

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

In the Matter of the Petition to Revoke
Probation Against:

CARL CACCONIE
3007 Estepa Drive, Unit A
Cameron Park, CA 95682

Case No.: D1 2012 266

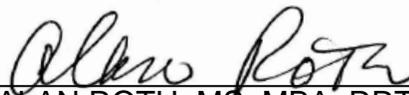
OAH No.: 2014010459

DECISION AND ORDER

The attached proposed Decision of the Administrative Law Judge 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 June 17, 2014.

It is so ORDERED June 10, 2014.



ALAN ROTH, MS, MBA, RRT-NPS, FAARC
PRESIDENT, RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

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

In the Matter of the Petition to Revoke
Probation Against:

CARL W. CACCONIE

Respiratory Care Practitioner License
Number 21206

Respondent.

Case No. D1 2012 266

OAH No. 2014010459

CORRECTED PROPOSED DECISION¹

Administrative Law Judge Marilyn A. Woollard, Office of Administrative Hearings, State of California, heard this matter in Sacramento, California, on March 20, 2014.

Deputy Attorney General Joshua M. Templet represented complainant Stephanie Nunez, in her official capacity as Executive Officer of the Respiratory Care Board of California (Board). Also present was Board Probation Monitor Jennifer Malone.

Ronald E. Kaldor, Attorney at Law, represented respondent Carl W. Cacconie, who was present.

At the hearing, complainant submitted her Hearing Brief, marked for identification as Exhibit 1. Oral and documentary evidence was presented. At the conclusion of the evidence, the record remained open to receive additional documents and written argument. On March 27, 2014, respondent timely submitted signed copies of character letters from Matthew W. Murray (Exhibit B), Liz Gartner (Exhibit C) and Vanessa Zambrano (Exhibit D).

¹ On April 28, 2014, the Proposed Decision (PD) was issued. On May 13, 2014, pursuant to California Code of Regulations, title 1, section 1048, subdivision (a), the Board requested changes to the PD. On May 20, 2014, respondent submitted his non-opposition with additional proposed changes, which were not opposed by the Board. The changes to the original PD are indicated in bold.

On April 4, 2014, Mr. Kaldor faxed respondent's written Closing Argument to OAH, which was marked for identification as Exhibit E. His request to submit the brief one day late, due to a calendaring error, was granted. On April 10, 2014, Mr. Templet timely filed complainant's Reply Brief, which was marked for identification as Exhibit 14. On April 10, 2014, the record was closed and the matter was submitted for decision.

FACTUAL FINDINGS

1. *License History:* On January 6, 2000, the Board issued Respiratory Care Practitioner License 21206 (license) to respondent. Respondent's license is current and will expire on March 31, 2015, unless revoked or renewed.

2. *Accusation:* On January 22, 2013, in Case Number 1H 2012 266, complainant filed an Accusation against respondent, seeking license discipline based on respondent's use of alcohol in a manner dangerous to himself or others and a conviction substantially related to the qualifications, functions and duties of a licensee, as set forth in Business and Professions Code sections 3750, subdivision (d), 3750.5, subdivisions (b) and (d), 3752, and California Code of Regulations, title 16 (16 CCR) section 1399.370, subdivision (c).²

The factual basis for the Accusation arose when respondent was stopped and failed field sobriety tests on April 7, 2012. On **July 27, 2012**, respondent pled no contest to a misdemeanor violation of Vehicle Code section 23152, subdivision (b), for driving under the influence of alcohol (DUI) with a blood-alcohol content (BAC) of .08 percent or higher. Respondent's BAC was .13 and .14 percent. Respondent was sentenced to 36 months of informal probation. Respondent's criminal probation is contingent on compliance with various conditions, including serving two days in county jail, with credit for one day; paying fines; completing a Level 1 Drinking Driver Program; and not driving with any measurable alcohol in his system. Respondent's criminal probation for this conviction extends through **July 27, 2015**.

As matters in aggravation, complainant alleged respondent's prior Board probation, imposed to resolve the January 10, 2005 Accusation in Case Number R-1966. That Accusation was based on respondent's October 8, 2004 conviction of two counts of violating Penal Code section 272, subdivision (b)(1) (persuade or lure a minor 14 years of age or younger), based on his no contest plea. On December 6, 2006, the Board adopted a Stipulated Settlement and Disciplinary Order as its Decision, effective December 18, 2006. Respondent's license was revoked, revocation was stayed and respondent was placed on probation for two years with terms and conditions. In addition to standard probationary conditions, respondent was required to submit to a psychological evaluation, to comply with any recommendations for treatment and counseling, and to pay the Board \$3,000 for the

² Unless otherwise indicated, all undesignated statutory references are to the Business and Professions Code.

costs of investigation and prosecution of the case. Respondent successfully completed probation in this matter on December 18, 2008.

