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Virginia Board of Nursing



COMMONWEALTH of VIRGINIA

David E. Brown, D.C.  
Director

Department of Health Professions

Perimeter Center  
9960 Mayland Drive, Suite 300  
Henrico, Virginia 23233-1463

www.dhp.virginia.gov  
TEL (804) 367- 4400  
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March 27, 2015

Theresa Janine Carter  
1303 Iris Trail  
Perris, CA 92571

CERTIFIED MAIL

DUPLICATE COPY  
VIA FIRST CLASS MAIL

RE: License No.: 0001-244347

DATE 3/27/15

Dear Ms. Carter:

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 March 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,

[Signature]

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

Enclosures  
Case # 161776

**VIRGINIA:**

**BEFORE THE DEPARTMENT OF HEALTH PROFESSIONS**

**IN RE: THERESA JANINE CARTER, R.N.**  
**License No.: 0001-244347**

**ORDER**

In accordance with Section 54.1-2409 of the Code of Virginia (1950), as amended, ("Code"), I, David E. Brown, D.C., Director of the Virginia Department of Health Professions, received and acted upon evidence that the license of Theresa Janine Carter, R.N., to practice nursing in the State of California was revoked by a Decision effective March 12, 2015. 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 license of Theresa Janine Carter, R.N., to practice nursing in the Commonwealth of Virginia be, and hereby is, SUSPENDED.

Upon entry of this Order, the license of Theresa Janine Carter, R.N., will be recorded as suspended and no longer current. Should Ms. Carter seek reinstatement of her license pursuant to Section 54.1-2409 of the Code, she shall be responsible for any fees that may be required for the reinstatement and renewal of her license prior to issuance of her 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.



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

ENTERED: 3/27/15



# COMMONWEALTH of VIRGINIA

David E. Brown, D.C.  
Director


## Department of Health Professions

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### CERTIFICATION OF DUPLICATE RECORDS

I, David E. Brown, D.C., Director of the Department of Health Professions, hereby certify that the attached Decision effective March 12, 2015, regarding Theresa Janine Carter, R.N., is a true copy of the records received from the State of California Board of Registered Nursing.

  
\_\_\_\_\_  
David E. Brown, D.C.

Date: 3/27/15

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

In the Matter of the Accusation Against:

**THERESA JANINE CARTER**  
P.O. Box 339  
San Jacinto, CA 92581

Registered Nurse License No. 701219

Respondent.

Case No. 2015-164

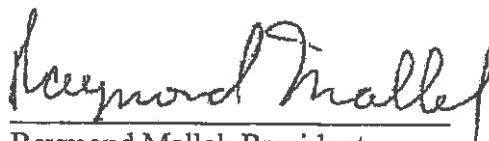
OAH No. 2014090266

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 March 12, 2015.


IT IS SO ORDERED this 10<sup>th</sup> day of February, 2015.



Raymond Mallel, 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  
Executive Officer



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

In the Matter of the Accusation Against:

THERESA JANINE CARTER,

Registered Nurse License No. 701219,

Respondent.

Case No. 2015-164

OAH No. 2014090266

**PROPOSED DECISION**

Administrative Law Judge Diane Schneider, State of California, Office of Administrative Hearings, heard this matter on December 4 and 5, 2014.

Complainant Louise R. Bailey, M.Ed., R.N., Executive Officer of the Board of Registered Nursing, was represented by Nicholas Tsukamaki, Deputy Attorney General.

Respondent Theresa Janine Carter was present and represented herself.

The matter was submitted for decision on December 5, 2014.

**FACTUAL FINDINGS**

1. Complainant Louise R. Bailey, M.Ed., R.N., filed the accusation in her official capacity as Executive Officer, Board of Registered Nursing (board), Department of Consumer Affairs.

2. On March 30, 2007, the board issued Registered Nurse License No. 701219 to respondent Theresa Janine Carter. Respondent's license was in full force and effect at all times relevant to these proceedings, and is renewed through May 31, 2016.

3. The following witnesses testified at hearing: Jeanette Black, RN, Director of In-Patient Care Nursing, Contra Costa Regional Medical Center (CCRMC); Mary Murphy, RN, former Nurse Program Manager, CCRMC; board expert Tejinder Kaur Khaira, RN; respondent, and respondent's daughter. The testimony of the witnesses and the documentary evidence established the facts set forth below.

