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By M. Baylor
Virginia Board of Nursing



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AUG 16 2016

COMMONWEALTH of VIRGINIA
BOARD OF NURSING

David E. Brown, D.C.
Director

Department of Health Professions

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Henrico, Virginia 23233-1463

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TEL (804) 367-4400
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August 16, 2016

David Hixon, R.N.
6690 1/2 Antigua Blvd.
San Diego, CA 92124

DUPLICATE COPY
VIA FIRST CLASS MAIL

DATE 8/16/16

RE: License Number: 0001-233230
Case Number: 175395

Dear Mr. Hixon:

Pursuant to Virginia Code § 54.1-2409, you are hereby given notice that your license to practice professional nursing in the Commonwealth of Virginia has been mandatorily suspended by the enclosed Order entered August 15, 2016. You are hereby advised that you may not practice professional nursing or hold yourself out as a licensed professional nurse unless and until the Board of Nursing has notified you in writing that your license has been reinstated. Please return your license to Jay Douglas, Executive Director of the Virginia Board of Nursing ("Board"), at the above address, immediately upon receipt of this letter.

You may apply to the Board for reinstatement of your license, and you shall be entitled to a formal administrative hearing not later than the next regular meeting of the Board after the expiration of 60 days from the Board's receipt of your reinstatement application. The reinstatement of your license shall require the affirmative vote of three-fourths of the members of the Board present at the hearing. The reinstatement application can be found at www.dhp.virginia.gov/nursing.

If you have any questions about this matter, you can contact me at (804) 367-4474 or anne.joseph@dhp.virginia.gov.

Sincerely,

Anne Joseph

Anne Joseph, Deputy Director
Administrative Proceedings Division

cc: Jay P. Douglas, Executive Director, Board of Nursing
Enclosures

BEFORE THE VIRGINIA DEPARTMENT OF HEALTH PROFESSIONS

IN RE: DAVID HIXON, R.N.
License Number: 0001-233230
Case Number: 175395

ORDER OF MANDATORY SUSPENSION


In accordance with Virginia Code § 54.1-2409, I, David E. Brown, D.C., Director of the Virginia Department of Health Professions, received and acted upon evidence that the license of David Hixon, R.N. to practice as a registered nurse in the State of California was revoked by the California Board of Registered Nursing. A certified copy of the California Board's Decision is attached hereto as Commonwealth's Exhibit 1.

WHEREUPON, by the authority vested in the Director of the Department of Health Professions pursuant to Virginia Code § 54.1-2409, it is hereby ORDERED that the license of David Hixon, R.N. to practice professional nursing in the Commonwealth of Virginia is hereby SUSPENDED.

Upon entry of this Order, the license of David Hixon, R.N. will be recorded as suspended and no longer current and valid. Should David Hixon, R.N. seek reinstatement of his license pursuant to Virginia Code § 54.1-2409, he shall be responsible for any fees that may be required for the reinstatement of the license prior to issuance of the license to resume practice.

This Order shall be applicable to Mr. Hixon's multistate licensure privilege, if any, to practice professional nursing in the Commonwealth of Virginia.

Pursuant to Virginia Code § 2.2-4023 and § 54.1-2400.2, the signed original of this Order shall remain in the custody of the Department of Health Professions as a public record and shall be made available for public inspection or copying on request.




David E. Brown, D.C., Director
Virginia Department of Health Professions

ENTERED:

8/15/16

CERTIFICATION OF DUPLICATE RECORDS

I, David E. Brown, D.C., Director of the Department of Health Professions, hereby certify that the attached Decision entered July 11, 2016, regarding David Hixon, R.N., is a true copy of the records received from the California Board of Registered Nursing.



David E. Brown, D.C.

Date: 8/15/16

I hereby certify the foregoing to be a true copy of the documents on file in our office.

BOARD OF REGISTERED NURSING



Joseph L. Lewis, PhD, MSN, RN
Executive Officer



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



In the Matter of the Accusation Against:

DAVID HIXON
AKA DAVID RALPH HIXON
4025 Arizona St. #20
San Diego, CA 92104

Registered Nurse License No. 536750

Respondent.

Case No. 2016-137

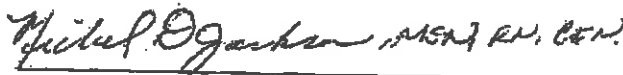
OAH No. 2015090148

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 August 10, 2016.

IT IS SO ORDERED this 11th day of July, 2016.



Michael D. Jackson, President
Board of Registered Nursing
Department of Consumer Affairs
State of California

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

In the Matter of the Accusation Against:

DAVID HIXON, also known as
DAVID RALPH HIXON,

Registered Nurse License No. 536750,

Respondent.

Case No. 2016-137

OAH No. 2015090148

PROPOSED DECISION

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 28, 2016, in San Diego, California.

Lauro A. Paredes, Deputy Attorney General, Department of Justice, State of California, represented Louise R. Bailey, M.Ed., R.N., complainant, the Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs, State of California.

David Hixon, R.N., also known as David Ralph Hixon, R.N., respondent, represented himself and was present throughout the administrative hearing.

The matter was submitted on April 28, 2016.

SUMMARY

Complainant seeks to impose discipline upon respondent's registered nursing license as a result of a September 20, 1999, driving under the influence conviction and an October 2, 2014, driving under the influence conviction. Respondent remains on summary probation as a result of the 2014 conviction.

Respondent admitted the fact of his convictions. He acknowledged he exercised extremely poor judgment each time he decided to operate a motor vehicle after consuming alcoholic beverages to excess. He denies having a problem with alcohol. He believes it appropriate to place his license on a short period of probation, but objects to some terms and conditions of probation typically imposed for alcohol-related misconduct. According to

respondent and his wife, he no longer consumes alcoholic beverages and has no plans to do so in the near future.

Respondent did not establish a compelling reason to deviate from the Board's recommended disciplinary guidelines or depart from the usual terms and conditions of probation applicable in these kinds of matters. While respondent may be well on the path to rehabilitating himself, appropriate terms and conditions of probation must be imposed to monitor his recovery. Imposing probation for a period of three years, subject to terms and conditions of probation applicable to alcohol-related misconduct, will protect the public.