3. *Stipulated Settlement and Disciplinary Order:* On June 4 and 6, 2013, respectively, respondent and Senior Legal Analyst Catherine Santillan signed a Stipulated Settlement and Disciplinary Order to resolve the issues in the Accusation. Respondent, who represented himself, admitted the truth of each of the allegations in the Accusation, and agreed that his license was subject to discipline.

4. *Decision:* On June 25, 2013, the Board adopted the Stipulated Settlement as its Decision, which became effective on July 5, 2013. Respondent's license was revoked, the revocation was stayed, and respondent was placed on probation for three years, subject to terms and conditions. In addition to standard probationary terms, respondent was suspended from practicing as a respiratory therapist for 12 days. He was ordered to participate in biological fluid testing, to abstain from the use of mood-altering substances, and to pay cost recovery in the sum of \$1,590.

5. *Petition to Revoke Probation:* On December 11, 2013, complainant filed the current Petition to Revoke Probation (Petition), based on respondent's violation of probation Condition 18 ("Suspension") and Condition 16 ("Biological Fluid Testing"). Based on these violations, complainant seeks a decision revoking respondent's probation, imposing the stayed disciplinary order revoking his license, and ordering respondent to pay the costs of investigation and enforcement, and the costs of probation monitoring, if he is placed on probation.

6. On December 30, 2013, respondent's Notice of Defense and request for a hearing was received by the Office of the Attorney General.

7. Thereafter, the matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500, et seq.

8. At the March 20, 2014 hearing, complainant called Board Probation Monitor Jennifer Malone as a witness. Respondent testified on his own behalf, called respiratory therapist Louis J. Halpern as a witness, and submitted supportive letters from medical providers familiar with his work. Complainant urged that Petition be granted and that respondent's license be revoked. Respondent did not dispute that he had violated probation as alleged in the Petition. Respondent provided explanations for his conduct and urged that he be allowed to remain on probation, subject to whatever additional time and probation conditions are determined to be appropriate.

Probation Violations

9. *Testimony of Jennifer Malone:* Jennifer Malone was assigned to be respondent's probation monitor on June 25, 2013. Her testimony is paraphrased as relevant below.

Ms. Malone first met with respondent on July 9, 2013, for approximately 45 to 60 minutes. During this meeting, Ms. Malone reviewed all of the probationary terms and conditions set forth in the Decision with respondent. After discussing each of the probationary terms, respondent initialed the specific paragraph on the Disciplinary Order attached to the Decision to indicate that he had read and understood the term. After reviewing the entire document, respondent signed the last page and added a handwritten notation that: "I ... have read and understand the terms of my probation."

10. *Suspension Violation:* On July 15, 2013, respondent violated Condition 18 of his probation, which provides: "As part of probation, Respondent shall be suspended from the practice of respiratory care for a period of twelve (12) days beginning the effective date of this decision. Respondent shall ensure that each employer informs the Board, in writing, that it is aware of the dates of suspension." At the time he was placed on probation, respondent was working as a respiratory therapist at Valley Care Health System (Valley Care) in Pleasanton, California.

Respondent violated this condition by returning to work on July 15, 2013, before his suspension was completed. Respondent's 12-day suspension extended from July 5, through July 16, 2013. He was authorized to return to work on July 17, 2013. Ms. Malone specifically reviewed these dates with respondent at their July 9, 2013 meeting. Respondent told Ms. Malone that he thought the suspension would have ended earlier. She informed him that the suspension began on the effective date of the decision.

Ms. Malone learned of this violation when respondent called her on July 18, 2013. Respondent told her he had made a mistake in calculating his return to work. Respondent went to work on July 15, 2013, to have his supervisor sign his suspension and employer acknowledgment form. Once at work, respondent "clocked in" and provided several hours of patient care. "Once it was realized" that respondent should not be working, he clocked out again. Respondent told Ms. Malone that he believed he would be terminated from the hospital for violating the suspension order.

Valley Care later confirmed, via certified personnel records, that it had terminated respondent effective July 18, 2013, for working on a suspended license. The Employee Termination Notice indicated that, "[w]ith a suspended RT license, Carl reported to work on July 15th, 2013 at 0636 and subsequently worked for a period of approximately 4.25 hours," "placing the organization at great risk and liability." The Incident Report noted that respondent "worked and provided patient care for 4.25 hours before his manager was made aware of the dates of suspension and realized Mr. Cacconie should not be working." Valley

Care also provided specific medical records documenting the patient care respondent provided during this time.

11. *Cease Practice Order*: Any licensee placed on probation who has committed a "Major Violation," as identified in the Board's *Disciplinary Guidelines*, 2011 Edition (*Guidelines*), "shall receive a notice to cease the practice of respiratory care, as directed by the Board." (16 CCR 1399.375, subd. (a).) Pursuant to the *Guidelines*, respondent engaged in a "major violation" of his probation by his "(9) failure to adhere to any suspension or restriction in practice." The licensee may appeal this order to the Executive Officer.

