

1 EDMUND G. BROWN JR.
Attorney General of California
2 JOSE R. GUERRERO
State Bar No. 97276
3 Supervising Deputy Attorney General
CATHERINE E. SANTILLAN
4 Senior Legal Analyst
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-5579
6 Facsimile: (415) 703-5480
Attorneys for Complainant

7
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**

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

14 **Respiratory Care Practitioner License No.**
15 **17018**

16 Respondent.

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

20 PARTIES

21 1. Stephanie Nunez (Complainant) is the Executive Officer of the Respiratory Care
22 Board of California. She brought this action solely in her official capacity and is represented in
23 this matter by Edmund G. Brown Jr., Attorney General of the State of California, by Catherine E.
24 Santillan, Senior Legal Analyst.

25 2. Respondent Jeffrey Berman (Respondent) is representing himself in this proceeding
26 and has chosen not to exercise his right to be represented by counsel.

27 3. On or about April 20, 1994, the Respiratory Care Board of California issued
28 Respiratory Care Practitioner License No. 17018 to Jeffrey Berman (Respondent). 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 2006 380 and will expire on December 31, 2009, unless
3 renewed.

4 JURISDICTION

5 4. Accusation No. 1H 2006 380 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 June 10,
8 2009. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of
9 Accusation No. 1H 2006 380 is attached as exhibit A and incorporated herein by reference.

10 ADVISEMENT AND WAIVERS

11 5. Respondent has carefully read, and understands the charges and allegations in
12 Accusation No. 1H 2006 380. Respondent has also carefully read, and understands the effects of
13 this Stipulated Settlement and Disciplinary Order.

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

21 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
22 every right set forth above.

23 CULPABILITY

24 8. Respondent admits the truth of each and every charge and allegation in Accusation
25 No. 1H 2006 380.

26 9. Respondent agrees that his Respiratory Care Practitioner License is subject to
27 discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the
28 Disciplinary Order below.

1 CONTINGENCY

2 10. This stipulation shall be subject to approval by the Respiratory Care Board.
3 Respondent understands and agrees that counsel for Complainant and the staff of the Board may
4 communicate directly with the Board regarding this stipulation and settlement, without notice to
5 or participation by Respondent. By signing the stipulation, Respondent understands and agrees
6 that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the
7 Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and
8 Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for
9 this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall
10 not be disqualified from further action by having considered this matter.

11 11. The parties understand and agree that facsimile copies of this Stipulated Settlement
12 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
13 effect as the originals.

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

17 DISCIPLINARY ORDER

18 IT IS HEREBY ORDERED that Respiratory Care Practitioner License No. 17018 issued
19 to Respondent Jeffrey Berman (Respondent) is revoked. However, the revocation is stayed and
20 Respondent is placed on probation for two (2) years on the following terms and conditions.

21 1. OBEY ALL LAWS Respondent shall obey all laws, whether federal, state, or local.
22 Respondent shall also obey all regulations governing the practice of respiratory care in California.

23 Respondent shall notify the Board in writing within 14 days of any incident resulting in his
24 arrest, or charges filed against, or a citation issued against Respondent.

25 2. QUARTERLY REPORTS Respondent shall file quarterly reports of compliance
26 under penalty of perjury, on forms to be provided to the probation monitor assigned by the Board.
27 Omission or falsification in any manner of any information on these reports shall constitute a
28 violation of probation and shall result in the filing of an accusation and/or a petition to revoke

1 probation against Respondent's respiratory care practitioner license.

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

5 For the period covering January 1st through March 31st, reports are to be completed and
6 submitted between April 1st and April 7th. For the period covering April 1st through June 30th,
7 reports are to be completed and submitted between July 1st and July 7th. For the period covering
8 July 1st through September 30th, reports are to be completed and submitted between October 1st
9 and October 7th. For the period covering October 1st through December 31st, reports are to be
10 completed and submitted between January 1st and January 7th.

11 Failure to submit complete and timely reports shall constitute a violation of probation.

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

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

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

20 Failure to appear for any scheduled meeting or examination, or cooperate with the
21 requirements of the program, including timely submission of requested information, shall
22 constitute a violation of probation and will result in the filing of an accusation and/or a petition to
23 revoke probation against Respondent's respiratory care practitioner license.

24 4. PROBATION MONITORING COSTS All costs incurred for probation monitoring
25 during the entire probation shall be paid by the Respondent. The monthly cost may be adjusted as
26 expenses are reduced or increased. Respondent's failure to comply with all terms and conditions
27 may also cause this amount to be increased.

28 All payments for costs are to be sent directly to the Respiratory Care Board and must be

1 received by the date(s) specified. (Periods of tolling will not toll the probation monitoring costs
2 incurred.)

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

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

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

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

16 5. EMPLOYMENT REQUIREMENT Respondent shall be employed a minimum of
17 24 hours per week as a respiratory care practitioner for a minimum of 2/3 of his probation period.

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

23 6. NOTICE TO EMPLOYER Respondent shall be required to inform his employer,
24 and each subsequent employer during the probation period, of the discipline imposed by this
25 decision by providing his supervisor and director and all subsequent supervisors and directors
26 with a copy of the decision and order, and the Statement(s) of Issues or Accusation(s) in this
27 matter prior to the beginning of or returning to employment or within 14 days from each change
28 in a supervisor or director.

