

Certified True Copy

By Steph S
Virginia Board of Nursing



COMMONWEALTH of VIRGINIA

David E. Brown, D.C.
Director

Department of Health Professions

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October 27, 2015

Rodney Wayne Hicks
P.O. Box 7721
Midland, TX 79708

CERTIFIED MAIL
DUPLICATE COPY
VIA FIRST CLASS MAIL
DATE 10/27/15

RE: License No.: 0001-095842

Dear Mr. Hicks:

Pursuant to Section 54.1-2409 of the Code of Virginia (1950), as amended, ("Code"), you are hereby given notice that your license to practice nursing in the Commonwealth of Virginia has been mandatorily suspended by the enclosed Order entered October 27, 2015. You are hereby advised that, pursuant to Section 54.1-2409.1 of the Code, any person who practices a profession or occupation after having their license or certificate to do so suspended shall be guilty of a felony. Please return your license to Jay P. Douglas, Executive Director of the Virginia Board of Nursing, at the above address, immediately upon receipt of this letter.

Section 54.1-2409 of the Code further provides that you may apply to the Board of Nursing ("Board") for reinstatement of your license, and shall be entitled to a hearing not later than the next regular meeting of the Board after the expiration of sixty days from the receipt of such reinstatement application. You have the following rights, among others: to be represented by legal counsel, to have witnesses subpoenaed on your behalf, to present documentary evidence and to cross-examine adverse witnesses. The reinstatement of your license shall require the affirmative vote of three-fourths of the members present of the Board of Nursing.

Should you wish to petition the Board of Nursing for reinstatement of your license, contact Jay P. Douglas, Executive Director, at the above address or (804) 367-4599.

Sincerely,

Jason Brown, Deputy Director for Administration
Department of Health Professions

cc: Frederick M. Ray, Esquire

Enclosures

Case # 170213

Board of Audiology & Speech-Language Pathology – Board of Counseling – Board of Dentistry – Board of Funeral Directors & Embalmers
Board of Long-Term Care Administrators – Board of Medicine – Board of Nursing – Board of Optometry – Board of Pharmacy
Board of Physical Therapy – Board of Psychology – Board of Social Work – Board of Veterinary Medicine
Board of Health Professions

VIRGINIA

BEFORE THE DEPARTMENT OF HEALTH PROFESSIONS

IN RE: RODNEY WAYNE HICKS, R.N.
License No.: 0001-095842

ORDER

In accordance with Section 54.1-2409 of the Code of Virginia (1950), as amended, ("Code"), I, Jason Brown, Deputy Director for Administration, of the Virginia Department of Health Professions, received and acted upon evidence that the license of Rodney Wayne Hicks, R.N., to practice nursing in the State of California was revoked by a Decision which was effective on October 15, 2015, said license has not been reinstated. A certified copy of the Decision is attached to this Order and is marked as Commonwealth's Exhibit No. 1.

WHEREFORE, by the authority vested in the Director of the Department of Health Professions pursuant to Section 54.1-2409 of the Code, it is hereby ORDERED that the privilege of Rodney Wayne Hicks, R.N., to renew his license to practice nursing in the Commonwealth of Virginia be, and hereby is, SUSPENDED.

Upon entry of this Order, the license of Rodney Wayne Hicks, R.N., will be recorded as suspended and no longer current. Should Mr. Hicks seek reinstatement of his license pursuant to Section 54.1-2409 of the Code, he shall be responsible for any fees that may be required for the reinstatement and renewal of his license prior to issuance of his license to resume practice.

Pursuant to Sections 2.2-4023 and 54.1-2400.2 of the Code, 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 and copying upon request.



