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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 2006 380

11 **JEFFREY BERMAN**
12 **21012 White Pine Drive**
13 **Tehachapi, CA 93561**

ACCUSATION

14 **Respiratory Care Practitioner Lic. No. 17018**

15 Respondent.

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17 Complainant alleges:

18 **PARTIES**

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

22 2. On or about April 20, 1994, the Respiratory Care Board issued Respiratory Care
23 Practitioner Number 17018 to Jeffrey Berman (Respondent). The Respiratory Care Practitioner
24 license was in full force and effect at all times relevant to the charges brought herein and will
25 expire on December 31, 2009, unless renewed.

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1 monitoring techniques, and violation of any provision of Section 3750. The board may
2 determine unprofessional conduct involving any and all aspects of respiratory care
3 performed by anyone licensed as a respiratory care practitioner.”

4 8. California Code of Regulations, title 16, section 1399.370, states:

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

11 “(a) Violating or attempting to violate, directly or indirectly, or assisting or
12 abetting the violation of or conspiring to violate any provision or term of the Act.

13 COST RECOVERY

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

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

19 10. Section 3753.7 of the Code states:

20 “For purposes of the Respiratory Care Practice Act, costs of prosecution
21 shall include attorney general or other prosecuting attorney fees, expert witness fees,
22 and other administrative, filing, and service fees.”

23 11. Section 3753.1 of the Code states:

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

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1 FIRST CAUSE FOR DISCIPLINE

2 (Changing the prescription of a physician)

3 12. Respondent is subject to disciplinary action under code section 3750(l) in that he
4 changed a physician’s prescription without authorization. The circumstances are as follows:

5 13. From August, 2001 through July 2006, Respondent was employed as a respiratory
6 care practitioner in the Cardiopulmonary Department at Tehachapi Valley Healthcare District
7 (TVHD).

8 14. On or about June 24, 2005, patient D.D.S., an 84 year old female, was admitted to
9 TVHD Long Term Care after a two week hospitalization at Lancaster Community Hospital,
10 recovering from pneumonia and plural effusion, and a history of circulatory problems. She was
11 admitted as a transfer patient and was on IV antibiotics and two liters of oxygen upon admission.
12 On June 24, 2005, Dr. McNaughton., her treating physician, wrote an order for “two liters of
13 oxygen via nasal cannula.” Dr. McNaughton did not modify the order throughout D.D.S.’s
14 hospitalization.

15 15. Contrary to Dr. McNaughton’s order, Respondent charted that he administered
16 oxygen to D.D.S. as follows:

<u>Date</u>	<u>Oxygen Amount per minute</u>
June 29, 2005	1 liter
June 30, 2005	1 liter
July 8, 2005	1.5 liters
July 9, 2005	1.5 liters
July 10, 2005	1.5 liters
July 13, 2005	1.5 liters

24 16. Therefore, Respondent’s license is subject to discipline because he changed a
25 physician’s orders without authorization, in violation of code section 3750(l).

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SECOND CAUSE FOR DISCIPLINE

(Negligence)

17. Paragraphs 13 through 15 above are incorporated herein.

18. Respondent is subject to disciplinary action under code section 3750(f) in that his act of changing a physician's orders without authorization constitutes negligence.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional conduct)

19. Paragraphs 13 through 15 above are incorporated herein.

20. Respondent is subject to disciplinary action under code section 3755 in that his act of changing a physician's orders without authorization constitutes unprofessional conduct.

PRAYER

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

1. Revoking or suspending Respiratory Care Practitioner Number 17018, issued to Jeffrey Berman;
2. Ordering Jeffrey Berman to pay the Respiratory Care Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring;
3. Taking such other and further action as deemed necessary and proper.

DATED: June 10, 2009

Original signed by:

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

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