BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	
DARCY WYNNE MCSHERRY	Case No. 2016-1200
Registered Nurse License No. 254794	
Respondent.	

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 9, 2017.

IT IS SO ORDERED this 9th day of May, 2017.

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

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

In the Matter of the Accusation Against: DARCY WYNNE MCSHERRY 1001 Sylmar Avenue, #82 Clovis, CA 93612 Registered Nurse License No. 254794 Respondent.	Case No. 2016-1200 STIPULATED SURRENDER OF LICENSE AND ORDER

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

PARTIES

1. Louise R. Bailey, M.Ed., RN was the Executive Officer of the Board of Registered Nursing (Board). She brought this action solely in her official capacity. This matter is currently brought by Joseph L. Morris, PhD, MSN, RN (Complainant) solely in his official capacity as the Executive Officer of the Board and is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Karen L. Gordon, Deputy Attorney General.

2. Darcy Wynne McSherry (Respondent) is representing herself in this proceeding and has chosen not to exercise her right to be represented by counsel.

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3. On or about August 31, 1975, the Board issued Registered Nurse License No. 254794 to Respondent. The Registered Nurse License expired on February 28, 2017, and has not been renewed.

JURISDICTION

4. Accusation No. 2016-1200 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on June 6, 2016. Respondent timely filed her Notice of Defense contesting the Accusation. A copy of Accusation No. 2016-1200 is attached as Exhibit A, and incorporated by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in Accusation No. 2016-1200. Respondent also has carefully read, and understands the effects of this Stipulated Surrender of License and Order.

6. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at her own expense; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 2016-1200, agrees that cause exists for discipline and hereby surrenders her Registered Nurse License No. 254794 for the Board's formal acceptance.

9. Respondent understands that by signing this stipulation she enables the Board to issue an order accepting the surrender of her Registered Nurse License without further process.

CONTINGENCY

10. This stipulation shall be subject to approval by the Board. Respondent understands and agrees that counsel for Complainant and the staff of the Board may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

11. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Surrender of License and Order, including Portable Document Format (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

12. This Stipulated Surrender of License and Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Order:

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ORDER

IT IS HEREBY ORDERED that Registered Nurse License No. 254794 issued to Respondent Darcy Wynne McSherry is surrendered and accepted by the Board.

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

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

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

4. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. 2016-1200 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.

5. 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 $4,819.91. Respondent shall be permitted to pay these costs in a payment plan approved by the Board. Nothing in this provision shall be construed to prohibit the Board from reducing the amount of cost recovery upon reinstatement of the license.

6. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation No. 2016-1200 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

7. Respondent shall not apply for licensure or petition for reinstatement for two (2) years from the effective date of the Board of Registered Nursing's Decision and Order.

ACCEPTANCE

I have carefully read the Stipulated Surrender of License and Order. I understand the stipulation and the effect it will have on my Registered Nurse License. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Registered Nursing.

DATED: May 3, 2017 Darcy Wynne McSherry
DARCY WYNNE MCSHERRY
Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board of Registered Nursing of the Department of Consumer Affairs.

Dated: 5-3-17

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
ANTOINETTE B. CINCOTTA
Supervising Deputy Attorney General

/Karen Gordon
KAREN L. GORDON
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 2016-1200

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

In the Matter of the Accusation Against: **DARCY WYNNE MCSHERRY** **409 Holly Street** **Oceanside, CA 92058** **Registered Nurse License No. 254794** Respondent.	Case No. 2016-1206 **A C C U S A T I O N**

Complainant alleges:

PARTIES

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

2. On or about August 31, 1975, the Board issued Registered Nurse License Number 254794 to Darcy Wynne McSherry (Respondent). The Registered Nurse License was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2017, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY PROVISIONS

6. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

7. Section 2761 of the Code states:

> The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:
>
> (a) Unprofessional conduct, which includes, but is not limited to, the following:
>
> (1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions.

REGULATORY PROVISIONS

8. California Code of Regulations, title 16, section 1442, states:

> As used in Section 2761 of the code, 'gross negligence' includes an extreme departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent registered nurse. Such an extreme departure means the repeated failure to provide nursing care as required or failure to provide care or to exercise ordinary precaution in a single situation which the

nurse knew, or should have known, could have jeopardized the client's health or life.

