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

12 In the Matter of the Second Amended
Accusation Against:

13 **MELISSA A. ADAMS, R.C.P.**
14 **P.O. Box 878**
Highland, CA 92346
15
16 **Respiratory Care Practitioner License**
No. 24691

17 Respondent.

Case No. 1H 2009 721

DEFAULT DECISION
AND ORDER

[Gov. Code, §11520]

18 **FINDINGS OF FACT**

19
20 1. On or about January 20, 2012, Complainant Stephanie Nunez, in her official capacity
21 as the Executive Officer of the Respiratory Care Board of California, Department of Consumer
22 Affairs, filed the Second Amended Accusation No. 1H 2009 721 against Melissa A. Adams,
23 R.C.P. (Respondent), before the Respiratory Care Board.

24 2. On or about September 26, 2005, the Respiratory Care Board (Board) issued
25 Respiratory Care Practitioner License No. 24691 to Respondent. Respiratory Care Practitioner
26 License No. 24691 was in full force and effect at all times relevant to the charges brought herein.
27 Respiratory Board Practitioner's License No. 24691 will expire on November 30, 2012, unless
28 renewed. A true and correct copy of Respondent's license history is set forth in Exhibit 1 to the

1 separate accompanying “Default Decision Evidence Packet.”¹

2 3. On or about June 25, 2010, Stephanie M. Aguirre, an employee of the Board, served
3 by certified mail a true and correct copy of Accusation No. 1H 2009 721, Statement to
4 Respondent, Notice of Defense (two copies), Request for Discovery, and Government Code
5 sections 11507.5, 11507.6, and 11507.7 to Respondent’s address of record with the Board, which
6 was 404 East Balboa Blvd., Newport Beach, CA 92661.² (Exh. 2.)

7 4. On or about June 3, 2011, Stephanie M. Aguirre, an employee of the Board, served by
8 certified mail a true and correct copy of the First Amended Accusation No. 1H 2009 721,
9 Statement to Respondent, Notice of Defense (two copies), Request for Discovery, and
10 Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent’s address of record
11 with the Board, which was P.O. Box 878 Highland, CA 92346. (Exh. 3.)

12 5. On or about January 20, 2012, Stephanie M. Aguirre, an employee of the Board,
13 served by certified mail a true and correct copy of the Second Amended Accusation No. 1H 2009
14 721, Statement to Respondent, Notice of Defense (two copies), Request for Discovery, and
15 Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent’s address of record
16 with the Board, which was P.O. Box 878 Highland, CA 92346. (Exh. 4.)

17 6. Service of the Accusation and the First and Second Amended Accusations were
18 effective as a matter of law under the provisions of Government Code section 11505, subdivision
19 (c).

20 7. Government Code section 11506 states, in pertinent part:

21 “(c) The respondent shall be entitled to a hearing on the merits if the
22 respondent files a notice of defense, and the notice shall be deemed a specific
23 denial of all parts of the accusation not expressly admitted. Failure to file a
24

25 ¹ The Exhibits referred to herein, which are true and correct copies of the originals, are
26 contained in the separate accompanying “Default Decision Evidence Packet” and are identified as
“Exh.” followed by the specific exhibit number. The Default Decision Evidence Packet is hereby
incorporated by reference as if fully set forth herein.

27 ² Respondent’s address was updated to P.O. Box 878 Highland, CA 92346. The
28 subsequent documents were served to the new address of record.

1 notice of defense shall constitute a waiver of respondent's right to a hearing,
2 but the agency in its discretion may nevertheless grant a hearing."

3 8. Respondent filed a Notice of Defense in response to each Accusation within 15 days
4 after service upon her of the Accusation, the First Amended Accusation and the Second Amended
5 Accusation. (Exhs. 5, 6 and 7.)

6 9. On or about October 18, 2011, the Office of Administrative Hearing scheduled the
7 administrative hearings in this matter for February 24, 2012, at 9:00 a.m., in the San Diego Office
8 of Administrative Hearings, and a Notice of Hearing was timely served to Respondent at her
9 updated address on P.O. Box 878 Highland, CA 92346. (Exh. 8.)

