

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

In the Matter of the Accusation Against:

Case No. 1H 2013 205

ROBERT HOYLE BURTON  
1787 Cantrell Court  
Concord, CA 94521

Respiratory Care Practitioner License No. 10922

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**DECISION AND ORDER**

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Respiratory Care Board of California, Department of Consumer Affairs, as its Decision in the above entitled matter.

This Decision shall become effective on July 11, 2015.

It is so ORDERED July 1, 2015.

Original signed by:  
ALAN ROTH, MS, MBA, RRT-NPS, FAARC  
PRESIDENT, RESPIRATORY CARE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

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7  
8 **BEFORE THE**  
**RESPIRATORY CARE BOARD**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

11 **ROBERT HOYLE BURTON**

12 **1787 Cantrell Court**  
13 **Concord, CA 94521**  
14 **Respiratory Care Practitioner License No.**  
**10922**

15 Respondent.

Case No. 1H-2013-205

OAH No. 2014120315

**STIPULATED SETTLEMENT AND**  
**DISCIPLINARY ORDER**

16  
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
18 entitled proceedings that the following matters are true:

19 PARTIES

20 1. Stephanie Nunez ("Complainant") is the Executive Officer of the Respiratory Care  
21 Board of California. She brought this action solely in her official capacity and is represented in  
22 this matter by Kamala D. Harris, Attorney General of the State of California, by Greg W.  
23 Chambers, Deputy Attorney General.

24 2. Respondent Robert Hoyle Burton ("Respondent") is represented in this proceeding by  
25 attorney Paul Chan, Esq., whose address is: Law Offices of Paul Chan, 2311 Capitol Avenue,  
26 Sacramento, CA 95816.

27 3. On or about March 25, 1987, the Respiratory Care Board of California issued  
28 Respiratory Care Practitioner License No. 10922 to Respondent Robert Hoyle Burton. The

1 Respiratory Care Practitioner License was in full force and effect at all times relevant to the  
2 charges brought in Accusation No. 1H-2013-205 and will expire on March 31, 2017, unless  
3 renewed.

4 JURISDICTION

5 4. Accusation No. 1H-2013-205 was filed before the Respiratory Care Board ("Board"),  
6 Department of Consumer Affairs, and is currently pending against Respondent. The Accusation  
7 and all other statutorily required documents were properly served on Respondent on October 13,  
8 2014. Respondent timely filed his Notice of Defense contesting the Accusation.

9 5. A copy of Accusation No. 1H-2013-205 is attached as exhibit A and incorporated  
10 herein by reference.

11 ADVISEMENT AND WAIVERS

12 6. Respondent has carefully read, fully discussed with counsel, and understands the  
13 charges and allegations in Accusation No. 1H-2013-205. Respondent has also carefully read,  
14 fully discussed with counsel, and understands the effects of this Stipulated Settlement and  
15 Disciplinary Order.

16 7. Respondent is fully aware of his legal rights in this matter, including the right to a  
17 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at  
18 his own expense; the right to confront and cross-examine the witnesses against him; the right to  
19 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel  
20 the attendance of witnesses and the production of documents; the right to reconsideration and  
21 court review of an adverse decision; and all other rights accorded by the California  
22 Administrative Procedure Act and other applicable laws, having been fully advised of same by his  
23 attorney, Paul Chan, Esq.

24 8. Respondent, having the benefit of counsel, voluntarily, knowingly, and intelligently  
25 waives and gives up each and every right set forth above.

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1 CULPABILITY

2 9. Respondent understands and agrees that the charges and allegations in Accusation  
3 No. 1H-2013-205, if proven at a hearing, constitute cause for imposing discipline upon his  
4 Respiratory Care Practitioner License No. 10922.

5 10. For the purpose of resolving the Accusation without the expense and uncertainty of  
6 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual  
7 basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest  
8 those charges.

9 11. Respondent agrees that his Respiratory Care Practitioner License is subject to  
10 discipline and he agrees to be bound by the Board's probationary terms as set forth in the  
11 Disciplinary Order below.

12 CONTINGENCY

13 12. This stipulation shall be subject to approval by the Respiratory Care Board.  
14 Respondent understands and agrees that counsel for Complainant and the staff of the Respiratory  
15 Care Board of California may communicate directly with the Board regarding this stipulation and  
16 settlement, without notice to or participation by Respondent or his counsel. By signing the  
17 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek  
18 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails  
19 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary  
20 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal  
21 action between the parties, and the Board shall not be disqualified from further action by having  
22 considered this matter.