FACTUAL FINDINGS

License History

1. On September 16, 1997, the Board of Registered Nursing issued Registered Nurse License No. 536750 to respondent. Respondent's license expires on May 31, 2016, unless renewed. There is no history of administrative discipline having previously been imposed upon respondent's license.

Jurisdictional Matters

2. On August 5, 2015, complainant signed the accusation. The accusation alleged respondent was convicted of driving under the influence on September 20, 1999 (first cause for discipline) and October 2, 2014 (second cause for discipline); using alcohol in a dangerous manner on August 18, 1999, and August 2, 2014 (third cause for discipline); and unprofessional conduct (fourth cause for discipline). The accusation sought recovery of the Board's costs of investigation and enforcement.

The accusation was served on respondent, who timely filed a notice of defense. The matter was set for hearing.

On April 28, 2016, the record was opened; jurisdictional documents were presented; documentary evidence was received; sworn testimony was given; official notice was taken; closing arguments were given; the record was closed; and the matter was submitted.

Respondent's September 20, 1999, Conviction

3. On September 20, 1999, respondent was convicted, on his plea of no contest, of violating Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol level of 0.08 percent or more), a misdemeanor, in the Superior Court of California, County of Santa Barbara, in Case No. 493356.

The court suspended imposition of sentence and placed respondent on summary probation for three years. Terms and conditions of probation required respondent to serve 18

days in custody, which was suspended pending the successful completion of probation; pay fines and fees; make restitution; undergo a 90-day driver's license suspension; and complete a first offender drinking driver program. Respondent failed to complete the first offender program in a timely manner and violated probation; probation was reinstated on condition that he completed the first offender program. Respondent ultimately completed probation. His conviction has not been expunged.

4. The circumstances underlying respondent's conviction are as follows: On August 18, 1999, respondent and his friends celebrated respondent's birthday by wine tasting in Santa Barbara County. He drove his vehicle after the celebration. A California Highway Patrol officer stopped respondent's vehicle for speeding, determined respondent had consumed alcoholic beverages, and observed evidence of intoxication. Respondent was arrested for driving under the influence. A blood sample obtained following respondent's arrest resulted in a blood alcohol level that exceeded 0.08 percent, although the precise level was not established.

Respondent's October 2, 2014, Conviction

5. On October 2, 2014, respondent was convicted, on his plea of guilty, of violating Vehicle Code section 23152, subdivision (a) (driving under the influence of alcohol), a misdemeanor, in the Superior Court of California, County of San Diego, Central District, in Case No. M189296.

The court suspended imposition of sentence and placed respondent on summary probation for five years. Terms and conditions of probation required respondent provide 15 days public service, with credit given for having served one day in custody; pay fines and fees; make restitution; attend a MADD impact presentation; and complete a first offender drinking driver program.

Respondent paid fines and fees, attended the MADD impact presentation, and completed the first offender drinking driver program. He had not completed nine of the remaining 14 days of public service by the date of the hearing in this matter. He remains on summary probation.

6. The circumstances underlying respondent's conviction are as follows: On the evening of August 1, 2014, and the early morning hours of August 2, 2014, respondent and his friends celebrated respondent's upcoming birthday by drinking at a bar in the North Park area of San Diego. After the celebration, respondent went to his 2013 Nissan Xterra, which was parked on Kansas Street, to move it to avoid a parking ticket. According to respondent, he had consumed too much alcohol to drive home, and he merely intended to move his vehicle rather than driving it home. He got into his vehicle, started it up, put it in reverse, and backed into a Mitsubishi Lancer that was parked behind his vehicle.

A San Diego police officer on patrol in the immediate area heard a loud crunching noise and observed what had just occurred. The officer was concerned respondent might

drive away. The officer initiated a stop with sirens and lights. The officer spoke with respondent at approximately 2:00 a.m.

According to the arresting officer's report, respondent said he had been at the "Bar Pink," where he consumed four 14 oz. beers. He said he started drinking at 7:00 p.m. the evening before, about seven hours earlier. He admitted his consumption of alcohol affected his driving. The officer noted respondent's alcoholic breath, bloodshot and watery eyes, slurred speech, unsteady gait, and other signs of intoxication. Respondent, realizing he was under the influence and was going to be arrested, declined to take the field sobriety tests. A preliminary alcohol screening of respondent's breath resulted in a blood alcohol level of 0.19 percent. Respondent was arrested and taken to the San Diego County Jail.

Respondent provided a blood sample at the jail that was tested twice: The first test resulted in a blood alcohol level of 0.234 percent; the second test resulted in a blood alcohol level of 0.250 percent.¹ Respondent admitted in this proceeding that his blood alcohol level on the date of the incident was extremely high. He also testified he had no idea of the number of drinks he consumed in the hours before his arrest.²

Respondent's Testimony

7. Respondent is an affable, intelligent, and articulate 54-year-old registered nurse. He was born in El Paso, Texas, and grew up in St. Louis, Missouri. He graduated from Ritenour High School in Overland, Missouri, in 1979. After high school, he attended the University of Missouri, St. Louis, from 1979 to 1982, and the University of Missouri, Columbia, from 1982 to 1984. He went into the restaurant business in 1984 and, after serving as a restaurant manager, he opened his own restaurant in Missouri.

Respondent moved to San Diego in 1988 and went into the restaurant business with his (then) father-in-law. Thereafter, he worked at several San Diego restaurants including Reuben's, KFC, the Boathouse, and Olive Garden. He attended San Diego City College and Pt. Loma Nazarene College.

While he was working and attending college, respondent spoke with his (then) sister-in-law, who was a nurse. She very much enjoyed her work. Respondent observed his sister-in-law's profession was stable and rewarding. He decided he wanted to become a nurse, so he enrolled in the nursing program at Southwest Community College.

¹ These factual matters were established through the arresting officer's report, which was received under *Lake v. Reed* (1997) 16 Cal.4th 448, and respondent's testimony.

