

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

In the Matter of the Accusation Against:

Case No. 1H 2012 266

CARL CACCONIE
5728 Shaver Court
Stockton, CA 95219

Respiratory Care Practitioner License No. 21206

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 July 5, 2013.

It is so ORDERED June 25, 2013.

Original Signed by: _____
CHARLES B. SPEARMAN, MEd, RCP, RRT
PRESIDENT, RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

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9 **DEPARTMENT OF CONSUMER AFFAIRS**
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11 **CARL CACCONIE**
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13 **Stockton, CA 95219**

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

14 **Respiratory Care Practitioner License No.**
15 **21206**

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 (Board) of California. She brought this action solely in her official capacity and is
23 represented in this matter by Kamala D. Harris, Attorney General of the State of California, by
24 Catherine E. Santillan, Senior Legal Analyst.

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

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

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

- 9 • For the period covering January 1st through March 31st, reports are to be completed and
10 submitted between April 1st and April 7th.
- 11 • For the period covering April 1st through June 30th, reports are to be completed and
12 submitted between July 1st and July 7th.
- 13 • For the period covering July 1st through September 30th, reports are to be completed and
14 submitted between October 1st and October 7th.
- 15 • For the period covering October 1st through December 31st, reports are to be completed
16 and submitted between January 1st and January 7th.

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

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

24 Respondent shall provide to the Board the names, physical work addresses, work mailing
25 addresses, telephone numbers, and e-mail addresses of all employers, human resources personnel,
26 directors, managers, supervisors, and contractors, and any person providing direct supervision,
27 and shall give specific, written consent that the Respondent authorizes the Board and its
28

1 representatives and the employers, human resources personnel, directors, managers, supervisors;
2 and contractors, and any person providing direct supervision, to communicate regarding the
3 Respondent's work status, performance, and monitoring. Monitoring includes, but is not limited
4 to, any violation or potential violation of any probationary term and condition.

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

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

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

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

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

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

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

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

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

8 6. **NOTICE TO EMPLOYER** Respondent shall be required to inform all current and
9 subsequent employers, directors, managers, supervisors, and contractors during the probation
10 period, of the discipline imposed by this decision by providing his current and subsequent human
11 resources personnel, directors, managers, supervisors, and contractors with a complete copy of
12 the decision and order, and the Accusation in this matter prior to the beginning of or returning to
13 employment or within three (3) days from each change in a supervisor or director.

14 If Respondent is employed by or through a registry [and is not restricted from working for a
15 registry], Respondent shall also make each hospital or establishment to which he is sent aware of
16 the discipline imposed by this decision by providing his human resources personnel, manager,
17 and supervisor for each shift, at each hospital or establishment with a copy of this decision, and
18 the Accusation in this matter prior to the beginning of employment. This must be done each time
19 there is a change in supervisors or administrators.

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

24 In addition, any employer, director, manager, supervisor or contractor, shall report to the
25 Board immediately, within 24 hours, if he/she suspects Respondent is under the influence of
26 alcohol or any substance or has had any occurrence of substance abuse.

27 7. **SUPERVISOR QUARTERLY REPORTS** Supervisor Quarterly Reports of
28 Performance are due for each year of probation and the entire length of probation from each

1 employer, as follows:

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

10 Respondent is ultimately responsible for ensuring his employer(s) submits complete and
11 timely reports.

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

17 Respondent shall also notify his probation monitor AND the Board IN WRITING of any
18 changes of residence or mailing address within three (3) days. P.O. Boxes are accepted for
19 mailing purposes, however the Respondent must also provide his physical residence address as
20 well.

21 9. **COST RECOVERY** Respondent shall pay to the Board a sum not to exceed the
22 costs of the investigation and prosecution of this case. That sum shall be \$1,590.00 and shall be
23 paid in full directly to the Board, in equal quarterly payments, within 12 months from the
24 effective date of this decision. Cost recovery will not be tolled.

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

1 submission.

2 Respondent understands that failure to submit costs timely is a violation of probation and
3 submission of evidence demonstrating financial hardship does not preclude the Board from
4 pursuing further disciplinary action. However, Respondent understands that by providing
5 evidence and supporting documentation of financial hardship may delay further disciplinary
6 action.

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

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

12 **10. TOLLING FOR OUT-OF-STATE RESIDENCE OR PRACTICE** Periods of
13 residency or practice outside California, whether the periods of residency or practice are
14 temporary or permanent, will toll the probation period but will not toll the obey all laws, quarterly
15 reports, probation monitoring program, probation monitoring costs, or cost recovery
16 requirements. Travel out of California for more than 30 days must be reported to the Board in
17 writing prior to departure. Respondent shall notify the Board, in writing, within three (3) days,
18 upon his return to California and prior to the commencement of any employment where
19 representation as a respiratory care practitioner is/was provided.

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

23 **11. VALID LICENSE STATUS** Respondent shall maintain a current, active and valid
24 license for the length of the probation period. Failure to pay all fees and meet CE requirements
25 prior to his license expiration date shall constitute a violation of probation.

