

BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Petition to Revoke  
Probation Against:

KELLIE MARIE ALLEN,  
a.k.a. KELLIE MARIE BRANCO

Registered Nurse License No. 450044

Respondent.

Case No. 2016-869

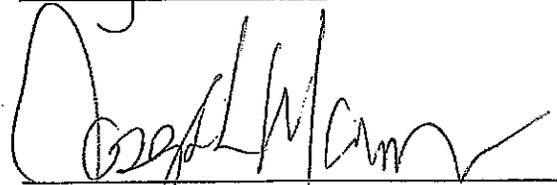
OAH No. 2017021065

**DECISION AND ORDER**

Pursuant to Title 16 of the California Code of Regulations, section 1403,  
the attached Stipulated Settlement is hereby adopted by the Board of Registered  
Nursing as its Decision and Order in the above-entitled matter.

This Decision shall become effective on May 10, 2017.

IT IS SO ORDERED this 10<sup>th</sup> day of May, 2017.



Joseph Morris, PhD, MSN, RN  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California

1 XAVIER BECERRA  
Attorney General of California  
2 KENT D. HARRIS  
Supervising Deputy Attorney General  
3 PHILLIP L. ARTHUR  
Deputy Attorney General  
4 State Bar No. 238339  
1300 I Street, Suite 125  
5 P.O. Box 944255  
Sacramento, CA 94244-2550  
6 Telephone: (916) 322-0032  
Facsimile: (916) 327-8643  
7 E-mail: Phillip.Arthur@doj.ca.gov  
*Attorneys for Complainant*

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

11 In the Matter of the Petition to Revoke  
12 Probation Against:

13 **KELLIE MARIE ALLEN**  
14 **aka KELLIE MARIE BRANCO**  
2707 W. Main Street  
15 Visalia, CA 93291

16 **Registered Nurse License No. 450044**

17 Respondent.

Case No. 2016-869

OAH No. 2017021065

**STIPULATED SURRENDER OF  
LICENSE AND ORDER**

18  
19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
20 entitled proceedings that the following matters are true:

21 PARTIES

22 1. Joseph L. Morris, PhD, MSN, RN (Complainant) is the Executive Officer of the  
23 Board of Registered Nursing (Board). He brought this action solely in his official capacity and is  
24 represented in this matter by Xavier Becerra, Attorney General of the State of California, by  
25 Phillip L. Arthur, Deputy Attorney General.

26 2. Kellie Marie Allen aka Kellie Marie Branco (Respondent) is representing herself in  
27 this proceeding and has chosen not to exercise her right to be represented by counsel.

28 ///





1           1.     The surrender of Respondent's Registered Nurse License and the acceptance of the  
2 surrendered license by the Board shall constitute the imposition of discipline against Respondent.  
3 This stipulation constitutes a record of the discipline and shall become a part of Respondent's  
4 license history with the Board of Registered Nursing.

5           2.     Respondent shall lose all rights and privileges as a Registered Nurse in California as  
6 of the effective date of the Board's Decision and Order.

7           3.     Respondent shall cause to be delivered to the Board her pocket license and, if one was  
8 issued, her wall certificate on or before the effective date of the Decision and Order.

9           4.     If Respondent ever applies for licensure or petitions for reinstatement in the State of  
10 California, the Board shall treat it as a petition for reinstatement. Respondent must comply with  
11 all the laws, regulations, and procedures for reinstatement of a revoked license in effect at the  
12 time the petition is filed, and all of the charges and allegations contained in Petition to Revoke  
13 Probation No. 2016-869 shall be deemed to be true, correct, and admitted by Respondent when  
14 the Board determines whether to grant or deny the application or petition.

15           5.     If and when Respondent's license is reinstated, she shall pay to the Board the  
16 remaining outstanding costs associated with its investigation and enforcement of the underlying  
17 Accusation No. 2016-869, pursuant to Business and Professions Code section 125.3, in the  
18 amount of \$9,800.00. Respondent shall be permitted to pay these costs in a payment plan  
19 approved by the Board. Nothing in this provision shall be construed to prohibit the Board from  
20 reducing the amount of cost recovery upon reinstatement of the license.

