EDMUND G. BROWN JR.
Attorney General of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General
RON ESPINOZA
Deputy Attorney General
State Bar No. 176908
110 West "A" Street, Suite 1100
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2100
Facsimile: (619) 645-2061
Attorneys for Complainant

FILED
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: **EVA LAURA CUEVAS NAVARRO** **5311 Columbus Place** **Oxnard, CA 93033** **Vocational Nurse License No. VN 227632** Respondent.	Case No. VN-2008-1142 **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.

2. On or about May 22, 2007, the Board of Vocational Nursing and Psychiatric Technicians issued Vocational Nurse License Number VN 227632 to Eva Laura Cuevas Navarro (Respondent). The Vocational Nurse License was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2011, unless renewed.

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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.

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 of the Code states:

". . . .

"(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

". . . ."

6. Section 2892.1 of the Code provides, in pertinent part, that the Board may renew an expired license at any time within four years after the expiration.

STATUTORY AND REGULATORY PROVISIONS

7. Section 482 of the Code states:

"Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

"(a) Considering the denial of a license by the board under Section 480; or

"(b) Considering suspension or revocation of a license under Section 490.

"Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee."

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8. Section 490 of the Code states:

"(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

"(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

"(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

". . . ."

9. Section 493 of the Code states:

"Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

"As used in this section, "license" includes "certificate," "permit," "authority," and "registration.""

10. Section 2878 of the Code states:

"The board may suspend or revoke a license issued under this chapter 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.

". . . ."

11. Section 2878.5 of the Code states:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter, it is unprofessional conduct for a person licensed under this chapter to do any of the following:

". . . .

"(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.

". . . ."

12. Section 2878.6 of the Code states:

"A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions and duties of a licensed vocational nurse is deemed to be a conviction within the meaning of this article. The board may order the

license suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment."

13. California Code of Regulations, title 16, section 2521, states:

"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:

"(a) Procuring a license by fraud, misrepresentation, or mistake.

"(b) A conviction of practicing medicine without a license in violation of Chapter 5 of Division 2 of the Business and Professions Code.

"(c) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of Chapter 6.5, Division 2 of the Business and Professions Code.

"(d) Aiding or assisting, or agreeing to aid or assist any person or persons, whether a licensed physician or not, in the performance of or arranging for a violation of any of the provisions of Article 13, Chapter 5, Division 2 of the Business and Professions Code.

"(e) Conviction of a crime involving fiscal dishonesty.

"(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."

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14. California Code of Regulations, title 16, section 2522, states:

"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 his or 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."

COST RECOVERY

15. Section 125.3 of the Code provides that the Board may request the administrative law just 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 investigation and enforcement of the case.

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FIRST CAUSE FOR DISCIPLINE

(July 31, 2006, Conviction for DUI of June 5, 2006)

16. Respondent is subject to disciplinary action under Code sections 2878, subdivision (f) and 490 in that Respondent was convicted of a crime substantially related to the qualifications, duties and functions of a licensed vocation nurse. The circumstances are as follows:

a. On July 31, 2006, in a criminal proceeding entitled *The People of the State of California v. Eva Laura Cuevas Navarro*, in Ventura County Superior Court, case number 2006021323, Respondent was convicted on her plea of guilty of violating Vehicle Code section 23152, subdivision (b), driving while having a 0.08 percent or higher blood alcohol content (BAC), and Respondent admitted a special allegation under Vehicle Code section 23578, driving with a BAC of .15 percent or more.

b. The facts that led to the conviction are that on June 5, 2006, Respondent was pulled over by a California Highway Patrol officer (officer) on Victoria Avenue approaching Valentine Road in Ventura for making a right turn at an intersection against a posted "no right turn sign." When the officer made contact with Respondent he noticed the smell of an alcoholic beverage coming from Respondent's vehicle, observed that her eyes were red and watery, and her speech was slow and slurred. In response to the officer's questioning, Respondent admitted that she had one beer earlier that evening. Respondent failed to perform field sobriety tests as explained and demonstrated and was arrested. Respondent was administered a breath test which yielded results of .15 and .16 percent BAC.

c. As a result of the conviction Respondent was sentenced to formal probation for 36 months, ordered to serve 48 hours in the Ventura County Jail, participate as directed in any treatment program designated by the probation officer, and other terms and conditions.

