

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

In the Matter of the Accusation Against:

Case No. 1H 2008 458

MELVIN D. BROWN
380 West Summerfield Circle
Anaheim CA 92802

Respiratory Care Practitioner License No. 23191

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 16, 2010 .

It is so ORDERED July 6, 2010 .

Original Signed by: _____

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

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

11 In the Matter of the Accusation Against:
12
13 **MELVIN D. BROWN, R.C.P.**
380 West Summerfield Circle
Anaheim, CA 92802
14 **Respiratory Care Practitioner License No.**
23191
15
16 **Respondent.**

Case No. 1H-2008-458

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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
22 Care Board of California, Department of Consumer Affairs (Board). She brought this action
23 solely in her official capacity and is represented in this matter by Edmund G. Brown Jr., Attorney
24 General of the State of California, by Matthew M. Davis, Deputy Attorney General.

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

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1 **JURISDICTION**

2 3. On or about September 5, 2003, the Respiratory Care Board issued
3 Respiratory Care Practitioner License No. 23191 to respondent. Respiratory Care Practitioner
4 License No. 23191 was in full force and effect at all times relevant to the charges brought in
5 Accusation No. 1H-2008-458 and will expire on December 31, 2010, unless renewed.

6 4. On December 28, 2009, complainant Stephanie Nunez, in her official
7 capacity as the Executive Officer of the Board, filed Accusation No. 1H-2008-458 against
8 Respondent. On or about December 28, 2009, respondent was served with a true and correct
9 copy of Accusation No. 1H-2008-458 together with true and correct copies of all other statutorily
10 required documents, at his address of record then on file with the Board: 380 West Summerfield
11 Circle, Anaheim, CA 92802. On January 13, 2010, Respondent timely filed a Notice of Defense.

12 **ADVISEMENT AND WAIVERS**

13 5. Respondent has carefully read, and fully understands the charges and
14 allegations in Accusation No. 1H-2008-458. Respondent has also carefully read, and fully
15 understands the effects of this Stipulated Settlement and Disciplinary Order.

16 6. Respondent is fully aware of his legal rights in this matter, including
17 the right to a hearing on the charges and allegations in Accusation No. 1H-2008-458; the right to
18 be represented by counsel at his own expense; the right to confront and cross-examine the
19 witnesses against him; the right to present evidence and to testify on his own behalf; the right to
20 the issuance of subpoenas to compel the attendance of witnesses and the production of
21 documents; the right to reconsideration and court review of an adverse decision; and all other
22 rights accorded by the California Administrative Procedure Act and other applicable laws.

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

25 **CULPABILITY**

26 8. Respondent admits the truth of each and every charge and allegation in
27 Accusation No. 1H-2008-458, a true and correct copy of which is attached hereto as Attachment
28 "A," and that he has thereby subjected his Respiratory Care Practitioner License No. 23191 to

1 disciplinary action. Respondent further agrees to be bound by the Board's imposition of
2 discipline as set forth in the Disciplinary Order below.

3 **CONTINGENCY**

4 9. The parties agree that this Stipulated Settlement and Disciplinary Order
5 shall be submitted to the Board for its consideration in the above-entitled matter and, further, that
6 the Board shall have a reasonable period of time in which to consider and act on this Stipulated
7 Settlement and Disciplinary Order after receiving it.

8 10. The parties agree that this Stipulated Settlement and Disciplinary Order
9 shall be null and void and not binding upon the parties unless approved and adopted by the Board,
10 except for this paragraph, which shall remain in full force and effect. Respondent fully
11 understands and agrees that in deciding whether or not to approve and adopt this Stipulated
12 Settlement and Disciplinary Order, the Board may receive oral and written communications from
13 its staff and/or the Attorney General's office. Communications pursuant to this paragraph shall
14 not disqualify the Board, any member thereof, and/or any other person from future participation
15 in this or any other matter affecting or involving respondent. In the event that the Board, in its
16 discretion, does not approve and adopt this Stipulated Settlement and Disciplinary Order, with the
17 exception of this paragraph, it shall not become effective, shall be of no evidentiary value
18 whatsoever, and shall not be relied upon or introduced in any disciplinary action by either party
19 hereto. Respondent further agrees that should the Board reject this Stipulated Settlement and
20 Disciplinary Order for any reason, respondent will assert no claim that the Board, or any member
21 thereof, was prejudiced by its/his/her review, discussion and/or consideration of this Stipulated
22 Settlement and Disciplinary Order or of any matter or matters related hereto.