*Withdrawal of Dilaudid from Omnicell machine without physician's order*

4. An Omnicell machine is a computerized medication dispensing system. At CCRMC's Emergency Department, the Omnicell machine is located in a small, locked room near the nursing station. In order to obtain medication a nurse enters her identification and password into the machine. The nurse then selects the patient's name, the medication, and dosage. After the machine dispenses the medication to the nurse, the nurse presses the exit button and logs out of the machine. If the nurse forgets to exit the machine, the machine will log the nurse out in 45 seconds. Nurses at CCRMC receive extensive training regarding the operation of the Omnicell machine. They are told that they may not share their identification or password with anyone, and that a violation of this rule is grounds for termination. Neither Ms. Black nor Ms. Murphy was aware of any case in which a nurse used the identification and password of another nurse to obtain medication from the Omnicell machine.

5. The standard of practice for registered nurses and CCRMC policies and procedures prohibit nurses from administering medication without a physician's order. Once the nurse administers the medication to the patient, the standard of practice and CCRMC policies and procedures require the nurse to document the administration of the medication in the patient's chart. If the medication is not given to the patient, the nurse is required to waste the medication in the presence of a witness and document this event in the patient's chart.

6. Between July 8 and August 29, 2012, while respondent was on duty as a registered nurse in the Emergency Department of CCRMC, she withdrew 35<sup>1</sup> two milligram doses of Dilaudid<sup>2</sup> from the Omnicell machine on 18 separate dates for 19 different patients. There was no physician's order for the Dilaudid, and respondent did not document the administration or wastage of the Dilaudid. Respondent's conduct deviated from the standard of practice and CCRMC policies and procedures pertaining to the administration of medication, and was unprofessional.

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<sup>1</sup> The Accusation alleged that respondent withdrew 34 doses of Dilaudid, but was amended at hearing to conform to proof.

<sup>2</sup> Dilaudid, a brand of hydromorphone hydrochloride, is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b), and a dangerous drug pursuant to Business and Professions Code section 4022.

*Out-of-state discipline*

7. On July 25, 1996, respondent was disciplined by the Alabama Board of Nursing (Alabama board) for her involvement<sup>3</sup> in a Florida robbery and her use of cocaine in 1987. At the proceeding before the Alabama Board, and at this hearing, respondent testified that her criminal activity and use of cocaine stemmed from her relationship with her former husband, who was a drug addict and criminal. As a result of respondent's criminal conduct and her use of cocaine, the Alabama board placed respondent on probation for three years. Respondent completed her term of probation with the Alabama board.

8. On May 20, 2013, respondent was reprimanded<sup>4</sup> by the Virginia Board of Nursing (Virginia board) for failing to disclose her no contest plea in connection with the Florida robbery and failing to disclose her previous discipline by the Alabama board on her application to practice nursing in Virginia.

*Respondent's evidence,*

9. Respondent worked in CCRMC's Emergency Department from 2006 until September 20, 2012, when she terminated her employment for personal reasons. Respondent acknowledges that she was at work on each occasion that her identification and password were used to withdraw the Dilaudid, and she does not dispute that the Dilaudid was illegally obtained without a physician's order. Respondent steadfastly denies, however, that she withdrew these medications. Instead, she maintains that another nurse stole and used her identification and password to withdraw the Dilaudid from the Omnicell machine on the dates and times at issue. Respondent's denial of responsibility and her theory that another nurse stole and used her identification password to withdraw the Dilaudid were not credible.

10. Respondent acknowledges her out-of-state discipline. She testified that she genuinely believed that she had not suffered a robbery conviction in Florida. Respondent thought that the robbery charges had been dismissed, and that therefore, she was not obliged to report this incident to the Virginia board.

11. Respondent's 25-year-old daughter testified to her close relationship with respondent. According to respondent's daughter, respondent has no interests outside of her children and her work. Respondent's daughter has never seen her mother use any illegal drugs, and she would never suspect that her mother used illegal drugs. For this reason, she does not believe that her mother stole the Dilaudid from CCRMC.

12. Respondent graduated from nursing school in Alabama and has worked as a registered nurse for 18 years. She loves the practice of nursing and wants to continue

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<sup>3</sup> It was not clear from the record whether respondent was actually found guilty of committing robbery in Florida.

<sup>4</sup> Under Virginia law, a reprimand constitutes license discipline.

working in her chosen profession. Ms. Murphy supervised respondent for over three years and had never received a complaint regarding respondent's work.

13. Respondent submitted letters written by nurses and one doctor who are familiar her work. The letters uniformly praise respondent's excellent nursing skills, her hard work, and her integrity.

