



Filed  
APR 11 2005  
Board of Nursing

KANSAS STATE BOARD OF NURSING  
MARY BLUBAUGH MSN, RN, EXECUTIVE ADMINISTRATOR

KATHLEEN SEBELIUS, GOVERNOR

*April 11, 2005*

Gary Manning  
3895 North Kenwood Ave  
San Bernardino, CA 92404

**SUMMARY ORDER**

Dear Mr. Manning:

The Disciplinary Committee of the Kansas State Board of Nursing has reviewed your application materials and on behalf of the Board members I am denying your endorsement application to practice nursing as a registered nurse in Kansas. This denial is based upon the following:

**FINDINGS OF FACT**

1. Respondent submitted an application to the Board for endorsement as a registered nurse in the State of Kansas on 2/2/2004.
2. Respondent has an RN license No. 301677 and a Public Health Nurse Certificate No. 29842 in California. The California Board of Nursing has a disciplinary action in case No. 2000-237. The California Board of Nursing Decision of May 29, 2002 is attached and incorporated within. The order describes a revocation with a stay in California, subject to probationary requirements of several limitations on the applicant's practice, and to payment of the costs of the action. The probationary requirements are not completed as yet.

**CONCLUSIONS OF LAW**

11. K. S. A. 65-1120(a) provides that it is a ground for denial of a license if the applicant is found to be guilty of:

K.S.A. 65-1120(a)(8) to have a license to practice nursing as a registered nurse or as a practical nurse denied, revoked, limited or suspended, or to be publicly or privately censured, by a licensing authority of another state, agency of the United States government, territory of the United States or country or to have other disciplinary action taken against the applicant or licensee by a licensing authority of another state, agency of the United States government, territory of the United States or country. A certified copy of the record or order of public or private censure, denial, suspension, limitation, revocation or other disciplinary action of the licensing authority of another state, agency of the United States government, territory of the United States or country shall constitute prima facie evidence of such a fact for purposes of this paragraph (8).

12. K.S.A. 77-511(a)(2)(a) of the Kansas Administrative Procedure Act authorizes the use of summary proceedings by a state agency when denying an application.

13. Your conduct described herein violates the Kansas Nurse Practice Act.
14. If the information provided is incorrect, or if you wish to dispute this matter, please let us know immediately by following the procedure for requesting a hearing. A copy of your application will be sent to you upon request.
15. Pursuant to K.S.A. 77-537, this decision, which is called a Summary Order, is subject to your request for a hearing. If you desire a hearing, you must submit or direct a written request for hearing to:

Kansas State Board of Nursing  
Legal Division  
900 SW Jackson, Suite 1051  
Topeka, Kansas 66612-1230  
(785) 296-4325

THIS REQUEST MUST BE SUBMITTED WITHIN FIFTEEN (15) DAYS FROM THE DATE OF THIS ORDER. If a hearing is not requested in the time and manner stated above, this Summary Order becomes effective and final upon the expiration of the time for requesting a hearing.

  
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Kelly Arpin, L.P.N.  
Board Member

CERTIFICATE OF SERVICE

I certify that on the 11<sup>th</sup> day of April, 2005, the foregoing copy of the Summary Order was served by depositing the same in the United States Mail, first-class postage prepaid, addressed to the following:

Gary Manning  
3895 North Kenwood Ave  
San Bernardino, CA 92404



Betty Wright/  
Assistant Attorney General

BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

GARY LYNN MANNING  
5541 Crosscreek Lane 32105  
Fort Worth, TX 76109

Case No. 2000-237

OAH No. L2001010552

Registered Nurse License No. 301677,  
Public Health Nurse Certificate No. 29842,  
Respondent.

**DECISION**

The attached Proposed Decision of the Administrative Law Judge is hereby  
adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective on May 29, 2002.

IT IS SO ORDERED April 29, 2002.

SANDRA ERICKSON, CRNA  
PRESIDENT  
BOARD OF REGISTERED NURSING  
Department of Consumer Affairs  
State of California

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Registered Nurse License No. 301677,  
  
Public Health Nurse Certificate No. 29842,  
  
Respondent.

**PROPOSED DECISION**

Administrative Law Judge M. Amanda Behe, Office of Administrative Hearings, State of California, heard this matter on November 1, 2001, in Los Angeles, California.

Erlinda G. Shrenger, Deputy Attorney General, represented the Board of Registered Nursing.