Jason Brown, Deputy Director for Administration
Department of Health Professions

ENTERED: _____ 10/27/2015 _____



COMMONWEALTH of VIRGINIA

David E. Brown, D.C.
Director

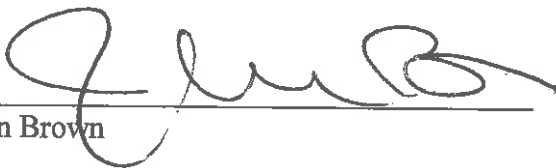
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CERTIFICATION OF DUPLICATE RECORDS

I, Jason Brown, Deputy Director for Administration, of the Department of Health Professions, hereby certify that the attached Decision effective October 15, 2015, regarding Rodney Wayne Hicks, R.N., is a true copy of the records received from the State of California, Board of Registered Nursing.



Jason Brown

Date: 10/27/2015

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

In the Matter of the Statement of Issues
Against:

RODNEY WAYNE HICKS

Applicant for Registered Nurse License

Respondent

Case No. 2015-259

OAH No. 2014100203

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 October 15, 2015.

IT IS SO ORDERED this 15th day of September, 2015.

Michael D. Jackson, MSN, RN, CEN

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

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

BOARD OF REGISTERED NURSING

Louise R. Bailey, M.Ed., RN
Louise R. Bailey, M. ED., RN
Executive Officer



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

In the Matter of the Statement of Issues
Against:

RODNEY WAYNE HICKS,

Respondent.

Case No. 2015-259

OAH No. 2014100203

PROPOSED DECISION

Administrative Law Judge Thomas Heller, State of California, Office of Administrative Hearings, heard this matter in Los Angeles, California on June 9 and 10, 2015.

Katherine Messana, Deputy Attorney General, represented complainant Louise R. Bailey, M.Ed., R.N., Executive Officer of the Board of Registered Nursing (Board), Department of Consumer Affairs.

Frederick M. Ray, Esq., represented respondent Rodney Wayne Hicks.

The matter was submitted on June 10, 2015. On July 6, 2015, the Administrative Law Judge reopened the record for the limited purpose of addressing the possible sealing of an exhibit. Having received no objection to sealing, the Administrative Law Judge entered an order on July 20, 2015, sealing the first eight pages of Exhibit O, and the record was re-closed on the same day.

FACTUAL FINDINGS

Parties and Jurisdiction

1. On March 17, 2014, the Board received respondent's Application for Licensure by Endorsement. The application stated that respondent was licensed to practice as a registered nurse in Texas, but also that respondent has had disciplinary action taken against his Texas license.

2. On May 20, 2014, the Board denied respondent's application, based on the Texas disciplinary action that was disclosed in the application.

3. On June 16, 2014, respondent requested a hearing on the Board's denial of his application.

4. On September 30, 2014, complainant filed a Statement of Issues, which alleges various grounds to deny the application, including: (i) the Texas disciplinary action; (ii) violations of California's Nursing Practice Act (Bus. & Prof. Code, § 2700 et seq.); and (iii) conduct warranting the discipline of a licensee. Complainant filed the Statement of Issues in her official capacity as Executive Officer of the Board, and served it on respondent on October 1, 2014.

Respondent's Texas Discipline

5. On June 20, 2012, in the disciplinary matter entitled *In the Matter of Permanent Certificate Numbers 514318 Issued to Rodney Wayne Hicks*, Docket No. 507-11-2458, the Texas Board of Nursing (Texas Board) issued an order imposing the sanction of a "Warning with Stipulations" on respondent's registered nurse license. Under Texas law, a Warning with Stipulations is a form of discipline that includes "reasonable probationary stipulations" such as education, limitations on specific nursing activities, and supervised employment. (Tex. Admin. Code, tit. 22, § 213.33, subd. (e)(3).) The order included requirements that respondent complete an approved educational course in Texas nursing jurisprudence and ethics, and two National Council of State Boards of Nursing (NCSBN) courses entitled "Sharpening Critical Thinking Skills" and "Respecting Professional Boundaries." The order also required respondent to provide direct patient care and practice under supervision in a hospital, nursing home, or other clinical setting for at least 64 hours per month for one year, "should respondent practice as a nurse in the State of Texas." (Ex. 4 pp. AG0-5-6.) The order stated that the stipulation period would be extended until respondent has completed that one year of work. (*Ibid.*)