10 10. On February 24, 2012, Complainant's attorney and expert witness appeared before
11 Administrative Law Judge Mary Agnes Madajewski (the ALJ). Respondent failed to Appear.
12 The ALJ found that the Board's jurisdiction over Respondent was proper and she failed to appear
13 at the administrative hearing. (Declaration of Deputy Attorney Lori Forcucci, Exh. 9.)
14 Complainant's expert witness's testimony is submitted by way of Declaration. (Declaration of
15 Salomay Corbolay, RRT-NPS, Ed.D., Exh. 10.)

16 11. California Government Code section 11520 states, in pertinent part:

17 "(a) If the respondent either fails to file a notice of defense or to appear at
18 the hearing, the agency may take action based upon the respondent's express
19 admissions or upon other evidence and affidavits may be used as evidence
20 without any notice to respondent."

21 12. Pursuant to its authority under Government Code section 11520, the Board finds
22 Respondent is in default. The Board will take action without further hearing and, based on
23 Respondent's express admissions by way of default and the evidence before it, contained in
24 Exhibits 1 through 10, finds that the allegations in Second Amended Accusation No. 1H- 2009-
25 721 are true.

26 13. The Respiratory Care Board further finds that pursuant to Business and Professions
27 Code section 3753.5, the costs of investigation and enforcement of the case prayed for in the
28 Accusation total \$13,922.50, based on the Declaration of Costs contained in Exhibit 11.

1 14. Section 3750 of the Code states:

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

5 “. . .”

6 “(d) Conviction of a crime that substantially relates to the qualifications,
7 functions, or duties of a respiratory care practitioner. The record of conviction
8 or a certified copy thereof shall be conclusive evidence of the conviction.

9 “. . .”

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

11 “(g) Conviction of a violation of any of the provisions of this chapter or
12 of any provision of Division 2 (commencing with Section 500), or violating, or
13 attempting to violate, directly or indirectly, or assisting in or abetting the
14 violation of, or conspiring to violate any provision or term of this chapter or of
15 any provision of Division 2 (commencing with Section 500).

16 “. . .

17 “(p) A pattern of substandard care.”

18 15. Section 3750.5 of the Code states:

19 “In addition to any other grounds specified in this chapter, the board may
20 deny, suspend, place on probation, or revoke the license of any applicant or
21 licenseholder who has done any of the following:

22 “(a) Obtained, possessed, used, or administered to himself or herself in
23 violation of law, or furnished or administered to another, any controlled
24 substances as defined in Division 10 (commencing with Section 11000) of the
25 Health and Safety Code, or any dangerous drug as defined in Article 2
26 (commencing with Section 4015) of Chapter 9, except as directed by a licensed
27 physician and surgeon, dentist, podiatrist, or other authorized health care
28 provider.

1 “(b) Used any controlled substance as defined in Division 10
2 (commencing with Section 11000) of the Health and Safety Code, or any
3 dangerous drug as defined in Article 2 (commencing with Section 4015) of
4 Chapter 9 of this code, or alcoholic beverages, to an extent or in a manner
5 dangerous or injurious to himself or herself, or to others, or that impaired his or
6 her ability to conduct with safety the practice authorized by his or her license.

7 “. . .”

8 16. Respondent is subject to disciplinary action under section 3750.5, subdivision (a), of
9 the Code, and California Code of Regulations, title 16, section 1399.370, subdivision (a), in that
10 she possessed and used a controlled substance as set forth in Exhibit 4, in that on or about
11 November 22, 2009, a police officer responded to a call in Newport Beach, California regarding a
12 loud party. Upon entering the room, the officer observed a “line” of what he recognized to be
13 cocaine, a rolled dollar bill, and Respondent’s California driver license. The officer discovered,
14 in Respondent’s purse, a make-up compact which contained a small zip-lock baggie with a white
15 solid substance that field tested positive for cocaine. A credit card with respondent’s name on it
16 was also found inside the purse, and Respondent admitted to ownership of the compact, but
17 denied ownership of the cocaine. Upon questioning Respondent reported that the last time she
18 used cocaine was “a week ago,” but also said that she had snorted approximately two lines of
19 cocaine on November 22, 2009.

20 17. Respondent is further subject to disciplinary action under section 3750.5, subdivision
21 (b) as set forth in Exhibit 4, in that she used a controlled substance, to wit, cocaine, to the extent
22 or in a manner dangerous or injurious to herself or others, or that impairs her ability to safely
23 practice as a Respiratory Care Practitioner, as more particularly described in paragraph 16, above.