14. After leaving her position at CCRMC respondent worked as a traveling nurse. She is presently unemployed; her belongings are in storage, and she lives out of her car.

#### *Costs*

15. Complainant has incurred costs in the amount of \$19,537.60, in its investigation and enforcement of this matter. The costs include the following items: \$10,050.10 in investigation and expert witness costs, and \$9,487.50 in Attorney General costs. In the absence of evidence to the contrary, these costs are found to be reasonable.

### LEGAL CONCLUSIONS

#### *First cause for discipline (unprofessional conduct)*

1. Business and Professions Code section 2761, subdivision (a), provides that the board may take disciplinary action against licensees for unprofessional conduct. Respondent is subject to discipline under this section because she committed unprofessional conduct when she obtained a controlled substance and a dangerous drug without a physician's order. (Factual Findings 5 and 6.)

#### *Second cause for discipline (disciplinary action by another jurisdiction)*

2. The board may take disciplinary action against a registered nurse who commits unprofessional conduct, which, by definition, includes any disciplinary action taken against a licensee by another state. (Bus. & Prof. Code, § 2761, subd. (a)(4).) A certified copy of a disciplinary order from another state constitutes "conclusive evidence of that action." (*Ibid.*) Cause for license discipline exists pursuant to Business and Professions Code section 2762, subdivision (a)(4), based upon respondent's out-of-state discipline. (Factual Findings 7 and 8.)

#### *Third cause for discipline (illegally obtaining and/or possessing controlled substance and dangerous drug)*

3. Pursuant to Business and Professions Code section 2762, subdivision (a), a licensee commits unprofessional conduct when she illegally obtains or possesses controlled substances or dangerous drugs. Respondent engaged in unprofessional conduct when she illegally obtained Dilaudid, a controlled substance and dangerous drug, on numerous dates.



(Factual Findings 5 and 6.) Accordingly, cause for discipline exists under Business and Professions Code section 2762, subdivision (a).

### *Costs*

4. Business and Professions Code section 125.3 provides that a licensee found to have violated the licensing act may be required to pay a sum not to exceed the reasonable costs of investigation and enforcement of the case. By reason of the matters set forth in Legal Conclusions 1 through 3, cause exists to require respondent to pay cost recovery.

In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the Supreme Court enumerated several factors that a licensing board must consider in assessing costs. The board must not assess the full costs of investigation and enforcement when to do so would unfairly penalize a respondent who has committed some misconduct, but who has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty; the board must consider a respondent's subjective good faith belief in the merits of her position and whether the respondent has raised a colorable challenge; and the board must consider a respondent's ability to pay.

Although most of the factors enumerated by the court in *Zuckerman* do not militate against imposing the cost recovery requested by complainant, respondent is currently unemployed and living out of her car. In light of the evidence presented demonstrating respondent's inability to pay a substantial cost recovery award, cause exists to reduce the cost recovery award to \$12,537.60.

### *Disciplinary considerations*

5. Respondent has been a registered nurse for 18 years. She has devoted many years of hard work to her profession. Her supervisor at CCRMC, Ms. Murphy, never received any complaints about respondent's work. Several of her colleagues wrote letters praising her skills and her professionalism. For this she is commended. Against this background, however, are respondent's numerous and serious acts of unprofessional conduct committed when she illegally obtained controlled substances from the medication dispensing machine at CCRMC.

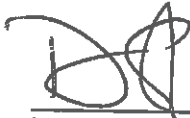
In deciding the appropriate discipline, the board's highest priority is the protection of the public. Respondent steadfastly denies that she illegally withdrew Dilaudid from the Omnicell machine. Instead, she continues to propound the theory that another nurse withdrew the Dilaudid by stealing her identification number and password. Respondent's theory was wholly unsupported by the evidence, which demonstrated that on 18 occasions within a six week time period, she removed 35 doses of Dilaudid without a physician's order. Respondent's failure to take responsibility for her actions suggests that she has not come to terms with her egregious misconduct. Under these circumstances, the board's disciplinary

guidelines<sup>5</sup> require revocation of respondent's license. Respondent's out-of-state discipline was also considered in making this determination.

### ORDERS

1. Registered Nurse License No. 701219 issued to respondent Theresa Janine Carter is revoked.
2. If and when respondent's license is reinstated, she 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 \$12,537.60.

DATED: 12/23/14



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DIANE SCHNEIDER  
Administrative Law Judge  
Office of Administrative Hearings

<sup>5</sup> See California Code of Regulations, title 16, section 1444.5.