26 **12. VIOLATION OF PROBATION** If Respondent commits a "Major Violation," as
27 identified in the Disciplinary Guidelines, incorporated by reference pursuant to section 1399.374,
28 he shall receive a notice to cease the practice of respiratory care, as directed by the Board. The

1 Board shall attempt to contact Respondent by electronic and/or telephonic means to advise him of
2 the notice to cease practice and shall deliver such notice by certified and regular mail. The Board
3 shall update its licensing database to reflect the status of the license.

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

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

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

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

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

24 **13. SURRENDER OF LICENSE** Following the effective date of this decision, if
25 Respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy
26 the terms and conditions of probation, he may request the voluntary surrender of his license. The
27 Board reserves the right to evaluate Respondent's request and to exercise its discretion whether or
28 not to grant the request or to take any other action deemed appropriate and reasonable under the

1 circumstances. Upon formal acceptance of the surrender, within 15 calendar days Respondent
2 shall deliver his wallet and wall certificate to the Board or its designee and he shall no longer
3 practice respiratory care. Respondent will no longer be subject to the terms and conditions of
4 probation and the surrender of Respondent's license shall be deemed disciplinary action. If
5 Respondent re-applies for a respiratory care license, the application shall be treated as a petition
6 for reinstatement of a revoked license.

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

9 **15. WORK SCHEDULES** Respondent shall be required to submit to the probation
10 monitor work schedules on a weekly/monthly basis for the length of probation for each and every
11 place of employment. Respondent shall ensure the Board has a copy of her/his current work
12 schedule at all times for each place of employment.

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

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

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

25 If Respondent is unable to provide a specimen in a reasonable amount of time from the
26 request, while at the work site, Respondent understands that any Board representative may
27 request from the supervisor, manager or director on duty to observe Respondent in a manner that
28 does not interrupt or jeopardize patient care in any manner until such time Respondent provides a

1 specimen acceptable to the Board.

2 If Respondent tests positive for a banned substance (including testing positive for ETG), the
3 Board will contact the Respondent and his employers, human resources personnel, directors,
4 managers, supervisors, and/or contractors and notify them of the positive test, including the
5 substance(s) and levels detected. Thereafter, the Board may contact the specimen collector,
6 laboratory, Respondent, treating physician, treatment provider and/or support group facilitators to
7 determine whether the positive test is evidence of prohibited use. If the Board determines the
8 positive test is not evidence of prohibited use, the Board shall inform the Respondent and others
9 previously contacted, that the positive test was not a violation of his probationary order.

10 **17. ABSTENTION FROM USE OF MOOD ALTERING SUBSTANCES** For
11 purposes of these terms and conditions, a banned substance includes alcohol, marijuana,
12 controlled substances and any and all other mood altering drugs and substances. Respondent
13 shall completely abstain from the possession or use of all banned substances and their associated
14 paraphernalia. Respondent may take other medication when lawfully prescribed by a licensed
15 practitioner as part of a documented medical treatment. Respondent shall provide the Board a
16 copy of a prescription within five (5) days of the date the prescription was filled.

17 Respondent shall execute a release authorizing the release of pharmacy and prescribing
18 records as well as physical and mental health medical records. Respondent shall also provide
19 information of treating physicians, counselors or any other treating professional as requested by
20 the Board.

21 Respondent shall ensure that he is not in the presence of or in the same physical location as
22 individuals who are using illegal substances, even if Respondent is not personally ingesting the
23 drug(s). Respondent shall also ensure he is not ingesting or using any product that contains trace
24 amounts of alcohol or any other banned substances (including but not limited to: cold/flu
25 medications, cough syrups, diet pills/products, mouth wash, skin care or hygiene products,
26 perfumes, poppy seeds, dessert or any foods, etc...).

27 Any positive result that registers over the established laboratory cutoff level for a banned
28 substance, shall be reported to each of Respondent's employers.

1 medications, cough syrups, diet pills/products, mouth wash, skin care or hygiene products,
2 perfumes, poppy seeds, dessert or any foods, etc...).

3 Any positive result that registers over the established laboratory cutoff level for a banned
4 substance, shall be reported to each of Respondent's employers.

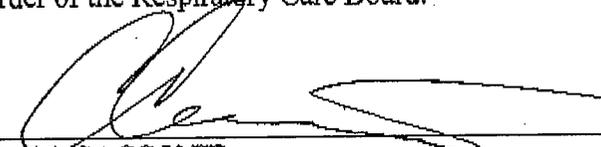
5 18. **SUSPENSION** As part of probation, Respondent shall be suspended from the
6 practice of respiratory care for a period of twelve (12) days beginning the effective date of this
7 decision. Respondent shall ensure that each employer informs the Board, in writing, that it is
8 aware of the dates of suspension.

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

14 ACCEPTANCE

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

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20 DATED: 6/4/13



21 CARL CACCONIE
22 Respondent
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Dated: June 6, 2013

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Respectfully submitted,

KAMALA D. HARRIS
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Supervising Deputy Attorney General



CATHERINE E. SANTILLAN
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