Robert H. Beswick, Attorney at Law, represented respondent who was present at the hearing.

On February 1, 2001, the Notice of Hearing was issued setting the matter for August 23, 2001. On August 6, 2001, Mr. Beswick requested a continuance of the scheduled hearing date on the grounds that he had a calendar conflict and because discovery had not been completed. Mr. Beswick and Ms. Shrenger agreed that the matter could be reset on one of three specified dates, one of which was November 1, 2001. On August 8, 2001, Mr. Beswick's request for a continuance was granted, and both counsel were notified by the Office of Administrative Hearings that the matter reset on November 1, 2001.

On September 13, 2001, Mr. Beswick requested a continuance of the scheduled November 1, 2001, hearing date on the grounds that he would be out of town on that date and that he would be handling other unspecified cases. He wrote that he would be out of the state most of the balance of 2001, and requested that the matter be rescheduled in 2002. On

September 25, 2001, Ms. Shrenger filed an Opposition to the Request for Continuance, noting that Mr. Beswick agreed to the scheduled November 1, 2001, date when his prior continuance request was granted and that he should not have accepted other engagements which conflicted with that date. On October 1, 2001, Mr. Beswick's request for a continuance was denied because the scheduled date had been selected with his agreement, and he had been notified of that date on August 9, 2001.

On October 24, 2001, Mr. Beswick made a third request for a continuance on the grounds of the recent events in the nation and that a seven-day notice was insufficient to obtain out-of-state witnesses.<sup>1</sup> On October 29, 2001, Ms. Shrenger filed an opposition to Mr. Beswick's third request for a continuance. She noted that he had had at least three months to make travel arrangements for witnesses, that at least three of his character witnesses resided in Los Angeles County, and that any further continuance would be inconsistent with the public interest and the safety of respondent's nursing colleagues. On October 29, 2001, Mr. Beswick responded that his three requests for a continuance were grounded on viable facts and circumstances and not frivolous or unsupported. He reiterated his request for a continuance. Later that day Mr. Beswick's request for a continuance was denied and the parties were notified of that order by telephone.

Documentary and testimonial evidence was received on November 1, 2001. The record remained open for receipt of a certified copy of Exhibit 5 and for receipt of closing briefs to be filed simultaneously on January 11, 2002. Respondent's Closing Brief was received on January 10, 2002, as Exhibit B. On the same date at 4:09 p.m. Mr. Beswick faxed a letter [Exhibit C] in which he objected to Ms. Shrenger having an extension<sup>2</sup> of time to file her closing brief, and requested the opportunity to file a reply to her brief. The undersigned Administrative Law Judge directed the calendar clerk to advise Mr. Beswick that he could file a responsive or supplemental brief. Later that day, Ms. Shrenger advised the Los Angeles Office of Administrative Hearings that she could file her brief by the due date and would not utilize an extension. The Board's Closing Statement was received on January 11, 2002, as Exhibit 6. The record remained open for receipt of the additional brief for respondent. On February 15, 2002, Mr. Beswick's office confirmed that no further brief

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<sup>1</sup> Mr. Beswick had served Ms. Shrenger with Notices of Intent to Introduce Declarations of Witnesses [Government Code section 11524] on October 18 and 24, 2001, more than a month after the events of September 11, 2001. On October 24, 2001, Ms. Shrenger filed her request to cross-examine three of the five witnesses whose declarations were proposed.

<sup>2</sup> At hearing counsel were permitted to determine if they wanted to file briefs, if they would be simultaneous or responsive, and the briefing schedule they wanted. Counsel were advised that if they needed an extension of a week or less they need not contact the undersigned, but need only advise opposing counsel of the use of that short extension. Neither counsel objected to that procedure, which was designed to prevent problems of contacting an administrative law judge conducting hearings away from her home office. Counsel were further advised that a longer extension would require formal permission.

Mr. Beswick's faxed letter of January 10, 2002, stated that one day before the briefs were due he received a call from Ms. Shrenger advising that she was using the one-week extension. He wrote: "Please be advised that we object to this extension on two grounds: she has requested at the eleventh hour an extension within which to file her brief only after reading our brief. Effectively her brief will be a response to ours and not a closing brief as ordered by the court. As a result we request that she not be allowed the extension, and that her brief be a 'closing brief' and not an opposition to ours. We are also requesting that we be allowed to file a reply to (sic) should we deem it necessary."

would be filed. On that date Mr. Beswick again faxed the Closing Brief which had been received as Exhibit B. The second faxed document was marked as Exhibit D. The record was closed and the matter was submitted.

