

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

In the Matter of the Accusation Against:

Case No. 1H 2010 783

VALENCIA BENITA BENJAMIN
25 Santa Cruz Court
Pittsburg, CA 94565

Respiratory Care Practitioner License No. 19721

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 May 12, 2012.

It is so ORDERED May 2, 2012.

Original Signed by: _____
MURRAY L. OLSON, RCP, RRT-NPS, RPFT
PRESIDENT, RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

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8 **BEFORE THE**
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9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 1H 2010 783

11 **VALENCIA BENITA BENJAMIN**
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13 **Pittsburg, CA 94565**

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

14 **Respiratory Care Practitioner License No.**
15 **19721**

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 Kamala D. Harris, Attorney General of the State of California, by Catherine E.
24 Santillan, Senior Legal Analyst.

25 2. Respondent Valencia Benita Benjamin (Respondent) is represented in this proceeding
26 by attorney Jennille Smith, whose address is: Smith & Zimmerman, 1300 Clay Street, Suite 600
27 Oakland, CA 94612.
28

1 CULPABILITY

2 9. Respondent agrees that at a hearing, the Complainant could establish a basis for the
3 charges and allegations in Accusation No. 1H 2010 783.

4 10. Respondent agrees that her Respiratory Care Practitioner License is subject to
5 discipline and she agrees to be bound by the Board's probationary terms as set forth in the
6 Disciplinary Order below.

7 CONTINGENCY

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

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

20 13. In consideration of the foregoing admissions and stipulations, the parties agree that
21 the Board may, without further notice or formal proceeding, issue and enter the following
22 Disciplinary Order:

23 **DISCIPLINARY ORDER**

24 IT IS HEREBY ORDERED that Respiratory Care Practitioner License No. 19721 issued to
25 Valencia Benita Benjamin (Respondent) is revoked. However, the revocation is stayed and
26 Respondent is placed on probation for two (2) years on the following terms and conditions.

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

1 California.

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

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

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

- 12 • For the period covering January 1st through March 31st, reports are to be
13 completed and submitted between April 1st and April 7th.
- 14 • For the period covering April 1st through June 30th, reports are to be completed
15 and submitted between July 1st and July 7th.
- 16 • For the period covering July 1st through September 30th, reports are to be
17 completed and submitted between October 1st and October 7th.
- 18 • For the period covering October 1st through December 31st, reports are to be
19 completed and submitted between January 1st and January 7th.
- 20 • Failure to submit complete and timely reports shall constitute a violation of
21 probation.

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

25 Respondent shall claim all certified mail issued by the Board, respond to all notices of
26 reasonable requests timely, and submit Annual Reports, Identification Update reports or other
27 reports similar in nature, as requested and directed by the Board or its representative.
28

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

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

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

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

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

22 Respondent understands that failure to submit costs timely is a violation of probation and
23 submission of evidence demonstrating financial hardship does not preclude the Board from
24 pursuing further disciplinary action. However, Respondent understands that by providing
25 evidence and supporting documentation of financial hardship it may delay further disciplinary
26 action.

27 In addition to any other disciplinary action taken by the Board, an unrestricted license will
28 not be issued at the end of the probationary period and the respiratory care practitioner license

1 will not be renewed, until such time all probation monitoring costs have been paid.

2 The filing of bankruptcy by the Respondent shall not relieve the Respondent of his/her
3 responsibility to reimburse the Board for costs incurred.

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

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

12 6. **NOTICE TO EMPLOYER** Respondent shall be required to inform his/her
13 employer, and each subsequent employer during the probation period, of the discipline imposed
14 by this decision by providing his/her supervisor and director and all subsequent supervisors and
15 directors with a copy of the decision and order, and the Statement(s) of Issues or Accusation(s) in
16 this matter prior to the beginning of or returning to employment or within 14 days from each
17 change in a supervisor or director.