On July 23, 2013, respondent's license was suspended as required by 16 CCR section 1399.375. On July 29, 2013, respondent appealed this Cease Practice Order by submitting the following email to Ms. Malone, stating, in pertinent part:

...During this time of trying to comply with all the requirements of said probation I have unintentionally had an oversight in regards to the 12 days suspension of my license to work. In speaking to the attorney handling this case there was a conversation about the days possibly starting on the third of July. The actual day of suspension started on the 5th. Of course this was before knowing that it was actually on the 5th. My manager was on vacation and I went in to have all the paperwork signed by him on the 15th and was mistaken on my return date because I was looking at the original arrangement reflected by the work schedule. After looking through the paperwork with him as he signed [sic] I realized I had made a huge mistake. I immediately covered my position and left work canceling my next shifts that fell before the proper date. I apologize for this unintentional oversight. And I will be more attentive to sensitive dates as such. I love my career and hope you can see fit to reinstate my privilege to practice Respiratory Care.

On July 31, 2013, the Board upheld the Cease Practice Order.

The cease practice order is still in effect, and respondent has not practiced as a respiratory care therapist since its issuance. As discussed below, respondent subsequently engaged in other "major violations" under the *Guidelines* by his: "... (6) failure to make daily contact as directed, submit to testing on the day requested, or appear as requested by any Board representative for testing, in accordance with the 'biological fluid testing.'" Under the regulations, the "probationer shall not resume the practice of respiratory care until a final decision on an accusation and/or petition to revoke probation is made or until such time as the Board delivers written notification that the notice to cease practice has been dissolved." (16 CCR § 1399.375, subd. (d).) In addition, any time covered by the "cessation

of practice shall not apply to the reduction of the probationary period.” (16 CCR § 1399.375, subd. (e).)

12. *Biological Fluid Testing Violation:* Respondent violated Condition 16 of his probation on 13 occasions in 2013: August (8/4/13), September (9/11/13), October (10/6/13, 10/11/13, 10/21/13, 10/26/13, 10/28/13, 10/30/13 and 10/31/13) and November (11/1/13, 11/2/13, 11/12/13 and 11/20/13).³ Condition 16 provides a lengthy description of respondent’s obligation to participate in biological fluid testing and provides, in relevant part:

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

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

[¶] . . . [¶]

13. Ms. Malone testified that Pharmatech was the testing agency respondent was to use. To comply with this condition, respondent was required to call the lab each day to see if he was required to test. Alternatively, respondent could go through Pharmatech’s web site. Ms. Malone estimated that completion of either of these actions takes “about 60 seconds” to accomplish. When she reviewed this condition with respondent, Ms. Malone explained that a call-in to the biological fluid testing company is required every day between 5 a.m. and 5 p.m. and that it would be considered a violation resulting in a cease practice order if he missed even one day. Ms. Malone told respondent that he would be contacted if he missed a call-in, but this notice would only occur after the first missed call.

Pharmatech typically sent Ms. Malone emails about missed call-ins and she was also able to check their website for this information. Ms. Malone first noticed respondent had missed a call-in on August 4, 2013. Ms. Malone called respondent “probably on August 5, 2013,” but she did not remember whether she actually spoke to him or just left a voice mail message. She had no record of such a call. Ms. Malone recalled speaking to respondent in

³ As indicated in Ms. Malone’s Violation Report, the Suspension condition was designed to allow sufficient time to enroll respondent in the biological fluid testing program. Ms. Malone did not consider respondent’s failure to log in from July 5, 2013 through July 8, 2013, as violations because she did not yet have instructions from Pharmatech.

October 2013, when he missed two call-in days in a row. Because respondent was already on a cease practice order, it was not necessary to issue another one. Respondent was “just reminded that he needed to comply with all conditions.” Ms. Malone clarified that, as probation monitor, she was under no obligation to contact respondent to inform him of each missed call-in. Her calls were simply a matter of courtesy. Condition 16 only requires notification to respondent (and to his employer) if he tests positive and respondent has never tested positive for any banned substances.

14. Ms. Malone testified that respondent has not missed any daily call-ins to Pharmatech since November 20, 2013.

Respondent's Testimony

15. Respondent's testimony is paraphrased in relevant part below.

In 1999, respondent received his Associate of Arts Degree from San Joaquin College in respiratory care. He has been a licensed respiratory therapist for the past 14 years, and has worked primarily at hospitals in the acute or sub-acute setting. His last position as a licensee was at Valley Care in Pleasanton, where he was employed for four years until his termination. He denied any prior disciplinary actions by the hospital. Respondent is 40 years old.

