the Board's decision. Petitioner shall pay the established examination fees.

The probationary period shall not commence until petitioner has successfully passed the licensure examination and a license is issued by the Board.

2. **OBEY ALL LAWS**. Petitioner shall obey all federal, state and local laws, including all statutes and regulations governing the license. Petitioner shall submit, in writing, a full and detailed account of any and all violations of the law, including alleged violations, to the Board within five (5) days of occurrence.

To ensure compliance with this condition, petitioner shall submit fingerprints through the Department of Justice and Federal Bureau of Investigation within thirty (30) days of the effective date of the decision, unless the Board determines that fingerprints were previously submitted by the petitioner to the Board.

Petitioner shall also submit to the Board a recent 2" x 2" photograph of herself within thirty (30) days of the effective date of the Decision.

If petitioner is under a criminal court order, including probation or parole, and the order is violated, it shall be deemed a violation of these probation conditions.

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may apply for and obtain a new license if all of the following conditions are met:

(a) No fact, circumstance, or condition exists which, if the license were issued, would justify its revocation or suspension.

(b) The applicant pays all of the fees that would be required of an applicant for a new license.

(c) The applicant takes and passes the examination which would be required of an applicant for a new license. The examination may be waived in any case in which the applicant establishes to the satisfaction of the board that, with due regard for the public interest, the applicant is qualified to engage in the practice of vocational nursing.

3. **COMPLIANCE WITH PROBATION PROGRAM.** Petitioner shall fully comply with the conditions of probation established by the Board and shall cooperate with representatives of the Board in its monitoring and investigation of petitioner's compliance with the Probation Program.

Upon successful completion of probation, petitioner's license will be fully restored.

4. **SUBMIT WRITTEN REPORTS.** Petitioner shall submit or cause to be submitted, under penalty of perjury, any written reports, declarations and verification of actions as required by the Board or its representatives. These reports or declarations shall contain statements relative to petitioner's compliance with all the conditions of the Board's Program. Petitioner shall immediately execute all release of information forms as may be required by the Board or its representatives.

In the first report, petitioner shall provide a list of all states and territories where she has ever been licensed as a vocational/practical nurse, psychiatric technician, or registered nurse. Petitioner shall provide information regarding the status of each license and any change in license status during the period of probation. Petitioner shall inform the Board if she applies for or obtains a new nursing or psychiatric technician license during the period of probation.

Petitioner shall provide a copy of the Board's decision to the regulatory agency in every state and territory in which she has applied for or holds a vocational/practical nurse, psychiatric technician and/or registered nurse license.

5. **NOTIFICATION OF ADDRESS AND TELEPHONE NUMBER CHANGE(S).** Petitioner shall notify the Board, in writing, within five (5) days of any change in address or telephone number(s).

Petitioner's failure to claim mail sent by the Board may be deemed a violation of these probation conditions.

6. **NOTIFICATION OF RESIDENCY OR PRACTICE OUTSIDE OF STATE.** Petitioner shall notify the Board, in writing, within five (5) days, if she leaves California to reside or practice in another state. Periods of residency or practice outside of California shall not apply toward a reduction of this probation time period. If petitioner resides or practices outside of California, the period of probation shall be automatically extended for the same time period she resides or practices outside of California. Petitioner shall provide written notice to the Board within five (5) days of any change of residency or practice.

Petitioner shall notify the Board, in writing, within five (5) days, upon her return to California.

7. **MEETINGS WITH BOARD REPRESENTATIVE(S).** Petitioner shall appear in person at meetings as directed by the Board or its designated representatives.

8. **NOTIFICATION TO EMPLOYER(S).** When currently employed or applying for employment in any capacity in any health care profession, petitioner shall notify her employer of the probationary status of petitioner's license. This notification to petitioner's current health care employer shall occur no later than the effective date of the Decision. Petitioner shall notify any prospective health care employer of her probationary status with the Board prior to accepting such employment. At a minimum, this notification shall be accomplished by providing the employer or prospective employer with a copy of the Board's Accusation and Disciplinary 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.

Petitioner shall cause each health care employer to submit to the Board all performance evaluations and any other employment related reports as required by the Board. Petitioner shall notify the Board, in writing, of any difficulty in securing employer reports within five (5) days of such an event.

Petitioner shall notify the Board, in writing, within five (5) days of any change in employment status. Petitioner shall notify the Board, in writing, if she is terminated or separated, regardless of cause, from any nursing or health care related employment with a full explanation of the circumstances surrounding the termination or separation.

9. **EMPLOYMENT REQUIREMENTS AND LIMITATIONS.** Petitioner shall work in her licensed capacity in the state of California. This practice shall consist of no less than six (6) continuous months and of no less than twenty (20) hours per week.

Petitioner 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. Petitioner 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.

10. **SUPERVISION REQUIREMENTS.** Before commencing or continuing employment in any health care profession, petitioner shall obtain approval from the Board of the supervision provided to petitioner while employed.

Petitioner 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.

11. **COMPLETION OF EDUCATIONAL COURSE(S).** Petitioner, at her own expense, shall enroll and successfully complete a course(s) substantially related to the violation(s) no later than the end of the first year of probation.