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

24 The employer will then inform the Board, in writing, that he/she is aware of the discipline,
25 on forms to be provided to the Respondent. Respondent is responsible for contacting the Board to
26 obtain additional forms if needed. All reports completed by the employer must be submitted from
27 the employer directly to the Board.

28 In addition, any employer, director, manager, supervisor or contractor, shall report to the

1 Board immediately, within 24 hours, if he/she suspects Respondent is under the influence of
2 alcohol or any substance or has had any occurrence of substance abuse.

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

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

11 8. **COST RECOVERY** Respondent shall pay to the Board a sum not to exceed the
12 costs of the investigation and prosecution of this case. That sum shall be \$1,200.00 and shall be
13 paid in full directly to the Board, in equal quarterly payments, within 12 months from the
14 effective date of this decision. Cost recovery will not be tolled.

15 If Respondent is unable to submit costs timely, he/she shall be required, instead to submit
16 an explanation of why he/she is unable to submit these costs in part or in entirety, and the date(s)
17 he/she will be able to submit the costs including payment amount(s). Supporting documentation
18 and evidence of why the Respondent is unable to make such payment(s) must accompany this
19 submission.

20 Respondent understands that failure to submit costs timely is a violation of probation and
21 submission of evidence demonstrating financial hardship does not preclude the Board from
22 pursuing further disciplinary action. However, Respondent understands that by providing
23 evidence and supporting documentation of financial hardship may delay further disciplinary
24 action.

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

28 The filing of bankruptcy by the Respondent shall not relieve the Respondent of his/her

1 responsibility to reimburse the Board for these costs.

2 **9. TOLLING FOR OUT-OF-STATE RESIDENCE OR PRACTICE** Periods of
3 residency or practice outside California, whether the periods of residency or practice are
4 temporary or permanent, will toll the probation period but will not toll the cost recovery
5 requirement, nor the probation monitoring costs incurred. Travel out of California for more than
6 30 days must be reported to the Board in writing prior to departure. Respondent shall notify the
7 Board, in writing, within 14 days, upon his/her return to California and prior to the
8 commencement of any employment where representation as a respiratory care practitioner is/was
9 provided.

10 Respondent's license shall automatically be cancelled if respondent's cumulative period
11 tolling is greater than five years. However, the cancellation of the license does not relieve the
12 respondent from outstanding cost recovery or probation monitoring costs.

13 **10. VALID LICENSE STATUS** Respondent shall maintain a current, active and valid
14 license for the length of the probation period. Failure to pay all fees and meet CE requirements
15 prior to his/her license expiration date shall constitute a violation of probation.

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

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

28 **13. SURRENDER OF LICENSE** Following the effective date of this decision, if

1 Respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy
2 the terms and conditions of probation, she may request the voluntary surrender of her license.
3 The Board reserves the right to evaluate Respondent's request and to exercise its discretion
4 whether or not to grant the request or to take any other action deemed appropriate and reasonable
5 under the circumstances. Upon formal acceptance of the surrender, within 15 calendar days
6 Respondent shall deliver his wallet and wall certificate to the Board or its designee and he shall
7 no longer practice respiratory care. Respondent will no longer be subject to the terms and
8 conditions of probation and the surrender of Respondent's license shall be deemed disciplinary
9 action. If Respondent re-applies for a respiratory care license, the application shall be treated as a
10 petition for reinstatement of a revoked license.

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

13 ACCEPTANCE

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

19
20 DATED: 03/29/12 Original signed by: _____
21 VALENCIA BENITA BENJAMIN
22 Respondent

23 I have read and fully discussed with Respondent Valencia Benita Benjamin the terms and
24 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
25 I approve its form and content.

26 DATED: 03/29/12 Original signed by: _____
27 Jennille Smith
28 Attorney for Respondent

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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: 04/02/12

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JOSE R. GUERRERO
Supervising Deputy Attorney General

Original signed by: _____
CATHERINE E. SANTILLAN
Senior Legal Analyst
Attorneys for Complainant

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