24 18. Respondent is subject to disciplinary action under section 3750.5, subdivision (a), of
25 the Code, and California Code of Regulations, title 16, section 1399.370, subdivisions (a) and (c),
26 in that she possessed and used a controlled substance as set forth in Exhibit 4, in that she has been
27 convicted of crimes substantially related to the qualifications, functions or duties of a respiratory
28 care practitioner. On or about January 3, 2012, Respondent was convicted of driving under the

1 influence of alcohol, in violation of Vehicle code section 23152, subdivision (a). Respondent was
2 sentenced to three years probation, and one day of custody in county jail, fines and restitution,
3 among other terms.

4 19. Respondent is subject to disciplinary action under section 3750, subdivision (f), of the
5 Code, in that she respondent was negligent in her care and treatment of multiple patients.
6 Respondent committed negligence in her care and treatment of patients J.M., R.L., S.M., D.B.,
7 E.P., D.D., B.L., G.P., B.B., I.K., L.R., A.B., C.C., G.D., J.C., and E.S., which included, but was
8 not limited to, the following:

9 (a) During the night shift on or about March 3-4, 2010, Respondent failed to assess
10 and document every 2-4 hours patient J.M.'s BIPAP therapy.

11 (b) During the night shift on or about March 3-4, 2010, Respondent failed to
12 document that she gave patient R.L. the 03:00 a.m. treatment of 2.5 mg Albuterol Sulfate
13 which was ordered to be given every 4 hours.

14 (c) During the night shift on or about March 3-4, 2010, Respondent failed to
15 document that she gave patient S.M. the 03:00 a.m. treatment of 2.5 mg Albuterol Sulfate
16 which was ordered to be given every 4 hours.

17 (d) During the night shift on or about March 3-4, 2010, Respondent failed to
18 document that she gave patient D.B. the 03:00 a.m. treatment of 2.5 mg Albuterol Sulfate.

19 (e) During the night shift on or about March 3-4, 2010, Respondent failed to
20 document that she started a new order for 0.63 mg. Levalbuterol (Xopenex) which was
21 ordered to be given every 4 hours to patient E.P.

22 (f) During the night shift on or about March 3-4, 2010, Respondent failed to assess
23 and document every 2-4 hours patient D.D.'s BIPAP therapy.

24 (g) During the night shift on or about March 3-4, 2010, Respondent failed to
25 administer the 03:00 a.m. breathing treatment of 2.5 mg Albuterol Sulfate and 0.5 mg/2.5
26 mg. Ipratropium Bromide to patient B.L.

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1 (h) During the night shift on or about March 4-5, 2010, Respondent administered to
2 patient B.L. the prescribed breathing treatment of Fluticasone/Salmeterol 250/50 (Advair
3 Diskus) one and one-half hour before the medication was due.

4 (i) During the evening shift on or about March 5, 2010, Respondent failed to
5 document that she checked patient G.P.'s ventilator every two hours as ordered.

6 (j) During the evening shift on or about March 5, 2010, Respondent failed to
7 administer a CPT treatment to patient B.B. which was due shortly after, or during the time
8 the hand-held nebulizer (HHN) was administered.

9 (k) During the night shift on or about March 11-12, 2010, Respondent failed to
10 administer the 2100 (9:00 p.m.) breathing treatment of Fluticasone/Salmeterol 250/50 MDI
11 (Advair) to patient I.K.

12 (l) During the night shift on or about March 11-12, 2010, Respondent failed to
13 administer the 23:00 (11:00 p.m.) breathing treatment of 0.31 mg. Levalbuterol HCl to
14 patient L.R.

15 (m) During the night shift on or about March 11-12, 2010, Respondent failed to
16 administer the 03:00 a.m. breathing treatment of 1.25 mg. Levalbuterol HCl (Xopenex) to
17 patient A.B.

18 (n) During the night shift on or about March 11-12, 2010, Respondent failed to
19 timely administer a breathing treatment to patient C.C. when she administered the breathing
20 treatment at 23:22 (11:22 p.m.) that was due at 19:00 (7:00 p.m.)

21 (o) During the night shift on or about March 11-12, 2010, Respondent failed to
22 document the reason why she did not administer the breathing treatment of 1.25 mg
23 Levalbuterol and 400 mg. Mucomyst to patient G.D.

24 (p) During the night shift on or about March 11-12, 2010, Respondent failed to
25 timely administer a breathing treatment of 1.25 mg Levalbuterol and 400 mg. Mucomyst to
26 patient G.D. when she administered the breathing treatment at 23:30 (11:30 p.m.) that was
27 due at 19:00 (7:00 p.m.)