The coursework shall be in addition to that required for license renewal. The Board shall notify petitioner of the course content and number of contact hours required. Within thirty (30) days of the Board's written notification of assigned coursework, petitioner 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, petitioner shall submit "original" completion certificates to the Board within thirty (30) days of course completion.

12. **MAINTENANCE OF VALID LICENSE.** Petitioner shall, at all times, maintain an active current license with the Board including any period of suspension.

Probation shall not commence until a license is issued by the Board. Petitioner must complete the licensure process within two (2) years from the effective date of the Board's decision.

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

13. **LICENSE SURRENDER.** During probation, if petitioner ceases practicing due to retirement, health reasons, or is otherwise unable to satisfy the conditions of probation, petitioner may surrender her license to the Board. The Board reserves the right to evaluate petitioner's request and to exercise its discretion whether to grant the request without further hearing. Upon formal acceptance of the tendered license, petitioner will no longer be subject to the conditions of probation.

Surrender of petitioner's license shall be considered a disciplinary action and shall become a part of petitioner's license history with the Board. A licensee who surrenders his/her license may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision for the surrender:

- Three (3) years for reinstatement of a license surrendered for any reason other than a mental or physical illness; or
- One (1) year for a license surrendered for a mental or physical illness.

14. **VIOLATION OF PROBATION.** If petitioner violates the conditions of her probation, the Board, after giving petitioner notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (denial/revocation/suspension) of petitioner's license. If during probation, an accusation or petition to revoke probation has been filed against petitioner's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against petitioner'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.

15. **PSYCHIATRIC/PSYCHOLOGICAL EVALUATION**. Within sixty (60) days of the effective date of the Decision, petitioner shall submit to a psychiatric/psychological evaluation. The evaluation shall be performed by a psychiatrist licensed in California and Board certified in psychiatry, or by a clinical psychologist licensed in California. This evaluation shall be for the purpose of determining petitioner's current mental, psychological and emotional fitness to perform all professional duties with safety to self and to the public. Petitioner shall provide the evaluator with a copy of the Board's Disciplinary Order prior to the evaluation. The cost of such evaluation shall be paid by petitioner.

Petitioner shall cause the evaluator to submit to the Board a written report concerning petitioner's status and progress as well as such other information as may be requested by the Board. This report shall be submitted in a format acceptable to the Board within ninety (90) days from the effective date of the Decision.

If the evaluator finds that petitioner is not psychologically fit to practice safely, or can only practice with restrictions, the evaluator shall notify the Board, in writing, within five (5) working days. The Board shall notify petitioner in writing of the evaluator's determination of unfitness to practice and shall order petitioner to cease or restrict licensed activities as a condition of probation. Petitioner shall comply with this condition until the Board is satisfied of petitioner's fitness to practice safely and has so notified petitioner. Petitioner shall document compliance in the manner required by the Board.

If the evaluator finds that psychotherapy is required, petitioner shall participate in a therapeutic program at the Board's discretion. The cost of such therapy shall be paid by petitioner.

16. **REHABILITATION PROGRAM**. Within thirty (30) days of the effective date of the Decision, petitioner shall enter a rehabilitation and monitoring program specified by the Board. Petitioner shall successfully complete such treatment contract as may be recommended by the program and approved by the Board. Petitioner shall submit written verification of successful completion of such treatment in a format acceptable to the Board within thirty (30) days of completion.

Components of the treatment contract shall be relevant to the violation and to petitioner's current status in recovery or rehabilitation. The components may include, but are not limited to: restrictions on practice and work setting, random bodily fluid testing, abstention from drugs and alcohol, use of work site monitors, participation in chemical dependency rehabilitation programs or groups, psychotherapy, counseling, psychiatric evaluations and other appropriate rehabilitation or monitoring programs. The cost for participation in this program shall be paid by petitioner.

17. **CHEMICAL DEPENDENCY SUPPORT & RECOVERY GROUPS.** Within five (5) days of the effective date of the Decision, petitioner shall begin attendance at a chemical dependency support group (e.g. Alcoholics Anonymous, Narcotics Anonymous, Nurse Support Group). Verified documentation of attendance shall be submitted by petitioner with each written report as required by the Board. Petitioner shall continue attendance in such a group for the duration of probation.

18. **ABSTAIN FROM CONTROLLED SUBSTANCES.** Petitioner shall completely abstain from the personal use or possession of controlled substances, as defined in the California Uniform Controlled Substances Act, and dangerous drugs as defined in Section 4021 and 4022 of the Business and Professions Code, except when lawfully prescribed by a licensed practitioner for a bona fide illness.

19. **ABSTAIN FROM USE OF ALCOHOL.** Petitioner shall completely abstain from the use of alcoholic beverages and products containing alcohol.

20. **SUBMIT BIOLOGICAL FLUID SAMPLES.** Petitioner shall immediately submit to biological fluid testing, at petitioner's cost, upon request by the Board or its designee. There will be no confidentiality in test results; positive test results will be immediately reported to the Board and petitioner's current employer.

DATED: August 12, 2010

KAREN J. BRANDT
Administrative Law Judge
Office of Administrative Hearings