21           6.     If Respondent should ever apply or reapply for a new license or certification, or  
22 petition for reinstatement of a license, by any other health care licensing agency in the State of  
23 California, all of the charges and allegations contained in Petition to Revoke Probation No. 2016-  
24 869 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any  
25 Statement of Issues or any other proceeding seeking to deny or restrict licensure.

26           7.     Respondent shall not apply for licensure or petition for reinstatement for one (1) year  
27 from the effective date of the Board's Decision and Order.

28     ///



**Exhibit A**

**Petition to Revoke Probation No. 2016-869**

1 KAMALA D. HARRIS  
Attorney General of California  
2 KENT D. HARRIS  
Supervising Deputy Attorney General  
3 PHILLIP L. ARTHUR  
Deputy Attorney General  
4 State Bar No. 238339  
1300 I Street, Suite 125  
5 P.O. Box 944255  
Sacramento, CA 94244-2550  
6 Telephone: (916) 322-0032  
Facsimile: (916) 327-8643  
7 *Attorneys for Complainant*

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

11 In the Matter of the Petition to Revoke  
12 Probation Against:

Case No. 2016-869

13 **KELLIE MARIE ALLEN**  
14 **aka KELLIE MARIE BRANCO**  
15 **2707 W. Main Street**  
16 **Visalia, CA 93291**

~~PETITION TO REVOKE PROBATION~~

16 **Registered Nurse License No. 450044**

17 Respondent.

18  
19 Joseph L. Morris, PhD, MSN, RN ("Complainant") alleges:

20 **PARTIES**

21 1. Complainant brings this Petition to Revoke Probation solely in his official capacity as  
22 the Executive Officer of the Board of Registered Nursing ("Board"), Department of Consumer  
23 Affairs.

24 2. On or about March 31, 1990, the Board issued Registered Nurse License Number  
25 450044 to Kellie Marie Allen, also known as Kellie Marie Branco ("Respondent"). The license  
26 was in effect at all times relevant to the charges brought herein and will expire on January 31,  
27 2018, unless renewed.

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PRIOR DISCIPLINE**

3. Effective October 7, 2016, pursuant to the Decision and Order ("Order"), in a disciplinary action titled, *In the Matter of the Accusation Against Kellie Marie Allen, aka Kellie Marie Branco, Registered Nurse License No. 450044*, Case No. 2016-869, the Board ordered that Respondent's Registered Nurse License Number 450044 be revoked. However, the revocation was stayed and Respondent was placed on probation for a period of three (3) years with certain terms and conditions.

4. At all times after the effective date of Respondent's probation, Condition 12 stated:

If a respondent violates the conditions of her 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/suspension) 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.

5. Respondent's probation is subject to revocation, in that she violated probation, as set forth below:

**FIRST CAUSE TO REVOKE PROBATION**

**(Failed to Abstain from Use of Psychotropic (Mood-Altering) Drugs)**

6. At all times after the effective date of Respondent's probation, Condition 16 stated:

Respondent shall completely abstain from the possession, injection or consumption by any route of all controlled substances and 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 medical treatment. Respondent shall have sent to the Board, in writing and within fourteen (14) days, by the prescribing health professional, a report identifying the medication, dosage, the date the medication was prescribed, the Respondent's 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 substance abuse 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.

1 The Board may require the single coordinating physician, nurse  
2 practitioner, or physician assistant to be a specialist in addictive medicine, or to  
3 consult with a specialist in addictive medicine.

4 7. Respondent's probation is subject to revocation for failing to comply with Condition  
5 16, referenced above, in that Respondent failed to abstain from the use of alcohol by testing positive  
6 for alcohol on October 15 and 17, 2016. Furthermore, Respondent admitted to ingesting alcohol on  
7 October 21, 2016.