² Respondent weighed 210 pounds at the time of his arrest. A 210 pound male who consumes 14 pints of beer evenly over a six hour period before blood alcohol testing will produce a blood alcohol level of approximately 0.230 percent on testing.

In 1997, respondent obtained an associate's degree in nursing from Southwest Community College. The Board issued a registered nursing license to respondent in September 1997.

Respondent has been employed full time as a registered nurse since obtaining his license. He has been employed as a registry nurse with Staffing Partners, as a traveling nurse with American Mobile Nurses, by Scripps Mercy Hospital in the cardiac step down unit, at the UCSD Medical Center, and at Palomar-Pomerado Hospital in the emergency room. For the past five years, he has been employed by Kaiser Permanente as a utilization management nurse. In his current role, respondent provides case management services and supports to patients to ensure they receive the care and support necessary to achieve a positive clinical outcome while, at the same time, making certain that the services provided are medically appropriate and necessary. He works 40 hours a week.

Respondent has been a board member of the Case Management Society of America, Southern California chapter, for more than five years.

In addition to his current employment, respondent is an active member of the San Diego Mountain Rescue Team. He provides volunteer rescue services and serves on the SDMRT's Board of Directors.

8. Respondent expressed great remorse for his driving under the influence convictions. He emphasized the convictions were misdemeanors that occurred about 15 years apart. He argued he could not have worked successfully as a registered nurse if he had an alcohol or substance abuse problem. He believed his convictions were not related to a chronic drinking problem, but were the result of his having exercised extremely poor judgment on two occasions when he drank to excess and drove. He acknowledged that his 0.23 percent blood alcohol level was extremely high and theoretically might indicate some degree of alcohol tolerance. According to respondent, "The [blood alcohol] level is not lost on me." He said he last consumed alcoholic beverages on August 1, 2014. He said he did not experience any adverse reaction after he stopped drinking alcohol, which he believed established that he was not alcohol dependent. He attended Alcoholics Anonymous (AA) meetings as a requirement of criminal probation. He last attended an AA meeting four months ago as part of probation. He does not voluntarily attend AA meetings because he does not consider himself to be an alcoholic.

After respondent's first driving under the influence conviction in 1999, he did not abstain from the consumption of alcohol. He was able to control his drinking. After his arrest on August 2, 2014, he was "shocked and embarrassed by the whole situation." He decided the easiest way to control his drinking was simply not to consume any alcohol. He testified he "has chosen not to drink again," and while he has no plan to consume alcohol at this time, he is not certain he will not consume alcoholic beverages in the future.

Respondent notified his employers, the SDMRT, and others of his 2014 arrest and driving under the influence conviction.

Documentary and Other Evidence

9. Respondent provided several letters to verify his employment and competence as a registered nurse and his involvement with the San Diego Mountain Rescue Team.

Cynthia Natalie, R.N., Senior Director, Quality and Care Management, Permanent Advantage, authored a letter dated April 1, 2016. That letter stated Ms. Natalie had daily interaction with respondent, who always exhibited good judgment, excellent communication skills, and a calm demeanor. The letter described respondent as a team player who never exhibited any signs of alcohol or substance abuse.

Janet Appel, R.N., Director of Information, Sharp Rees-Stealy Medical Centers, authored an undated letter. That letter stated Ms. Appel had known respondent for seven years; she had supervised respondent for many years; respondent was a valuable asset to a contract team; and respondent never showed any signs of substance abuse in the professional arena or in his personal life. Ms. Appel believed respondent possessed integrity and a wonderful work ethic.

Vivian A. Thwaites, R.N., authored a letter dated March 25, 2016. The letter stated Ms. Thwaites had known respondent for 14 years. The letter described respondent as a "wonderful, dedicated and compassionate Case Manager." Ms. Thwaites never observed respondent exhibit any signs or symptoms of substance abuse.

Jack Coughlin, R.N., founder of PsychCoverage Inc., authored a letter dated March 23, 2016. The letter stated Mr. Coughlin had known respondent for ten to 12 years. Mr. Coughlin, a professional colleague and one of respondent's best friends, had never observed any evidence of respondent having an alcohol or substance abuse problem.

A letter signed by J. Anthony Rolfe, Attorney at Law, was dated March 30, 2016. The letter stated Mr. Rolfe met respondent in 2010 as a result of their mutual involvement in SDMRT. The letter stated respondent had always acted in a professional manner, demonstrated sound judgment, and possessed good moral character. Mr. Rolfe had not seen any sign of substance abuse in respondent's personal life or with SDMRT.

Dennis Peck, SDMRT's President, authored a letter dated March 31, 2016. The letter stated Mr. Peck had known respondent since 2008. According to the letter, respondent advanced from a trainee to rescue member status. Respondent serves on SDMRT's Board of Directors. Respondent has been a team trainer and is considered a reliable team member. Mr. Peck has never observed any signs or symptoms of substance abuse. Respondent is of good moral character.

10. A recent performance review from Kaiser Permanente established respondent exceeded expectations in the areas of leadership, client service, communication and interpersonal skills, technical skills, and clinical competency.

11. In addition to holding a nursing license in California, respondent holds registered nursing licenses in Maryland, Virginia, Washington, D.C., and Oregon. No discipline has been imposed upon any of those licenses.

12. Respondent provided a letter, dated April 12, 2016, addressed to the Board. It described the circumstances occurring the evening of August 2, 2014, and the conviction on October 2, 2014.

The letter stated in part:

I would like to express my regret making the poor personal decision to even get into my car, whether I was only moving it or not. I take full responsibility for my actions and understand the seriousness of this matter. I have and intend to fulfill all terms of my probation. This has been a learning experience for me and one that I have and will continue to share with others in order to impress how serious drinking and driving is.

The letter also stated, in part, "I do not have a problem with alcoholism or any other addictive substance."

The letter concluded:

Thank you very much for taking the time to review my story and submissions. It is my hope that you are able to see my sincerity and the professionalism that I bring to the Board of Nursing and my license. I ask that in your consideration, you see fit to allow me to hold my license free of a probationary status or revocation.

