

1 KAMALA D. HARRIS
Attorney General of California
2 THOMAS S. LAZAR
Supervising Deputy Attorney General
3 SAMUEL K. HAMMOND
Deputy Attorney General
4 State Bar No. 141135
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2083
7 Facsimile: (619) 645-2061
Attorneys for Complainant

8
9 **BEFORE THE**
RESPIRATORY CARE BOARD
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

12 **MARIA E. BETHUNE, R.C.P.**
13 **7876 E. Horizon View Drive**
14 **Anaheim Hills, CA 92808**

15 **Respiratory Care Practitioner**
License No. 10302

Case No. 1H-2011-116

DEFAULT DECISION
AND ORDER

[Gov. Code, §11520]

16 One.

17
18 **FINDINGS OF FACT**

19 1. On or about June 28, 2011, Complainant Stephanie Nunez, in her official
20 capacity as the Executive Officer of the Respiratory Care Board of California, Department of
21 Consumer Affairs, filed Accusaion No. 1H-2011-116 against MARIA E. BETHUNE, R.C.P.
22 (Respondent) before the Respiratory Care Board.

23 2. On or about May 30, 1986, the Respiratory Care Board (Board) issued
24 Respiratory Care Practitioner License No. 10302 to Respondent. The Respiratory Care
25 Practitioner License was in full force and effect at all times relevant to the charges brought herein
26 and will expire on January 31, 2012, unless renewed.

27 3. On or about June 28, 2011, Stephanie M. Aguirre, an employee of the
28 Complainant Agency, served by Certified and First Class Mail a true and correct copy of

1 Accusation No. 1H-2011-116, Statement to Respondent, Notice of Defense, Request for
2 Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's
3 address of record with the Board, which was and is 7876 E. Horizon View Drive, Anaheim Hills,
4 CA 92808. A true and correct copy of the Accusation, the related documents, and Declaration of
5 Service are attached as Exhibit A, and are incorporated herein by reference. Service of the
6 Accusation No. 1H-2011-116 was effective as a matter of law under the provisions of
7 Government Code section 11505, subdivision (c).

8 4. On or about July 25, 2011, the aforementioned documents referenced in
9 paragraph 3, above, which were mailed by certified mail were returned by the U.S. Postal Service
10 marked "Unclaimed." A true and correct copy of the envelope returned by the post office is
11 attached as Exhibit B, and is incorporated herein by reference.

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

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

18 6. Respondent failed to file a Notice of Defense within 15 days after service upon
19 her of Accusation No. 1H-2011-116, and therefore waived her right to a hearing on the merits of
20 the charges and allegations contained therein.

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

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

26 8. Pursuant to its authority under Government Code section 11520, the Board
27 finds Respondent is in default. The Board will take action without further hearing and, based on
28 Respondent's express admissions by way of default and the evidence before it, contained in

1 Exhibits A, B, C, and D, hereto, and hereby finds that the allegations in Accusation No. 1H-2011-
2 116, and each of them, separately and severally, are true and correct.

3 9. California Business and Professions Code section Section 3710 of the Code
4 states: "The Respiratory Care Board of California, hereafter referred to as the board, shall enforce
5 and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act]."

6 10. Section 3718 of the Code states: "The board shall issue, deny, suspend, and
7 revoke licenses to practice respiratory care as provided in this chapter."

8 11. Section 118, subdivision (b) of the Code states:

9 "The suspension, expiration, or forfeiture by operation of law of a license
10 issued by a board in the department, or its suspension, forfeiture, or cancellation by
11 order of the board or by order of a court of law, or its surrender without the written
12 consent of the board, shall not, during any period in which it may be renewed,
13 restored, reissued, reinstated, deprive the board of its authority to institute or continue
14 a disciplinary proceeding against the licensee upon any ground provided by law or to
15 enter an order suspending or revoking the license or otherwise taking disciplinary
16 action against the licensee on any such ground."

17 12. Section 820 of the Code states:

18 "Whenever it appears that any person holding a license, certificate or permit
19 under this division or under any initiative act referred to in this division may be
20 unable to practice his or her profession safely because the licentiate's ability to
21 practice is impaired due to mental illness, or physical illness affecting competency,
22 the licensing agency may order the licentiate to be examined by one or more
23 physicians and surgeons or psychologists designated by the agency. The report of
24 the examiners shall be made available to the licentiate and may be received as direct
25 evidence in proceedings conducted pursuant to Section 822."