16. *Explanation Re: Suspension Violation:* Respondent did not dispute that he treated patients for about four hours on July 15, 2013, and that this constituted a violation of his suspension condition. Respondent explained that he had scheduled his days off from work to cover the suspension period after speaking to Ms. Santillan, who had negotiated the Stipulated Settlement. Based on that conversation, respondent believed his suspension would start on July 3, 2013, and extend through July 15, 2013, and he therefore arranged to take 12 days off beginning July 3, 2013.⁴

Respondent acknowledged that on July 9, 2013, Ms. Malone explained that the suspension did not begin until July 5, 2013, and that he knew the actual suspension dates were not the same dates that he had arranged to take off work. Despite this knowledge, respondent neglected to rearrange his work schedule with the hospital and he did not change his work dates on his daily planners, on which he relied for his schedule. Respondent testified that he made an error and “blocked it out.”

17. Respondent took issue with the Petition's allegation that he “only left the workplace after his supervisor informed him that he was suspended from practice that day.” Respondent emphasized that he was the one who determined that he had violated the suspension order, not his supervisor, George Daluz. Mr. Daluz had been on vacation and had just returned to work on July 15, 2013. Respondent went to work on July 15th to get Mr. Daluz's signature on a document required by the Board, which respondent believed he was

⁴ Ms. Santillan did not testify and her asserted statements are hearsay.

late in providing. Respondent went into the hospital at his normal time of 6:30 a.m., and the supervisor did not arrive until 8:00 a.m. Respondent performed his normal duties. Respondent brought the document to Mr. Daluz, who asked him to copy them for Human Resources. Respondent then reviewed the document and realized he came in on the wrong day. Mr. Daluz had left, so respondent called him and told him he had to leave work until July 17th due to the suspension order. Respondent arranged to have his shift covered that day and the next (July 16, 2013), and he then left Valley Care. Respondent called Ms. Malone on July 18, 2013, after Mr. Daluz told him he was terminated. Respondent was concerned about the probation condition that requires him to have a job and, specifically, that his termination might constitute a violation of probation. Ms. Malone told him that he would hear from her about what steps would be taken.⁵

18. *Explanation Re: Biological Fluid Testing Violations:* Respondent admitted violating the daily call-in requirement of his biological fluid testing condition. Respondent acknowledged he was aware of his obligation to call-in every day and he understood that failures to do so would be seen as positive tests. Respondent testified that he did speak to Ms. Malone about missed tests, but that it was not after the first missed call-in. When respondent spoke with her, Ms. Malone informed him he had 13 missed call-ins and that the Board was preparing to take legal action against him. This was respondent's first notice of these violations. Initially, respondent did not believe that he had missed this many call-ins. After he contacted Pharmatech and checked his phone records, respondent realized this was accurate. Respondent testified that, during this period, he had been trying his best to maintain a routine of calling in. After this notice, respondent created a log and he now writes down every morning when he calls. Since this time, respondent has only missed one day, when he had a bad flu and called in after 5:00 p.m. He left a voice mail for Ms. Malone on that occasion.⁶

19. *Explanations re: Convictions:* Respondent testified about the facts and circumstances surrounding his 2004 misdemeanor convictions. In 2001, respondent married a woman with four children and he became a stepfather. One of the daughters accused him of inappropriately touching her. Respondent denied that this ever occurred. To settle the matter and on the advice of his attorney, respondent eventually pled no contest to lesser charges (e.g., Penal Code section 272, subdivision (b)(1)).⁷ Respondent and his wife tried to

⁵ Mr. Daluz did not testify.

⁶ Respondent's testimony is consistent with that of Ms. Malone. After testifying that respondent had not missed any call-ins since the violations alleged in the Petition, Ms. Malone clarified that there had been one additional miss that she did not record.

⁷ Respondent's counsel characterized these offenses as "infractions" as opposed to misdemeanor convictions. While Penal Code section 272, subdivision (b)(1), provides that this offense is either "an infraction or a misdemeanor subject to subdivision (d) of [Penal Code] Section 17," no evidence of the underlying conviction minute orders was provided from which to determine their proper characterization.

reconcile, but respondent left the relationship, concluding that the incident had done too much damage. Respondent completed all the requirements of both his criminal and Board probation.

Regarding his 2012 DUI conviction, respondent testified that, in April 2012, he had just separated from his then-current wife. He went out drinking with some friends and was stopped at a check point while driving home. He admitted drinking, failed field sobriety tests and had a BAC of .13. This resulted in his DUI conviction and three years of informal probation which is still in effect. Respondent was not working at the time of his arrest and he rarely drinks.

20. Since these violations, respondent has complied with the terms of his probation. Respondent states he is "passionate about" his career as a respiratory therapist and that maintaining his license is very important to him. Respondent tried to "stay on top of the process," to be diligent and follow through, but he acknowledged that he has "messed up." Respondent characterized his mistakes as oversights, rather than deliberate violations. Respondent is currently unemployed, but is actively seeking employment. He is working on his continuing education courses which are required for his license renewal next year.

