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

In the Matter of the Accusation Against**:** **MELVIN D. BROWN, R.C.P.** **380 West Summerfield Circle** **Anaheim, CA 92802** **Respiratory Care Practitioner License No. 23191** Respondent.	Case No. 1H-2008-458 **A C C U S A T I O N**

Complainant alleges:

PARTIES

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

2. On or about September 5, 2003, the Respiratory Care Board issued Respiratory Care Practitioner License No. 23191 to MELVIN D. BROWN, R.C.P. (respondent). Respiratory Care Practitioner License No. 23191 was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2010, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

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

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

6. Section 3750 of the Code states:

"The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

"… .

"(f) Negligence in his or her practice as a respiratory care practitioner.

"… .

"(k) Falsifying, or making grossly incorrect, grossly inconsistent, or unintelligible entries in any patient, hospital, or other record.

"… .

"(o) Incompetence in his or her practice as a respiratory care practitioner.

"(p) A pattern of substandard care."

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

8. California Code of Regulations, title 16, section 1399.370, states, in pertinent part:

> "For the purposes of denial, suspension, or revocation of a license, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to perform the functions authorized by his or her license or in a manner inconsistent with the public health, safety, or welfare.

Such crimes or acts include but are not limited to those involving the following:

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

"… ."

9. Section 3755 of the Code states:

"The board may take action against any respiratory care practitioner who is charged with unprofessional conduct in administering, or attempting to administer, direct or indirect respiratory care. Unprofessional conduct includes, but is not limited to, repeated acts of clearly administering directly or indirectly inappropriate or unsafe respiratory care procedures, protocols, therapeutic regimens, or diagnostic testing or monitoring techniques, and violation of any provision of Section 3750. The board may determine unprofessional conduct involving any and all aspects of respiratory care performed by anyone licensed as a respiratory care practitioner."

COST RECOVERY

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

"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 to pay to the board a sum not to exceed the costs of the investigation and prosecution of the case."

11. Section 3753.7 of the Code states:

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

12. Section 3753.1 of the Code states:

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

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FIRST CAUSE FOR DISCIPLINE

(Negligence)

13. Respondent has subjected his Respiratory Care Practitioner License No. 23191 to disciplinary action under section 3750, as defined by 3750, subdivision (f), and Title 16 of the California Code of Regulations section 1399.370, in that respondent was negligent in the performance of his duties as a Respiratory Care Therapist at St. Jude Medical Center. The circumstances are as follows:

April 9, 2008

14. On or about April 9, 2008, respondent was assigned to provide respiratory therapy to eight (8) patients.

15. On or about April 9, 2008, respondent engaged in concurrent therapy by treating two (2) patients during the same time period.

16. On or about April 9, 2008, respondent placed Patient 0 on treatment a 7:40 a.m. Respondent left Patient 0 unattended. Patient 0 was found at 9:59 a.m. with her nebulizer lying next to her in her bed. Patient 0's oxygen level had dropped to between 80-89% because respondent forgot to check on her and failed to place her on her prescribed post treatment oxygen level. Respondent was not present when Patient 0's treatment was completed and therefore could not assess the effects of the medication on Patient 0.

17. On or about April 9, 2008, respondent failed to provide Patient 1 timely treatment. Respondent was approximately ninety (90) minutes late in administering treatment to Patient 1.

18. On or about April 9, 2008, respondent failed to provide Patient 2 timely treatment. Respondent was approximately one hundred twenty (120) minutes late in administering treatment to Patient 2.

19. On or about April 9, 2008, respondent failed to provide Patient 3 timely treatment. Respondent was approximately one hundred ninety-five (195) minutes late in administering treatment to Patient 3.

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20. On or about April 9, 2008, respondent failed to provide Patient 4 timely treatment. Respondent was approximately two hundred forty-five (245) minutes late in administering treatment to Patient 4.

21. On or about April 9, 2008, respondent failed to provide Patient 5 timely treatment. Patient 5 was to receive Albuterol. Respondent did not administer Patient 5's 8:00 a.m. treatment. Respondent administered Patient 5's first treatment of the day at approximately 10:11 a.m.

22. On or about April 9, 2008, respondent failed to provide and document accurate treatment for Patient 6. Patient 6 was to receive Duoneb, via hand held nebulizer (HHN), every 4 hours and Advair, via metered dose inhaler (MDI), every 6 hours. Respondent documented an HHN and MDI treatment for Duoneb at 0730. Respondent documented an HHN and MDI treatment for Duoneb at 1205. Respondent was thirty five (35) minutes late in administering the second HHN treatment of Duoneb and documented the MDI Advair treatment two times without administering the MDI Advair treatment.

