KAMALA HARRIS
Attorney General of California
KAREN B. CHAPPELLE
Supervising Deputy Attorney General
GLORIA A. BARRIOS
Supervising Deputy Attorney General
State Bar No. 94811
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-2540
Facsimile: (213) 897-2804
Attorneys for Complainant

FILED
JAN 13 2011
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: **NANCY LEE VENEGASELBRECHT** **aka NANCY LEE VENEGAS** **aka NANCY LEE ELBRECHT** 1599 N. Nora, #21 Ridgecrest, CA 93555 and 511 N. Sydnor Ridgecrest, CA 93556 Vocational Nurse License No. VN 192283 Respondent.	Case No. VN-2009-924 **A C C U S A T I O N**

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 (Board).

2. On or about June 28, 2000, the Board issued Vocational Nurse License No. VN 192283 to Nancy Lee Venegaselbrecht aka Nancy Lee Venegas aka Nancy Lee Elbrecht (Respondent). The Vocational Nurse License expired on October 31, 2009, and has not been renewed.

JURISDICTION

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 118, subdivision (b), 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, the Board may renew an expired license at any time within four (4) years after the expiration.

5. Section 490 provides, in pertinent part, that the Board may suspend or revoke a license when it finds that the licensee has been convicted of a crime substantially related to the qualifications, functions or duties of a licensed vocational nurse.

6. Section 2875 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.

7. Section 2878 states, in pertinent part:

"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:

. . . .

"(f) Conviction of a crime substantially related to the qualifications, functions, and duties of a licensed vocational nurse, in which event the record of the conviction shall be conclusive evidence of the conviction. . . ."

8. Section 2878.5 states, in pertinent part:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for a person licensed under this chapter to do any of the following:

"(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed

physician and surgeon, dentist or podiatrist administer to himself or herself or furnish or administer to another, any controlled substance as defined in Division 10 of the Health and Safety Code, or any dangerous drug as defined in Section 4022.

"(b) Use any controlled substance as defined in Division 10 of the Health and Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public, or to the extent that the use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

"(c) Be convicted of a criminal offense involving possession of any narcotic or dangerous drug, or the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, in which event the record of the conviction is conclusive evidence thereof.

"(d) Be committed or confined by a court of competent jurisdiction for intemperate use of or addiction to the use of any of the substances described in subdivisions (a) and (b) of this section, in which event the court order of commitment or confinement is prima facie evidence of that commitment or confinement. . . ."

REGULATORY PROVISIONS

9. California Code of Regulations, title 16, section 2518.6 states, in pertinent part:

"(b) A licensed vocational nurse shall adhere to standards of the profession and shall incorporate ethical and behavioral standards of professional practice which include but are not limited to the following:

. . . .

"(4) Abstaining from chemical/substance abuse; . . .

"(c) A violation of this section constitutes unprofessional conduct for purposes of initiating disciplinary action."

10. California Code of Regulations, title 16, section 2521 states, in pertinent part:

"For the purposes of denial, suspension, or revocation of a license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be

considered to be substantially related to the qualifications, functions or duties of a licensed vocational nurse if to a substantial degree it evidences present or potential unfitness of a licensed vocational nurse to perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

. . . .

"(f) Any crime or act involving the sale, gift, administration, or furnishing of "narcotics or dangerous drugs or dangerous devices" as defined in Section 4022 of the Business and Professions Code."

COST RECOVERY

11. Section 125.3 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.

CONTROLLED SUBSTANCE / DANGEROUS DRUG

12. Methamphetamine is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (d)(2), and is categorized as a dangerous drug pursuant to Business and Professions Code section 4022.

FIRST CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crime)

13. Respondent is subject to disciplinary action under sections 490, 2878, subdivision (f), in conjunction with California Code of Regulations, title 16, section 2521, in that on or about November 30, 2009, Respondent was convicted of a crime substantially related to the qualifications, functions or duties of a licensed vocational nurse which to a substantial degree evidences her present or potential unfitness to perform the functions authorized by her license in a manner consistent with the public health, safety, or welfare, as follows:

a. On or about November 30, 2009, after pleading nolo contendere, Respondent was convicted pursuant to Penal Code section 1210.1 of one felony count of violating Health and

Safety Code section Health and Safety Code section 11379(a) [sale / transport of a controlled substance, to wit, methamphetamine] in the criminal proceeding entitled *The People of the State of California v. Nancy Lee Venegas-Elbrecht* (Super. Ct. Kern County, 2009, No. RF5706A). The Court sentenced Respondent to 127 days in jail, placed her on three (3) years of probation pursuant to Penal Code section 1210.1, ordered her to provide biological samples pursuant to Penal Code section 296, ordered her to register as a narcotics offender pursuant to Health and Safety Code section 11590, and ordered her to complete a drug treatment program.

b. The circumstances underlying the conviction are that on or about September 6, 2009, Respondent was admittedly found transporting methamphetamine, and found in possession of 7.6 grams of methamphetamine.