8 **SECOND CAUSE TO REVOKE PROBATION**

9 **(Failed to Submit to Tests and Samples)**

10 8. At all times after the effective date of Respondent's probation, Condition 17 stated:

11 Respondent, at her expense, shall participate in a random, biological fluid  
12 testing or a drug screening program which the Board approves. The length of time  
13 and frequency will be subject to approval by the Board. Respondent is responsible  
14 for keeping the Board informed of respondent's current telephone number at all times.  
15 Respondent shall also ensure that messages may be left at the telephone number when  
16 she is not available and ensure that reports are submitted directly by the testing  
17 agency to the Board, as directed. Any confirmed positive finding shall be reported  
18 immediately to the Board by the program and respondent shall be considered in  
19 violation of probation.

20 In addition, respondent, at any time during the period of probation, shall  
21 fully cooperate with the Board or any of its representatives, and shall, when  
22 requested, submit to such tests and samples as the Board or its representatives may  
23 require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other  
24 controlled substances.

25 If respondent has a positive drug screen for any substance not legally  
26 authorized and not reported to the coordinating physician, nurse practitioner, or  
27 physician assistant, and the Board files a petition to revoke probation or an  
28 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 will 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, respondent 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 will not apply to the reduction of this  
probationary time period.

9. Respondent's probation is subject to revocation by failing to comply with Condition 17,  
referenced above, in that on or about November 8, 2016 and January 7, 2017, Respondent failed to  
call in to First Lab when she was required to do so on those dates.



**Exhibit A**

**Decision and Order  
Board of Registered Nursing Case No. 2016-869**

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

In the Matter of the Accusation Against:

**KELLIE MARIE ALLEN**  
**AKA KELLIE MARIE BRANCO**  
2707 W. Main Street  
Visalia, CA 93291

Registered Nurse License No. 450044

Respondent.

Case No. 2016-869

OAH No. 2016030527

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 7, 2016.

IT IS SO ORDERED this 7<sup>th</sup> day of September, 2016.

*Michael D. Jackson MSN, RN, CRRN*

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:

KELLIE MARIE ALLEN, aka KELLIE MARIE  
BRANCO,

Registered Nurse License No. 450044

Respondent.

Case No. 2016-869

OAH No. 2016030527

**PROPOSED DECISION**

This matter was heard before Administrative Law Judge Ed Washington, Office of Administrative Hearings (OAH), on June 20, 2016, in Visalia, California.

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

Kellie Marie Allen, also known as Kellie Marie Branco, represented herself at hearing.

Evidence was received and the record remained open through June 30, 2016, to allow respondent to submit supportive documentation and to allow complainant to submit objections to that documentation. Between June 22, 2016, and June 29, 2016, OAH received respondent's supportive documentation, which was marked as Exhibit A. The record was closed and the matter was submitted for decision on June 30, 2016.

**FACTUAL FINDINGS**

1. On March 31, 1990, the Board issued to respondent Registered Nurse License number 450044. The license will expire on January 31, 2018, unless renewed or revoked.
2. On March 4, 2016, complainant, acting solely in her official capacity as the Executive Officer of the Board, signed and thereafter filed the Accusation. Complainant seeks to discipline respondent's license for unprofessional conduct, as specified below.

3. Respondent timely filed a Notice of Defense, pursuant to Government Code section 11506. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

*Respondent's Conduct*

4. Respondent began working as a registered nurse for Tulare Regional Medical Center (TRMC) on June 5, 2012. Between April 2014 and June 13, 2014, several of respondent's former coworkers observed respondent engage in conduct that was concerning. Respondent appeared disheveled at work, frequently appeared sleepy and slept during work hours, and was frequently missing from her assigned area for extended periods of time.

