

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

In the Matter of the Accusation Against:

Case No. 7002014000000

DAVID JOSEPH BERMUDO
12636 Homepark Drive
Whittier, CA 90606

Respiratory Care Practitioner License No. 28495

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 August 25, 2016.

It is so ORDERED August 15, 2016.

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

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

11 **In the Matter of the Accusation Against:**

Case No. 7002014000000

12 **DAVID JOSEPH BERMUDO, R.C.P.**

**STIPULATED SETTLEMENT
AND DISCIPLINARY ORDER**

13 12636 Homepark Drive
14 Whittier, CA 90606

15 Respiratory Care Practitioner's License No. RCP 28495

16 Respondent.

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 Care
22 Board of California. She brought this action solely in her official capacity and is represented in
23 this matter by Kamala D. Harris, Attorney General of the State of California, by Cindy M. Lopez,
24 Deputy Attorney General.

25 2. Respondent David Joseph Bermudo, R.C.P. ("Respondent") is representing himself in
26 this proceeding and has chosen not to exercise his right to be represented by counsel.

27 3. On or about February 26, 2009, the Respiratory Care Board of California issued
28 Respiratory Care Practitioner's License No. RCP 28495 to David Joseph Bermudo, R.C.P.

1 (Respondent). The License was in full force and effect at all times relevant to the charges
2 brought in Accusation No. 7002014000000 and will expire on June 30, 2014, unless renewed.

3 JURISDICTION

4 4. Accusation No. 7002014000000 was filed before the Respiratory Care Board (Board),
5 Department of Consumer Affairs, and is currently pending against Respondent. The Accusation
6 and all other statutorily required documents were properly served on Respondent on November
7 13, 2014. Respondent timely filed his Notice of Defense contesting the Accusation.

8 5. A copy of Accusation No. 7002014000000 is attached as exhibit A and incorporated
9 herein by reference.

10 ADVISEMENT AND WAIVERS

11 6. Respondent has carefully read, and understands the charges and allegations in
12 Accusation No. 7002014000000. Respondent has also carefully read, and understands the effects
13 of this Stipulated Settlement and Disciplinary Order.

14 7. Respondent is fully aware of his legal rights in this matter, including the right to a
15 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
16 his own expense; the right to confront and cross-examine the witnesses against him; the right to
17 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
18 the attendance of witnesses and the production of documents; the right to reconsideration and
19 court review of an adverse decision; and all other rights accorded by the California
20 Administrative Procedure Act and other applicable laws.

21 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
22 every right set forth above.

23 CULPABILITY

24 9. Respondent understands and agrees that the charges and allegations in Accusation
25 No. 702014000000, if proven at a hearing, constitute cause for imposing discipline upon his
26 Respiratory Care Practitioner's License.

27 10. For the purpose of resolving the Accusation without the expense and uncertainty of
28 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual

1 basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest
2 those charges.

3 11. Respondent agrees that his Respiratory Care Practitioner's License No. 28495 is
4 subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in
5 the Disciplinary Order below.

6 CONTINGENCY

7 12. The parties agree that this Stipulated Settlement and Disciplinary Order shall be
8 submitted to the Board for its consideration in the above-entitled matter and, further, that the
9 Board shall have a reasonable period of time in which to consider and act on this Stipulated
10 Settlement and Disciplinary Order after receiving it. By signing this stipulation, respondent fully
11 understands and agrees that she may not withdraw her agreement or seek to rescind this
12 stipulation prior to the time that the Board considers and acts upon it.

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

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

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

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

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

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

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

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

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

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

1 tolled.

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

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

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

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

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

19 5. **EMPLOYMENT REQUIREMENT** Respondent shall be employed a minimum of
20 24 hours per week as a respiratory care practitioner for a minimum of 2/3 of his probation period.