What was not included in respondent's letter was significant. It did not mention the 1999 driving under the influence conviction, an explanation for his 0.23 blood alcohol level, or what steps respondent had taken to address any alcohol or substance abuse problem he might have including a professional evaluation. Respondent's letter did not address the Board's primary concern – the impact that his misuse of alcohol might have on patient safety.

13. Respondent said he understood the Board's concern, and he did not object to a short period of probation. However, he testified the conditions of probation set forth in the Board's disciplinary guidelines for alcohol-related offenses – such as random chemical testing and required attendance in a recovery program – "cast a wide net" and did not apply to his situation because he is not an alcoholic. He believed many of the alcohol-related conditions of probation were burdensome, expensive, might have an impact his ability to support his sons, and likely would interfere with his volunteer rescue work. Respondent testified he does not consume alcohol and is capable of safe nursing.

14. Respondent's wife, Samantha Hixon, testified. She has known respondent for 16 months. They married about a month before the hearing in this matter. Respondent has not consumed alcohol since they met. Respondent told Ms. Hixon of his driving under the influence convictions shortly after they met. He was embarrassed and ashamed when he did so. Ms. Hixon testified her husband takes his profession, employment, and volunteer rescue work very seriously. He is a good father. Ms. Hixon would continue to fully support her husband if he were placed on probation.

Disciplinary Guidelines

15. In keeping with its obligation to protect consumers of nursing services from unsafe, incompetent or negligent practitioners, the Board adopted guidelines recommending various penalties for specific violations of the Nursing Practice Act. The Board carefully considers the totality of the facts and circumstances of each disciplinary case, with the safety of the public being paramount. The Board requests that an administrative law judge clearly delineate the factual basis for a proposed decision, particularly when there is a deviation from the guidelines. The rationale for any deviation should be reflected in the proposed decision to enable the Board to understand and evaluate the decision.

If an administrative law judge finds at the time of hearing that the licensee is incapable of safe practice for any reason, the Board favors revocation of the license; if, however, the licensee has demonstrated a capacity to practice safe nursing, then a stayed revocation with an order of probation is recommended.

For a violation of Business and Professions Code section 2761, subdivision (a) – unprofessional conduct – the disciplinary guidelines provide a maximum penalty of revocation and a minimum penalty of revocation stayed with three years' probation, with standard terms and conditions of probation as appropriate.

For a violation of Business and Professions Code section 2761, subdivision (f) – the conviction of a substantially related criminal offense – the recommendation is revocation.³

³ More specifically, the guidelines state:

Conviction of a felony or 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. Offenses that the Board deems to be substantially related include, but are not limited to, child abuse, murder, rape, assault and/or battery, lewd conduct, theft crimes, and sale or use of controlled substances. In addition, for reinstatement of licensure, the individual must have completed criminal probation and have compelling evidence of rehabilitation substantiated by a recent psychiatric evaluation.

For a violation of Business and Professions Code section 2762, subdivision (b) – the use of any narcotic, dangerous drug, or alcohol to the extent that it is dangerous to self or others – the disciplinary guidelines provide a maximum penalty of revocation and a minimum penalty of revocation stayed with three years' probation, including terms and conditions of probation 1 through 19 as appropriate.

For a violation of Business and Professions Code section 2762, subdivision (c) – the conviction of a criminal offense involving the self-administration of narcotics, dangerous drugs, or alcohol – the disciplinary guidelines provide a maximum penalty of revocation and a minimum penalty of revocation stayed with three years' probation, including terms and conditions of probation 1 through 19 as appropriate. Under the disciplinary guidelines, the minimum discipline applies in cases of a first time offense with documented evidence of an on-going rehabilitation program.

16. Under the guidelines, in determining whether revocation, suspension or probation should be imposed in a given case, various factors should be considered such as: The nature and severity of the acts, offenses, or crimes under consideration; the actual or potential harm to the public; the actual or potential harm to any patient; any prior disciplinary record; the number and/or variety of current violations; mitigation evidence; rehabilitation evidence; in case of a criminal conviction, compliance with conditions of sentence and/or court-ordered probation; the overall criminal record; the time that has passed since the acts or offenses occurred; and evidence of expungement proceedings under Penal Code Section 1203.4.

Rehabilitation Criteria Considered in Substance Abuse Cases

17. Criteria to be considered in determining a licensee's rehabilitation from substance abuse include, but are not limited to, the successful completion of a drug/alcohol treatment program lasting at least six months; participation in individual and/or group counseling; random, documented biological fluid screening; participation in a nurse (or other professionals) support group; obtaining education about addictive disease; adherence to a 12-step recovery program or its equivalent; written documentation that verifies participation in a 12-step recovery group or its equivalent; continuing employment in the nursing field for a minimum of six months with documentation from the employer that the employer was aware of the previous drug or alcohol abuse problems and evidence there was no continued alcohol or drug abuse and that the respondent performed nursing functions in a safe and competent manner.

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Recommended discipline: Revocation.

Discussion

18. Respondent was convicted of driving under the influence on September 20, 1999, and October 2, 2014. The convictions are substantially related to the qualifications, functions, and duties of a registered nurse, who is expected to know the deleterious effects of alcohol in his personal and professional life and exercise good judgment. Respondent had a problem with the excessive consumption of alcohol on at least two occasions; however, the two DUI convictions are not similar to far more serious convictions involving the offenses of child abuse, murder, rape, assault, battery, lewd conduct, theft-related crimes, or the sale or use of controlled substances, offenses specifically mentioned in the disciplinary guidelines as being substantially related.

Although respondent's convictions involved a risk of harm to the public, they were misdemeanors. Respondent completed probation for the 1999 conviction. He will remain on summary probation for the most recent conviction through October 2019. The convictions did not occur when respondent was working as a registered nurse or immediately before he was required to report to work. Respondent's most recent conviction involved an extremely high level of intoxication, poor judgment, and carelessness resulting in property damage. Respondent failed to establish compelling mitigating evidence.