5. Maria Hernández is a registered nurse employed by TRMC. On June 11, 2014, Ms. Hernandez entered the nurses' station and observed respondent searching through the purse of another coworker, Victoria Faria. As the door to the nurses' station closed behind Ms. Hernandez, respondent realized Ms. Hernandez was in the area and immediately moved away from Ms. Faria's purse. Ms. Hernandez immediately reported the incident to the Charge Nurse, Amy Monger. Prior to this incident, Ms. Hernandez also noticed that respondent "was not her usual bubbly self," and frequently appeared "tired," and "out of it." Ms. Hernandez noticed that respondent was always "falling asleep," and disappearing from the department for extended periods of time."

6. Victoria Faria is a registered nurse employed by TRMC. On June 11, 2014, Ms. Faria was assigned as the unit secretary and stored her purse underneath her desk at the front counter. Ms. Faria left the area during her work shift. When she returned, Ms. Monger told her to look through her purse to see if anything was missing. Ms. Faria checked her purse and discovered that her pill box was not where she normally stored it within her purse. When she opened her pill box, she noticed that her last pill of a prescription muscle relaxant had been removed.

7. Sherri Price is a Nursing Manager with TRMC. She supervised respondent between April 2014 and June 13, 2014, as the Interim RN Manager. Ms. Price noticed a change in respondent's work performance during this time. She noticed respondent coming to work late and also appearing disheveled, when compared to her normal appearance. Ms. Price also noticed that respondent would go to the restroom for long periods of time, frequently appeared sleepy, and would sometimes sleep in Ms. Price's office. Ms. Price also observed respondent fall asleep while charting and bumping into the walls while walking down the hallways.

8. On June 13, 2014, Ms. Price, and Brooke Brown, the Director of Human Resources TRMC, met with respondent, to discuss their concerns. Respondent agreed to submit to a drug and alcohol test and tested positive for hydrocodone, .03 percent alcohol, and alprazolam. On June 27, 2014, respondent was terminated from employment with

TRMC because her drug and alcohol test reflected that she reported to work under the influence of alcohol.<sup>1</sup>

### *Respondent's Evidence*

9. Respondent is 53 years old and has been a registered nurse for 26 years. She denied that she came to work disheveled and frequently fell asleep while working. Respondent acknowledged that she reported to work exhausted between April and June 2014, but insisted that she only slept during her break periods. She explained that she was taking care of three children in high school and was suffering from asthma and Chronic Obstructive Pulmonary Disease, which caused her to cough frequently and prevented her from getting sufficient sleep. Respondent testified that she was also ill on June 10, 2014, and had ingested Nyquil on that date as well as "a glass or two of wine before going to bed to help her sleep." She recalled that on June 11, 2014, she told the Charge Nurse that she had to put her head down because she was exhausted. Respondent testified that she only recalled falling asleep and then waking up some time later at the nurses' station. She asserted that she has no recollection of ever going through anyone's purse at work and did not recall ever walking into walls or falling asleep while charting.

10. Respondent testified that in her 26-year nursing career there have been no concerns with her ability to perform her job safely. She added that she has had no prior issues with the Board and has always had positive performance evaluations. Respondent described being a nurse as "her life," and stated that she does not know what else she would do if she was prohibited from continuing to work in the profession she loves.

11. Respondent submitted certificates of completion reflecting that she has completed training in Cardio Pulmonary Resuscitation, Advanced Cardiovascular Life Support, and Pediatric Advanced Life Support, in addition to nine hours of continuing education in nursing in 2015 and 2016. Respondent also submitted 17 character reference letters which reflect an impressive commitment to the nursing field, her family, and her community. These materials were admitted as administrative hearsay and have been considered to the extent permitted under Government Code section 11513, subdivision (d).