COST RECOVERY

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

FACTUAL ALLEGATIONS

10. Respondent was employed as a nurse circulator in the operating room (OR) at TriCity Medical Center (TCMC) in Oceanside, California. As a nurse circulator, Respondent was responsible for preparing the operating room for surgery, ensuring the anesthesiologist was set up with their equipment, counting instruments and soft goods, interviewing patients, and obtaining paperwork, among other duties. As to the counting of equipment, including sponges, Respondent was responsible for performing the initial count, closing count and final count. Respondent was required to display the laparotomy sponges so that all sponges could be accounted for before and after surgery.

11. On December 23, 2014, a thirty-six year old female patient was admitted to TCMC for an ectopic pregnancy.[1] The patient was scheduled for an exploratory laparotomy[2] and right partial salpingectomy[3] with removal of ectopic pregnancy and evacuation of hemoperitoneum (blood in the peritoneal cavity). Respondent was assigned as the nurse circulator during the scheduled surgery for this patient.

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[1] An ectopic pregnancy or a tubal pregnancy, is a pregnancy where the fetus develops outside the uterus, typically in the Fallopian tube.

[2] A laparotomy is a surgical procedure involving a large incision through the abdominal wall to gain access into the abdominal cavity.

[3] Salpingectomy refers to the surgical removal of a Fallopian tube.

12. Prior to the surgery, Respondent performed an initial count of the sponges. The surgery took place after regular hours, around 5:00 a.m. and was completed around 6:30 a.m. The surgeon used two laparotomy sponges at the start of the procedure to hold up the bowel. Respondent performed a closing count of the laparotomy sponges, which she believed to be correct. Respondent then left the operating room between the closing and final count. While outside of the operating room, Respondent gave a report to the day shift regarding the next scheduled surgery. When Respondent returned to the operating room, she saw the surgeon closing the skin on the incision. Respondent was informed by the surgical technician that she could not find two laparotomy sponges. Respondent did not inform the surgical team that two laparotomy sponges were unaccounted for. The surgeon continued closing the skin and upon closure of the skin, there were still two laparotomy sponges missing. Housekeeping then entered the operating room to prepare for the next surgery. The anesthesiologist had the patient moved from the operating room table and onto the gurney in preparation for transfer to the recovery room. Respondent went with the anesthesiologist and the patient to the recovery room and gave a report to the recovery nurses. When Respondent returned to the operating room, she did not see the surgical technician and assumed that the two unaccounted for sponges had been found. Although Respondent did not perform a final count of the laparotomy sponges, Respondent documented the final count as correct on the intra operative record. Respondent did not follow up with the surgical technician to ensure that the missing sponges had been accounted for.

13. Two days later, the patient returned to TCMC complaining of abdominal pain and fever. A CT scan revealed that the patient had a foreign object in her abdomen. The patient underwent an additional surgery to remove the two laparotomy sponges that had been left inside of her during her first surgery. In addition, the patient required a hysterectomy[4] due to the necrotic tissue[5] found inside of her caused by the laparotomy sponges.

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[4] A hysterectomy is a surgery to remove a patient's uterus, rendering her sterile.

[5] Necrotic tissue is dead tissue, usually resulting from inadequate local blood supply. Necrotic tissue contains dead cells and debris that are a consequence of the fragmentation of dying cells.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

14. Respondent is subject to disciplinary action for unprofessional conduct under section 2761(a)(1) of the Code in that during her employment TCMC, Respondent was grossly negligent when she failed to provide care or to exercise ordinary precaution in a single situation which the nurse knew, or should have known, could have jeopardized the client's health or life, when she failed to perform or verify the final count of the sponges, documented that the final count was correct in the patient's record even though she was aware that there were two sponges missing, failed to verify with the surgical technician that the sponges were accounted for, and failed to take steps to find the missing sponges, as is forth in paragraphs 10 through 13 above, which are incorporated herein as though set forth in full.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

15. Respondent is subject to disciplinary action under section 2761(a) of the Code in that Respondent exhibited general unprofessional conduct, when she failed to perform or verify the final count of the sponges, documented that the final count was correct in the patient's record even though she was aware that there were two sponges missing, failed to verify with the surgical technician that the sponges were accounted for, and failed to take steps to find the missing sponges, as set forth in paragraphs 10 through 13, above, which are incorporated herein as though set forth in full

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. Revoking or suspending Registered Nurse License Number 254794 issued to Darcy Wynne McSherry;

2. Ordering Darcy Wynne McSherry to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: June 6, 2016

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

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