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

10 In the Matter of the Accusation Against:

Case No. 2011-987

11 **DAVID MICHAEL MELLOTT**
12 **927 Wind Drift Drive**
13 **Carlsbad, CA 92011**

DEFAULT DECISION AND ORDER

Registered Nurse License No. 665392

[Gov. Code, §11520]

Respondent.

14 FINDINGS OF FACT

15 1. On or about June 20, 2011, Complainant Louise R. Bailey, M.Ed., RN, in her official
16 capacity as the Executive Officer of the Board of Registered Nursing, Department of Consumer
17 Affairs, filed Accusation No. 2011-987 against David Michael Mellott (Respondent) before the
18 Board of Registered Nursing. (Accusation attached as Exhibit A.)

19 2. On or about September 12, 2005, the Board of Registered Nursing (Board) issued
20 Registered Nurse License No. 665392 to Respondent. The Registered Nurse License expired on
21 February 28, 2009, and has not been renewed.

22 3. On or about June 20, 2011, Respondent was served by First Class Mail and Certified
23 Mail copies of the Accusation No. 2011-987, Statement to Respondent, Notice of Defense,
24 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,
25 and 11507.7) at Respondent's address of record which, pursuant to California Code of
26 Regulations, title 16, section 1409.1, is required to be reported and maintained with the Board,
27 which was and is:

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927 Wind Drift Drive
Carlsbad, CA 92011.

3. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c) and/or Business & Professions Code section 124.

4. On or about June 27, 2011, the First Class Mail envelope was returned to the Board marked "Return to Sender."

5. Government Code section 11506 states, in pertinent part:

(c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

6. Respondent failed to file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 2011-987.

7. California Government Code section 11520 states, in pertinent part:

(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent.

8. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on the relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as taking official notice of all the investigatory reports, exhibits and statements contained therein on file at the Board's offices regarding the allegations contained in Accusation No. 2011-987, finds that the charges and allegations in Accusation No. 2011-987, are separately and severally, found to be true and correct by clear and convincing evidence.

9. Taking official notice of its own internal records, pursuant to Business and Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement is \$1,032.50 as of July 14, 2011.

DETERMINATION OF ISSUES

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2 1. Based on the foregoing findings of fact, Respondent David Michael Mellott has
3 subjected his Registered Nurse License No. 665392 to discipline.

4 2. The agency has jurisdiction to adjudicate this case by default.

5 3. The Board of Registered Nursing is authorized to revoke Respondent's Registered
6 Nurse License based upon the following violations alleged in the Accusation which are supported
7 by the evidence contained in the Default Decision Evidence Packet in this case:

8 a. Violation of Business and Professions Code section 2761, subdivision (a)(4), in
9 that on or about September 28, 2009, the Florida Board of Nursing issued a Final Order in
10 the disciplinary action entitled, Department of Health v. David Michael Mellott, Case
11 No. 2008-17041, which states that Respondent failed to respond to an administrative complaint
12 filed against him, that the evidence supported the uncontested facts, and the Florida Board
13 disciplined Respondent's license by placing it on probation for two years, indefinitely suspending
14 it until Respondent underwent an evaluation by a substance abuse intervention group, and
15 publicly reprimanded said license. The Final Order found that the uncontested facts of the
16 administrative complaint are as follows:

17 (1) In 2008, while working as a registered nurse at Lee Memorial Health System in Fort
18 Myers, Florida, Respondent diverted the drug Fentanyl, failed to adhere to Physician's Orders by
19 ~~withdrawing said controlled substance more frequently than prescribed, and failed to submit to~~
20 employer-ordered reasonable suspicion drug screens. Fentanyl, a Schedule II controlled
21 substance under both California and Florida laws¹ from his employer.

22 (2) Respondent failed to document his misappropriation of Fentanyl on the charts of two
23 different patients.

24 (3) Under Code section 2761(a)(4) of the code, the Florida Board's disciplinary action
25 against Respondent for diverting controlled substances for his own use and for failing to properly
26 document patient charts is grounds for the California Board to take disciplinary action.

27 ¹ Fentanyl is an opiate used for pain relief. *See* California Health and Safety Code section
28 11055(c)(8), and Florida Statutes section 893.3(2), which list Fentanyl as a Schedule II opiate.

Exhibit A

Accusation

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

11 In the Matter of the Accusation Against:

Case No. *2011-987*

12 **DAVID MICHAEL MELLOTT**

ACCUSATION

13 **927 Wind Drift Drive**
14 **Carlsbad, CA 92011**

15 **Registered Nurse License No. 665392**

16 **Respondent.**

17 **Complainant alleges:**

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., R.N. ("Complainant") brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Registered Nursing ("Board"),

Department of Consumer Affairs.

21 2. On or about September 12, 2005, the Board issued Registered Nurse License Number
22 665392 to David Michael Mellott ("Respondent"). The Registered Nurse License was active at
23 all times relevant herein but became delinquent on February 28, 2009 and has not been renewed.

24 **JURISDICTION AND STATUTORY PROVISIONS**

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

1 CAUSE FOR DISCIPLINE

2 (Disciplinary Action by the Florida Board of Nursing)

3 8. Respondent is subject to discipline pursuant to Section 2761 subdivision (a)(4) of the
4 Code on the grounds of unprofessional conduct because he was disciplined by the Florida Board
5 of Nursing ("Florida Board"), as follows:

6 9. On or about September 28, 2009, the Florida Board issued a Final Order in the
7 disciplinary action entitled, *Department of Health v. David Michael Mellott*, Case No. 2008-
8 17041. In that Final Order, after Respondent failed to respond to an administrative complaint
9 filed against him, the Florida Board disciplined Respondent's license by placing it on probation
10 for two years, indefinitely suspending it until Respondent underwent an evaluation by a substance
11 abuse intervention group, and publicly reprimanding it. The Final Order found that the
12 uncontested facts of the administrative complaint showed as follows:

13 10. In 2008, while working as a registered nurse at Lee Memorial Health System in Fort
14 Myers, Florida, Respondent engaged or attempted to engage in the possession, sale, or
15 distribution of controlled substances by misappropriating fentanyl, a Schedule II controlled
16 substance under both California and Florida law,¹ from his employer.

17 11. Respondent also failed to document his misappropriation of fentanyl on the charts of
18 two different patients.

19 12. Under Section 2761 subdivision (a)(4) of the Code, the Florida Board's disciplinary
20 action against Respondent for diverting controlled substances for his own use and for failing to
21 properly document patient charts is ground for the California Board to take disciplinary action.

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27 ¹ Fentanyl is a opiate used for pain relief. See California Health and Safety Code section
28 11055(c)(8)(listing fentanyl as a Schedule II opiate) and Florida Statutes Section
893.03(2)(same).

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PRAYER

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

1.1. Revoking or suspending Registered Nurse License Number 665392, issued to David Michael Mellott;

1.2. Ordering David Michael Mellott 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; and,

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

DATED: June 20, 2011

Louise R. Bailey
LOUISE R. BAILEY, M.Ed., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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