23 13. The parties understand and agree that Portable Document Format ("PDF") and  
24 facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and  
25 facsimile signatures thereto, shall have the same force and effect as the originals.

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

1 **DISCIPLINARY ORDER**

2 IT IS HEREBY ORDERED that Respiratory Care Practitioner License No. 10922 issued to  
3 Respondent is revoked. However, the revocation is stayed and Respondent is placed on probation  
4 for three (3) years on the following terms and conditions.

5 1. **OBEY ALL LAWS** Respondent shall obey all laws, whether federal, state, or local.  
6 The Respondent shall also obey all regulations governing the practice of respiratory care in  
7 California.

8 Respondent shall notify the Board in writing within three (3) days of any incident resulting  
9 in his arrest, or charges filed against, or a citation issued against, Respondent.

10 2. **QUARTERLY REPORTS** Respondent shall file quarterly reports of compliance  
11 under penalty of perjury, on forms to be provided, to the probation monitor assigned by the  
12 Board. Omission or falsification in any manner of any information on these reports shall  
13 constitute a violation of probation and shall result in the filing of an accusation and/or a petition  
14 to revoke probation against Respondent's respiratory care practitioner license.

15 Quarterly report forms will be provided by the Board. Respondent is responsible for  
16 contacting the Board to obtain additional forms if needed. Quarterly reports are due for each year  
17 of probation and the entire length of probation as follows:

- 18 • For the period covering January 1st through March 31st, reports are to be  
19 completed and submitted between April 1st and April 7th.
- 20 • For the period covering April 1st through June 30th, reports are to be completed  
21 and submitted between July 1st and July 7th.
- 22 • For the period covering July 1st through September 30th, reports are to be  
23 completed and submitted between October 1st and October 7th.
- 24 • For the period covering October 1st through December 31st, reports are to be  
25 completed and submitted between January 1st and January 7th.

26 3. **PROBATION MONITORING PROGRAM** Respondent shall comply with  
27 requirements of the Board appointed probation monitoring program, and shall, upon reasonable  
28 request, report to or appear to a local venue as directed.

1 Respondent shall claim all certified mail issued by the Board, respond to all notices of  
2 reasonable requests timely, appear as requested by the Board, and submit Annual Reports,  
3 Identification Update reports or other reports similar in nature, as requested and directed by the  
4 Board or its representative.

5 Respondent shall provide to the Board the names, physical work addresses, work mailing  
6 addresses, telephone numbers, and e-mail addresses of all employers, human resources personnel,  
7 directors, managers, supervisors, and contractors, and any person providing direct supervision,  
8 and shall give specific, written consent that the Respondent authorizes the Board and its  
9 representatives and the employers, human resources personnel, directors, managers, supervisors,  
10 and contractors, and any person providing direct supervision, to communicate regarding the  
11 Respondent's work status, performance, and monitoring. Monitoring includes, but is not limited  
12 to, any violation or potential violation of any probationary term and condition.

13 Respondent is encouraged to contact the Board's Probation Program at any time he has a  
14 question or concern regarding his terms and conditions of probation.

15 **4. PROBATION MONITORING COSTS** All costs incurred for probation  
16 monitoring during the entire probation shall be paid by the Respondent. The monthly cost may be  
17 adjusted as expenses are reduced or increased. Respondent's failure to comply with all terms and  
18 conditions may also cause this amount to be increased. Probation monitoring costs will not be  
19 tolled.

20 All payments for costs are to be sent directly to the Respiratory Care Board and must be  
21 received by the date(s) specified. (Periods of tolling will not toll the probation monitoring costs  
22 incurred.)

23 If Respondent is unable to submit costs for any month, he shall be required, instead to  
24 submit an explanation of why he is unable to submit the costs, and the date(s) he will be able to  
25 submit the costs including payment amount(s). Supporting documentation and evidence of why  
26 the Respondent is unable to make such payment(s) must accompany this submission.

27 Respondent understands that failure to submit costs timely is a violation of probation and  
28 submission of evidence demonstrating financial hardship does not preclude the Board from

1 pursuing further disciplinary action. However, Respondent understands that by providing  
2 evidence and supporting documentation of financial hardship it may delay further disciplinary  
3 action.

4 In addition to any other disciplinary action taken by the Board, an unrestricted license will  
5 not be issued at the end of the probationary period and the respiratory care practitioner license  
6 will not be renewed, until such time all probation monitoring costs have been paid.