SECOND CAUSE FOR DISCIPLINE

(Conviction Involving a Controlled Substance - Methamphetamine)

14. Respondent is subject to disciplinary action under section 2878, subdivision (a), and 2878.5, subdivision (c), on the grounds of unprofessional conduct, in that on or about November 30, 2009, Respondent was convicted of a criminal offense involving possession of methamphetamine, a controlled substance and dangerous drug. Complainant refers to and by this reference incorporates the allegations set forth above in paragraph 13, subparagraphs a and b, inclusive, as though set forth fully.

THIRD CAUSE FOR DISCIPLINE

(Commitment for Intemperate Use of Controlled Substances)

15. Respondent is subject to disciplinary action under section 2878, subdivision (a), and 2878.5, subdivision (d), and / or California Code of Regulations, title 16, section 2518.6(b)(4), on the grounds of unprofessional conduct, in that Respondent was committed or confined by a court of competent jurisdiction for intemperate use of or addiction to the use of methamphetamine, and / or failing to abstain from substance abuse in the criminal proceeding *People v. Venegas-Elbrecht, supra.* Complainant refers to and by this reference incorporates the allegations set forth above in paragraphs 13 – 14, inclusive, as though set forth fully.

///

FOURTH CAUSE FOR DISCIPLINE

(Illegal Possession of a Controlled Substance)

16. Respondent is subject to disciplinary action under section 2878, subdivision (a), and 2878.5, subdivision (a), on the grounds of unprofessional conduct, in that on or about September 6, 2009, Respondent obtained and / or possessed methamphetamine, a controlled substance and dangerous drug, without a valid prescription. Complainant refers to and by this reference incorporates the allegations set forth above in paragraph 13, subparagraph b, inclusive, as though set forth fully.

FIFTH CAUSE FOR DISCIPLINE

(Dangerous Use of a Controlled Substance)

17. Respondent is subject to disciplinary action under section 2878, subdivision (a), and 2878.5, subdivision (b), on the grounds of unprofessional conduct, in that on or about September 6, 2009, Respondent used a controlled substance and dangerous drug to an extent or in a manner dangerous or injurious to herself or others and / or to the extent that the use impairs her ability to conduct with safety to the public the practice authorized by her license. Complainant refers to and by this reference incorporates the allegations set forth above in paragraphs 13 - 16, inclusive, as though set forth fully.

DISCIPLINE CONSIDERATIONS

18. To determine the degree of discipline, Complainant alleges that:

a. On or about June 9, 2000, concurrent to issuing Respondent her license to practice vocational nursing, the Board issued a Notice of Warning Letter to Respondent for sustaining substantially related criminal convictions in 1989 and 1993.

b. On or about February 11, 1993, after pleading guilty, Respondent was convicted of one misdemeanor count of violating Health and Safety Code section 11550, subdivision (a) [under influence of a controlled substance, to wit, methamphetamine] in the criminal proceeding entitled *The People of the State of California v. Nancy Lee Elbrecht* (Super. Ct. Kern County, 1992, No. SC051992B). The Court sentenced Respondent to 90 days in jail, and placed her on three (3) years of probation. The circumstances underlying the conviction are that on or about

October 4, 1992, Respondent admitted to being under the influence of methamphetamine.

c. On or about December 12 ,1989, after pleading guilty, Respondent was convicted of one interlineated misdemeanor count of violating Vehicle Code section 12500(a) [driving without a valid license] in the criminal proceeding entitled *The People of the State of California v. Nancy Lee Venegas* (Super. Ct. Kern County, 1989, No. RM6065A). The Court place Respondent on two (2) years of probation.

PRAYER

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

1. Revoking or suspending Vocational Nurse License No. VN 192283, issued to Nancy Lee Venegaselbrecht;

2. Ordering Nancy Lee Venegaselbrecht to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and

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

DATED: January 13, 2011

for 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

LA2010600994
11/18/2010dmm
60581014.doc