Respondent expressed remorse about his two driving under the influence convictions, and he was quite adamant in testifying that he does not have a problem with alcohol. While this may be true, his criminal history and the role denial plays in the disease of alcoholism raise concerns and call into question the effectiveness of what respondent learned in the first offender programs he briefly attended which are, to date, the only substance abuse treatment programs he has undertaken.

In applying the Board's substance abuse rehabilitation criteria, it is found that respondent did not provide evidence of his successful completion of a drug/alcohol treatment program of at least six months duration; participate in individual counseling; engage in random, documented biological fluid screening; participate in a nurse (or other professionals) support group; obtain further education about addictive diseases; or adhere to a 12-step recovery program or its equivalent. He provided letters of support from a supervisor at Kaiser and others that suggested they were somewhat aware of respondent's conviction for driving under the influence. Many authors expressed the belief that respondent does not have an alcohol or substance abuse problem. Employee reviews from Kaiser indicated respondent performs nursing functions in a safe and competent manner.

Counsel for complainant did not recommend a revocation. Respondent's attitude towards the practice of nursing and his long term, highly successful employment at Kaiser indicate he is capable of safe nursing practice. On this record, the Board does not need to remove respondent from the nursing profession to assure public protection; doing so would constitute punishment. But, respondent's recent conviction for driving under the influence, coupled with his prior conviction for driving under the influence, and his extreme level of intoxication the early morning of his most recent arrest raise significant concerns the Board

must address. To postpone the imposition of discipline until respondent harms a patient or is found under the influence at work disregards the Board's mission of protecting the public.

While each case is unique and must be decided on its own facts and circumstances, the Board's disciplinary guidelines promote the uniform imposition of disciplinary sanctions and recommend conditions of probation relevant to particular offenses. Respondent's complaint that conditions 1-19 "cast a wide net" does not make the application of relevant conditions, or their enforcement, invalid. The application of relevant conditions of probation provide a means by which the Board can monitor and assure respondent's safe nursing practice, compliance with probation, and rehabilitation. While there appears to be no need at present to compel respondent to undergo a physical or mental health examination, cause certainly exists to require him to participate in a rehabilitation program, prohibit his use of alcohol and illegal drugs, and require him to submit to testing to assure his abstinence.

Reasonable Costs of Enforcement

19. A revised certification of costs and declaration signed by the deputy who prosecuted this matter was received. A billing summary was attached to the original declaration identified various legal services provided by the Office of the Attorney General in this matter. Legal services were billed at a reasonable hourly rates. The deputy who tried this matter was organized and very professional. The certifications satisfied the requirements of California Code of Regulations, title 1, section 1042, subdivision (b), and the certification supports a finding that the total costs in the amount of \$1,520 are reasonable in both the nature and extent of the work performed.

Respondent provided no evidence to support a reduction of costs.

LEGAL CONCLUSIONS

Purpose of Disciplinary Proceedings

1. Administrative proceedings to revoke, suspend, or impose discipline on a professional license are noncriminal and nonpenal; they are not intended to punish the licensee, but rather to protect the public. (*Sulla v. Board of Registered Nursing* (2012) 205 Cal.App.4th 1195, 1206.)

The Burden and Standard of Proof

2. The standard of proof in an administrative disciplinary action to revoke, suspend or impose discipline on a professional license is clear and convincing evidence. (*Ettinger v. Board. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 857.)

Clear and convincing evidence must establish a high probability of the existence of the disputed facts, which requires proof greater than a preponderance of the evidence. (*People v. Mabini* (2001) 92 Cal.App.4th 654, 662.)

Statutory Authority to Impose License Discipline

3. Business and Professions Code section 2761 provides in part:

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

(a) Unprofessional conduct

[¶] . . . [¶]

(f) Conviction 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

4. Business and Professions Code section 2762 provides in part:

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 . . . alcoholic beverages, to an extent or in a manner dangerous or injurious to himself . . . , any other person, or the public or to the extent that such use impairs . . . his . . . ability to conduct with safety to the public the practice authorized by . . . his . . . license.

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

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Relevant Regulatory Authority

5. California Code of Regulations, title 16, section 1444, provides:
A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:
 - (a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.
 - (b) Failure to comply with any mandatory reporting requirements.
 - (c) Theft, dishonesty, fraud, or deceit.
 - (d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.⁴

6. California Code of Regulations, title 16, section 1444.5, provides:

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), the board shall consider the disciplinary guidelines entitled: "Recommended Guidelines for Disciplinary Orders and Conditions of Probation" (10/02), which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the board, in its sole discretion, determines that the facts of the particular case warrant such a deviation - for example: The presence of mitigating factors; the age of the case; evidentiary problems

7. California Code of Regulations, title 16, section 1445, subdivision (b), provides:

⁴ The general term "unprofessional conduct" is not limited to enumerated conduct, but also includes conduct which breaches the rules or ethical code of a profession, or conduct unbecoming a member in good standing of a profession. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.)

(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
- (6) Evidence, if any, of rehabilitation submitted by the licensee.

Substantial Relationship

8. A determination that a criminal conviction justifies license discipline requires a reasoned determination that the conduct at issue was in fact substantially related to the licensee's fitness to engage in the profession. Licensing authorities do not have unfettered discretion to determine whether a given conviction is substantially related to the relevant professional qualifications and must develop criteria to aid in making that determination in accordance with Business and Professions Code section 481. (*Robbins v. Davi* (2009) 175 Cal.App.4th 118, 124.)

9. The excessive use of alcoholic beverages reflects a lack of sound professional and personal judgment relevant to a professional's fitness and competence to practice in the health care profession. The excessive use of alcohol may threaten the professional's personal safety and may place the safety of the public in jeopardy. The excessive use of alcohol demonstrates a disregard of sound knowledge about the misuse of alcohol. It is not necessary for misconduct forming the basis for discipline to have occurred in the actual practice of the profession. To postpone the imposition of discipline until the licensee harms a patient or until the licensee is found under the influence on the job disregards many of the purposes of the regulatory act; it is far more desirable to discipline *before* a licensee harms any patient than after harm has occurred. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 772.)