21. *Testimony of Louis J. Halpern:* Mr. Halpern has been a respiratory therapist for 42 years and has practiced in California since 1985 (license number 10615). Over his career, Mr. Halpern has worked both as a practitioner and as a manager of respiratory care services. He is currently employed at a practice of five pulmonary physicians in Stockton. In addition to his March 20, 2014 letter to the Board, Mr. Halpern testified on respondent's behalf.

Mr. Halpern has known respondent for 13 years. They met when both worked as respiratory therapists in the long-term Ventilator Care Unit at Lodi Memorial Hospital, from 2001 through 2008. Most of the patients in this unit were comatose. Due to the hospital's management shortages, Mr. Halpern also occasionally functioned as respondent's supervisor. Mr. Halpern described respondent as an extremely professional and proficient respiratory care therapist, who always put his patients first. Respondent became his friend because, in addition to being technically excellent, he is also "very caring" of his patients. Mr. Halpern characterized many of the technical functions of this position as rather mundane. While technical skill can be taught, the ability to truly care for patients cannot be taught. Mr. Halpern testified that, if he was ever "on the wrong end" of a ventilator and saw respondent providing his care, it would give him great relief. In his opinion, it would be a loss to the profession if respondent lost his ability to provide respiratory care. While respondent made mistakes, Mr. Halpern urged compassion. Mr. Halpern had no knowledge of respondent's previous convictions; however, this would not change his recommendation. Based on his interactions with respondent as co-worker and his experience as a manager, Mr. Halpern would still hire respondent.

22. *Letters of Recommendation:* Respondent provided letters from individuals who have known him in his capacity as a respiratory care therapist. These exhibits were

admitted and are considered to the extent permitted Government Code section 11513, subdivision (d).⁸

These individuals corroborated Mr. Halpern's testimony.

a. In his March 19, 2014 letter, Valley Care Supervisor/Clinical Educator Matthew M. Murray, RCP, indicated that respondent was a "valued member of the Respiratory Dept. in multiple areas of Patient Care during his employment" there. Mr. Murray indicated that he "worked with Carl for several years as his supervisor and always appreciated his ability to take care of his patient's [sic] with compassion."

b. Liz Gartner, RN, BSN, is a Valley Care Critical Care Charge Nurse. She wrote that:

I have nothing but positive work relations with Carl. Carl showed compassion to his patients and had good rapport with co-workers in my observations. Carl was knowledgeable at his job, I could rely on him to take good care of his patients and function calmly and efficiently in a critical environment. Carl was well liked by the nurses and conducted himself professionally at all times.

c. Vanessa Zambrano is a respiratory therapist at Valley Care; respondent acted as her preceptor. In her March 18, 2014 letter, Ms. Zambrano characterized respondent as a "great teacher" and a "fantastic Respiratory Therapist" who "did what was right for the patients and gave quality care."

Costs

23. In support of its request for costs, complainant submitted her March 14, 2014 Declaration of Costs, indicating the total costs for enforcement actions against respondent are \$8,562.50. This amount encompassed: (1) the costs to the Board of attorney and paralegal services in this matter for the 2013 – 2014 fiscal year (\$6,967.50), as further itemized in the March 18, 2014 Declaration of Mr. Templet;⁹ (2) the outstanding cost recovery (\$795 currently due out of the \$1,590 awarded); and (3) probation monitoring costs from August 5, 2013 through March 5, 2014 (\$800). These costs are reasonable.

⁸ Government Code section 11513, subdivision (d), provides in pertinent part that "hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions..."

⁹ The "costs of prosecution shall include attorney general or other prosecuting attorney fees, expert witness fees, and other administrative, filing, and service fees." (Bus. and Prof. Code § 3753.7.)

Respondent offered no argument or testimony challenging the request for an award of costs. The only factor in evidence is that respondent has not been employed as a licensee since July 2013. It was not established whether respondent has any other source of income.

Discussion

24. There is no dispute that respondent violated Condition 18 of his probation by returning to work on July 15, 2013, during his 12-day suspension period, or that he violated Condition 16 by failing to make daily call-ins to Pharmatech on 13 occasions between August and November 2013, to determine whether he was required to submit to biological fluid testing. Complainant persuasively established that Ms. Malone explained the terms and conditions of respondent's probation to him, that he acknowledged his understanding of them, and that Ms. Malone was under no obligation to notify respondent of his failures to comply, particularly while he was subject to an existing cease practice order. Complainant has met her burden that respondent violated Probation Conditions 16 and 18 as set forth in the Decision. Probation Condition 12 provides, *inter alia*, that if respondent "violates any term of the probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed."

25. At issue is whether respondent's admitted probation violations are such that the stay of revocation imposed in the Decision should be lifted and his license be revoked, or whether he should be allowed to return to practicing under a probationary license subject to additional terms and conditions.