1 If Respondent is employed by or through a registry [and is not restricted from working for a
2 registry], Respondent shall make each hospital or establishment to which he is sent aware of the
3 discipline imposed by this decision by providing his direct supervisor and administrator at each
4 hospital or establishment with a copy of this decision, and the Statement(s) of Issues or
5 Accusation(s) in this matter prior to the beginning of employment. This must be done each time
6 there is a change in supervisors or administrators.

7 The employer will then inform the Board, in writing, that he is aware of the discipline, on
8 forms to be provided to the Respondent. Respondent is responsible for contacting the Board to
9 obtain additional forms, if needed. All reports completed by the employer must be submitted
10 from the employer directly to the Board.

11 Respondent shall execute a release authorizing the Board or any of its representatives to
12 review and obtain copies of all employment records and discuss and inquire of the probationary
13 status with any of Respondent's supervisors or directors.

14 7. CHANGES OF EMPLOYMENT OR RESIDENCE Respondent shall notify the
15 Board, and appointed probation monitor, in writing, of any and all changes of employment,
16 location, and address within 14 days of such change. This includes, but is not limited to, applying
17 for employment, termination or resignation from employment, change in employment status,
18 change in supervisors, administrators or directors.

19 Respondent shall also notify his probation monitor AND the Board IN WRITING of any
20 changes of residence or mailing address within 14 days. P.O. Boxes are accepted for mailing
21 purposes, however the Respondent must also provide his physical residence address as well.

22 8. SURRENDER OF LICENSE Following the effective date of this decision, if
23 Respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy
24 the terms and conditions of probation, he may request the voluntary surrender of his license. The
25 Board reserves the right to evaluate Respondent's request and to exercise its discretion whether or
26 not to grant the request or to take any other action deemed appropriate and reasonable under the
27 circumstances. Upon formal acceptance of the surrender, within 15 calendar days Respondent
28 shall deliver his wallet and wall certificate to the Board or its designee and he shall no longer

1 practice respiratory care. Respondent will no longer be subject to the terms and conditions of
2 probation and the surrender of Respondent's license shall be deemed disciplinary action. If
3 Respondent re-applies for a respiratory care license, the application shall be treated as a petition
4 for reinstatement of a revoked license.

5 9. COST RECOVERY Respondent shall pay to the Board a sum not to exceed the
6 costs of the investigation and prosecution of this case. That sum shall be \$2,648.00 and shall be
7 paid in full directly to the Board, in equal quarterly payments, within 24 months from the
8 effective date of this decision. Cost recovery will not be tolled.

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

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

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

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

23 10. TOLLING FOR OUT-OF-STATE RESIDENCE OR PRACTICE Periods of
24 residency or practice outside California, whether the periods of residency or practice are
25 temporary or permanent, will toll the probation period, but will not toll the cost recovery
26 requirement, nor the probation monitoring costs incurred. Travel out of California for more than
27 30 days must be reported to the Board in writing prior to departure. Respondent shall notify the
28 Board, in writing, within 14 days, upon his return to California and prior to the commencement of

1 any employment where representation as a respiratory care practitioner is/was provided.

2 11. VALID LICENSE STATUS Respondent shall maintain a current, active and valid
3 license for the length of the probation period. Failure to pay all fees and meet Continuing
4 Education requirements prior to his license expiration date shall constitute a violation of
5 probation.

6 12. VIOLATION OF PROBATION If Respondent violates any term of the probation in
7 any respect, the Board, after giving Respondent notice and the opportunity to be heard, may
8 revoke probation and carry out the disciplinary order that was stayed. If a petition to revoke
9 probation is filed against Respondent during probation, the Board shall have continuing
10 jurisdiction and the period of probation shall be extended until the matter is final. No petition for
11 modification of penalty shall be considered while there is an accusation or petition to revoke
12 probation or other penalty pending against Respondent.

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

15 ACCEPTANCE

16 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the
17 stipulation and the effect it will have on my Respiratory Care Practitioner License. I enter into
18 this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and
19 agree to be bound by the Decision and Order of the Respiratory Care Board.

20
21 DATED: September 16, 2009

Original signed by: _____

22 JEFFREY BERMAN
23 Respondent
24
25
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

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Respiratory Care Board of the Department of Consumer Affairs.

Dated: September 16, 2009

Respectfully Submitted,
EDMUND G. BROWN JR.
Attorney General of California
JOSE R. GUERRERO
Supervising Deputy Attorney General

Original signed by:

CATHERINE E. SANTILLAN
Senior Legal Analyst
Attorneys for Complainant

SF2008402794
40357186.doc

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

In the Matter of the Accusation Against:

Case No. 1H 2006 380

**JEFFREY BERMAN
21012 White Pine Drive
Tehachapi, CA 93561**

**Respiratory Care Practitioner License No.
17018**

Respondent.

DECISION AND ORDER

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

This Decision shall become effective on December 4, 2009.

It is so ORDERED November 24, 2009.

Original signed by: _____

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