26 ///

27 ///

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

13. Code section 821 states:

"The licentiate's failure to comply with an order issued under Section 820 shall constitute grounds for the suspension or revocation of the licentiate's certificate or license."

14. Code section 822 states:

"If a licensing agency determines that its licentiate's ability to practice his or her profession safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the licensing agency may take action by any one of the following methods:

- "(a) Revoking the licentiate's certificate or license.
- "(b) Suspending the licentiate's right to practice.
- "(c) Placing the licentiate on probation.

"(d) Taking such other action in relation to the licentiate as the licensing agency in its discretion deems proper.

"The licensing agency shall not reinstate a revoked or suspended certificate or license until it has received competent evidence of the absence or control of the condition which caused its action and until it is satisfied that with due regard for the public health and safety the person's right to practice his or her profession may be safely reinstated. "

15. Section 3755 of the Code states:

"The board may take action against any respiratory care practitioner who is charged with unprofessional conduct in administering, or attempting to administer, direct or indirect respiratory care. Unprofessional conduct includes, but is not limited to, repeated acts of clearly administering directly or indirectly inappropriate or unsafe respiratory care procedures, protocols, therapeutic regimens, or diagnostic testing or monitoring techniques, and violation of any provision of Section 3750. The board may determine unprofessional conduct involving any and all aspects of respiratory care performed by anyone licensed as a respiratory care practitioner."

///

1 16. Section 3753.5, subdivision (a) of the Code states:

2 "In any order issued in resolution of a disciplinary proceeding before the board,
3 the board or the administrative law judge may direct any practitioner or applicant
4 found to have committed a violation or violations of law or any term and condition of
5 board probation to pay to the board a sum not to exceed the costs of the investigation
6 and prosecution of the case. A certified copy of the actual costs, or a good faith
7 estimate of costs where actual costs are not available, signed by the official custodian
8 of the record or his or her designated representative shall be prima facie evidence of
9 the actual costs of the investigation and prosecution of the case."

10 17. Section 3753.7 of the Code states:

11 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall
12 include attorney general or other prosecuting attorney fees, expert witness fees, and
13 other administrative, filing, and service fees."

14 18. Section 3753.1 of the Code states:

15 "(a) An administrative disciplinary decision imposing terms of probation may
16 include, among other things, a requirement that the licensee probationer pay the
17 monetary costs associated with monitoring the probation. "

18 19. Respondent has subjected her Respiratory Care License No. 10302 to
19 disciplinary action under section 821 of the Code, in that respondent failed to comply with the
20 Board's Order compelling her to submit to a psychiatric examination pursuant to the provisions of
21 section 820 of the Code. The circumstances are as follows:

22 20. On or about May 6, 2011, Complainant filed a petition for an order for the
23 psychiatric examination (petition) of respondent with the Board. As cause for the petition,
24 Complainant alleged reasonable cause existed to believe respondent suffers from a mental illness
25 or physical illness affecting competency based on the events listed in paragraphs 20(A) through
26 20(G) below:¹

27 ¹ The events listed in paragraphs 20(A) through 20(F) came from Anaheim Police Department
28 incident reports submitted to the Board.

1 A. The September 20, 2010 Police Contact

2 On or about September 20, 2010, respondent summoned the Anaheim Police to her
3 apartment complex at 7876 E. Horizon View Drive in Anaheim (respondent's apartment
4 complex). Upon contact, respondent told the police officer that her neighbor was harassing
5 her by smoking next to her bedroom window and blowing cigarette smoke into her
6 apartment. The police officer interviewed the neighbor who denied blowing smoke into
7 respondent's bedroom window.

8 B The October 20, 2010 Police Contact

9 On October 20, 2010, Anaheim Police officers responded to a disturbance complaint
10 made by two of respondent's neighbors. The two neighbors complained that respondent
11 had been disturbing her neighbors by banging on the apartment walls she shared with her
12 neighbors. Upon contact, respondent admitted that she banged at the walls in retaliation to
13 noises made by her neighbors as they took out trash and opened and closed the garage door.
14 Respondent also stated that her neighbors were "pawns" of the Calvary Church of Costa
15 Mesa. She claimed the Calvary Church wanted her to leave the neighborhood.