6. The Texas discipline arose from respondent's recording of a web tutorial for nursing students in May 2010, in which respondent mistakenly appended sexually-explicit material to the recording. At the time, respondent was employed as a professor of nursing at Texas Tech University Health Science Center School of Nursing (TTUHSC) in Lubbock, Texas. Respondent made the web tutorial using WebEx, an internet service that facilitates meetings and videoconferences. The tutorial was for students in a graduate-level nursing class about eLOGS, a nursing database management system that respondent developed and licenses. Respondent recorded the tutorial at his home on a computer using a WebEx "screen capture" mode, which displayed the entire image of his desktop. At the end of the presentation, respondent thought he turned off WebEx, but did not. As a result, WebEx recorded several more hours of screen captures from respondent's computer, which included respondent's sexually-explicit discussions in various internet chatrooms and nude adult male photo exchange, along with non-sexual material. The sexual material included graphic discussions between respondent and other chatroom users about sexual contact between boys

and adults (including respondent), sexual contact between adults, and personal adolescent sexual experiences. Respondent also engaged in graphic chatroom discussions about sexual contact involving respondent and his fictitious son. In reality, respondent does not have a son.

7. Without realizing his recording error, respondent sent the WebEx recording to TTUHSC's information technology director, to be processed into a format that could be posted online for the graduate students. Without reviewing the recording, the information technology director sent respondent a Uniform Resource Locator (URL) link to the recording, which respondent could have used to review the recording before it was posted online. Respondent did not review the recording before approving it and forwarding it to another TTUHSC instructor for online posting. A graduate student reviewed the recording in June 2010 and notified a university official, which led to the Texas Board's disciplinary action soon thereafter.

8. After a hearing before an administrative law judge, the Texas Board determined that respondent engaged in unprofessional conduct related to nursing, and failed to conform to minimum standards of accepting nursing practice in a manner that exposed a person to unnecessary risk of harm. (Ex. 4.) The Texas Board made these determinations by adopting the proposed decision of the administrative law judge, and summarized the determinations as follows:

The Respondent had an obligation to maintain the professional demeanor and appearance required of a nurse educator in a classroom setting and to conduct classes in a competent manner. Further, the Respondent was required to maintain a safe learning environment that was free of sexually explicit material contained within a presentation. The Respondent failed to meet these standards. Further, his conduct was reckless and careless and evidences an extreme lack of good judgment and critical thinking. Further, Respondent's conduct caused actual harm to a nursing student and an administrator . . . [and] demonstrates deficiencies in his nursing practice that shows lack of professional judgment and could pose a risk of harm to the public and future patients. (Ex. 4 pp. AGO 3-4, fns. omitted.)¹

9. The Texas Board also considered whether respondent had a personality disorder, or paraphilia involving sexual attraction to adolescent males, that impaired his ability to practice nursing with reasonable skill and safety. Adopting the administrative law judge's findings, the Texas Board determined that there was insufficient proof of these mental health conditions. As to paraphilia in particular, the evidence did not prove that respondent had intense sexual urges involving adolescent males that were sufficient to justify a diagnosis as a paraphilic. (Ex. 4.)

¹ The "actual harm to a nursing student and an administrator" was the emotional harm that both experienced due to viewing the recording. (Ex. 4.)

Other Evidence

10. Respondent was suspended from the TTUHSC faculty in June 2010, shortly after university officials learned of the WebEx recording. The recording also received considerable media coverage in Texas and prompted a police investigation; however, there was no evidence presented that respondent was ever charged with a crime. Respondent resigned from TTUHSC in July 2010, and relocated briefly to Vermont, where he served on the faculty at Norwich University. Respondent is licensed as a registered nurse in Vermont, but that license is currently inactive. Later, media coverage in Vermont of respondent's difficulties in Texas caused respondent and Norwich University to end their relationship, which respondent testified was a mutual decision. Respondent relocated to California, and is currently a professor at the Western University of Health Sciences Graduate College of Nursing (Western University) in Pomona, California. He has been a faculty member there since August 2011.