## FACTUAL FINDINGS

1. Ruth Ann Terry, R.N., M.P.H., is the Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs (hereinafter "the Board"), and made and filed the Accusation in her official capacity.

2. On March 31, 1979, the Board issued registered nurse License No. 301677 to Gary Lynn Manning (hereinafter "respondent"). The license was in full force and effect at all times relevant to the Accusation and will expire on October 31, 2002, unless renewed. On April 9, 1980, the Board issued Public Health Nurse Certificate No. 29842 to respondent. The certificate will expire on October 31, 2002, unless renewed.

Respondent obtained his BS in 1979 at California State University at Los Angeles and his master's degree at the same institution in 1983. He holds a specialized certificate in critical care nursing, and is a member of the Emergency Nurses Association and the National Flight Nurse Association. He has worked at several hospitals in Oregon, California, and Texas in various positions including charge nurse, unit supervisor, multi-unit supervisor, and Assistant Director of Nursing.

3. Pursuant to Business and Professions Code section 2750 the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 of the Nursing Practice Act.

4. Business and Professions Code section 2761 provides that:

"The board may take disciplinary action against a certified or licensed nurse or an applicant for a certificate for any of the following:

"(a) ...

"(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof."

5. Pursuant to Business and Professions Code section 2764 the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

6. Business and Professions Code section 490 provides that:

“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. 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 which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has lapsed, 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.”

7. Pursuant to Business and Professions Code section 125.3 the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the Nursing Practice Act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

8. On March 26, 1996, respondent was convicted in the Los Angeles Superior Court in Case No. BA117306 captioned “The People of the State of California v. Gary Manning,” on his plea of nolo contendere of violation of Penal Code section 243(c) [BATTERY AGAINST A NURSE], a felony. Respondent was placed on three years probation on various terms including that he complete 200 hours of community service, to stay away from the victim, and to cooperate with the probation office for psychiatric or psychological counseling.

The circumstances of the conviction were that on June 7, 1995, respondent committed battery against a female nurse E.K., a co-worker at Goodhew Ambulance.

9. The crime of which respondent was convicted is substantially related to the qualifications, functions and duties of a registered nurse within the meaning of Title 16, California Code of Regulations (“CCR”) 1444(a).

10. At the time of the offense respondent was employed<sup>3</sup> as a nurse in the Emergency Room of Huntington East Valley Hospital in Glendora, and through an agency at other hospitals and Goodhew Ambulance. At the Hollywood station of Goodhew Ambulance respondent and nurse E.K. handled critical care ground and air transport. They had separate sleeping quarters, which respondent described as like those in a fire station, available during shifts.

11. Respondent testified that E.K. alleged that he came into her room at the Hollywood station and forced her to touch his erect penis and fondled her breasts and vagina.

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<sup>3</sup> While respondent was living and working in Southern California his wife and family remained in Oregon.



12. Respondent testified that the rape charges originally filed<sup>4</sup> were reduced to a misdemeanor battery. He further claimed he pled nolo contendere to that misdemeanor on the advice of his attorney, and the plea meant he was not contesting the whole procedure but was not admitting guilt.

In fact respondent was convicted of a felony. On cross-examination he admitted that the judge advised him on the record that he was pleading to a felony, and the deputy district attorney stated twice that he was pleading to a felony.

13. Respondent was licensed in California at the time of his March 26, 1996, conviction. He did not report his conviction to the Board, and testified that he did not know if he was required to do so. Respondent had no contact from the Board regarding his conviction until late 1999.

14. Respondent completed the 200 hours of community service ordered by the court. He was permitted to complete some of the required community service taking blood pressures and performing glucose screenings at a Health Fair in Oregon.

15. Respondent obtained the ordered counseling from Dr. Wendy Saxon, a forensic psychologist whom respondent's attorney had used in prior criminal cases. Respondent met with Dr. Saxon four times over a four to five week period. He testified that Dr. Saxon pointed out a number of things about his personality and how he approached people. He opined that those four sessions changed his nursing practices, including that for female patients he always has a woman staff member or patient's relative present. He testified that he has matured and "is more aware of how circumstances could be interpreted."

16. Respondent continued working at Huntington East Valley Hospital until 1999, when he left to attend Texas Wesleyan University. He is a full-time student and scheduled to graduate as a nurse anesthetist in December 2003. Respondent is presently employed by CompHealth as a travelling nurse and at the Osteopathic Hospital Medical Center. He testified that there have been no complaints about his care.