### *Discussion*

12. In its Recommended Guidelines for Disciplinary Orders and Conditions of Probation, the Board of Registered Nursing has set forth the type of factors for consideration in determining whether revocation, suspension or probation should be imposed. The criteria include (1) the nature and severity of the acts under consideration; (2) the actual or potential harm to the public; (3) the actual or potential harm to any patient; (4) prior disciplinary

---

<sup>1</sup> Although the drug and alcohol test reflected that hydrocodone and alprazolam were also present in respondent's system, no quantitative measurements were performed to determine whether the presence of those substances exceeded therapeutic levels.

record; (5) the number or variety of current violations; (6) mitigation evidence; (7) rehabilitation evidence; and (8) the time passed since the acts occurred.

13. Respondent reported to work under the influence of alcohol. She went through her coworker's purse when her coworker was not present and removed prescription medication. Respondent reported to work with such exhaustion that she had to take naps in her supervisor's office, fell asleep while charting, and walked into walls for reasons she could not explain. Her actions, as well as her inability to explain them, are very serious. Though there is no evidence that any patient was harmed, the potential harm to the public and patients is clear.

14. Engaging in nursing activities while either under the influence of alcohol or with such a level of exhaustion that it is difficult to ambulate poses a serious potential risk to patients and the public. In mitigation, respondent has no disciplinary record and her coworkers and colleagues speak favorably of her work as a nurse. Despite her observed inabilities at work, there was no evidence that she provided substandard care to any patients. Her 17 character reference letters reflect that she is committed to her profession and her community. However, those letters fail to demonstrate that respondent has gained any insight into the circumstances that caused her to behave as she did at work between April 2014 and June 2014. For these reasons, respondent's character reference letters were given little weight.

15. When all the evidence is considered in light of the Board's factors for consideration, placing respondent on probation for three years under the terms and conditions set forth below is appropriate to ensure the public health, safety and welfare are adequately protected. These probationary terms will further public protection by ensuring that respondent is receiving the level of supervision to practice safely, that she is physically capable of performing the duties of a registered nurse, and that her use of alcohol or drugs will not adversely affect her ability to practice safely.

#### *Costs*

16. Complainant has requested that respondent be ordered to pay the Board its costs of investigation and enforcement of this matter in the amount of \$13,520.75 in investigation costs, and \$4,465 in enforcement cost, for a total of \$17,985.75. Complainant submitted declarations explaining and supporting these costs. These costs are reasonable based upon the tasks performed and time spent by the Board's staff and counsel in light of the allegations and legal issues in this matter. Respondent did not object to the declarations for cost, but asserted that she cannot pay these costs due to difficult financial circumstances. She asserted that she has not been working consistently due to ongoing health issues and the allegations specified in the Accusation. She detailed her sources of income and living expenses to support her claimed inability to pay the costs sought by complainant. Respondent's asserted inability to pay the requested costs is addressed in the Legal Conclusions, below.

CALIFORNIA  
BOARD OF REGISTERED NURSES

AUG 2 2016

## LEGAL CONCLUSIONS

### *Burden of Proof*

1. A professional license may be disciplined only upon "clear and convincing proof to a reasonable certainty." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Clear and convincing evidence means "evidence of such convincing force that demonstrates, in contrast to the opposing evidence, a high probability of truth of the facts for which it is offered as proof." (*People v. Mabini* (2001) 92 Cal.App.4th 654, 660.)

### *Cause for Discipline*

2. Business and Professions Code section 2761, subdivision (a), provides that the Board may take disciplinary action against a license when the licensee has engaged in "[u]nprofessional conduct."

3. Complainant established that between April 2014 and June 13, 2014, respondent rifled through her coworkers purse and removed prescription medication, and reported to work in such an exhausted fashion that in inhibited her ability to walk. Therefore, complainant established cause to discipline respondent's license pursuant to Business and Professions Code section 2761, subdivision (a).

4. Business and Professions Code section 2762, subdivision (b), defines "unprofessional conduct" to include using any dangerous drug or alcoholic beverage to an extent or in a manner dangerous to the licensee, any other person, or the public.