7 The filing of bankruptcy by the Respondent shall not relieve the Respondent of his  
8 responsibility to reimburse the Board for costs incurred.

9 **5. EMPLOYMENT REQUIREMENT** Respondent shall be employed a minimum of  
10 24 hours per week as a respiratory care practitioner for a minimum of 2/3 of his probation period.

11 Respondent may substitute successful completion of a minimum of 30 additional  
12 continuing education hours, beyond that which is required for license renewal, for each eight (8)  
13 months of employment required. Respondent shall submit proof to the Board of successful  
14 completion of all continuing education requirements. Respondent is responsible for paying all  
15 costs associated with fulfilling this term and condition of probation.

16 **6. NOTICE TO EMPLOYER** Respondent shall be required to inform all current and  
17 subsequent employers, directors, managers, supervisors, and contractors during the probation  
18 period, of the discipline imposed by this decision by providing his current and subsequent human  
19 resources personnel, directors, managers, supervisors, and contractors with a complete copy of  
20 the decision and order, and the Accusation in this matter prior to the beginning of or returning to  
21 employment or within three (3) days from each change in a supervisor or director.

22 If Respondent is employed by or through a registry, Respondent shall also make each  
23 hospital or establishment to which he is sent aware of the discipline imposed by this decision by  
24 providing his human resources personnel, manager, and supervisor for each shift, at each hospital  
25 or establishment with a copy of this decision, and the Accusation in this matter prior to the  
26 beginning of employment. This must be done each time there is a change in supervisors or  
27 administrators.

28 The employer will then inform the Board, in writing, that he/she is aware of the discipline,

1 on forms to be provided to the Respondent. Respondent is responsible for contacting the Board to  
2 obtain additional forms if needed. All reports completed by the employer must be submitted from  
3 the employer directly to the Board.

4 In addition, any employer, director, manager, supervisor or contractor, shall report to the  
5 Board immediately, within 24 hours, if he/she suspects Respondent is under the influence of  
6 alcohol or any substance or has had any occurrence of substance abuse.

7 **7. SUPERVISOR QUARTERLY REPORTS** Supervisor Quarterly Reports of  
8 Performance are due for each year of probation and the entire length of probation from each  
9 employer, as follows:

- 10 • For the period covering January 1st through March 31st, reports are to be  
11 completed and submitted between April 1st and April 7th.
- 12 • For the period covering April 1st through June 30th, reports are to be completed  
13 and submitted between July 1st and July 7th.
- 14 • For the period covering July 1st through September 30th, reports are to be  
15 completed and submitted between October 1st and October 7th.
- 16 • For the period covering October 1st through December 31st, reports are to be  
17 completed and submitted between January 1st and January 7th.

18 Respondent is ultimately responsible for ensuring his employer(s) submits complete and  
19 timely reports.

20 **8. CHANGES OF EMPLOYMENT OR RESIDENCE** Respondent shall notify the  
21 Board, and appointed probation monitor, in writing, of any and all changes of employment,  
22 location, and address within three (3) days of such change. This includes but is not limited to  
23 applying for employment, termination or resignation from employment, change in employment  
24 status, change in supervisors, administrators or directors.

25 Respondent shall also notify his probation monitor AND the Board IN WRITING of any  
26 changes of residence or mailing address within three (3) days. P.O. Boxes are accepted for  
27 mailing purposes, however the Respondent must also provide his physical residence address as  
28 well.

1           9.     **COST RECOVERY** Respondent shall pay to the Board a sum not to exceed the  
2 costs of the investigation and prosecution of this case. That sum shall be \$6,944.17 and shall be  
3 paid in full directly to the Board, in equal quarterly payments, within 36 months from the  
4 effective date of this decision. Cost recovery will not be tolled.

5           If Respondent is unable to submit costs timely, he shall be required, instead to submit an  
6 explanation of why he is unable to submit these costs in part or in entirety, and the date(s) he will  
7 be able to submit the costs including payment amount(s). Supporting documentation and  
8 evidence of why the Respondent is unable to make such payment(s) must accompany this  
9 submission.

10          Respondent understands that failure to submit costs timely is a violation of probation and  
11 submission of evidence demonstrating financial hardship does not preclude the Board from  
12 pursuing further disciplinary action. However, Respondent understands that by providing  
13 evidence and supporting documentation of financial hardship may delay further disciplinary  
14 action.