23 **ADDITIONAL PROVISIONS**

24 11. This Stipulated Settlement and Disciplinary Order is intended by the
25 parties herein to be an integrated writing representing the complete, final and exclusive
26 embodiment of the agreements of the parties in the above-entitled matter.

27 12. The parties agree that facsimile copies of this Stipulated Settlement and
28 Disciplinary Order, including facsimile signatures of the parties, may be used in lieu of original

1 documents and signatures and, further, that facsimile copies shall have the same force and effect
2 as originals.

3 13. In consideration of the foregoing admissions and stipulations, the parties
4 agree the Board may, without further notice to or opportunity to be heard by Respondent, issue
5 and enter the following Disciplinary Order:

6 **DISCIPLINARY ORDER**

7 IT IS HEREBY ORDERED THAT Melvin Brown's Respiratory Care Practitioner
8 License No. 23191 shall be and hereby is immediately revoked, with the revocation stayed, and
9 Respondent placed on probation for a period of three (3) years from the effective date of this
10 Decision and Order, on the following terms and conditions:

11 1. SUSPENSION As part of probation, Respondent shall be suspended from
12 the practice of respiratory care for a period of two (2) days, beginning the effective date of this
13 decision. If not employed as a respiratory care practitioner or if currently on any other type of
14 leave from employment, the suspension shall be served once employment has been established or
15 reestablished and prior to the end of the probationary period. Respondent shall ensure that each
16 employer informs the Board, in writing, that it is aware of the dates of suspension.

17 2. ADDITIONAL CONTINUING EDUCATION Respondent shall be
18 required to complete additional Continuing Education beyond that which is required for license
19 renewal. A minimum of fifteen (15) additional hours is required for each year of probation.
20 Respondent shall submit proof to the Board of successful completion of all continuing education
21 requirements.

22 3. EDUCATION/COURSE WORK Respondent shall be required to
23 successfully complete three (3) semester (or its equivalent) units of education courses in
24 California at an institution approved by the Board in addition to the continuing education required
25 for the renewal of licensure. The course selection shall be submitted to and approved by the
26 Board in advance. The Board, at its discretion, may require the education to be in a specific area
27 of study. Successful completion is a grade of "C" or "70%" or better for any completed course.
28 Respondent shall be required to submit proof of successful completion in the form of official

1 transcripts no later than six (6) months prior to the date probation is scheduled to end. Failure to
2 timely and successfully complete approved courses at an approved institution(s), or provide
3 documentation thereof shall constitute a violation of probation. Respondent is responsible for
4 paying all costs associated with fulfilling this term and condition of probation.

5 4. RESTRICTION OF PRACTICE Respondent may not be employed or
6 function as a member of a respiratory care management or supervisory staff during the entire
7 length of probation. This includes lead functions. Respondent is further prohibited from working
8 in home care unless it is under direct supervision and personal observation.

9 5. DIRECT SUPERVISION During the period of probation, Respondent
10 shall be under the direct supervision of a person holding a current and valid non-restricted Board
11 license. "Under the direct supervision" means assigned to a respiratory care practitioner who is on
12 duty and immediately available in the assigned patient area. The Board shall be informed in
13 writing of and approve the level of supervision provided to the Respondent while he/she is
14 functioning as a licensed respiratory care practitioner. The appropriate level of supervision must
15 be approved by the Board prior to commencement of work.