26. The Board has adopted Disciplinary Guidelines that have been considered in reaching this decision. As reflected in 16 CCR section 1399.374:

In reaching a decision on the disciplinary action under the Administrative Procedure Act (Government Code section 11400 et seq.), determining terms and conditions of probation, or consequences for non-compliance of ordered probation, the board shall consider the disciplinary guidelines entitled "Disciplinary Guidelines" [2011 Edition] which are hereby incorporated by reference. Deviation from these standards, guidelines and orders, including the standard terms of probation, is appropriate where the board in its sole discretion determines that the facts of the particular case warrant such a deviation - for example: the presence of mitigating factors; the age of the case; evidentiary problems.

27. The underlying basis for the Accusation and current probation is respondent's single 2012 DUI conviction. Respondent was previously disciplined, based on his 2004 convictions for violating Penal Code section 272, subdivision (b)(1) (persuading, luring a minor under 14 years of age "for any purpose" without parental consent). Respondent

testified about the circumstances leading to his no contest plea to these charges.¹⁰ He denied having engaged in the originally charged lewd and lascivious conduct. Respondent's hearsay testimony that the victim later recanted is given no weight. It is axiomatic that respondent cannot challenge his convictions in this forum and that, by virtue of his no contest plea, respondent stands guilty of each of the elements of these convictions. (*Arneson vs. Fox* (1980) 28 Cal. 3d 440, 449.) The elements of these convictions, however, do not include lewd and lascivious conduct. (Cf., *In Re Autumn K.* (2013) 221 Cal.App.4th 674, 709.) Moreover, with full knowledge of these convictions and respondent's admissions in the Stipulated Settlement, the Board placed respondent on probation in 2006 and respondent thereafter successfully completed this probationary period.

28. The evidence does not support a finding that respondent deliberately violated his suspension period, or misrepresented the facts in his email appeal of the cease practice order. In his testimony, respondent conceded that Ms. Malone told him the suspension began on July 5th, and not on July 3rd, during the July 9, 2013 meeting. In his July 29, 2013 email appeal to Ms. Malone, he reiterated the source of his original date confusion (his alleged conversation with Ms. Santillan), but conceded that "[o]f course this was before knowing that it was actually on the 5th." This statement indirectly references respondent's knowledge of the accurate suspension dates as communicated to him by Ms. Malone just 20 days earlier. Respondent was aware that the dates he had arranged to take off from work did not match the suspension dates communicated to him by Ms. Malone, but he "blocked it out" and did not change his work schedule or personal planners. Respondent had no reasonable motive for violating the suspension order. But by neglecting to take action to correct his release dates from work and his personal planners, respondent created the conditions that resulted in his violation of the suspension order. Such conduct cannot properly be characterized as "unintentional." As a probationer, respondent is responsible for ensuring that his conduct is consistent with the terms of his probation at all times.

Respondent's multiple violations of the daily call-in requirement over a four-month period reflect an individual who was insufficiently unfocused on the serious business of complying with the terms and conditions of his probation. Respondent missed his first call-in on August 4, 2013. This was less than a week after he had appealed the cease practice order, telling the Board that he would "be more attentive to sensitive dates as such." There is no ambiguity about a "daily" call-in requirement; each day is "sensitive." The probation order does not require the Board to notify respondent of violations so he can modify his behavior to conform to its requirements, and respondent had no right to expect notification from Ms. Malone. Nevertheless, respondent passively waited until Ms. Malone informed him of multiple violations before seriously reexamining his practice of ensuring compliance

¹⁰ Business and Professions Code section 493 provides in part that "...the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question."

with this condition. The evidence suggests that, during this time period, respondent was overwhelmed following his termination from Valley Care and his suspension from practice.

29. The factors in aggravation present in this case are as follows. Respondent has a prior history of discipline based on his 2004 criminal convictions. He admittedly violated his Board probation on multiple occasions in 2013, within the first five months of his current Board probation. At the time of these violations, respondent was also on active criminal probation.

Factors in mitigation are as follows: Respondent successfully completed his previous Board probation. Regarding his violation of Condition 18, respondent persuasively established that it was he who realized his error on the suspension violation, informed his supervisor and left work, and later called Ms. Malone to report the violation. Regarding his violation of Condition 16, his daily call-in requirement, respondent has recognized the reason for his errors and demonstrated that he has established a mechanism to prevent recurrence of these errors. As verified by Ms. Malone, respondent has been compliant with the biological fluid testing requirement for the past five months. Respondent's conduct resulting in discipline has not involved his clinical treatment of patients. A strong factor in mitigation is the evidence regarding respondent's skills and reputation as a respiratory care practitioner as discussed below.