23. On or about April 9, 2008, respondent failed to properly document treatments administered to Patient 7.

24. On or about April 9, 2008, respondent failed to provide Patient 8 timely treatment. Respondent administered Patient 8's second treatment three (3) hours late. Respondent failed to properly document the ordered medication.

April 14, 2008

25. On or about April 14, 2008, respondent failed to respond to three (3) overhead pages requesting respiratory therapy for Patient 9. Patient 9 waited two and a half (2.5) hours to receive treatment for shortness of breath. Respondent also failed to provide peak flow meter measurements as required both pre and post treatment.

June 21, 2008

26. On or about June 21, 2008, respondent was assigned to provide respiratory therapy to six (6) patients.

27. On or about June 21, 2008, respondent failed to provide Patient 1 a scheduled treatment at 7:50 a.m. Patient 1 did not receive this treatment until 3:39 p.m. when another Respiratory Care Practitioner discovered respondent's error and administered the treatment. Respondent's failure caused Patient 1's treatment to be delayed by seven (7) hours and forty nine (49) minutes.

28. On or about June 21, 2008, Patient 2 was ordered to receive Advair, via MDI, every twelve (12) hours and Duoneb, via HHN every four (4) hours while awake, and every two (2) hours as needed. Respondent administered and charted Advair and Duoneb at 8:52 a.m. At 11:30 a.m., Respondent charted that he administered Duoneb but incorrectly charted the MDI modality. At 11:32 a.m., Respondent undid his charting as being done at the wrong time. At 4:14 p.m., Respondent charted that he administered Duoneb but incorrectly charted the MDI modality.

29. On or about June 21, 2008, respondent failed to measure peak flows on any of the three (3) treatments provided to Patient 3. Respondent failed to correctly document the medication administered and the modality used to administer the medication.

30. On or about June 21, 2008, respondent failed to document the concentration or liter flow of oxygen treatment provided to Patient 4.

31. On or about June 21, 2008, respondent waited over one (1) hour to provide treatment to Patient 5 despite blood gas levels and lab values indicating the Patient was in distress.

32. On or about June 21, 2008, respondent documented treating Patient 6 with normal saline when the order called for Xopenex.

June 22, 2008

33. On or about June 22, 2008, respondent was assigned eleven (11) patient procedures to be completed between 6:00 a.m. and 10:30 a.m. Respondent failed to document any work performed prior to 10:25 a.m.

SECOND CAUSE FOR DISCIPLINE

(Falsifying patient or hospital records)

34. Respondent has further subjected his Respiratory Care Practitioner License No. 23191 to disciplinary action under section 3750, as defined by 3750, subdivision (k), and Title 16

of the California Code of Regulations, section 1399.370, in that respondent engaged in falsifying, or making grossly incorrect, grossly inconsistent, or unintelligible entries in patient, hospital, or other records as more particularly described in paragraphs 14 through 33 above, which are hereby incorporated by reference and re-alleged as if fully set forth herein.

THIRD CAUSE FOR DISCIPLINE

(Incompetence)

35. Respondent has further subjected his Respiratory Care Practitioner License No. 23191 to disciplinary action under section 3750, as defined by 3750, subdivision (o), and Title 16 of the California Code of Regulations, section 1399.370, in that respondent is incompetent in his practice as a respiratory care practitioner as more particullarly described in paragraphs 14 through 33 above, which are hereby incorporated by reference and realleged as if fully set forth herein.

FOURTH CAUSE FOR DISCIPLINE

(Engaging in a Pattern of Substandard Care)

36. Respondent has further subjected his Respiratory Care Practitioner License No. 23191 to disciplinary action under section 3750, as defined by 3750, subdivision (p), and Title 16 of the California Code of Regulations, section 1399.370, in that respondent has engaged in a pattern of substandard care in his practice as a respiratory care practitioner at St. Jude Medical Center as more particullarly described in paragraphs 14 through 33 above, which are hereby incorporated by reference and realleged as if fully set forth herein.

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

37. Respondent has further subjected his Respiratory Care Practitioner License No. 23191 to disciplinary action under section 3755, as defined by 3750, and Title 16 of the California Code of Regulations section 1399.370 in that respondent engaged in unprofessional conduct as more particularly described in paragraphs 14 through 33 above, which are hereby incorporated by reference and re-alleged as if fully set forth herein.

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PRAYER

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

1. Revoking or suspending Respiratory Care Practitioner License Number 23191, issued to MELVIN D. BROWN, R.C.P. Melvin D. Brown, R.C.P.

2. Ordering Melvin D. Brown, R.C.P. to pay the Respiratory Care Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring;

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

DATED: December 28, 2009

Original signed by Liane Freels for:
STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
Department of Consumer Affairs
State of California
Complainant

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