16 6. OBEY ALL LAWS Respondent shall obey all laws, whether federal,
17 state, or local. The Respondent shall also obey all regulations governing the practice of
18 respiratory care in California. Respondent shall notify the Board in writing within 14 days of any
19 incident resulting in his arrest, or charges filed against, or a citation issued against, Respondent.

20 7. QUARTERLY REPORTS Respondent shall file quarterly reports of
21 compliance under penalty of perjury, on forms to be provided, to the probation monitor assigned
22 by the Board. Omission or falsification in any manner of any information on these reports shall
23 constitute a violation of probation and shall result in the filing of an accusation and/or a petition
24 to revoke probation against Respondent's respiratory care practitioner license. Quarterly report
25 forms will be provided by the Board. Respondent is responsible for contacting the Board to
26 obtain additional forms if needed. Quarterly reports are due for each year of probation and the
27 entire length of probation as follows:

28 (a) For the period covering January 1st through March 31st, reports are to

1 be completed and submitted between April 1st and April 7th.

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

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

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

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

9 8. PROBATION MONITORING PROGRAM Respondent shall comply with
10 requirements of the Board appointed probation monitoring program, and shall, upon
11 reasonable request, report to or appear at a local venue as directed. Respondent shall claim all
12 certified mail issued by the Board, respond to all notices of reasonable requests timely, and
13 submit Annual Reports, Identification Update reports or other reports similar in nature, as
14 requested and directed by the Board or its representative. Respondent is encouraged to contact
15 the Board's Probation Program at any time he has a question or concern regarding his terms and
16 conditions of probation.

17 Failure to appear for any scheduled meeting or examination, or cooperate with the
18 requirements of the program, including timely submission of requested information, shall
19 constitute a violation of probation and will result in the filing of an accusation and/or a petition to
20 revoke probation against Respondent's Respiratory Care Practitioner license.

21 9. PROBATION MONITORING COSTS All costs incurred for probation
22 monitoring during the entire probation shall be paid by the Respondent. The monthly cost may be
23 adjusted as expenses are reduced or increased. Respondent's failure to comply with all terms and
24 conditions may also cause this amount to be increased. All payments for costs are to be sent
25 directly to the Board and must be received by the date(s) specified (Periods of tolling will not toll
26 the probation monitoring costs incurred.). If Respondent is unable to submit costs for any month,
27 he shall be required, instead to submit an explanation of why he is unable to submit the costs, and
28 the date(s) she will be able to submit the costs including payment amount(s). Supporting

1 documentation and evidence of why the Respondent is unable to make such payment(s) must
2 accompany this submission. Respondent understands that failure to submit costs timely is a
3 violation of probation and submission of evidence demonstrating financial hardship does not
4 preclude the Board from pursuing further disciplinary action. However, Respondent understands
5 that by providing evidence and supporting documentation of financial hardship it may delay
6 further disciplinary action. In addition to any other disciplinary action taken by the Board, an
7 unrestricted Respiratory Care Practitioner license will not be issued at the end of the probationary
8 period and the Respiratory Care Practitioner license will not be renewed, until such time all
9 probation monitoring costs have been paid. The filing of bankruptcy by the Respondent shall not
10 relieve the Respondent of his responsibility to reimburse the Board for costs incurred.

11 10. EMPLOYMENT REQUIREMENT Respondent shall be employed a
12 minimum of 24 hours per week as a respiratory care practitioner for a minimum of 2/3 of his
13 probation period. Respondent may substitute successful completion of a minimum of thirty (30)
14 additional continuing education hours, beyond that which is required for Respiratory Care
15 Practitioner license renewal, for each 8 months of employment required. Respondent shall submit
16 proof to the Board of successful completion of all continuing education requirements.
17 Respondent is responsible for paying all costs associated with fulfilling this term and condition of
18 probation.