SECOND CAUSE FOR DISCIPLINE

(October 17, 2006, Conviction for Driving on a Suspended License on August 30, 2006)

17. Respondent is subject to disciplinary action under Code sections 2878, subdivision (f) and 490 in that Respondent was convicted of a crime substantially related to the qualifications, duties and functions of a licensed vocation nurse. The circumstances are as follows:

a. On October 17, 2006, in a criminal proceeding entitled *The People of the State of California v. Eva Laura Cuevas Navarro*, in Ventura County Superior Court, case number 2006036433, Respondent was convicted on her plea of guilty of violating Vehicle Code section 14601.1, subdivision (a), driving a motor vehicle while privilege suspended, reduced to an infraction. Respondent was ordered to pay various fines and fees.

b. The facts that led to the conviction are that on August 30, 2006, an Oxnard Police officer pulled over Respondent for a headlight that was not working. When the officer asked Respondent for her driver's license, registration, and insurance, Respondent told the officer she did not have her driver's license with her as it was suspended for failure to complete a DUI program in violation of her probation. The police officer issued Respondent a citation and allowed the additional licensed driver in Respondent's vehicle to drive the vehicle instead of Respondent.

THIRD CAUSE FOR DISCIPLINE

(March 3, 2009, Conviction for DUI on October 18, 2008)

18. Respondent is subject to disciplinary action under Code sections 2878, subdivision (f) and 490 in that Respondent was convicted of a crime substantially related to the qualifications, duties and functions of a licensed vocation nurse. The circumstances are as follows:

a. On January 5, 2009, in a criminal proceeding entitled *The People of the State of California v. Eva Laura Navarro*, in Los Angeles County Superior Court, case number 9BF00094, Respondent was convicted by her plea of no contest of violating Vehicle Code section 23152, subdivision (b), driving while having a 0.08 percent or higher BAC and Vehicle Code section 14601.1, driving while her driving privilege was suspended and revoked.

b. The facts that led to the conviction are that on October 18, 2008, Respondent was pulled over by a California Highway Patrol (CHP) officer for weaving and crossing over the divider line and her fluctuating speed, between 75 and 90 miles per hour, on southbound I-605 near the South Street off-ramp, where Respondent exited the freeway. The CHP officer noticed Respondent's red/watery eyes and smelled a strong odor of an alcoholic beverage emitting from Respondent's vehicle. Respondent admitted to consuming one drink. The CHP officer conducted

field sobriety tests, which Respondent failed and she was then arrested. The preliminary alcohol screening (PAS) test yielded results of .11 percent BAC.

c. As a result of the conviction, Respondent was sentenced to 36 months of summary probation; ordered to serve 96 hours in Los Angeles County Jail, less credit for 12 hours served; perform 50 days of service with Caltrans; complete an 18-month second offender alcohol and other drug education and counseling program; enroll in an SB38 program within 21 days; complete the Victim Impact Program (VIP) of Mothers' Against Drunk Driving (MADD), among other conditions.

d. On or about March 12, 2010, Respondent failed to appear for post-sentencing to provide proof of completion of community service. Respondent's probation was revoked and a $35,000 bench warrant was issued.

e. At a hearing on or about May 5, 2010, Respondent was found in violation of probation. Probation was reinstated on the terms that she show proof of enrollment in an SB38 program by June 3, 2010. On June 3, 2010, Respondent failed to appear. A $35,000 bench warrant was issued and remains in effect.

FOURTH CAUSE FOR DISCIPLINE

(Using Alcohol to a Dangerous Extent)

19. Respondent's license is subject to discipline under Code section 2878.5, subdivision (b) in that Respondent used alcohol to an extent dangerous to herself and others as is set forth in paragraphs 16 and 18, above, which are incorporated by this reference.

FIFTH CAUSE FOR DISCIPLINE

(Criminal Convictions Involving the Consumption of Alcohol)

20. Respondent's license is subject to discipline under Code section 2878.5, subdivision (c) in that Respondent was convicted of criminal offenses involving the consumption of alcohol as is set forth in paragraphs 16 and 18, above, which are incorporated by this reference.

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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 Number VN 227632, issued to Eva Laura Cuevas Navarro;

2. Ordering Eva Laura Cuevas Navarro to pay the Board of Vocational Nursing and Psychiatric Technicians the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: November 23, 2010.

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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