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1 (q) During the night shift on or about March 11-12, 2010, Respondent failed to
2 administer the 05:30 a.m. breathing treatment of 1.25 mg Levalbuterol and 400 mg.
3 Mucomyst to patient G.D.

4 (r) During the night shift on or about March 11-12, 2010, Respondent administered
5 a breathing treatment to patient J.C. at 19:35 (7:35 p.m.) but noted in the billing record that
6 the treatment was given at 23:15 (11:15 p.m.)

7 (s) During the night shift on or about March 11-12, 2010, Respondent failed to
8 administer the 05:00 a.m. breathing treatment of 0.63 mg. Levalbuterol and CPT treatment
9 to patient J.C.

10 (t) During the night shift on or about March 11-12, 2010, Respondent failed to
11 document the breathing treatment she administered at 23:03 (11:03 p.m.) to patient E.S. but
12 billed for the treatment.

13 (u) During the night shift on or about March 11-12, 2010, Respondent failed to
14 administer the 05:00 a.m. breathing treatment of 1.25 mg. Levalbuterol to patient E.S.

15 (Exh. 10, Declaration of Expert.)

16 20. Respondent is further subject to disciplinary action under section 3750, subdivision
17 (p), of the Code, in that Respondent engaged in a pattern of substandard care, as set forth in
18 Exhibits 4 and 10, and described in paragraph 19, above.

19 21. Respondent is subject to disciplinary action under section 3750, subdivision (g), of
20 the Code, in that Respondent violated provisions or portions of the Respiratory Care Act as set
21 forth in Exhibits 4 and 10 and described in paragraphs 19 through 20, above.

22 22. Respondent is subject to disciplinary considerations in aggravation of the above-
23 stated allegations, in that when she submitted her application for licensure a Respiratory Care
24 Practitioner on or about June 5, 2005, she revealed that on or about August 25, 2000, she was
25 convicted of violating Vehicle Code section 10851(a), unlawful driving or taking a vehicle. On
26 or about July 29, 2005, the Board sent Respondent a warning letter informing her that should
27 future violations of the Respiratory Care Practice Act occur, the Board will use the information

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1 obtained regarding the prior conviction as aggravating evidence in any future disciplinary
2 proceedings, including penalty actions.

3 DETERMINATION OF ISSUES

4 1. Based on the foregoing findings of fact, Respondent Melissa A. Adams, R.C.P., has
5 subjected her Respiratory Care Practitioner License No. 24691 to discipline.

6 2. The Board has jurisdiction to adjudicate this case by default.

7 3. Pursuant to its authority under California Government Code section 11520, and based
8 on the evidence before it, the Board hereby finds that the charges and allegations contained in the
9 Second Amended Accusation No. 1H 2009 721, and the findings of fact contained in paragraphs
10 1 through 22 above, and each of them, separately and severally, are true and correct.

11 4. Pursuant to its authority under California Government Code section 11520, and by
12 reason of the Findings of Fact contained in paragraphs 1 through 3 above, and Determination of
13 Issues 1 through 3, above, the Board hereby finds that Respondent Melissa A. Adams, R.C.P., has
14 subjected her Respiratory Care Practitioner License No. 24691 to disciplinary action under Code
15 sections 3750, subdivisions (d), (f), (g), (p); Code section 3750.5, subdivisions (a) and (b);
16 3750.5, subdivision (b), and California Code of Regulations, title 16, section 1399.370,
17 subdivisions (a) and (c), in that she possessed and used a controlled substance, she used
18 controlled substances and dangerous drugs in a manner dangerous to herself or others; she has
19 been convicted of crimes substantially related to the qualifications, functions or duties of a
20 respiratory care practitioner; she was negligent in her care and treatment of multiple patients;
21 engaged in a pattern of substandard care; and violated provisions or portions of the Respiratory
22 Care Act.

23 5. The Board is authorized to revoke Respondent's Respiratory Care Practitioner
24 License based upon Findings of Fact 1 through 22 and Determination of Issues 1 through 4.

25 6. Revocation is the appropriate discipline based on Determination of Issues 1 through
26 5.

27 7. Respondent is liable to the Board for costs of investigation and prosecution in the
28 amount of \$13,922.50 (Exhibit 11).