16 C. The November 12, 2010 Police Contact

17 On or about November 12, 2010, Anaheim Police officers responded to a
18 disturbance complaint at respondent's apartment complex. Three of respondent's neighbors
19 complained of persistent noise disturbance from respondent banging on the wall she shared
20 with her neighbors. The "wall banging" would start at about 8:00 a.m. and continue until
21 approximately 2:00 a.m. the following morning. When contacted, respondent denied she
22 banged on the walls, but told one of the officers that someone broke into her home and
23 sprinkled powder and dust inside her house and clothing. However, the officer could not
24 find any powder or the dust respondent indicated was in her apartment.

25 D. The November 14, 2010 Police Contact

26 On or about November 14, 2010, one of respondent's neighbors went to the Anaheim
27 Police Department and filed a disturbance complaint against respondent. The neighbor
28 complained about the ongoing noise disturbance caused by respondent banging on the

1 common walls she shared with her neighbors. The neighbor told the police that respondent
2 told her respondent believed someone at the Calvary Church was trying to kill her; that she
3 had seen respondent in the street taking pictures and yelling at no one in particular; that
4 respondent had installed cameras in all her windows; and that she called the police because
5 respondent had threatened to fight her.

6 E. The February 11, 2011 Police Contact

7 On or about February 11, 2011, Anaheim Police officers responded to a disturbance
8 complaint at respondent's apartment complex. Respondent's neighbor told the officers that
9 as she was getting out of her apartment with her one-year-old son, respondent stood at her
10 window and yelled "I'm gonna fuck you up bitch, I'm gonna kill you, I hate your Herman
11 Munster family." Other neighbors told the police they heard respondent's threats. On
12 contact, respondent denied threatening anyone but admitted to the police officer that she
13 believed she was being watched and followed by unknown persons who were attempting to
14 harm her. Respondent also claimed her neighbors were conspiring to have her hospitalized
15 and jailed because "they hate niggers." The officers arrested respondent for threatening to
16 commit a crime on a person in violation of Penal Code section 422.

17 F. On or about February 15, 2011, a criminal complaint was filed against
18 respondent charging her with one misdemeanor count of threatening to commit a crime on a
19 person in violation of Penal Code section 422, and one misdemeanor count of challenging a
20 person to a fight in violation of Penal Code section 415(1).

21 G. Report of D.T.A., M.D.

22 In about April 2011, Complainant forwarded the reports of police contacts (above) to
23 D.T.A., M.D., for his review and opinion as to whether reasonable cause exists to compel
24 the psychological examination of respondent pursuant to the provisions of Code section
25 820. Dr. D.T.A. opined that respondent's conduct shows signs and symptoms that "are
26 consistent with the diagnosis of schizophrenia, paranoid type, showing positive symptoms
27 of hallucinations, delusions, and effective instability." Dr. D.T.A. opined further that
28 respondent has no insight into this condition and shows impaired judgment and reality

1 testing.” He also opined that respondent suffers from a mental illness or physical illness
2 affecting competency which affects respondent’s ability to practice respiratory care with
3 safety to the public.

4 21. On or about May 18, 2011, the Board issued an Order Compelling the
5 Psychiatric Examination (Order) of respondent. The Order required respondent to submit to a
6 psychiatric examination (psych exam) to be performed at Board’s expense, by M. A. K., M.D. at
7 his offices in San Diego. The Order also required the psych exam be performed no later than
8 June 17, 2011 and required respondent contact Dr. M.A.K. no later than May 23, 2011, to
9 schedule the interview.

10 22. On or about May 26, 2011, respondent contacted the Board. Respondent
11 objected to San Diego as the venue for the psych exam stating she had a back injury and traveling
12 from her home in Anaheim to San Diego for the psych exam would be a hardship.

13 23. On or about May 27, 2011, the Board issued a modified Order. The modified
14 Order named C.W.C.H., M.D. as the psychiatric examiner, and required the psych exam be
15 performed at Dr. C.W.C.H.’s offices in Fullerton no later than June 17, 2011.²

16 24. On or about June 6, 2011, respondent sent a facsimile to the Board in which she
17 stated: “I am changing my California Respiratory Care License status to inactive status due to on-
18 going medical illness resulting from injuries sustained on 19 December, 2011 [sic].”