5. Complainant established that between April 2014 and June 13, 2014, respondent reported to work with alcohol in her system, rifled through her coworkers purse and removed prescription medication, and reported to work in such an exhausted fashion that in inhibited her ability to walk. Therefore, complainant established cause to discipline respondent's license pursuant to Business and Professions Code section 2762, subdivision (b).

### *Cost Recovery*

6. Pursuant to Business and Professions Code section 125.3, a licensee found to have violated the licensing act may be ordered to pay the reasonable costs of investigation and enforcement of a case. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. These factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate in light of the alleged misconduct.

7. As set forth in Finding 16, complainant seeks reimbursement from respondent in the amount of \$17,985.75. When considering the licensee's financial ability to pay, as set forth in Zuckerman, ordering respondent to pay this amount is unreasonable. Accordingly, the costs of investigation and prosecution in this matter are reduced to \$10,000.

8. Respondent shall pay the costs of investigation and prosecution of this matter pursuant to Business and Professions Code section 125.3, in the amount of \$10,000. Respondent may make installment payments in a schedule to be approved by the Board or its designee.

### ORDER

Registered Nurse License Number 450044 issued to respondent Kellie Marie Allen aka Kellie Marie Branco is revoked. However, the revocation is stayed and respondent is placed on probation for three (3) 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 she 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 she 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 she 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 she 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 her 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 her 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 she obtains any nursing or other health care related employment. Respondent shall notify the Board in writing within seventy-two (72) hours after she 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 a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

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

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

(10) **COMPLETE A NURSING COURSE(S)** - Respondent, at 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 her 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 \$10,000. 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 respondent has presented sufficient documentation of her 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 will apply.

(12) **VIOLATION OF PROBATION** - If a respondent violates the conditions of her 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/suspension) 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 she ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, respondent may surrender her 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.

(14) **PHYSICAL EXAMINATION** - Within 45 days of the effective date of this decision, respondent, at her expense, shall have a licensed physician, nurse practitioner, or physician assistant, who is approved by the Board before the assessment is performed, submit an assessment of respondent's physical condition and capability to perform the duties of a registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If medically determined, a recommended treatment program will be instituted and followed by respondent with the physician, nurse practitioner, or physician assistant providing written reports to the Board on forms provided by the Board.

If respondent is determined to be unable to practice safely as a registered nurse, the licensed physician, nurse practitioner, or physician assistant making this determination shall immediately notify the Board and respondent by telephone, and the Board shall request that

the Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall immediately cease practice and shall not resume practice until notified by the Board. During this period of suspension, respondent shall not engage in any practice for which a license issued by the Board is required until the Board has notified respondent that a medical determination permits respondent to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If respondent fails to have the above assessment submitted to the Board within the 45-day requirement, respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

**(15) PARTICIPATE IN TREATMENT/REHABILITATION PROGRAM FOR CHEMICAL DEPENDENCE** - Respondent, at her expense, shall successfully complete during the probationary period or shall have successfully completed prior to commencement of probation a Board-approved treatment/rehabilitation program of at least six months duration. As required, reports shall be submitted by 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 in violation of probation.

Based on Board recommendation, each week respondent shall be required to attend at least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board. If a nurse support group is not available, an additional 12-step meeting or equivalent shall be added. Respondent shall submit dated and signed documentation confirming such 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.

**(16) 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 medical treatment. Respondent shall have sent to the Board, in writing and within fourteen (14) days, by the prescribing health professional, a report identifying the medication, dosage, the date the medication was prescribed, respondent's 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 substance abuse 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.

**(17) SUBMIT TO TESTS AND SAMPLES** - Respondent, at her expense, shall participate in a random, biological fluid testing or a drug screening program which the Board approves. The length of time and frequency will be subject to approval by the Board. Respondent is responsible for keeping the Board informed of respondent's current telephone number at all times. Respondent shall also ensure that messages may be left at the telephone number when she is not available and ensure that reports are submitted directly by the testing agency to the Board, as directed. Any confirmed positive finding shall be reported immediately to the Board by the program and respondent shall be considered in violation of probation.