11. Respondent disagrees with the Texas Board's order, and has filed an action in Texas District Court seeking to overturn it. Despite this disagreement, respondent completed the educational requirements of the Texas Board's order in 2013 and 2014. But respondent has not satisfied the requirement that he perform direct patient care and practice under supervision in a hospital, nursing home, or other clinical setting for at least 64 hours per month for one year. Respondent explained that he left Texas before the administrative hearing began, and has not completed the work requirement due to "geography." Respondent also asserts that the terms of the work requirement are inconsistent with his normal, preferred role as a nurse practitioner in an emergency room.

12. Respondent holds a Ph.D. in Human Services from Cappella University in Minnesota, two master's degrees in public administration and nursing from the University of Texas at Arlington, a bachelor's degree in nursing from TTUHSC, and an associate degree in nursing science from Oklahoma State University. In addition to Western University, TTUHSC, and Norwich University, he has been a faculty member at Johns Hopkins University, Texas Woman's University, and other institutions. He has practiced nursing at numerous hospitals since 1982, and has authored many scholarly articles about nursing. He has also received numerous awards and honors, including fellowships, outstanding alumni awards, and faculty accolades.

13. Respondent offered his own testimony and that of five other witnesses in support of his license application:

- a. Wayne Boyer, Director of Nursing and Allied Health at College of the Desert in Palm Desert, California, spoke highly of respondent's professionalism and knowledge of nursing, and expressed a desire to hire respondent.

- b. Michael Kline, respondent's partner for 29 years and spouse for about one year, testified about the media coverage in Texas, and that the WebEx recording has not changed his positive view of respondent.
- c. Mary Lopez, a Western University Associate Dean, testified that respondent is open and communicative as a professor, and has good relationships with faculty and students.
- d. Janet Boller, another Western University Associate Dean, testified that she has been very impressed with respondent's teaching ability, and that respondent is held in high regard in the professional nursing community.
- e. Karen Hanford, Western University's Dean, testified that she has had a "very positive" experience with respondent since hiring him, and has no reservations about him working in a clinical setting in California.

The witnesses expressed varying levels of familiarity with the content of the WebEx recording and the Texas discipline. Some knew before the hearing that the recording included explicit discussions about sexual contact between boys and adults, including respondent, but others did not.

14. For his part, respondent denied any paraphilia involving adolescent males, testifying that his chatroom discussions about those subjects were all fabricated. Respondent stated that he engaged in risky behavior and made a mistake by engaging in the chatroom discussions, but his testimony gave the overall impression that he does not consider his mistake to be serious, and that he believes the Texas discipline to be unjust. He articulated no real rationale for making the chatroom statements, testifying that he was simply "bored" and made the comments "in the moment." Counsel for complainant challenged these unpersuasive explanations, but ultimately conceded that complainant does not seek to deny respondent's application based on allegations of paraphilia. Rather, complainant seeks to deny the application based solely on the Texas discipline, which was not based on a finding that respondent had a disqualifying mental health condition, and in fact found that there was insufficient proof of such a mental health condition.

15. Respondent also testified that he has no criminal record, or any other license discipline in Texas apart from the order at issue.² To supplement his testimony and that of other witnesses, respondent offered numerous favorable reference letters from professional associates, former students, and nursing organizations. The letters and witness testimony are persuasive evidence that respondent is a highly accomplished and distinguished nursing educator, apart from the Texas discipline and events at issue.

² There was some evidence presented of a pending disciplinary action against respondent's nursing license in Vermont, but that unresolved action is not alleged in the Statement of Issues as a basis for denying respondent's California application.

LEGAL CONCLUSIONS

1. Respondent bears the burden of proving that he meets all prerequisites necessary for the requested license. (See *Breakzone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205, 1221.) This burden of proof requires proof by a preponderance of the evidence. (See Evid. Code, § 115.)