15          Consideration to financial hardship will not be given should Respondent violate this term  
16 and condition, unless an unexpected AND unavoidable hardship is established from the date of  
17 this order to the date payment(s) is due.

18          The filing of bankruptcy by the Respondent shall not relieve the Respondent of his  
19 responsibility to reimburse the Board for these costs.

20          10.     **TOLLING FOR OUT-OF-STATE RESIDENCE OR PRACTICE** Periods of  
21 residency or practice outside California, whether the periods of residency or practice are  
22 temporary or permanent, will toll the probation period but will not toll the obey all laws, quarterly  
23 reports, probation monitoring program, probation monitoring costs, or cost recovery  
24 requirements. Travel out of California for more than 30 days must be reported to the Board in  
25 writing prior to departure. Respondent shall notify the Board, in writing, within three (3) days,  
26 upon his return to California and prior to the commencement of any employment where  
27 representation as a respiratory care practitioner is/was provided.

28          11.     **VALID LICENSE STATUS** Respondent shall maintain a current, active and valid

1 license for the length of the probation period. Failure to pay all fees and meet CE requirements  
2 prior to his license expiration date shall constitute a violation of probation.

3       **12. VIOLATION OF PROBATION** If Respondent commits a "Major Violation," as  
4 identified in the Disciplinary Guidelines, incorporated by reference pursuant to section 1399.374,  
5 he shall receive a notice to cease the practice of respiratory care, as directed by the Board. The  
6 Board shall attempt to contact Respondent by electronic and/or telephonic means to advise  
7 him/her of the notice to cease practice and shall deliver such notice by certified and regular mail.  
8 The Board shall update its licensing database to reflect the status of the license.

9       If the Respondent is ordered to cease practice, he may file a written appeal, within 10 days  
10 of the date of the notice to cease practice, to provide additional evidence disputing the finding of  
11 the violation(s) that was cause for the notice to cease practice. The Executive Officer will review  
12 the appeal and make a determination in the matter, within 10 days from the date the written  
13 appeal and all supporting evidence or documentation is received. The probationer shall be  
14 notified of the outcome by certified mail.

15       Respondent shall not resume the practice of respiratory care until a final decision on an  
16 accusation and/or petition to revoke probation is made or until such time as the Board delivers  
17 written notification that the notice to cease practice has been dissolved. The cessation of practice  
18 shall not apply to the reduction of the probationary time period.

19       The Board will contact the Respondent and his employers, human resources personnel,  
20 directors, managers, supervisors, and contractors and notify them that Respondent has been issued  
21 a notice to cease practice.

22       In addition, if Respondent violates any term of the probation in any respect, the Board, after  
23 giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the  
24 disciplinary order that was stayed.

25       If a petition to revoke probation is filed against Respondent during probation, the Board  
26 shall have continuing jurisdiction and the period of probation shall be extended until the matter is  
27 final. No petition for modification of penalty shall be considered while there is an accusation or  
28 petition to revoke probation or other penalty pending against Respondent.

1           13.   **COMPLETION OF PROBATION** Upon successful completion of probation,  
2 Respondent's license shall be fully restored.

3           14.   **SUSPENSION** As part of probation, Respondent shall be suspended from the  
4 practice of respiratory care for a period of five (5) days, beginning the effective date of this  
5 decision. Respondent shall ensure that each employer informs the Board, in writing, that it is  
6 aware of the dates of suspension.

7           15.   **RESTRICTION OF PRACTICE** Respondent may not be employed or function as  
8 a member of respiratory care management or supervisory staff during the entire length of  
9 probation. This includes lead functions. Respondent is prohibited from working as part of a  
10 transport team. Respondent is also prohibited from providing instruction or supervision to  
11 respiratory care students or applicants whether in a clinical or classroom setting.

12           16.   **CONTINUING EDUCATION** Respondent shall be required to complete additional  
13 Continuing Education, approved by the Board, beyond that which is required for license renewal.  
14 A minimum of 15 additional hours is required for each year of probation. Respondent shall  
15 submit proposed courses to the Board 30 days in advance for approval consideration. Respondent  
16 shall also submit proof to the Board of successful completion of all continuing education  
17 requirements.

