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9  
10 **BEFORE THE**  
**RESPIRATORY CARE BOARD**  
11 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**  
12

13 In the Matter of the Accusation and Petition to  
Revoke Probation Against:

Case No. 7002015000361

14 **RAYMOND JOSEPH AUGUSTINUS, R.C.P.**  
15 **1971 Church Street, Apt. #2**  
16 **Costa Mesa, CA 92627**

**ACCUSATION AND PETITION TO  
REVOKE PROBATION**

17 **Respiratory Care Practitioner**  
18 **License No. 10983,**

Respondent.

19  
20 Complainant alleges:

21 **PARTIES**

22 1. Stephanie Nunez (complainant) brings this Accusation and Petition to Revoke  
23 Probation solely in her official capacity as the Executive Officer of the Respiratory Care Board of  
24 California (Board), Department of Consumer Affairs, and not otherwise.

25 2. On or about May 8, 1987, the Respiratory Care Board issued Respiratory Care  
26 Practitioner License No. 10983 to Raymond Joseph Augustinus, R.C.P. (respondent).  
27 Respiratory Care Practitioner License No. 10983 was in full force and effect at all times relevant  
28 to the charges and allegations brought herein and will expire on August 31, 2016, unless renewed.

1 Respiratory Care Practitioner License No. 10983 was suspended on October 9, 2014, when the  
2 Board issued a Cease Practice Order, pursuant to California Code of Regulations section  
3 1399.375. As a result of that Cease Practice Order, respondent remains prohibited from  
4 practicing respiratory care in the State of California as of the date of the filing of this Accusation  
5 and Petition to Revoke Probation.

6 **DISCIPLINARY HISTORY**

7 3. In a previous disciplinary action entitled, *In the Matter of the Accusation Against:*  
8 *Raymond Joseph Augustinus, R.C.P.*, Case No. 1H 2010 590, the Board, issued a Decision and  
9 Order, effective July 4, 2014, in which respondent's Respiratory Care Practitioner License No.  
10 10983 was revoked. However, the revocation was stayed, and Respiratory Care Practitioner  
11 License No. 10983 was placed on probation for a period of three (3) years, with certain terms and  
12 conditions. A true and correct copy of that Decision and Order is attached hereto as Exhibit A  
13 and incorporated by reference, as fully set forth herein.

14 **JURISDICTION**

15 4. This Accusation and Petition to Revoke Probation is brought before the Respiratory  
16 Care Board (Board), Department of Consumer Affairs, under the authority of the following laws  
17 and under the Board's Decision and Order in the case entitled, *In the Matter of the Accusation*  
18 *Against: Raymond Joseph Augustinus, R.C.P.*, Case No. 1H 2010 590. All section references are  
19 to the Business and Professions Code (Code) unless otherwise indicated.

20 5. Section 3710 of the Code states:

21 "The Respiratory Care Board of California, hereafter referred to as the board,  
22 shall enforce and administer this chapter." [Chapter 8.3, the Respiratory Care  
23 Practice Act].

24 6. Section 3718 of the Code states:

25 "The board shall issue, deny, suspend, and revoke licenses to practice  
26 respiratory care as provided in this chapter."

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1 7. Section 3754 of the Code states, in pertinent part:

2 “The board may deny an application for, or issue with terms and conditions, or  
3 suspend or revoke, or impose probationary conditions upon, a licensee in any decision  
4 made after a hearing, as provided in Section 3753.”

5 **COST RECOVERY**

6 8. Section 3753.5, subdivision (a), of the Code states:

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

15 9. Section 3753.7 of the Code states:

16 “For purposes of this chapter, costs of prosecution shall include attorney  
17 general or other prosecuting attorney fees, expert witness fees, and other  
18 administrative, filing, and service fees.”

19 10. Section 3753.1, subdivision (a), of the Code states, in pertinent part:

20 “(a) An administrative disciplinary decision imposing terms of probation may  
21 include, among other things, a requirement that the licensee-probationer pay the  
22 monetary costs associated with monitoring the probation.

23 “...”

24 **FIRST CAUSE TO REVOKE PROBATION**

25 **(Biological Fluid Testing)**

26 11. At all times after the effective date of the Decision and Order in Case No. 1H 2010  
27 590, Probation Condition No. 3 stated:

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1                    **“BIOLOGICAL FLUID TESTING** Respondent, at his expense, shall  
2 participate in random testing, including but not limited to biological fluid testing (i.e.  
3 urine, blood, saliva), breathalyzer, hair follicle testing, and/or any drug screening  
4 program approved by the Board.

5                    “Respondent shall be required to make daily contact, to determine if he is  
6 required to submit a specimen for testing, each day, including weekends, holidays,  
7 and vacations in or outside of California, at a lab approved by the Board. Board  
8 representatives may also appear unannounced, at any time to collect a specimen. All  
9 collections will be observed.

10                   “At all times, Respondent shall fully cooperate with the Board or any of its  
11 representatives, and shall, when directed, appear for testing as requested and submit  
12 to such tests and samples for the detection of alcohol, narcotics, hypnotic, dangerous  
13 drugs or other controlled substances. All alternative testing sites, due to vacation or  
14 travel outside of California must be approved by the Board, 30 days prior to the  
15 vacation or travel.

16                   “If Respondent is unable to provide a specimen in a reasonable amount of time  
17 from the request, while at the work site, Respondent understands that any Board  
18 representative may request from the supervisor, manager or director on duty to  
19 observe Respondent in a manner that does not interrupt or jeopardize patient care in  
20 any manner until such time Respondent provides a specimen acceptable to the Board.

21                   “If Respondent tests positive for a banned substance (including testing positive  
22 for ETG), the Board will contact the Respondent and his employers, human resources  
23 personnel, directors, managers, supervisors, and/or contractors and notify them of the  
24 positive test, including the substance(s) and levels detected. Thereafter, the Board  
25 may contact the specimen collector, laboratory, Respondent, treating physician,  
26 treatment provider and/or support group facilitators to determine whether the positive  
27 test is evidence of prohibited use. If the Board determines the positive test is not  
28 evidence of prohibited use, the Board shall inform the Respondent and others

1 previously contacted, that the positive test was not a violation of his probationary  
2 order.”

3 12. Respondent’s probation is subject to revocation because he failed to comply with  
4 Probation Condition No. 3, referenced above, in that on or about September 21, 2014, respondent  
5 failed to check in with Fortes Laboratories, as required.

6 13. On or about September 29, 2014, respondent was issued a strong warning letter  
7 reminding him that failure to make daily contact with Fortes Laboratories and determine if he was  
8 required to submit a specimen for testing on that date, constituted a “major violation” of his  
9 probation.

10 **SECOND CAUSE TO REVOKE PROBATION**

11 **(Abstention from Use of Mood Altering Substances)**

12 14. At all times after the effective date of the Decision and Order in Case No. 1H 2010  
13 590, Probation Condition No. 4 stated:

14 **“ABSTENTION FROM USE OF MOOD ALTERING SUBSTANCES**

15 For purposes of these terms and conditions, a banned substance includes alcohol,  
16 marijuana, controlled substances and any and all other mood altering drugs and  
17 substances. Respondent shall completely abstain from the possession or use of all  
18 banned substances and their associated paraphernalia. Respondent may take other  
19 medication when lawfully prescribed by a licensed practitioner as part of a  
20 documented medical treatment. Respondent shall provide the Board a copy of a  
21 prescription within five days of the date the prescription was filled.

22 “Respondent shall execute a release authorizing the release of pharmacy and  
23 prescribing records as well as physical and mental health medical records.

24 Respondent shall also provide information of treating physicians, counselors or any  
25 other treating professional as requested by the Board. Respondent shall ensure that he  
26 is not in the presence of or in the same physical location as individuals who are using  
27 illegal substances, even if Respondent is not personally ingesting the drug(s).

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1 Respondent shall also ensure he is not ingesting or using any product that contains  
2 trace amounts of alcohol or any other banned substances (including but not limited to:  
3 cold/flu medications, cough syrups, diet pills/products, mouth wash, skin care or  
4 hygiene products, perfumes, poppy seeds, dessert or any foods, etc.).

5 “Any positive result that registers over the established laboratory cutoff level  
6 for a banned substance, shall be reported to each of Respondent’s employers.”

7 15. Respondent’s probation is further subject to revocation because he failed to comply  
8 with Probation Condition No. 4, referenced above, in that on or about the dates, September 17,  
9 2014, and October 1, 2014, respondent tested positive for Ethylglucuronide and Ethylsulfate,  
10 metabolites of alcohol, in violation of his probationary order.

11 16. On or about October 9, 2014, the Board issued a Cease Practice Order to respondent  
12 following his positive tests for alcohol described in paragraphs above. In that Cease Practice  
13 Order, the Board reminded respondent that although a Cease Practice Order had been issued, all  
14 terms and conditions set forth in his probation order remained in effect. On or about October 16,  
15 2014, respondent submitted a written appeal in response to the Cease Practice Order. Respondent  
16 failed to provide any evidence disputing his positive alcohol metabolite test results. On or about  
17 October 24, 2014, the Cease Practice Order was upheld.

18 **THIRD CAUSE TO REVOKE PROBATION**

19 **(Probation Monitoring Costs)**

20 17. At all times after the effective date of the Decision and Order in Case No. 1H 2010  
21 590, Probation Condition No. 9 stated:

22 **“PROBATION MONITORING COSTS** All costs incurred for probation  
23 monitoring during the entire probation shall be paid by the Respondent. The monthly  
24 cost may be adjusted as expenses are reduced or increased. Respondent’s failure to  
25 comply with all terms and conditions may also cause this amount to be increased.  
26 Probation monitoring costs will not be tolled. All payments for costs are to be sent  
27 directly to the Respiratory Care Board and must be received by the date(s) specified.  
28 (Periods of tolling will not toll the probation monitoring costs incurred.)

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

6            “Respondent understands that failure to submit costs timely is a violation of  
7 probation and submission of evidence demonstrating financial hardship does not  
8 preclude the Board from pursuing further disciplinary action. However, Respondent  
9 understands that by providing evidence and supporting documentation of financial  
10 hardship it may delay further disciplinary action. In addition to any other disciplinary  
11 action taken by the Board, an unrestricted license will not be issued at the end of the  
12 probationary period and the respiratory care practitioner license will not be renewed,  
13 until such time all probation monitoring costs have been paid.

14            “The filing of bankruptcy by the Respondent shall not relieve the Respondent  
15 of his responsibility to reimburse the Board for costs incurred.”

16            18. Respondent’s probation is further subject to revocation because he failed to comply  
17 with Probation Condition No. 9, referenced above, in that respondent has failed to pay probation  
18 monitoring costs on October 4, 2014, and, as a result, his probation monitor payments are, as of  
19 that date, in arrears in the amount of \$100.00.

20            **FOURTH CAUSE TO REVOKE PROBATION**

21            **(Cost Recovery)**

22            19. At all times after the effective date of the Decision and Order in Case No. 1H 2010  
23 590, Probation Condition No. 14 stated:

24            **COST RECOVERY** Respondent shall pay to the Board a sum not to exceed  
25 the costs of the investigation and prosecution of this case. That sum shall be three  
26 thousand nine hundred fifteen dollars, and no cents (\$3,915.00), and shall be paid in  
27 full directly to the Board, in equal quarterly payments, within 36 months from the  
28 effective date of this decision. Cost recovery will not be tolled.

1            “If Respondent is unable to submit costs timely, he shall be required, instead to  
2 submit an explanation of why he is unable to submit these costs in part or in entirety,  
3 and the date(s) he will be able to submit the costs including payment amount(s).  
4 Supporting documentation and evidence of why the Respondent is unable to make  
5 such payment(s) must accompany this submission. Respondent understands that  
6 failure to submit costs timely is a violation of probation and submission of evidence  
7 demonstrating financial hardship does not preclude the Board from pursuing further  
8 disciplinary action. However, Respondent understands that by providing evidence  
9 and supporting documentation of financial hardship may delay further disciplinary  
10 action. Consideration to financial hardship will not be given should Respondent  
11 violate this term and condition, unless an unexpected AND unavoidable hardship is  
12 established from the date of this order to the date payment(s) is due.

13            “The filing of bankruptcy by the Respondent shall not relieve the Respondent  
14 of his responsibility to reimburse the Board for these costs.”

15            20. Respondent’s probation is further subject to revocation because he failed to comply  
16 with Probation Condition No. 14, referenced above, in that respondent has made no cost recovery  
17 payments to the Board and, as of October 9, 2014, respondent’s cost recovery payments were in  
18 arrears in the amount of \$226.25.

19            **FIFTH CAUSE TO REVOKE PROBATION**

20            **(Violation of Probation)**

21            21. At all times after the effective date of the Decision and Order in Case No. 1H 2010  
22 590, Probation Condition No. 17 stated:

23            **“VIOLATION OF PROBATION** If Respondent commits a ‘Major  
24 Violation,’ as identified in the Disciplinary Guidelines, incorporated by reference  
25 pursuant to section 1399.374, he shall receive a notice to cease the practice of  
26 respiratory care, as directed by the Board. The Board shall attempt to contact  
27 Respondent by electronic and/or telephonic means to advise him of the notice to

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1 cease practice and shall deliver such notice by certified and regular mail. The Board  
2 shall update its licensing database to reflect the status of the license.

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

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

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

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

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

26 22. Respondent’s probation is further subject to revocation because he failed to comply  
27 with Probation Condition No. 17 in that, respondent violated Probation Condition Nos. 3, 4, 9,  
28

1 and 14, as more particularly alleged in paragraphs 12 through 21, above, which are incorporated  
2 by reference and realleged herein as though fully set forth.

3 **PRAYER**

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

6 1. Revoking the probation granted to respondent Raymond Joseph Augustinus, R.C.P.,  
7 by the Respiratory Care Board of California in Case No. 1H 2010 590, and carrying out the  
8 disciplinary order that was stayed, i.e., revocation, of Respiratory Care Practitioner License No.  
9 10983;

10 2. Revoking or suspending Respiratory Care Practitioner License No. 10983, issued to  
11 respondent Raymond Joseph Augustinus, R.C.P.;

12 3. Ordering respondent Raymond Joseph Augustinus, R.C.P. to pay the Respiratory  
13 Care Board the costs of the investigation and enforcement of this case, and if probation is  
14 continued or extended, the costs of probation monitoring; and

15 4. Taking such other and further action as deemed necessary and proper.

16 DATED: March 5, 2015

17 Original signed by Christine Molina for:

18 STEPHANIE NUNEZ  
19 Executive Officer  
20 Respiratory Care Board of California  
21 Department of Consumer Affairs  
22 State of California  
23 *Complainant*

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