2. Under the Nursing Practice Act, the Board may deny an application for a variety of reasons, three of which are at issue here. First, the Board may deny an application due to “[u]nprofessional conduct,” which includes, without limitation, “[d]enial of licensure, revocation, suspension, restriction, or any other disciplinary action against a health care professional license or certificate by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board.” (Bus. & Prof. Code, § 2761, subd. (a)(4).)³ Second, the Board may deny an application for “[v]iolating or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of [the Nursing Practice Act] or regulations adopted pursuant to it.” (*Id.*, subd. (d).) Third, the Board may deny an application if the applicant has “[d]one any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.” (§§ 480, subd. (a)(3), 2736, subd. (a)(3).) The grounds for suspension or revocation of an existing license include the same types of conduct that are grounds to deny an application. (§ 2761.)

3. In the Statement of Issues, complainant alleges that the Board should deny respondent’s application for all three of these reasons. But complainant is really just alleging the same thing in three different ways, which is that the Texas discipline warrants denial of respondent’s application. According to complainant, that Texas discipline constitutes unprofessional conduct, and this unprofessional conduct, in turn, is a violation of the Nursing Practice Act. Complainant further alleges that the Texas discipline would be grounds for suspension or revocation of an existing license. Respondent, on the other hand, asserts that the Board should grant his application without restriction, because the Texas discipline allegedly does not relate to his fitness or competence to practice nursing in California as required under *Clare v. State Bd. of Accountancy* (1992) 10 Cal.App.4th 294, and *Marek v. Bd. of Podiatric Medicine* (1993) 16 Cal.App.4th 1089.

4. Respondent’s assertion that the Texas discipline does not relate to his fitness or competence to be a California registered nurse is without merit. The Texas discipline has a “substantial relationship” to respondent’s fitness or competence to practice nursing in California, which is all that is required. (*Clare v. State Bd. of Accountancy*, *supra*, 10 Cal.App.4th at pp. 302-304; see *Marek v. Bd. of Podiatric Medicine*, *supra*, 16 Cal.App.4th at p. 1096.) The Texas Board disciplined respondent for unprofessional conduct related to nursing, and for failure to conform to minimum standards of acceptable nursing practice in a manner that exposed a person to unnecessary risk of harm. This nursing-specific discipline

³ All further statutory references are to the Business and Professions Code, unless otherwise indicated.

relates precisely to respondent's fitness or competence to practice the same profession in this state.

5. Given the substantial relationship described above, the Texas discipline is grounds for denial of respondent's application for each of the three reasons that complainant alleges. (§§ 480, 2736, subd. (a)(3), 2761, subds. (a)(4), (d).) The remaining question, then, is whether the Board should actually deny the application based on these grounds for denial.

6. The Board has published criteria for use in considering an application where, as here, the applicant has committed acts that are grounds for denial of licensure. (Cal. Code Regs., tit. 16, § 1445.) The criteria that the Board considers are: "(1) The nature and severity of the act(s) . . . under consideration as grounds for denial. (2) Evidence of any act(s) committed subsequent to the act(s) . . . under consideration (3) The time that has elapsed since commission of the act(s) (4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant. (5) Evidence, if any, of rehabilitation submitted by the applicant." (*Id.*, subd. (a).) In reaching its decision, the Board also "shall consider" the disciplinary guidelines that the Board has enacted. (Cal. Code Regs., tit. 16, § 1444.5.) Under those guidelines, the recommended discipline due to disciplinary action against a health care license by another state, government agency, or licensing board is "[r]evocation or [r]evocation stayed with 3 years probation." (Recommended Guidelines for Disciplinary Orders and Conditions of Probation p. 5 (rev 10/02), italics omitted.)

7. Considering the totality of the evidence and the Board's criteria and guidelines, the proper resolution of this matter is to grant respondent's application, but with a stayed revocation and three years' probation. Under the Board's guidelines, this is a standard recommended discipline due to another state's disciplinary action, and respondent has not presented persuasive evidence that the Board should depart from that standard. Respondent was disciplined in Texas for unprofessional conduct and failure to meet minimum standards of nursing practice. These violations were not trivial; rather, respondent's violations were "reckless and careless and evidence[d] an extreme lack of good judgment and critical thinking." (Factual Finding 8.)

