

(Do not write above this line.)

State Bar Court of California Hearing Department San Francisco		
Counsel For The State Bar Erica L. M. Dennings State Bar of California Office of the Chief Trial Counsel 150 Howard Street San Francisco, CA 94105 Bar # 145755	Case Number (s) 07-O-10804	(for Court's use) PUBLIC MATTER FILED <i>[Signature]</i> AUG 12 2008 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
In Pro Per Respondent Owen T. Mascott 210 N. Salinas Street Santa Barbara, CA 93103 Bar # 134243	Submitted to: Settlement Judge	
In the Matter Of: Owen T. Mascott Bar # 134243 A Member of the State Bar of California (Respondent)	STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted June 17, 1988.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 11 pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."



(Do not write above this line.)

- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 284, Rules of Procedure.
- costs to be paid in equal amounts prior to February 1 for the following membership years: (hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
- costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
- costs entirely waived

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

- (1) Prior record of discipline [see standard 1.2(f)]
- (a) State Bar Court case # of prior case
- (b) Date prior discipline effective
- (c) Rules of Professional Conduct/ State Bar Act violations:
- (d) Degree of prior discipline
- (e) If Respondent has two or more incidents of prior discipline, use space provided below.

Effective August 10, 1994 in case number 94-O-15943, respondent was publicly reprimanded for violating Rules of Professional Conduct, Rule 5-200(B) and Business and Professions Code section 6068(b) for making misleading statements to a court. The misconduct occurred in 1993.

Effective September 16, 2007, in State Bar Case number 06-O-11505, respondent was suspended for six months, stayed, and placed on probation for one year for violating Rules of Professional Conduct, Rule 3-700(A)(1) for improperly withdrawing from representation. The misconduct occurred in 2005.

- (2) Dishonesty: Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) Trust Violation: Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) Harm: Respondent's misconduct harmed significantly a client, the public or the administration of justice. Respondent's failure to appear at the license revocation hearing resulted in a default decision against his client.

(Do not write above this line.)

- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct. Respondent has not made any amends towards Gotelli.
- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. Respondent committed multiple acts of misconduct in his representation of his client.
- (8) **No aggravating circumstances are involved.**

Additional aggravating circumstances:

C. Mitigating Circumstances [see standard 1.2(a)]. Facts supporting mitigating circumstances are required.

- (1) **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings. Respondent cooperated during the course of the disciplinary investigation and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) **Restitution:** Respondent paid \$ o n i n restitution to without the threat or force of disciplinary, civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) **Good Faith:** Respondent acted in good faith.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.

(Do not write above this line.)

- (11) **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances

D. Discipline:

(1) **Stayed Suspension:**

(a) Respondent must be suspended from the practice of law for a period of 2 years.

- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii) Standards for Attorney Sanctions for Professional Misconduct.
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following:

(b) The above-referenced suspension is stayed.

(2) **Probation:**

Respondent must be placed on probation for a period of 2 years, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

(3) **Actual Suspension:**

(a) Respondent must be actually suspended from the practice of law in the State of California for a period of 90 days.

- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following:

E. Additional Conditions of Probation:

- (1) If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.

(Do not write above this line.)

- (2) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (6) Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7) Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8) Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: Respondent was ordered to attend Ethics School pursuant to case no. 06-O-11505 which became effective on September 16, 2007.
- (9) Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) The following conditions are attached hereto and incorporated:
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

(Do not write above this line.)

- (1) **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.
- No MPRE recommended. Reason:** Respondent was ordered to take and pass the MPRE as part of case no. 06-O-11505 which became effective on September 16, 2007.
- (2) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) **Credit for Interim Suspension (conviction referral cases only):** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5) **Other Conditions:**

In the Matter of
Owen T. Mascott (# 134243)

Case number(s):
07-O-10804

A Member of the State Bar

NOLO CONTENDERE PLEA TO STIPULATION AS TO FACTS, CONCLUSIONS OF LAW AND DISPOSITION

Bus. & Prof. Code § 6085.5 Disciplinary Charges; Pleas to Allegations

There are three kinds of pleas to the allegations of a Notice of Disciplinary Charges or other pleading which initiates a disciplinary proceeding against a member:

- (a) Admission of culpability.
- (b) Denial of culpability.
- (c) **Nolo contendere, subject to the approval of the State Bar Court. The court shall ascertain whether the member completely understands that a plea of nolo contendere shall be considered the same as an admission of culpability and that, upon a plea of nolo contendere, the court shall find the member culpable. The legal effect of such a plea shall be the same as that of an admission of culpability for all purposes, except that the plea and any admission required by the court during any inquiry it makes as to the voluntariness of, or the factual basis for, the plea, may not be used against the member as an admission in any civil suit based upon or growing out of the act upon which the disciplinary proceeding is based. (Added by Stats. 1996, ch. 1104.) (emphasis supplied)**

Rule 133, Rules of Procedure of the State Bar of California STIPULATION AS TO FACTS, CONCLUSIONS OF LAW AND DISPOSITION

(a) A proposed stipulation as to facts, conclusions of law, and disposition must set forth each of the following:

- (5) a statement that Respondent either
 - (i) admits the facts set forth in the stipulation are true and that he or she is culpable of violations of the specified statutes and/or Rules of Professional Conduct or
 - (ii) pleads nolo contendere to those facts and violations. If the Respondent pleads nolo contendere, the stipulation shall include each of the following:
 - (a) an acknowledgement that the Respondent completely understands that the plea of nolo contendere shall be considered the same as an admission of the stipulated facts and of his or her culpability of the statutes and/or Rules of Professional Conduct specified in the stipulation; and
 - (b) if requested by the Court, a statement by the Deputy Trial Counsel that the factual stipulations are supported by evidence obtained in the State Bar investigation of the matter (emphasis supplied)

I, the Respondent in this matter, have read the applicable provisions of Bus. & Prof. Code § 6085.5 and rule 133(a)(5) of the Rules of Procedure of the State Bar of California. I plead nolo contendere to the charges set forth in this stipulation and I completely understand that my plea must be considered the same as an admission of culpability except as state in Business and Professions Code section 6085.5(c).

Date July 24, 2008

Owen T. Mascott
Signature

Owen T. Mascott
Print Name

(Nolo Contendere Plea form approved by SBC Executive Committee 10/22/1997. Revised 12/16/2004; 12/13/2005.)

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Owen T. Mascott

CASE NUMBER(S): 07-O-10804

FACTS AND CONCLUSIONS OF LAW.

Respondent pleads nolo contendere to the following facts and violations. Respondent completely understands that the plea for nolo contendere shall be considered the same as an admission of the stipulated facts and of his or her culpability of the statutes and/or Rules of Professional Conduct specified herein.

In or about 2000, the Board of Registered Nursing ("BRN") conducted administrative proceedings against Christine Gotelli ("Gotelli") to revoke her nurse's license. This case resulted in a January 2, 2002 decision to revoke Gotelli's registered nursing license and public health nurse certificate. The revocation was stayed and Gotelli was placed on probation with terms and conditions for seven years.

On January 7, 2003, the BRN filed a Petition to Revoke Probation. The BRN filed the probation revocation proceedings because Gotelli allegedly did not comply with the terms of her probation that had been imposed in 2002. Beginning in or about March 2003, respondent agreed to represent Gotelli in the proceeding to revoke probation before the BRN. *In the Matter of the Petition to Revoke Probation Against: Christine Anne Gotelli*, case no. 2000-251, OAH No. N2003020427. A hearing on petition was scheduled for July 22 and 23, 2003. Respondent agreed to represent Gotelli at the hearing.

On or about May 24, 2003, respondent signed a substitution of attorney substituting himself in place of Gotelli in the probation revocation matter. On or about July 14, 2003, Gotelli filed a complaint for damages against the BRN and others in the district court alleging, inter alia, a violation of Gotelli's equal protection rights. *Christine Gotelli v. California Board of Registered Nursing, Sandra Erickson, et al* United States District Court, Northern District of California case number C 03-03256 JCS. Although Gotelli filed the complaint in pro per, respondent helped her prepare the complaint.

On or about July 18, 2003, Gotelli filed an *ex parte* motion to obtain a temporary restraining order from the district court to stay the license revocation proceedings pending before the BRN. On or about July 18, 2003, the district court issued an order denying Gotelli's request

for a temporary restraining order and also set the hearing for preliminary injunction for August 13, 2003.

On or about July 21, 2003 at approximately 2:20 p.m., Gotelli sent a letter via facsimile to Presiding Administrative Law Judge Melissa Crowell stating that the district court granted the preliminary injunction and all further proceedings would be held in federal court. Gotelli included an unsigned copy of the proposed order in the district court case. Immediately after receiving Gotelli's communication, Judge Crowell sent a letter to respondent via facsimile stating that Gotelli was engaging in *ex parte* communication and that the revocation hearing would go forward. The judge also stated that she would leave a voicemail message for respondent telling him the revocation hearing would go forward.

Judge Crowell also spoke with Char Sachson ("Sachson"), the Deputy Attorney General representing the BRN in the revocation proceeding. At about 3:40 p.m., Sachson sent Judge Crowell via facsimile a copy of the district court's order denying the temporary restraining order, and a letter stating she intended to appear at the hearing scheduled for July 22, 2003 to present the BRN's case. At about 4:49 p.m., respondent sent Judge Crowell a letter via facsimile, stating, in essence, he believed the district court had ordered a stay of the license revocation proceeding and that he and Gotelli did not plan to appear at the hearing due to preemption. Respondent had not seen a copy of the purported order at that time. Respondent advised Gotelli not to attend the hearing.

The probation revocation proceeding took place as scheduled on July 22 and 23, 2003. Neither respondent nor Gotelli appeared at the revocation hearing. At the time respondent contacted Judge Crowell and represented that the federal court had stayed the BRN proceedings, he had not seen a copy of the order, nor had he spoken directly with anyone at the district court about the order. Therefore, his representation that there was a stay in the BRN proceedings was false and misleading.

On July 24, 2003, Administrative Law Judge Jonathan Lew issued an order granting the Petition to Revoke Probation. Gotelli's Registered Nurse License No. 411619 and Public Health Nurse Certificate No. 44323 issued by the BRN were revoked.

Conclusions of Law

By not obtaining a copy of the district court's order denying Gotelli's request for a temporary restraining order, advising Gotelli not to attend the revocation hearing, and not attending the revocation hearing, which caused Gotelli to be unrepresented at the revocation hearing, and which resulted in Gotelli's nursing license being revoked, respondent intentionally failed to perform legal services in willful violation of rule 3-110(A) of the Rules of Professional

Conduct.

By representing to Judge Crowell that the district court had ordered a stay in the BRN proceedings, when, in fact, it had not, respondent misrepresented the status of the case, thereby committing an act involving dishonesty in willful violation of section 6106 of the Business and Professions Code.

AUTHORITIES SUPPORTING DISCIPLINE

Because the misconduct in the current matter occurred in 2003 which is prior to the misconduct in case number 06-O-1505, (which misconduct occurred in 2005) the case does not fall strictly within standard 1.7(b) of the Standards for Attorney Sanctions which require disbarment if the respondent has two prior impositions of discipline. Therefore, the appropriate disposition is the discipline respondent would have received if the current case number 06-O-1505 had been brought together, pursuant to the analysis in *In the Matter of Sklar 2 Cal. State Bar Ct. Rpt. 602*.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was July 23, 2008.

(Do not write above this line.)

In the Matter of Owen T. Mascott (#134243)	Case number(s): 07-O-10804
---	-------------------------------

SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts and Conclusions of Law.

Respondent enters into this stipulation as a condition of his/her participation in the Program. Respondent understands that he/she must abide by all terms and conditions of Respondent's Program Contract.

If the Respondent is not accepted into the Program or does not sign the Program contract, this Stipulation will be rejected and will not be binding on Respondent or the State Bar.

If the Respondent is accepted into the Program, upon Respondent's successful completion of or termination from the Program, this Stipulation will be filed and the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Statement Re: Discipline shall be imposed or recommended to the Supreme Court.

July 24, 2008
Date

Owen T. Mascott
Respondent's Signature

Owen T. Mascott
Print Name

30 July 2008
Date

Erica L. M. Dennings
Deputy Trial Counsel's Signature

Erica L. M. Dennings
Print Name

(Stipulation form approved by SBC Executive Committee 9/18/02. Revised 12/16/2004.)

(Do not write above this line.)

In the Matter Of
Owen T. Mascott

Case Number(s):
07-O-10804

ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public,
IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without
prejudice, and:

- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 135(b), Rules of Procedure.) The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)

Aug. 7, 2008
Date

Lucy M. Armentrout
Judge of the State Bar Court
Lucy Armentrout

CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on August 12, 2008, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION
AND ORDER APPROVING**

in a sealed envelope for collection and mailing on that date as follows:

- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**OWEN T. MASCOTT
LAW OFC OWEN T MASCOTT
210 N SALINAS ST
SANTA BARBARA, CA 93103**

- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

ERICA L. M. DENNINGS , Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **August 12, 2008.**



Bernadette C. O. Molina
Case Administrator
State Bar Court