10. There is a nexus or logical relationship between the professional fitness of a registered nurse and alcohol-related misconduct defined by Business and Professions Code

section 2762, subdivisions (b) and (c). In light of this nexus, Section 2762 comports with due process and supplies a basis for discipline even in the absence of a finding of professional unfitness in a particular case. There is a conclusive presumption that the conduct described by Section 2762 amounts to unprofessional conduct. (*Sulla v. Bd. of Registered Nursing* (2012) 205 Cal. App. 4th 1195, 1204-1205.)

Appellate Authority Concerning Rehabilitation

11. Rehabilitation is a state of mind. The law looks with favor upon rewarding with the opportunity to serve, one who has achieved reformation and regeneration. (*Hightower v. State Bar* (1983) 34 Cal.3d 150, 157.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) Mere remorse does not demonstrate rehabilitation. A truer indication of rehabilitation is presented when an individual can demonstrate by sustained conduct over an extended period of time that he or she is fit to practice. (*In re Menna* (1995) 11 Cal.4th 975, 991.)

12. When evidence of substance abuse is coupled with evidence the abuse was addictive and contributed to the misconduct at issue, and when the professional demonstrates a meaningful and sustained period of successful recovery, that evidence should be considered as a factor in mitigation. Recovery or rehabilitation involves considering the professional's history of substance abuse. The requisite length of time needed to show meaningful and sustained rehabilitation varies from case to case. (*In re Billings* (1990) 50 Cal.3d 358, 367.)

Cause Exists to Impose Discipline

13. First Cause for Discipline: Cause exists under Business and Professions Code section 2761, subdivisions (a) and (f), to impose discipline upon respondent's license as a result of the September 20, 1999, driving under the influence of alcohol conviction. Clear and convincing evidence established that conviction involved a crime substantially related to the qualifications, functions, and duties of a registered nurse. While this conviction, alone, might not support the imposition of discipline because it occurred so long ago, it does so when it is considered with respondent's more recent driving under the influence conviction on October 2, 2014. The September 20, 1999, conviction involved unprofessional conduct.

14. Second Cause for Discipline: Cause exists under Business and Professions Code section 2761, subdivisions (a) and (f), to impose discipline upon respondent's license as a result of the October 2, 2014, driving under the influence of alcohol conviction. Clear and convincing evidence established that conviction involved a crime substantially related to the qualifications, functions, and duties of a registered nurse. The misconduct giving rise to the October 2, 2014, conviction was quite recent and involved unprofessional conduct.

15. Third Cause for Discipline: Cause exists under Business and Professions Code section 2762, subdivision (b), to impose discipline upon respondent's license. Clear and convincing evidence established respondent engaged in unprofessional conduct arising out of his use of alcohol in a dangerous manner on August 18, 1999, and August 2, 2014.

16. Fourth Cause for Discipline: Cause exists under Business and Professions Code section 2762, subdivision (c), to impose discipline upon respondent's license. Clear and convincing evidence established that on September 20, 1999, and October 2, 2014, respondent was convicted of an offense involving the consumption of alcoholic beverages which, by statute, constitutes unprofessional conduct.

The Disciplinary Order

17. Respondent was not convicted of a crime requiring revocation and prohibiting an order staying the order of revocation. No prior discipline has been imposed against respondent's license. Respondent's attitude towards nursing and his continuing, successful employment with Kaiser cannot be ignored. Respondent has demonstrated he is capable of safe practice. However, his recent conviction for driving under the influence, his level of intoxication at the time of his arrest, his prior conviction for driving under the influence, and his obvious inability to exercise sound judgment after consuming alcoholic beverages support a disciplinary order that places respondent's license on probation for a period of three years and imposes terms and conditions of probation that will verify respondent's abstinence, provide specific notice to his employer of his circumstances, assist him in his rehabilitative efforts, and enable the Board to monitor his recovery.

Recovery of Costs

18. Business and Professions Code section 125.3 provides in part:

(a) [I]n any order issued in resolution of a disciplinary proceeding before any board within the department . . . the board may request the administrative law judge to direct a licensee 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.

[¶] . . . [¶]

(d) The administrative law judge shall make a proposed finding of the amount of the reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision

(a)

19. Cause exists under Business and Professions Code section 125.3 to issue an order directing respondent to pay to the Board \$1,520 for the Board's reasonable costs of enforcement.

//

ORDER

IT IS HEREBY ORDERED that Registered Nurse License No. 536750 issued to respondent, David Hixon, also known as David Ralph Hixon, is revoked. However, the order of revocation is stayed and respondent is placed on probation for three years subject to the following conditions.

SEVERABILITY CLAUSE – Each condition of probation contained herein is a separate and distinct condition. If any 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 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 respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

CRIMINAL COURT ORDERS: Since respondent is presently on criminal probation and under a criminal court order, a violation of his probation in the criminal matter shall be deemed a violation of these probation conditions, and such a violation may result in the filing of an accusation and/or petition to revoke probation.

(2) **COMPLY WITH THE BOARD'S PROBATION PROGRAM** - Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of his compliance with the Board's 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. Upon successful completion of probation, respondent's license shall be fully restored.

(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, PRACTICE, OR LICENSURE OUTSIDE OF STATE** - Periods of residency or practice as a registered nurse outside of California shall not apply toward a reduction of this probation time period. Respondent's probation shall be tolled if and when he resides outside of California. Respondent must provide written notice to the Board within 15 days of any change of residency or practice outside the state, and within 30 days prior to re-establishing residency or returning to practice in this state. Respondent shall provide a list of all states and territories where he has ever been licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide information regarding the status of each license and any changes in such license status during the term of probation.

Respondent shall inform the Board if he applies for or obtains a new nursing license during the term of probation.

(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 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. 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.

(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 6 consecutive months or as determined by the Board. 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 nondirect patient care position that requires licensure as a registered nurse. The Board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

If respondent has not complied with this condition during the probationary term, and the respondent has presented sufficient documentation of his good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation shall apply.