17. Kenneth Langston, R.N., has known respondent since approximately 1979 as a co-worker and friend. As a licensed vocational nurse Mr. Langston worked with respondent at El Monte Community Hospital for four years, sometimes on the same shift. They worked together later at Santa Marta Hospital for a total of five years, and last worked together in 1991 or 1992. Although respondent has lived in Texas since 1999 he and Mr. Langston remain friends and speak monthly by telephone.

Mr. Langston opined that respondent is a nurse of excellent qualities and skills and that his ethics are "beyond reproach." He testified that the medical community considers respondent to be honest, sincere, and knowledgeable and that other nurses used him as a

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<sup>4</sup> The original charges were two felony counts of sexual penetration with a foreign object in violation of Penal Code section 289(A) and one felony count of sexual battery by restraint in violation of Penal Code section 243.4(A).

resource. Mr. Langston found respondent's arrest "unbelievable" because he had known respondent so many years and viewed his behavior with female coworkers and patients to be professional.

18. On June 15, 1999, in the Los Angeles Superior Court respondent's petition for a dismissal pursuant to Penal Code section 1203.4 was granted.

19. No direct expert evidence regarding respondent's psychiatric status was presented. A report by Dr. Saxon, who saw respondent four times, was received as hearsay. Dr. Saxon noted respondent's assertion that "the incident in question was a misunderstanding between two adults who were engaged in some intimate interplay that he did not feel constituted an act against the woman's will." That document and the hearsay statements of Richard Sheppard, R.N., Bradley Harville, R.N., Stephen Acosta, M.D., Stanley Shourup, R.N., and John McFarland, LVN, were considered pursuant to Government Code section 11513.

20. Respondent's argument that his 1996 conviction "bears no relationship with (sic) his qualifications, functions and duties as a registered nurse" was not persuasive.

21. Respondent's Closing Brief asserts facts<sup>5</sup> and purports to summarize evidence that was not presented at hearing. The false assertions of "facts" and descriptions of matters never even addressed by the evidence at hearing are to numerous to specify in the Proposed Decision. These claimed "facts" are, at best, confabulations.

22. Respondent asserts that the subject proceeding is barred by laches. To establish this defense, respondent must establish both an unreasonable delay in prosecution and that he was prejudiced by that delay. Fahmy v. Medical Board of California 38 Cal.App.4th 810, 815; Gates v. Department of Motor Vehicles (1979) 94 Cal.App.3d 921; Brown v. State Personnel Board (1985) 166 Cal.App.3d 1151.

Respondent asserts that the Board's delay prevented him from presenting evidence of the victim's "unusual behavior" and "nature and conduct" and "highly suspect nature." Such evidence would not have been admissible in that no collateral attack upon a conviction can be entertained in the subject administrative proceeding. Goodhew Ambulance no longer exists, but respondent presented statements and testimony from individuals who knew him at the time of the incident. Respondent did not establish that he was prejudiced by the Board's delay in filing the subject Accusation. The evidence established that respondent was aided by the passage of time which permitted him to establish a period of rehabilitation, and to obtain a dismissal pursuant to Penal Code section 1203.4.

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<sup>5</sup> Respondent's Closing Brief also states that the administrative hearing was conducted by Administrative Law Judge Janis Rovner. The hearing was conducted by the undersigned Administrative Law Judge, M. Amanda Behe.

Respondent's argument that he detrimentally relied upon the Board's inaction was not established by evidence in the record. Many of the related "facts" asserted in Respondent's Closing brief were not addressed, much less established, by the evidence.

23. The Board has incurred costs of the investigation and enforcement of the case totaling \$5,662.75. Those costs are found to be reasonable.

### LEGAL CONCLUSIONS

1. Clear and convincing evidence to a reasonable certainty establishes cause for revocation of respondent's license pursuant to Business and Professions Code sections 2761(f) and 490. Respondent has demonstrated sufficient rehabilitation that the public interest would be protected if he practiced under the strict terms set forth below.

2. Cause for ordering respondent to pay the Board's costs of the investigation and enforcement of \$5,662.75 was established.