18           17.   **SURRENDER OF LICENSE** Following the effective date of this decision, if  
19 Respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy  
20 the terms and conditions of probation, he may request the voluntary surrender of his license. The  
21 Board reserves the right to evaluate Respondent's request and to exercise its discretion whether or  
22 not to grant the request or to take any other action deemed appropriate and reasonable under the  
23 circumstances. Upon formal acceptance of the surrender, within 15 calendar days Respondent  
24 shall deliver his wallet and wall certificate to the Board or its designee and he shall no longer  
25 practice respiratory care. Respondent will no longer be subject to the terms and conditions of  
26 probation and surrender of Respondent's license shall be deemed disciplinary action. If  
27 Respondent re-applies for a respiratory care license, the application shall be treated as a petition  
28 for reinstatement of a revoked license.



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

10 In the Matter of the Accusation Against:

Case No. 1H-2013-205

11 **ROBERT HOYLE BURTON**  
12 1080 San Miguel Road, Trlr 39  
13 Concord, CA 94518

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

14 Respiratory Care Practitioner  
15 License No. 10922

16 Respondent

17  
18 Complainant alleges:

19 PARTIES

20 1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity  
21 as the Executive Officer of the Respiratory Care Board of California, Department of Consumer  
22 Affairs.

23 2. On or about March 25, 1987, the Respiratory Care Board issued Respiratory Care  
24 Practitioner License Number 10922 to Robert Hoyle Burton (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 March 31, 2015, unless renewed.

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1 JURISDICTION

2 3. This Accusation is brought before the Respiratory Care Board (Board), Department of  
3 Consumer Affairs, under the authority of the following laws. All section references are to the  
4 Business and Professions Code unless otherwise indicated.

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

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

10 6. Section 3750 of the Code states:  
11 "The board may order the denial, suspension or revocation of, or the imposition of  
12 probationary conditions upon, a license issued under this chapter, for any of the following causes:

13 "(f) Negligence in his or her practice as a respiratory care practitioner."

14 COST RECOVERY

15 7. Section 3753.5, subdivision (a) of the Code states:  
16 "In any order issued in resolution of a disciplinary proceeding before the board, the board or  
17 the administrative law judge may direct any practitioner or applicant found to have committed a  
18 violation or violations of law or any term and condition of board probation to pay to the board a  
19 sum not to exceed the costs of the investigation and prosecution of the case. A certified copy of  
20 the actual costs, or a good faith estimate of costs where actual costs are not available, signed by  
21 the official custodian of the record or his or her designated representative shall be prima facie  
22 evidence of the actual costs of the investigation and prosecution of the case."

23 8. Section 3753.7 of the Code states:  
24 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall include  
25 attorney general or other prosecuting attorney fees, expert witness fees, and other administrative,  
26 filing, and service fees."

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1 “January 14, 2013 – RCP + ST at bedside for 5 minutes. Trial stopped due to secretions.  
2 February 9, 2013 – Placed PMV. Stopped for increased WOB and increased heart rate.  
3 February 20, 2013 – Placed on PMV. Did not tolerate. Placed back on trach.  
4 February 21, 2013 – Placed on PMV @0925.”

5 14. On February 21, 2013, at approximately 10:45 a.m., two certified nursing assistants  
6 found B.H. in a non-responsive state, not breathing and with no pulse. 911 and Code Blue was  
7 called. The PMV was removed. At approximately 11:03 a.m., B.H. expired.

8 15. After the Code Blue event was recorded and the patient had expired, Respondent  
9 made the following entries:

10 “February 21, 2013 9:50 peeked in room – remains stable

11 February 21, 2013 10:45 code blue – CPR-BVM x 30 min. Resident expired”

12 16. Respondent’s charting for January 14, 2013 through February 21, 2013 contained  
13 minimal documentation on the outcome of the trials. Respondent’s February 21, 2013 entry is  
14 inaccurate in stating that he performed CPR for 30 minutes and is inconsistent with the arrival of  
15 the paramedics at 11:02 a.m. Therefore, Respondent’s charting is below the standard of practice  
16 and constitutes negligence in violation of code section 3750(f).

17 PRAYER

18 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
19 and that following the hearing, the Respiratory Care Board issue a decision:

20 1. Revoking or suspending Respiratory Care Practitioner License Number 10922, issued  
21 to Robert Hoyle Burton;

22 2. Ordering Robert Hoyle Burton to pay the Respiratory Care Board the costs of the  
23 investigation and enforcement of this case, and if placed on probation, the costs of probation  
24 monitoring; and

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

DATED: October 13, 2014

Original signed by Liane Freels for:

STEPHANIE NUNEZ  
Executive Officer  
Respiratory Care Board of California  
Department of Consumer Affairs  
State of California  
*Complainant*

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