19 25. To date, respondent has failed to comply with the Board’s Order Compelling
20 the Psychiatric Examination.

21 26. Respondent has further subjected her Respiratory Care License No. 10302 to
22 disciplinary action under section 3755 of the Code, in that respondent failed to comply with the
23 Board’s Order compelling respondent to submit to a psychiatric examination, as more particularly
24 described in paragraphs 17 through 25 above, which are incorporated by reference as if fully set
25 forth herein. Said conduct breaches the rules or ethical code of the respiratory care profession, is
26

27 ² The modified Order also informed respondent the psych exam had been scheduled for June 16,
28 2011, at 2:30 p.m.

1 unbecoming a member in good standing in the respiratory care profession, and demonstrates an
2 unfitness to practice respiratory care.

3 27. On or about September 25, 2011, Dr. D.T.A., an expert for the Board, signed a
4 declaration opining that respondent's conduct shows signs and symptoms that "are consistent
5 with the diagnosis of schizophrenia, paranoid type, showing positive symptoms of hallucinations,
6 delusions, and effective instability. Dr. D.T.A. opined further that respondent has no insight into
7 this condition and shows impaired judgment and reality testing." He further opined that
8 respondent suffers from a mental illness or physical illness affecting competency which affects
9 respondent's ability to practice respiratory care with safety to the public. (Exhibit C.)

10 28. The Respiratory Care Board further finds that pursuant to Business and
11 Professions Code section 3753.5, the costs of investigation and enforcement of the case prayed
12 for in the Accusation total \$3,420, based on the Certification of Costs contained in Exhibit D.

13 **DETERMINATION OF ISSUES**

14 1. Based on the foregoing findings of fact, Respondent Maria E. Bethune, R.C.P. has
15 subjected her Respiratory Care Practitioner License No. 10302 to discipline.

16 2. Pursuant to its authority under California Government Code section 11520, and based
17 on the evidence before it, the Board hereby finds that the charges and allegations contained in
18 Accusation No. 1H-2011-116, and the Findings of Fact contained in paragraphs 1 through 28,
19 above, and each of them, separately and severally, are true and correct. A true and correct copy
20 of Accusation No. 1H-2011-116 and the related documents and Declaration are attached.

21 3. Pursuant to its authority under California Government Code section 11520, and by
22 reason of the Findings of Fact contained in paragraphs 1 through 28, above, and Determination of
23 Issues 1 and 2, above, the Board hereby finds that Respondent Maria E. Bethune, R.C.P., has
24 subjected her Respiratory Care Practitioner's License No. 10302 to disciplinary action under
25 California Business and Professions Code sections 3710, 3718, 820, 821, 822 and 3755 in that
26 she:

27 ///

28 ///

1 (a) Failed to comply with an Order for a Psychiatric Examination, in violation of
2 California Business and Professions Code section 821 pursuant to the provisions of section 820 of
3 the Code; and

4 (b) Respondent suffers from mental illness which affects her competency and renders
5 her incapable of practicing respiratory care with safety to the public.

6 (c) Engaged in conduct that breaches the rules or ethical code of the medical
7 profession or conduct which is unbecoming to a member in good standing of the practice of
8 respiratory care, and which demonstrates an unfitness to practice respiratory care in violation of
9 California Business and Professions Code section 3755.

10 3. Respondent is hereby ordered to pay the above costs of investigation and
11 enforcement of this action.

12 **ORDER**

13 **IT IS SO ORDERED** that Respiratory Care Practitioner License No. 10302,
14 heretofore issued to Respondent Maria E. Bethune, R.C.P., is revoked.

15 Respondent is ordered to reimburse the Respiratory Care Board the amount of \$3,420
16 for its investigative and enforcement costs. The filing of bankruptcy by Respondent shall not
17 relieve Respondent of her responsibility to reimburse the Board for its costs. Respondent's
18 Respiratory Care Practitioner License may not be renewed or reinstated unless all costs ordered
19 under Business and Professions Code section 3753.5 have been paid.

20 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
21 written motion requesting that the Decision be vacated and stating the grounds relied on within
22 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
23 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

24 This Decision shall become effective on November 19, 2011.

25 It is so ORDERED October 20, 2011

26 
27 LARRY L. RENNER, BS, RRT, RCP, RPFT
28 PRESIDENT, RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA