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

12 In the Matter of the Accusation Against:

Case No. 1H 2007 602

13 FRANK THOMAS CASS  
3440 Snowden Avenue  
14 Long Beach, California 90808

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

15 Respiratory Care Practitioner License No. 15236

16 Respondent.

17  
18 Complainant alleges:

19 PARTIES

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

23 2. On or about May 27, 1992, the Board issued Respiratory Care Practitioner  
24 License Number 15236 to Frank Thomas Cass (Respondent). This license was in full force and  
25 effect at all times relevant to the charges brought herein and will expire on September 30, 2009,  
26 unless renewed.

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28 //

JURISDICTION

1  
2           3.     This Accusation is brought before the Board under the authority of the  
3 following laws. All section references are to the Business and Professions Code (Code) unless  
4 otherwise indicated.

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

8           5.     Section 3718 of the Code states: “The board shall issue, deny, suspend,  
9 and revoke 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  
13 causes:

14                 “ . . .

15                 “(d) Conviction of a crime that substantially relates to the qualifications,  
16 functions, or duties of a respiratory care practitioner. The record of conviction or a  
17 certified copy thereof shall be conclusive evidence of the conviction.

18                 “ . . .

19                 “(j) The commission of any fraudulent, dishonest, or corrupt act which is  
20 substantially related to the qualifications, functions, or duties of a respiratory care  
21 practitioner.

22                 “ . . .”

23          7.     Section 3752 of the Code states:

24                 “A plea or verdict of guilty or a conviction following a plea of nolo contendere  
25 made to a charge of any offense which substantially relates to the qualifications,  
26 functions, or duties of a respiratory care practitioner is deemed to be a conviction within  
27 the meaning of this article. The board shall order the license suspended or revoked, or  
28 may decline to issue a license, when the time for appeal has elapsed, or the judgment of

1 conviction has been affirmed on appeal or when an order granting probation is made  
2 suspending the imposition of sentence, irrespective of a subsequent order under Section  
3 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to  
4 enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the  
5 accusation, information, or indictment.”

6 8. California Code of Regulations, Title 16, section 1399.370, states:

7 “For the purposes of denial, suspension, or revocation of a license, a crime or act  
8 shall be considered to be substantially related to the qualifications, functions or duties of  
9 a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to  
10 perform the functions authorized by his or her license or in a manner inconsistent with the  
11 public health, safety, or welfare. Such crimes or acts shall include but not be limited to  
12 those involving the following:

13 “ . . .

14 “(b) Conviction of a crime involving fiscal dishonesty theft, or larceny.

15 “ . . . ”

#### 16 COST RECOVERY

17 9. Section 3753.5, subdivision (a) of the Code states:

18 "In any order issued in resolution of a disciplinary proceeding before the board,  
19 the board or the administrative law judge may direct any practitioner or applicant found to  
20 have committed a violation or violations of law to pay to the board a sum not to exceed  
21 the costs of the investigation and prosecution of the case."

22 10. Section 3753.7 of the Code states:

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

26 11. Section 3753.1, subdivision (a) of the Code states:

27 "An administrative disciplinary decision imposing terms of probation may  
28 include, among other things, a requirement that the licensee-probationer pay the monetary

1 costs associated with monitoring the probation."

2 FIRST CAUSE FOR DISCIPLINE

3 (Conviction of a Crime)

4 12. Respondent is subject to disciplinary action under sections 3750,  
5 subdivision (d), and 3752 of the Code, and California Code of Regulations, Title 16, section  
6 1399.370, subdivision (b), in that he was convicted of a crime substantially related to the  
7 qualifications, functions or duties of a respiratory care practitioner. The circumstances are as  
8 follows:

9 A. Respondent was an enrolled Medi-Cal provider doing business as  
10 Cardiopulmonary Services of California, Inc. He engaged in a scheme to defraud the  
11 Medi-Cal program by receiving payments in excess of \$1,276.68 for false and fraudulent  
12 claims submitted to Electronic Data Systems (EDS), the fiscal intermediary for Medi-Cal.  
13 From about May 2002 through December 1, 2004, respondent submitted claims through  
14 his Medi-Cal provider number to EDS for rental of oxygen concentration, portable  
15 oxygen tanks and for providing supplies related to the oxygen equipment including  
16 tubing, masks and albuterol to Medi-Cal beneficiaries that were not needed or were never  
17 provided. On the basis of the fraudulent claims submitted, warrants authorized by EDS  
18 for issuance by the State Controller's Office were mailed to Respondent.

19 B. On or about June 22, 2006, in Los Angeles County Superior Court  
20 Complaint No. BA320101, Respondent was charged with grand theft, in violation of  
21 Penal Code section 487, a felony (Count 1), and presenting false Medi-Cal claims, in  
22 violation of Welfare & Institutions Code section 14107, subdivision (b)(1), a felony  
23 (Counts 2 through 4).

24 C. On or about January 11, 2007, the Court amended the complaint to add  
25 grand theft of property over \$400.00, in violation of Penal Code section 487, subdivision  
26 (a), as a misdemeanor (Count 5). Respondent was convicted upon his plea of nolo  
27 contendere to grand theft (Count 5). He was placed on probation for two years on a  
28 number of terms and conditions, including: pay a court security assessment of \$20.00, and

1 a restitution fine of \$100.00; make restitution to the victim, the Department of Justice,  
2 Health Care Deposit Fund in the amount of \$217.00; pay a probation revocation  
3 restitution fine of \$100.00; and obey all laws and orders of the court. Counts 1 through 4  
4 of the complaint were dismissed.

5 SECOND CAUSE FOR DISCIPLINE

6 (Commission of a Fraudulent, Dishonest or Corrupt Act)

7 13. Respondent is subject to disciplinary action under section 3750,  
8 subdivision (j), of the Code, in that he committed a fraudulent, dishonest or corrupt act  
9 substantially related to the qualifications, functions, or duties of a respiratory care practitioner.  
10 The facts and circumstances set forth in above Paragraph 12 of this Accusation are incorporated  
11 herein by reference.

12 PRAYER

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

- 15 1. Revoking or suspending Respiratory Care Practitioner License Number  
16 15236 issued to Frank Thomas Cass;
- 17 2. Ordering Frank Thomas Cass to pay the Respiratory Care Board the costs  
18 of the investigation and enforcement of this case, and if placed on probation, the costs of  
19 probation monitoring; and
- 20 3. Taking such other and further action as deemed necessary and proper.

21 DATED: September 22, 2008

22  
23 Original signed by Liane Zimmerman for:  
24 STEPHANIE NUNEZ  
25 Executive Officer  
26 Respiratory Care Board of California  
27 Department of Consumer Affairs  
28 State of California  
Complainant