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 will 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, respondent 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 will not apply to the reduction of this probationary time period.

**(18) MENTAL HEALTH EXAMINATION** - Respondent shall, within 45 days of the effective date of this decision, have a mental health examination including psychological testing as appropriate to determine her capability to perform the duties of a

registered nurse. The examination will be performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by the Board. The examining mental health practitioner will submit a written report of that assessment and recommendations to the Board. All costs are the responsibility of respondent. Recommendations for treatment, therapy or counseling made as a result of the mental health examination will be instituted and followed by respondent.

If respondent is determined to be unable to practice safely as a registered nurse, the licensed mental health care practitioner making this determination shall immediately notify the Board and respondent by telephone, and the Board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall immediately cease practice and may not resume practice until notified by the Board. During this period of suspension, respondent shall not engage in any practice for which a license issued by the Board is required, until the Board has notified respondent that a mental health determination permits respondent to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If respondent fails to have the above assessment submitted to the Board within the 45-day requirement, respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by the respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

**(19) THERAPY OR COUNSELING PROGRAM** - Respondent, at her expense, shall participate in an on-going counseling program until such time as the Board releases him from this requirement and only upon the recommendation of the counselor. Written progress reports from the counselor will be required at various intervals.

DATED: August 1, 2016

DocuSigned by:  
*Ed Washington*  
D1857747BA4F405...

---

ED WASHINGTON  
Administrative Law Judge  
Office of Administrative Hearings

1 KAMALA D. HARRIS  
Attorney General of California  
2 KENT D. HARRIS  
Supervising Deputy Attorney General  
3 PHILLIP L. ARTHUR  
Deputy Attorney General  
4 State Bar No. 238339  
1300 I Street, Suite 125  
5 P.O. Box 944255  
Sacramento, CA 94244-2550  
6 Telephone: (916) 322-0032  
Facsimile: (916) 327-8643  
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:  
12 **KELLIE MARIE ALLEN,**  
13 **AKA KELLIE MARIE BRANCO**  
2707 W. Main Street  
14 Visalia, CA 93291  
15 **Registered Nurse License No. 450044**  
16 Respondent.

Case No. 2016-869

**A C C U S A T I O N**

17 Louise R. Bailey, M.Ed., R.N. ("Complainant") alleges:

18 **PARTIES**

19 1. Complainant brings this Accusation solely in her official capacity as the Executive  
20 Officer of the Board of Registered Nursing ("Board"), Department of Consumer Affairs.

21 **Registered Nurse License**

22 2. On or about March 31, 1990, the Board issued Registered Nurse License Number  
23 450044 to Kellie Marie Allen, also known as Kellie Marie Branco ("Respondent"). The  
24 Registered Nurse License expired on January 31, 2016, and has not been renewed.

25 **JURISDICTION**

26 3. Business and Professions Code ("Code") section 2750 provides, in pertinent part, that  
27 the Board may discipline any licensee, including a licensee holding a temporary or an inactive  
28

1 license, for any reason provided in Article 3 (commencing with Code section 2750) of the  
2 Nursing Practice Act.

3 4. Code section 2764 provides, in pertinent part, that the expiration of a license shall not  
4 deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or  
5 to render a decision imposing discipline on the license.

### 6 STATUTORY PROVISIONS

7 5. Code section 2761 states, in pertinent part:

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

10 (a) Unprofessional conduct. . . .

11 6. Code section 2762 states, in pertinent part:

12 In addition to other acts constituting unprofessional conduct within the meaning  
13 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person  
14 licensed under this chapter to do the following:

15 (b) Use any controlled substance as defined in Division 10 (commencing with  
16 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous  
17 device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner  
18 dangerous or injurious to himself or herself, any other person, or the public or to the  
19 extent that such use impairs his or her ability to conduct with safety to the public the  
20 practice authorized by his or her license. . . .

