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7
8 **BEFORE THE**
RESPIRATORY CARE BOARD
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 1H 2012 250

11 **JOHNNY LAWRENCE AGUILAR**
12 **36702 Olive Street**
13 **Newark, CA 94560**

A C C U S A T I O N

14 **Respiratory Care Practitioner License No.**
15 **25457**

16 Respondent.

17 Complainant alleges:

18 PARTIES

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

22 2. On or about August 17, 2006, the Board issued Respiratory Care Practitioner License
23 Number 25457 to Johnny Lawrence Aguilar (Respondent). The Respiratory Care Practitioner
24 License was in full force and effect at all times relevant to the charges brought herein and will
25 expire on August 31, 2013, unless renewed.

1 JURISDICTION

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

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

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

10 6. Section 3750 of the Code states:
11 "The board may order the denial, suspension or revocation of, or the imposition of
12 probationary conditions upon, a license issued under this chapter, for any of the following causes:

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

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

19 7. Section 3755 of the Code states:
20 "The board may take action against any respiratory care practitioner who is charged with
21 unprofessional conduct in administering, or attempting to administer, direct or indirect respiratory
22 care. Unprofessional conduct includes, but is not limited to, repeated acts of clearly
23 administering directly or indirectly inappropriate or unsafe respiratory care procedures, protocols,
24 therapeutic regimens, or diagnostic testing or monitoring techniques, and violation of any
25 provision of Section 3750. The board may determine unprofessional conduct involving any and
26 all aspects of respiratory care performed by anyone licensed as a respiratory care practitioner."
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1 COST RECOVERY

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

3 "In any order issued in resolution of a disciplinary proceeding before the board, the board or
4 the administrative law judge may direct any practitioner or applicant found to have committed a
5 violation or violations of law or any term and condition of board probation to pay to the board a
6 sum not to exceed the costs of the investigation and prosecution of the case. A certified copy of
7 the actual costs, or a good faith estimate of costs where actual costs are not available, signed by
8 the official custodian of the record or his or her designated representative shall be prima facie
9 evidence of the actual costs of the investigation and prosecution of the case."

10 9. Section 3753.7 of the Code states:

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

14 10. Section 3753.1 of the Code states:

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

18 FACTS

19 11. In October 2011, Respondent was employed as a respiratory care practitioner at
20 Kaiser Permanente Hospital (KPH) in Hayward, California. He worked his scheduled shift on
21 October 6, 2011 from 7:00 p.m. until 7:30 a.m. on October 7, 2011. He was assigned to provide
22 respiratory care and treatment to patients in the Transitional Care Unit (TCU) of the hospital, and
23 was provided with a cellular telephone to respond to calls from hospital staff.

24 12. On October 6, 2011, Respondent was assigned to care for Patient A.,¹ a 76 year old
25 male who was admitted to KPH on October 2, 2011. Patient A. had a history of diabetes with end
26 stage renal disease. He presented to Kaiser with ischemia on his left foot and also suffered with

27 ¹ Initials are used to protect patient privacy. The patient's name will be disclosed upon a
28 request for discovery.

1 obstructive sleep apnea (OSA), chronic obstructive pulmonary disease (COPD), and atrial
2 fibrillation.

3 13. During the evening of October 6, 2011, Patient A. was scheduled to be placed on
4 Bipap under the CPAP mode. On that date at 2245 hours (10:45 p.m.), Respondent charted that
5 Patient A. was attached to a Bipap machine under the CPAP mode, and documented his
6 respiratory rate. All documented values charted by Respondent indicated that Patient A. was
7 properly connected, and was tolerating the CPAP well.

8 On October 6, 2011 from 10:45 p.m. until the end of his shift on October 7, 2011 at 7:30
9 a.m., Respondent did not chart that he provided any care to Patient A., nor did Respondent chart
10 that he assessed Patient A. during that time frame.

11 14. On October 6, 2011, between 10:45 p.m. and October 7, 2011 at 6:45 a.m., Patient
12 A.'s pulmonary condition began to deteriorate, and the TCU Registered Nurse (RN) made
13 repeated attempts to telephone Respondent on his assigned cell phone but was unsuccessful. At
14 about 1:30 a.m., the TCU RN contacted the RCP shift supervisor who telephoned Respondent
15 unsuccessfully. As the RCP shift supervisor proceeded towards TCU to care for the patient, he
16 ran into Respondent and informed Respondent that he was needed in TCU right away to assess
17 Patient A. The shift supervisor also informed Respondent that he had been unable to telephone
18 him and that he should check his cell phone.

19 15. The RCP shift supervisor observed Respondent telephone the TCU RN and heard
20 Respondent talk to the RN instead of going to TCU. Respondent then left the room.

21 16. A few hours later, the RCP shift supervisor received another telephone call from TCU
22 regarding the RN's inability to reach Respondent to assess Patient A. The shift supervisor again
23 informed Respondent that he needed to go back to TCU to assess Patient A.

24 17. On October 7, 2011 at approximately 6:45 a.m., a Rapid Response Team was called
25 to TCU for Patient A., who required immediate endotracheal intubation and was transferred to the
26 Intensive Care Unit (ICU) for a higher level of care.

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1 FIRST CAUSE FOR DISCIPLINE

2 (Negligence)

3 18. Respondent’s failure to assess Patient A. more than once during a twelve hour shift,
4 his lack of communication with staff and failure to be accessible to Patient A. is an extreme
5 departure from the standard of practice for a respiratory care practitioner and is in violation of
6 code section 3750(f) [negligence.]

7 SECOND CAUSE FOR DISCIPLINE

8 (Unprofessional Conduct)

9 19. Paragraphs 12 through 17 are incorporated herein.

10 20. Respondent’s failure to be accessible to Patient A. in light of his knowledge of Patient
11 A.’s worsening condition is an extreme departure from the standard of practice and constitutes
12 unprofessional conduct in violation of code section 3755.

13 PRAYER

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

- 16 1. Revoking or suspending Respiratory Care Practitioner License Number 25457, issued
17 to Johnny Lawrence Aguilar;
- 18 2. Ordering Johnny Lawrence Aguilar to pay the Respiratory Care Board the costs of the
19 investigation and enforcement of this case, and if placed on probation, the costs of probation
20 monitoring; and
- 21 3. Taking such other and further action as deemed necessary and proper.

22
23 DATED: June 6, 2013

24 Original Signed by Liane Freels for:
25 STEPHANIE NUNEZ
26 Executive Officer
27 Respiratory Care Board of California
28 Department of Consumer Affairs
State of California
Complainant

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