8. Several years have elapsed since the Texas discipline and underlying acts, and there was no evidence presented of subsequent similar acts, which are factors in respondent's favor. (See Cal. Code Regs., tit. 16, § 1445, subd. (a)(2)-(3).) But respondent has not fulfilled the Texas Board's requirement that he complete one year of direct patient care and practice under supervision in Texas, and the Texas order will be extended indefinitely until he does. Given this fact and respondent's attitude that his misconduct was not serious, the evidence does not show that respondent is fully rehabilitated from his past unprofessional conduct, despite his subsequent professional achievements.

9. Complainant argued at the hearing for denial of respondent's application, focusing on respondent's poor judgment and failure to complete one year of supervised practice under the Texas Board's order. But denial would be out of proportion to the nature

and severity of the Texas Board's discipline. Respondent's conduct in Texas was unprofessional and reflected poor judgment. But the Texas Board imposed a discipline of a "Warning with Stipulations," not suspension or revocation, and found insufficient evidence of paraphilia or another disqualifying mental health condition. Furthermore, the Texas Board's requirement that respondent complete one year of direct patient care and practice applies "should respondent practice as a nurse in the State of Texas" (Ex. 4), and respondent has not practiced nursing in Texas since the discipline. While this extends the Texas order indefinitely, it does not appear to be an actual violation of that order. As such, respondent's failure to fulfill this stipulation in the Texas order does not warrant denial of respondent's application in California, but rather warrants imposition of an analogous requirement in California as part of the Board's probationary terms.

10. Respondent argued at the hearing that probation is more restrictive than the Texas discipline, and that a public reproof with unspecified conditions would be more appropriate, to the extent that any discipline is warranted at all. But while public reproof is an alternative available to the Board (§§ 495, 2759, subd. (e)), probation is more appropriate than public reproof here. Probation affords the Board the opportunity to approve and monitor respondent's employment as a registered nurse for a period of time, and to require respondent to practice nursing in a supervised setting. The Texas discipline raises questions about respondent's fitness to practice registered nursing in California that are best answered through a period of monitored practice. Respondent has performed well as a nursing professor at Western University, but he has applied for a license to practice registered nursing, not to be a nursing educator. Since respondent has not completed the direct patient care and practice requirement in the Texas Board's order, he should not be allowed to obtain a license in California without an analogous California requirement. Moreover, the Texas discipline was a "Warning with Stipulations," and the stipulations are described as "probationary" terms under Texas law. (Tex. Admin. Code, tit. 22, § 213.33, subd. (e)(3).) Given these facts, public reproof would be an inadequate discipline.

11. However, two items in the Board's standard probation conditions require modification. First, Item 9, regarding employment limitations, normally says that "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." (Recommended Guidelines for Disciplinary Orders and Conditions of Probation p. 23 (rev 10/02), italics added.) Here, respondent is a professor at Western University, and has been a faculty member there since 2011. Given this fact, including a "faculty member" prohibition in respondent's terms of probation would appear to require him to choose between his faculty position and a nursing license. At the same time, the prohibition would not significantly affect public safety or the quality of nursing student education. Therefore, respondent's probation conditions will exclude the "faculty member" prohibition, but will include the required prohibition against him working as an instructor in a Board-approved continuing education program. (Cal. Code Regs., tit. 16, § 1457, subd. (b)(1)(A).)

12. Second, Item 10 of the Board's standard probation conditions normally says that "Respondent, at his or her own expense, shall enroll and successfully complete a

course(s) relevant to the practice of registered nursing no later than six months prior to the end of his or her probationary term.” (Recommended Guidelines for Disciplinary Orders and Conditions of Probation p. 23 (rev 10/02).) But here, respondent has already completed three nursing-related educational courses under the Texas Board’s order. (Factual Findings 5, 11.) The courses concerned Texas nursing jurisprudence and ethics, sharpening critical thinking skills, and respecting professional boundaries, all of which pertained specifically to the nature of respondent’s unprofessional conduct in Texas. Since respondent has already completed these three courses, requiring him to complete another nursing course is unwarranted.