(7) **EMPLOYMENT APPROVAL AND REPORTING REQUIREMENTS** - Respondent shall obtain prior approval from the Board before commencing or continuing any new 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 current employer and immediate supervisors and to such entities and persons prior to commencement of any nursing or other health care related employment. In addition to the above, respondent shall notify the Board in writing within seventy-two (72) hours after he obtains any nursing or other health care related employment. Respondent shall notify the Board in writing within seventy-two (72) hours after he is terminated or separated, regardless of cause, from any nursing, or other health care related employment with a full explanation of the circumstances surrounding the termination or separation.

(8) **SUPERVISION** - Respondent shall obtain prior approval from the Board regarding his level of supervision and/or collaboration before commencing or continuing any employment as a registered nurse, or education and training that includes patient care. 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, a traveling nurse, or for an in-house nursing pool during probation. 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 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.

(10) COMPLETE A NURSING COURSE(S) - Respondent, at his own expense, shall enroll and successfully complete a course(s) relevant to the practice of registered nursing as

that course relates to substance abuse no later than six months before the end of his probationary term. Respondent shall obtain prior approval from the Board before enrolling in the course(s). Respondent shall submit to the Board the original transcripts or certificates of completion for the above required course(s). 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 \$1,520. 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.

If respondent has not complied with this condition during the probationary term and has presented sufficient documentation of his good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation will apply.

(12) **PARTICIPATE IN TREATMENT/REHABILITATION PROGRAM FOR CHEMICAL DEPENDENCE** - Respondent, at his expense, shall successfully complete during the probationary period or shall have successfully completed before the commencement of probation a Board-approved treatment/rehabilitation program of at least six months duration. As required, the program shall submit reports concerning respondent's participation in the program on forms provided by the Board. If respondent has not completed a Board-approved treatment/rehabilitation program prior to commencement of probation, respondent, within 45 days from the effective date of the decision, shall be enrolled in a program. If a program is not successfully completed within the first nine months of probation, the Board shall consider respondent to be in violation of probation. Based on Board recommendation, respondent shall be required to attend at least one, but no more than five 12-step recovery meetings or their equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) every week he is on probation and a nurse support group meeting as approved and directed by the Board. If a nurse support group is not available, an additional 12-step meeting or its equivalent shall be added. Respondent shall submit dated and signed documentation confirming his attendance to the Board during the entire period of probation. Respondent shall continue with the recovery plan recommended by the treatment/rehabilitation program or a licensed mental health examiner and/or other ongoing recovery groups.

(13) **ABSTAIN FROM USE OF PSYCHOTROPIC (MOOD-ALTERING) DRUGS** - Respondent shall completely abstain from the possession, injection or consumption by any route of all psychotropic (mood altering) drugs, including alcohol, except when the same are ordered by a health care professional legally authorized to do so as part of documented plan of medical treatment. Respondent shall send to the Board, in writing and within fourteen (14) days, records or reports from the prescribing health professional that identify the

medication, dosage, the date the medication was prescribed, his prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate. Respondent shall identify for the Board a single physician, nurse practitioner or physician assistant who shall be aware of respondent's history of alcohol misuse and will coordinate and monitor any prescriptions for respondent for dangerous drugs, controlled substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report to the Board on a quarterly basis respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances. The Board may require the single coordinating physician, nurse practitioner, or physician assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive medicine.

(14) **SUBMIT TO TESTS AND SAMPLES** - Respondent, at his expense, shall participate in a random, biological fluid testing or a drug screening program that the Board approves. The length of time and frequency of the testing shall be subject to approval by the Board. Respondent shall keep the Board informed of his current telephone number at all times. Respondent shall also ensure that messages may be left at the telephone number when he is not available and ensure that reports are submitted directly by the testing agency to the Board, as directed.

Any confirmed positive finding related to the use of psychotropic substances, including alcohol, shall be reported immediately to the Board by the testing program and respondent shall be considered in violation of probation upon such a report. In addition, respondent, at any time during the period of probation, shall fully cooperate with the Board or any of its representatives, and shall, when requested, submit to such tests and samples as the Board or its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances.

If respondent has a positive drug screen for any substance not legally authorized and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension shall not apply to the reduction of this probationary time period.


If respondent fails to participate in a random, biological fluid testing or drug screening program within the specified time frame, he shall immediately cease practice and shall not resume practice until notified by the Board. After taking into account documented evidence of mitigation, if the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension shall not apply to the reduction of this probationary time period.

(15) VIOLATION OF PROBATION - If 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 an order revoking 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.

(16) LICENSE SURRENDER - During respondent's term of probation, if he ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, respondent may surrender his license to the Board. The Board reserves the right to evaluate respondent's request and exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, respondent will no longer be subject to the conditions of probation.

Surrender of respondent's license shall be considered a disciplinary action and shall become a part of respondent's license history with the Board. A registered nurse whose license has been surrendered may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision: (1) two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or (2) one year for a license surrendered for a mental or physical illness.

DATED: May 12, 2016



JAMES AHLER
Administrative Law Judge
Office of Administrative Hearings

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Attorneys for Complainant

9
10 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2016-137
13 **A C C U S A T I O N**

13 **DAVID HIXON,**
14 **AKA DAVID RALPH HIXON**
6690 1/2 Antigua Boulevard
15 San Diego, CA 92124

16 Registered Nurse License No. 536750

17 Respondent..

18
19 Complainant alleges:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
22 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
23 Consumer Affairs.

24 2. On September 16, 1997, the Board of Registered Nursing issued Registered Nurse
25 License Number 536750 to David Hixon, also known as David Ralph Hixon (Respondent). The
26 Registered Nurse License was in full force and effect at all times relevant to the charges brought
27 herein and will expire on September 30, 2015, unless renewed.

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8. Section 2761 of the Code states:

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

(a) Unprofessional conduct, which includes, but is not limited to, the following:

....

(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.

....

9. Section 2762 of the Code states:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], 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 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device 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 such 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 the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof.

....

10. Section 2765 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 registered nurse is deemed to be a conviction within the meaning of this article. The board may order the license or certificate suspended or revoked, or may decline to issue a license or certificate, 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 or her 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.