30. Against this backdrop, significant evidence in support of respondent's request for continuing probation was provided by his former colleagues. As detailed in Factual Finding 21, Mr. Halpern's testimony about respondent's value to his profession and, particularly to the patients who need respiratory care services, was very persuasive. His testimony was corroborated by letters from respondent's former supervisor, Mr. Murray, from his colleague, Ms. Zambrano, and from RN/Charge Nurse Ms. Gartner. (Factual Finding 22.) Collectively, their comments underscore respondent's capacity, caring and professionalism as a respiratory care therapist. This evidence strongly supports allowing respondent to continue practicing under a probationary license.

31. Respondent must be held accountable for his probation violations. As a result of these violations, respondent has been subject to a cease practice order for approximately 10 months (since July 2013) and has been unable to practice his profession. None of this time can be considered as part of his current, three-year probation. Considering the record as a whole, outright revocation is not appropriate. Respondent will be allowed to remain on probation, but the probationary term is increased to four years (48 months). Respondent will be ordered to pay the Board \$8,562.50 in costs, as well as the costs of ongoing probation monitoring. (Bus. & Prof. Code 3753.1, subd. (a).) Respondent must also pay to the Board the outstanding balance, if any, from the costs awarded in the July 5, 2013 Decision.

LEGAL CONCLUSIONS

1. Protection of the public shall be the highest priority for the Respiratory Care Board of California in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount. (Bus. & Prof. Code, § 3710.1.)
2. *Burden and Standard of Proof:* In a petition to revoke respondent's probation, complainant has the burden to establish, by a preponderance of the evidence, that respondent has violated the conditions of his probation. (*Sandarg v. Dental Board* (2010) 184 Cal. App. 4th 1434; Evid. Code 115.)
3. As set forth in the Factual Findings and Legal Conclusions as a whole, and particularly in Factual Finding 24, complainant has met her burden of establishing that respondent violated Conditions 16 and 18 of his probation. Legal cause exists to lift the stayed revocation in the Board's July 5, 2013 Decision and Order, and to revoke respondent's license.
4. As set forth in the Factual Findings and Legal Conclusions as a whole, and particularly in Factual Findings 25 through 31, probation is appropriate, subject to the terms and conditions set forth below.
5. *Costs:* Business and Professions Code section 3753.5, subdivision (a), provides:
 - (a) In any order issued in resolution of a disciplinary proceeding before the board, the board or the administrative law judge may direct any practitioner or applicant found to have committed a violation or violations of law or any term and condition of board probation to pay to the board a sum not to exceed the costs of the investigation and prosecution of the case. A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the official custodian of the record or his or her designated representative shall be prima facie evidence of the actual costs of the investigation and prosecution of the case.
6. The factors for reduced or refusing to impose an award of costs, as described in *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, have been considered. There is no basis for a reduction in costs.
7. As set forth in the Factual Findings and Legal Conclusions as a whole, and particularly in Factual Finding 23, respondent shall be ordered to pay \$8,562.50 in costs, as well as the costs of ongoing probation monitoring during the period of probation. These

costs are in addition to any outstanding balance owed to the Board from the costs awarded in the July 5, 2013 Decision.

ORDER

The Petition to Revoke Probation is GRANTED in part and DENIED in part. The original stay of revocation in Decision and Order 1H 2012 266 is lifted and Respiratory Care Practitioner License No. 21206 is hereby REVOKED. However, REVOCATION is STAYED, and respondent is placed on probation for a period of four (4) years, subject to the conditions outlined below.

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

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

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

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

For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.

For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.

For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.

For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

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

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

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

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

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

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

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

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

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

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

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

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

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

If Respondent is employed by or through a registry, Respondent shall also make each hospital or establishment to which he is sent aware of the discipline imposed by this decision by providing his human resources personnel, manager, and supervisor for each shift, at each hospital or establishment with a copy of this decision, and the Statement(s) of Issues or Accusation(s) in this matter prior to the beginning of employment. This must be done each time there is a change in supervisors or administrators.

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

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

7. **SUPERVISOR QUARTERLY REPORTS:** Supervisor Quarterly Reports of Performance are due for each year of probation and the entire length of probation from each employer, as follows:

For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.

For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.

For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.

For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

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

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

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

9. **COST RECOVERY:** Respondent shall pay to the Board a sum not to exceed the costs of the investigation and prosecution of this case. That sum shall be \$ **8,562.50**, and shall be paid in full directly to the Board, in equal quarterly payments, within 12 months from the effective date of this decision. Cost recovery will not be tolled.

These costs are in addition to any outstanding balance owed to the Board from the costs awarded in the July 5, 2013 Decision in Case Number 1H 2012 266.

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

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

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

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

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

Respondent's license shall automatically be cancelled if respondent's cumulative period tolling is greater than five (**5**) years. However, the cancellation of the license does not relieve the respondent from outstanding cost recovery or probation monitoring costs.