19 11. NOTICE TO EMPLOYER Respondent shall be required to inform his
20 employer, and each subsequent employer during the probation period, of the discipline imposed
21 by this decision by providing his supervisor and director and all subsequent supervisors and
22 directors with a copy of the decision and order, and the Statement(s) of Issues in this matter prior
23 to the beginning of or returning to employment or within 14 days from each change in a
24 supervisor or director. If Respondent is employed by or through a registry [and is not restricted
25 from working for a registry], Respondent shall make each hospital or establishment to which he is
26 sent aware of the discipline imposed by this decision by providing his direct supervisor and
27 administrator at each hospital or establishment with a copy of this decision, and the Statement(s)
28 of Issues in this matter prior to the beginning of employment. This must be done each time there

1 is a change in supervisors or administrators. The employer will then inform the Board, in writing,
2 that he/she is aware of the discipline, on forms to be provided to the Respondent. Respondent is
3 responsible for contacting the Board to obtain additional forms if needed. All reports completed
4 by the employer must be submitted from the employer directly to the Board. Respondent shall
5 execute a release authorizing the Board or any of its representatives to review and obtain copies
6 of all employment records and discuss and inquire of the probationary status with any of
7 Respondent's supervisors or director.

8 12. CHANGES OF EMPLOYMENT OR RESIDENCE Respondent shall
9 notify the Board, and appointed probation monitor, in writing, of any and all changes of
10 employment, location, and address within 14 days of such change. This includes but is not
11 limited to applying for employment, termination or resignation from employment, change in
12 employment status, change in supervisors, administrators or directors. Respondent shall also
13 notify his probation monitor AND the Board IN WRITING of any changes of residence or
14 mailing address within 14 days. P.O. Boxes are accepted for mailing purposes, however the
15 Respondent must also provide his physical residence address as well.

16 13. COST RECOVERY Respondent shall pay to the Board a sum not to
17 exceed the costs of the investigation and prosecution of this case. That sum shall be \$7,717.50
18 and shall be paid in full directly to the Board. Cost recovery will not be tolled. If Respondent is
19 unable to submit costs timely, he shall be required, instead to submit an explanation of why he is
20 unable to submit these costs in part or in entirety, and the date(s) he will be able to submit the
21 costs including payment amount(s). Supporting documentation and evidence of why the
22 Respondent is unable to make such payment(s) must accompany this submission. Respondent
23 understands that failure to submit costs timely is a violation of probation and submission of
24 evidence demonstrating financial hardship does not preclude the Board from pursuing further
25 disciplinary action. However, Respondent understands that by providing evidence and supporting
26 documentation of financial hardship may delay further disciplinary action. Consideration to
27 financial hardship will not be given should Respondent violate this term and condition, unless an
28 unexpected AND unavoidable hardship is established from the date of this order to the date

1 payment(s) is due. The filing of bankruptcy by the Respondent shall not relieve the Respondent
2 of his responsibility to reimburse the Board for these costs.

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

10 15. VALID LICENSE STATUS Respondent shall maintain a current, active
11 and valid Respiratory Care Practitioner license for the length of the probation period. Failure to
12 pay all fees and meet continuing education requirements prior to his Respiratory Care Practitioner
13 license expiration date shall constitute a violation of probation.

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

21 17. COMPLETION OF PROBATION Upon successful completion of
22 probation, Respondent's Respiratory Care Practitioner license shall be fully restored.

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

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

28 (b) For the period covering April 1st through June 30th, reports are to be

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ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my probationary Respiratory Care Practitioner License No. 23191. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Respiratory Care Board.

DATED: May 9, 2010.

Original Signed by: _____
MELVIN BROWN
Respondent

ENDORSEMENT

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

DATED: April 23, 2010

EDMUND G. BROWN JR., Attorney General
of the State of California

THOMAS S. LAZAR
Supervising Deputy Attorney General

Original Signed by: _____
MATTTHEW M. DAVIS
Deputy Attorney General

Attorneys for Complainant