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REGULATORY PROVISIONS

11. California Code of Regulations (CCR), title 16, section 1444, states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

- (a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.
- (b) Failure to comply with any mandatory reporting requirements.
- (c) Theft, dishonesty, fraud, or deceit.
- (d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

12. CCR, title 16, section 1445, subdivision (b) states:

When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
- (6) Evidence, if any, of rehabilitation submitted by the licensee.

COST RECOVERY

13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

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2 **FIRST CAUSE FOR DISCIPLINE**

3 (September 20, 1999 Criminal Conviction for DUI on August 18, 1999)

4 14. Respondent has subjected his Registered Nurse License to discipline under Code
5 section 2761, subdivisions (a) and (f), in that he was convicted of a crime that is substantially
6 related to the qualifications, functions, and duties of a licensed registered nurse. The
7 circumstances are as follows:

8 a. On September 20, 1999, in a criminal proceeding entitled *The People of*
9 *the State of California v. David Ralph Hixon*, in Santa Barbara County Superior Court, Figueroa
10 Division, Criminal Case Number 493356, Respondent was convicted on his plea of no contest to
11 violating Vehicle Code (VC) section 23152, subdivision (a), driving under the influence of
12 alcohol (DUI), a misdemeanor. A misdemeanor charge for violation of VC section 23152,
13 subdivision (b), driving with a blood alcohol concentration (BAC) of 0.08 percent or more, was
14 dismissed under a plea bargain.

15 b. As a result of the conviction, on September 20, 1999, Respondent was
16 sentenced to 18 days in the Santa Barbara County Jail, which was suspended for three years.
17 Respondent was granted three years unsupervised probation under certain terms and conditions.
18 Respondent was ordered to enroll in a first-offender alcohol, drug education, and counseling
19 program. Respondent was further ordered to pay a fine and victim restitution. Respondent's
20 driving privilege was suspended for 90 days. On March 31, 2000, Respondent's probation was
21 reinstated on all original terms and conditions. Respondent was ordered to pay a fine and
22 assessments and re-enroll in a state licensed alcohol and drug counseling program for first
23 offenders.

24 c. The facts that led to the conviction are that on August 18, 1999,
25 Respondent drove a motor vehicle while under the influence of alcohol.

26 **SECOND CAUSE FOR DISCIPLINE**

27 (October 2, 2014 Criminal Conviction for DUI on August 2, 2014)

28 15. Respondent has subjected his Registered Nurse License to discipline under Code
section 2761, subdivisions (a) and (f), in that he was convicted of a crime that is substantially

1 related to the qualifications, functions, and duties of a licensed registered nurse. The
2 circumstances are as follows:

3 a. On October 2, 2014, in a criminal proceeding entitled *The People of the*
4 *State of California v. David Ralph Hixon*, in San Diego County Superior Court, Central Division,
5 Central Courthouse Case Number M189296, Respondent was convicted on his plea of guilty of
6 violating VC section 23152, subdivision (a), DUI, a misdemeanor. A misdemeanor charge for
7 violation of VC section 23152, subdivision (b), driving with a BAC of 0.08 percent or more, was
8 dismissed under a plea bargain.

9 b. As a result of the conviction, on October 2, 2014, Respondent was
10 sentenced to five years summary probation subject to standard alcohol conditions. Respondent
11 was ordered to enroll in a first-offender alcohol, drug education, and counseling program and a
12 Mothers Against Drunk Drivers Victim Impact Panel. Respondent was also ordered to perform
13 15 days work under the public service program, with credit for one day served. Respondent was
14 further ordered to pay a fine and victim restitution.

15 c. The facts that led to the conviction are that on August 2, 2014, while
16 backing out of a parking spot, Respondent's car struck a parked vehicle on Kansas Street in San
17 Diego, California. Officers on routine patrol from the San Diego County Sheriff's Department
18 (SDCSD) heard the resulting loud crunching sound and responded to the scene. When
19 Respondent attempted to leave without leaving the necessary information for the victim vehicle,
20 the officers initiated an enforcement stop. During the initial contact, Respondent admitted to
21 drinking prior to driving and to his driving being affected by alcohol. Respondent did not want to
22 take a series of field sobriety tests but consented to blow air into a portable alcohol sensor, which
23 tested .196 percent BAC. Respondent was processed at the SDCSD regional office where he
24 provided breath samples for the Intoxilyzer – alcohol analyzer test, which indicated a BAC of
25 .234 percent and .250 percent. Thereafter, Respondent was booked into the San Diego Central
26 County Jail.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct - Use of Alcohol in a Dangerous Manner)**

3 16. Respondent has subjected his Registered Nurse License to discipline under Code
4 section 2762, subdivision (b), in that on August 18, 1999, and August 2, 2014, as described in
5 paragraphs 14 and 15, above, he used alcoholic beverages to an extent or in a manner that was
6 dangerous and injurious to himself and to others when he operated a motor vehicle with a
7 significantly high BAC.

8 **FOURTH CAUSE FOR DISCIPLINE**

9 **(Unprofessional Conduct - Conviction of an Alcohol Related Criminal Offense)**

10 17. Respondent has subjected his Registered Nurse License to discipline under Code
11 section 2762, subdivision (c), in that on September 20, 1999, and October 2, 2014, as described
12 in paragraphs 14 and 15, above, Respondent was convicted of criminal offenses involving the
13 consumption of alcohol.

14 **PRAYER**

15 WHEREFORE, Complainant requests that a hearing be held on the matters herein
16 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

- 17 1. Revoking or suspending Registered Nurse License Number 536750, issued to
18 David Hixon, also known as David Ralph Hixon;
- 19 2. Ordering David Ralph Hixon to pay the Board of Registered Nursing the
20 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
21 Professions Code section 125.3; and
- 22 3. Taking such other and further action as deemed necessary and proper.
- 23

24 DATED: August 5, 2015

25 *Louise R. Bailey*
26 LOUISE R. BAILEY, M.ED., RN
27 Executive Officer
28 Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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