ORDER

The application of respondent Rodney Wayne Hicks for licensure is hereby granted and a license shall be issued to respondent upon successful completion of all licensing requirements. Said license shall immediately be revoked, the order of revocation stayed and respondent placed on probation for a period of three years on 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 the 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: If respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and 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 the respondent’s 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 is tolled, if and when he resides outside of California. The 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 non-direct 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 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 supervisors 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 respondent's 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.

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 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.

(10) **COMPLETE A NURSING COURSE(S)** – This requirement is deleted, for the reasons stated in Legal Conclusion 12.

(11) **COST RECOVERY** – Respondent does not owe the Board any costs.

(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 discipline (revocation) of the 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.


(13) **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 to 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: July 21, 2015


THOMAS HELLER
Administrative Law Judge
Office of Administrative Hearings

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7

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

10 In the Matter of the Statement of Issues
11 Against:

Case No. 2015-259

12 **RODNEY WAYNE HICKS**

STATEMENT OF ISSUES

13 Registered Nurse License Applicant

14 Respondent.
15

16 Complainant alleges:

17 **PARTIES**

18 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Statement of Issues solely in
19 her official capacity as the Executive Officer of the Board of Registered Nursing, Department of
20 Consumer Affairs.

21 2. On or about March 17, 2014, the Board of Registered Nursing, Department of
22 Consumer Affairs received an Application for Licensure by Endorsement for a Registered Nurse
23 License from Rodney Wayne Hicks ("Respondent"). On or about March 4, 2014, Rodney Wayne
24 Hicks certified under penalty of perjury to the truthfulness of all statements, answers, and
25 representations in the application. The Board denied the application on May 20, 2014.

26 **JURISDICTION AND STATUTORY PROVISIONS**

27 3. This Statement of Issues is brought before the Board of Registered Nursing ("Board"),
28 Department of Consumer Affairs, under the authority of the following laws. All section references

1 are to the Business and Professions Code ("Code") unless otherwise indicated.

2 4. Section 2736 of the Code provides, in pertinent part, that the Board may deny a
3 license when it finds that the applicant has committed any acts constituting grounds for denial of
4 licensure under section 480 of the Code.

5 5. Section 480 of the Code states:

6 "(a) A board may deny a license regulated by this code on the grounds that
7 the applicant has one of the following:

8 ...

9 (3) (A) Done any act that if done by a licentiate of the business or
profession in question, would be grounds for suspension or revocation of license.

10 (B) The board may deny a license pursuant to this subdivision only if the
11 crime or act is substantially related to the qualifications, functions, or duties of the
business or profession for which application is made.

12 (b) Notwithstanding any other provision of this code, no person shall be
13 denied a license solely on the basis that he or she has been convicted of a felony if he
14 or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with
15 Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been
convicted of a misdemeanor if he or she has met all applicable requirements of the
criteria of rehabilitation developed by the board to evaluate the rehabilitation of a
person when considering the denial of a license under subdivision (a) of Section 482.

16 (c) A board may deny a license regulated by this code on the ground that
17 the applicant knowingly made a false statement of fact required to be revealed in the
application for the license."

18 6. Section 2761 of the Code states:

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

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

22 ...

23 (4) Denial of licensure, revocation, suspension, restriction, or any other
24 disciplinary action against a health care professional license or certificate by another
25 state or territory of the United States, by any other government agency, or by another
California health care professional licensing board. A certified copy of the decision or
judgment shall be conclusive evidence of that action.

26 ...

27 (d) Violating or attempting to violate, directly or indirectly, or assisting in
28 or abetting the violating of, or conspiring to violate any provision or term of this
chapter [the Nursing Practice Act] or regulations adopted pursuant to it."

1 7. Section 141 of the Code provides:

2 “(a) For any licensee holding a license issued by a board under the
3 jurisdiction of the department, a disciplinary action taken by another state, by any
4 agency of the federal government, or by another country for any act substantially
5 related to the practice regulated by the California license, may be a ground for
6 disciplinary action by the respective state licensing board. A certified copy of the
7 record of the disciplinary action taken against the licensee by another state, an agency
8 of the federal government, or another country shall be conclusive evidence of the
9 events related therein.