### 19 COST RECOVERY

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

### 26 CONTROLLED SUBSTANCES

27 8. *Alprazolam* is a Schedule IV controlled substance as designated by Health and Safety  
28 Code section 11057(d)(1), and is a dangerous drug pursuant to Business and Professions Code

1 section 4022. Alprazolam has central nervous system (CNS) depressant effects. Patients are  
2 cautioned against engaging in activities requiring complete mental alertness and simultaneous  
3 ingestion of alcohol and other CNS depressant drugs while using alprazolam.

4 9. *Hydrocodone bitartrate* is designated a Schedule II controlled substance by Health  
5 and Safety Code section 11055(b)(1)(I) and Code of Federal Regulations, Title 21, section  
6 1308.12(b)(1)(vi), and is a dangerous drug pursuant to Business and Professions Code section  
7 4022. Hydrocodone is a narcotic pain reliever that may impair mental and/or physical abilities.  
8 Patients are cautioned against the simultaneous ingestion of alcohol and other CNS depressant  
9 drugs while using hydrocodone.

10 **FIRST CAUSE FOR DISCIPLINE**

11 (Unprofessional Conduct)

12 10. At the time of the events set forth herein, Respondent was employed as a licensed  
13 Registered Nurse in the Emergency Department at Tulare Regional Medical Center ("TRMC"), in  
14 Tulare, California.

15 11. At times between in or around April 2014 and June 13, 2014, Respondent's  
16 colleagues observed that Respondent's behavior had changed. Respondent appeared disheveled  
17 and sleepy, and was missing from her assigned area for extended periods of time.

18 12. On or about June 11, 2014, M.H., one of Respondent's colleagues, reported to TRMC  
19 management that she observed Respondent rifling through another colleague's purse and that  
20 Respondent looked tired and was falling asleep.

21 13. On or about June 13, 2014, when Respondent reported for work, management pulled  
22 her aside and held a meeting with her regarding her reported behaviors. Respondent admitted that  
23 she had had difficulty walking. Respondent agreed to a drug test and tested positive for  
24 hydrocodone, .03% alcohol, and showed the presence of alprazolam. On or about June 27, 2014,  
25 Respondent was terminated from TRMC.

26 14. On or about May 27, 2015, one of Respondent's colleagues, V.F., signed a  
27 declaration stating that she had observed Respondent sleeping at work, and was unable to locate  
28 Respondent for long periods of time at work.

1 15. On or about May 28, 2015, one of Respondent's colleagues, S.P., signed a declaration  
2 stating that Respondent walked into walls, occupied the restroom for extended periods of time,  
3 fell asleep in S.P.'s office, and fell asleep while charting.

4 16. Respondent is subject to discipline under Code section 2761(a), on the grounds of  
5 unprofessional conduct, as set forth in paragraphs 10 through 15, above.

6 **SECOND CAUSE FOR DISCIPLINE**

7 (Dangerous Use of Drugs and Alcohol)

8 17. Respondent is subject to discipline under Code section 2761(a), on the grounds of  
9 unprofessional conduct as defined in Code section 2762(b), in that Respondent used drugs and/or  
10 alcohol to an extent or in a manner dangerous or injurious to herself, any other person, or the  
11 public. Specifically; on or about June 13, 2014, Respondent reported to work as a registered  
12 nurse at TRMC after using alprazolam and hydrocodone, controlled substances and dangerous  
13 drugs, as well as alcohol, as set forth in paragraph 13, above.

14 **PRAYER**

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

17 1. Revoking or suspending Registered Nurse License Number 450044, issued to Kellie  
18 Marie Allen, also known as Kellie Marie Branco;

19 2. Ordering Kellie Marie Allen, also known as Kellie Marie Branco, to pay the Board of  
20 Registered Nursing the reasonable costs of the investigation and enforcement of this case,  
21 pursuant to Business and Professions Code section 125.3; and,

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

23  
24 DATED: March 4, 2016

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

25  
26  
27  
28 SA2016100451  
12114508.doc