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

26 6. **NOTICE TO EMPLOYER** Respondent shall be required to inform all current and
27 subsequent employers, directors, managers, supervisors, and contractors during the probation
28 period, of the discipline imposed by this decision by providing his current and subsequent human

1 resources personnel, directors, managers, supervisors, and contractors with a complete copy of
2 the decision and order, and the Accusation in this matter prior to the beginning of or returning to
3 employment or within three (3) days from each change in a supervisor or director.

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

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

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

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

- 20 • For the period covering January 1st through March 31st, reports are to be completed
21 and submitted between April 1st and April 7th.
- 22 • For the period covering April 1st through June 30th, reports are to be completed and
23 submitted between July 1st and July 7th.
- 24 • For the period covering July 1st through September 30th, reports are to be completed
25 and submitted between October 1st and October 7th.
- 26 • For the period covering October 1st through December 31st, reports are to be
27 completed and submitted between January 1st and January 7th.

28 Respondent is ultimately responsible for ensuring his employer(s) submits complete and

1 timely reports.

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

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

11 9. **COST RECOVERY** Respondent shall pay to the Board a sum not to exceed the
12 costs of the investigation and prosecution of this case, for a total of \$4547.50. That sum shall be
13 and shall be paid in full directly to the Board, in equal quarterly payments, within 48 months from
14 the effective date of this decision. Cost recovery will not be tolled.

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

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

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

28 The filing of bankruptcy by the Respondent shall not relieve the Respondent of his

1 responsibility to reimburse the Board for these costs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 If Respondent tests positive for a banned substance (including testing positive for ETG), the
7 Board will contact the Respondent and his employers, human resources personnel, directors,
8 managers, supervisors, and/or contractors and notify them of the positive test, including the
9 substance(s) and levels detected. Thereafter, the Board may contact the specimen collector,
10 laboratory, Respondent, treating physician, treatment provider and/or support group facilitators to
11 determine whether the positive test is evidence of prohibited use. If the Board determines the
12 positive test is not evidence of prohibited use, the Board shall inform the Respondent and others
13 previously contacted, that the positive test was not a violation of his probationary order.

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

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

25 Respondent shall ensure that he is not in the presence of or in the same physical location as
26 individuals who are using illegal substances, even if Respondent is not personally ingesting the
27 drug(s). Respondent shall also ensure he is not ingesting or using any product that contains trace
28 amounts of alcohol or any other banned substances (including, but not limited to: cold/flu

1 medications, cough syrups, diet pills/products, mouth wash, skin care or hygiene products,
2 perfumes, poppy seeds, dessert or any foods, etc...).

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

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

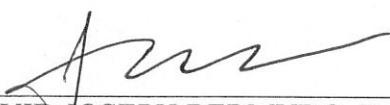
10 **18. SURRENDER OF LICENSE** Following the effective date of this decision, if
11 Respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy
12 the terms and conditions of probation, he may request the voluntary surrender of his license. The
13 Board reserves the right to evaluate Respondent's request and to exercise its discretion whether or
14 not to grant the request or to take any other action deemed appropriate and reasonable under the
15 circumstances. Upon formal acceptance of the surrender, within 15 calendar days Respondent
16 shall deliver his wallet and wall certificate to the Board or its designee and he shall no longer
17 practice respiratory care. Respondent will no longer be subject to the terms and conditions of
18 probation and surrender of Respondent's license shall be deemed disciplinary action. If
19 Respondent re-applies for a respiratory care license, the application shall be treated as a petition
20 for reinstatement of a revoked license.

21 ACCEPTANCE

22 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the
23 stipulation and the effect it will have on my Respiratory Care Practitioner's License No. 28495. I
24 enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and
25 intelligently, and agree to be bound by the Decision and Order of the Respiratory Care Board.

26 DATED: _____
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4/5/16

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DAVID JOSEPH BERMUDO, R.C.P.
Respondent

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ENDORSEMENT

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

Dated: 8.1.16

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
E. A. JONES III
Supervising Deputy Attorney General



CINDY M. LOPEZ
Deputy Attorney General
Attorneys for Complainant

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Exhibit A
Accusation No. 7002014000000