10 (b) Nothing in this section shall preclude a board from applying a specific
11 statutory provision in the licensing act administered by that board that provides for
12 discipline based upon a disciplinary action taken against the licensee by another state,
13 an agency of the federal government, or another country.”

14 **FIRST CAUSE FOR DENIAL OF APPLICATION**

15 **(Disciplinary Action by the Texas Board of Nursing)**

16 8. Respondent's application is subject to denial under section 2761, subdivision (a)(4) of
17 the Code on the grounds of unprofessional conduct in that the Texas Board of Nursing (“Texas
18 Board”) took disciplinary action against Respondent’s license in Texas, as follows:

19 9. On or about July 20, 2012, in the disciplinary matter entitled *In the Matter of*
20 *Permanent Certificate Numbers 514318 Issued to Rodney Wayne Hicks, Docket Number 507-11-*
21 *2458*, the Texas Board issued an order imposing the sanction of Warning with Stipulations on
22 Respondent’s Texas license. The stipulations included remedial education courses, employer
23 notification and quarterly reporting, and supervised practice of one year. The Board’s order
24 makes clear that the length of the stipulation period will be extended until such twelve (12) months
25 have elapsed. The circumstances underlying the disciplinary action by the Texas Board are that on
26 or about May 25, 2010, Respondent, while employed as a professor of nursing at Texas Tech
27 University Health Science Center, made a WEBEX¹ recording of an eLOGS tutorial for the
28 graduate students in an online diagnostics class. Respondent recorded the tutorial at his home on
his computer using WEBEX in a “screen capture mode” which displayed the entire image of his
desktop. At the conclusion of the presentation, Respondent put his mouse on the WEBEX icon to
turn it off, but actually only minimized the screen and continued recording all further activity until

¹ A fee-based interface service to facilitate meetings and classroom sessions.

1 he turned off the computer. The recording captured Respondent's sexually-explicit chat room
2 discussions, nude adult male photo exchange, work-related E-mails, and non-sexual internet
3 viewing. On June 19, 2010, a graduate nursing student viewed the tutorial and material and
4 reported the matter to staff.

5 **SECOND CAUSE FOR DENIAL OF APPLICATION**

6 **(Violations of the Nursing Practice Act)**

7 10. Respondent's application is subject to denial under section 2761, subdivision (d) of the
8 Code in that Respondent violated provisions of the Nursing Practice Act. The violations are
9 described in more particularity in paragraphs 8 and 9 above, inclusive and hereby incorporated by
10 reference.

11 **THIRD CAUSE FOR DENIAL OF APPLICATION**

12 **(Conduct Warranting Discipline of Licensee)**

13 11. Respondent's application is subject to denial under section 2736 of the Code in that
14 Respondent committed acts constituting grounds for denial of licensure under section 480 of the
15 Code. Specifically, Respondent committed an act, which if done by a licentiate of the business or
16 profession in question, would be grounds for suspension or revocation of license in violation of
17 section 480, subdivision (a)(3) of the Code. The grounds for discipline are, as follows:

18 12. Respondent was disciplined by the Texas Board in violation of section 2761,
19 subdivision (a)(4) of the Code and section 141 of the Code. The disciplinary action by the Texas
20 Board is described in more particularity in paragraphs 8 and 9 above, inclusive and hereby
21 incorporated by reference.

22 13. Respondent violated provisions of the Nursing Practice Act in violation of section
23 2761, subdivision (d) of the Code. The violations are described in more particularity in paragraphs
24 11 and 12 above, inclusive and hereby incorporated by reference.

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PRAYER

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

- 1. Denying the application of Rodney Wayne Hicks for a Registered Nurse License;
- 2. Taking such other and further action as deemed necessary and proper.

DATED: SEPTEMBER 30, 2014

for 
LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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