### ORDER

The license of respondent Gary Lynn Manning is revoked; however, the revocation is stayed and respondent is placed on probation for five years on the terms and conditions set forth below. Each term and condition of probation contained herein is a separate and distinct term and condition. If any term and condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each term and condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

(1) OBEY ALL LAWS - Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by the respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this term, respondent shall submit completed fingerprint cards and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process. Respondent shall submit a recent 2" X 2" photograph of himself within 45 days of the effective date of the final decision.

(2) COMPLY WITH PROBATION PROGRAM - Respondent shall fully comply with the terms and conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the respondent's compliance with the Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

(3) REPORT IN PERSON - Respondent, during the period of probation, shall appear in person at interviews/ meetings as directed by the Board or its designated representatives.

(4) RESIDENCY OR PRACTICE OUTSIDE OF STATE - Periods of residency or practice as a registered nurse outside of California will not apply to the reduction of this probationary term. The respondent must provide written notice to the Board within 15 days of any change of residency or practice outside the state.

(5) SUBMIT WRITTEN REPORTS - Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to respondent's compliance with all the terms and conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

(6) FUNCTION AS A REGISTERED NURSE - Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week.

For purposes of compliance with the section, "engage in the practice of registered nursing" may include, when approved by the Board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

(7) EMPLOYMENT APPROVAL AND REPORTING REQUIREMENTS -

Respondent shall obtain prior approval from the Board before commencing any employment, paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all performance evaluations and other employment related reports as a registered nurse upon request of the Board.

Respondent shall provide a copy of this decision to his employer and immediate supervisor prior to commencement of any nursing or other health care related employment.

Respondent shall notify the Board in writing within seventy-two (72) hours after he obtains any nursing or other health care related employment, when such employment is not as a registered nurse. Respondent shall notify the Board in writing within seventy-two (72) hours after he is terminated from any registered nursing, other nursing, or other health care related employment with a full explanation of the circumstances surrounding the termination.

(8) SUPERVISION - Respondent shall obtain prior approval from the Board regarding respondent's level of supervision and/or collaboration before commencing any employment as a registered nurse.

Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

- (a) Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.
- (b) Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours respondent works.
- (c) Minimum - The individual providing supervision and/or collaboration has person-to-person communication with respondent at least twice during each shift worked.
- (d) Home Health Care - If respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by the respondent with or without respondent present.

(9) EMPLOYMENT LIMITATIONS - Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

If the respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

## PROVIDE DECISION

Respondent shall provide a copy of this decision to the nursing regulatory agency in every state and territory in which he has a registered nurse license.

(10) COMPLETE A NURSING COURSE(S) Respondent, at his own expense, shall enroll and successfully complete an ethics course relevant to the practice of registered nursing no later than six months prior to the end of his probationary term.

Respondent shall obtain prior approval from the Board before enrolling in the course. Respondent shall submit to the Board the original transcripts or certificates of completion for the above required course. The Board shall return the original documents to respondent after photocopying them for its records.

(11) COST RECOVERY - Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 125.3 in the amount of \$5,662.75. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than three months prior to the end of the probation term.

(12) VIOLATION OF PROBATION – If a respondent violates the conditions of his probation, the Board after giving the respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed revocation of respondent's license.

If during the period of probation, an accusation or petition to revoke probation has been filed against respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against the respondent'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. Upon successful completion of probation, the respondent's license will be fully restored.

(13) MENTAL HEALTH EXAMINATION - The respondent shall, within 45 days of the effective date of this decision, have a mental health examination including psychological testing as appropriate to determine his capability to perform the duties of a registered nurse. The examination will be performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by the Board. The examining mental health practitioner will submit a written report of that assessment and recommendations to the Board. All costs are the responsibility of the respondent. Recommendations for treatment, therapy or counseling made as a result of the mental health examination will be instituted and followed by the respondent.

If respondent is determined to be unable to practice safely as a registered nurse, the licensed mental health care practitioner making this determination shall immediately notify the Probation Program and respondent by telephone. Respondent shall immediately cease practice and may not resume practice until notified by the Probation Monitor. During this period of suspension, respondent shall not engage in any practice for which a license issued

by the Board is required, until the Probation Monitor has notified respondent that a mental health determination permits respondent to resume practice.

(18) THERAPY OR COUNSELING PROGRAM - Respondent, at his expense, shall participate in an on-going counseling program until such time as the Board releases him from this requirement and only upon the recommendation of the counselor. Submission of written progress reports from the counselor will be required at various intervals to be determined by the Probation Monitor.

Dated: March 8, 2002

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M. AMANDA BEHE  
Administrative Law Judge  
Office of Administrative Hearings