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

12. **VIOLATION OF PROBATION:** If Respondent commits a "Major Violation," as identified in the Disciplinary Guidelines, incorporated by reference pursuant to section 1399.374, he shall receive a notice to cease the practice of respiratory care, as directed by the Board. The Board shall attempt to contact Respondent by electronic and/or telephonic means to advise him of the notice to cease practice and shall deliver such notice by certified and regular mail. The Board shall update its licensing database to reflect the status of the license.

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

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

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

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

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

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

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

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

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

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

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

If Respondent tests positive for a banned substance (including testing positive for ETG), the Board will contact the Respondent and his employers, human resources personnel, directors, managers, supervisors, and/or contractors and notify them of the positive test, including the substance(s) and levels detected. Thereafter, the Board may contact the specimen collector, laboratory, Respondent, treating physician, treatment provider and/or support group facilitators to determine whether the positive test is evidence of prohibited use.

If the Board determines the positive test is not evidence of prohibited use, the Board shall inform the Respondent and others previously contacted, that the positive test was not a violation of his probationary order.

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

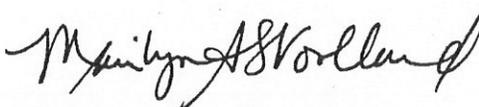
Respondent shall execute a release authorizing the release of pharmacy and prescribing records as well as physical and mental health medical records. Respondent shall also provide information of treating physicians, counselors or any other treating professional as requested by the Board.

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

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

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

DATED: May 21, 2014



MARILYN A. WOOLLARD
Administrative Law Judge
Office of Administrative Hearings

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FILED
STATE OF CALIFORNIA
RESPIRATORY CARE BOARD
SACRAMENTO Dec. 11 2013
BY [Signature] ANALYST

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

11 In the Matter of the Petition to Revoke
12 Probation Against:

13 **CARL CACCONIE**

14 **3007 Estepa Drive**
15 **Cameron Park, CA 95682**
16 **Respiratory Care Practitioner License No.**
17 **21206**

18 Respondent.

Case No. D1 2012 266

PETITION TO REVOKE PROBATION

18 Complainant alleges:

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

22 2. On or about January 6, 2000, the Respiratory Care Board (the Board) issued
23 Respiratory Care Practitioner License Number 21206 to Carl Cacconie (Respondent). The
24 Respiratory Care Practitioner License was in full force and effect at all times relevant to the
25 charges brought herein and will expire on March 31, 2015, unless renewed.

26 3. In a disciplinary action entitled "In the Matter of the Accusation Against Carl
27 Cacconie," Case No. 1H 2012 266, the Board issued a Decision and Order effective July 5, 2013
28 (attached as **Exhibit A** and incorporated herein), placing Respondent's license on probation for

1 three (3) years with certain terms and conditions, including a 12-day suspension from practice and
2 required daily contact with a biological fluid testing lab. The revocation of Respondent's license
3 was stayed pending his successful completion of the terms and conditions of his probation.

4 4. Shortly thereafter, on July 15, 2013, Respondent violated the suspension-from-
5 practice condition of his probation, as alleged below. As a result, on July 23, 2013, the Board
6 ordered Respondent to cease the practice of respiratory care, pursuant to California Code of
7 Regulations, title 16, section 1399.375. Respondent appealed the cease practice order on July 29,
8 2013, and the Board upheld the order on July 31, 2013.

9 JURISDICTION

10 5. This Petition to Revoke Probation is brought before the Board under the authority of
11 the following laws. All section references are to the Business and Professions Code unless
12 otherwise indicated.

13 6. Section 3710 of the Code states: "The Respiratory Care Board of California, hereafter
14 referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory
15 Care Practice Act]."

16 7. Section 3718 of the Code states: "The board shall issue, deny, suspend, and revoke
17 licenses to practice respiratory care as provided in this chapter."

18 8. Section 3754 of the Code states: "The board may deny an application for, or issue
19 with terms and conditions, or suspend or revoke, or impose probationary conditions upon, a
20 license in any decision made after a hearing, as provided in Section 3753."

21 COST RECOVERY

22 9. Section 3753.5, subdivision (a) of the Code states: "In any order issued in resolution
23 of a disciplinary proceeding before the board, the board or the administrative law judge may
24 direct any practitioner or applicant found to have committed a violation or violations of law or
25 any term and condition of board probation to pay to the board a sum not to exceed the costs of the
26 investigation and prosecution of the case."

27 ///

28 ///

1 1. Revoking the probation that was granted by the Respiratory Care Board in Case
2 Number 1H 2012 266 and imposing the disciplinary order that was stayed, thereby revoking
3 Respiratory Care Practitioner License Number 21206, issued to Carl Cacconie.

4 2. Ordering Carl Cacconie to pay the Respiratory Care Board the costs of the
5 investigation and enforcement of this case, and if placed on probation, the costs of probation
6 monitoring;

7 3. Taking such other and further action as deemed necessary and proper.

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DATED: December 11, 2013


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

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