

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

In the Matter of the Statement of Issues
Against:

CHRISTOPHER DEL COPPOCK,

Respondent.

Case No. 1H-2007-656

OAH No. 2008050192

DECISION AFTER NONADOPTION

Donald P. Cole, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on August 1, 2008, in San Diego, California.

Michael S. Cochrane, Deputy Attorney General, represented complainant Stephanie Nunez, Executive Officer of the Respiratory Care Board, State of California.

Christopher Del Coppock, respondent, represented himself and was present throughout the hearing.

The matter was submitted on August 1, 2008.

The proposed decision of the Administrative Law Judge was considered by the Respiratory Care Board (the Board) on November 20, 2008. After due consideration thereof, the Board declined to adopt said proposed decision and thereafter on November 21, 2008 issued an Order of Non-Adoption and subsequently on December 29, 2008 issued an order Fixing Date for Submission of written arguments. Written argument having been received from complainant and respondent and the time for filing written arguments in this matter having expired, and the entire record, including the transcript of said hearing having been read and considered, the Board pursuant to Section 11517 of the Government Code and Section 3753.5 (b) of the Business and Professions Code hereby makes the following decision:

FACTUAL FINDINGS

Jurisdictional Matters

1. On or about October 26, 2007, Christopher Del Coppock (respondent) submitted to the Respiratory Care Board an application for a respiratory care practitioner (RCP) license. On January 23, 2008, the board denied respondent's application on the basis of the criminal conviction described below. On or about February 4, 2008, respondent requested a hearing.

2. On April 23, 2008, Stephanie Nunez, (complainant), the Board's executive director, signed the statement of issues in her official capacity. The statement of issues and other jurisdictional documents were served on respondent. Respondent signed and filed a notice of defense. On April 25, 2008, complainant served on respondent a notice of hearing.

3. On August 1, 2008, the record was opened, jurisdictional documents were received, sworn testimony was given, documentary evidence was introduced, closing arguments were presented, and the matter was submitted.

The Penal Code Section 149 Conviction

4. On August 1, 2002, respondent entered a plea of nolo contendere and was convicted of one count of violating Penal Code section 149, assault by a public officer, a felony. On November 12, 2002, a sentencing hearing was held. Respondent was placed on formal probation for five years. The terms of probation included service of 365 days in jail and payment of restitution in the amount of \$5,000. The court permitted respondent to serve his jail term in a home detention/work furlough program.

5. Respondent's conviction arose out of an incident that occurred on or about October 23, 1997, when respondent and his partner, David Cochrane, Los Angeles Police Department (LAPD) police officers, contacted a homeless person in the "Skid Row" area of downtown Los Angeles. The evidence presented at the hearing as to the circumstances underlying the conviction may be summarized as follows:

a. In an attachment submitted to his RCP license application, respondent stated:

"My partner and I picked up a homeless man from downtown Los Angeles, skid row area, who was causing a disturbance. We made the decision to remove him from the area to take care of the problem. My partner was driving the car that night and I was the passenger. We drove him approximately one mile away to . . . another homeless area. We let him out of the car, at which time my partner unhandcuffed the man and shoved him. We told him to leave the area and not to come back. The man cut his hand while

climbing a fence to get out of the area. This was the extent of the occurrence.”

b. Respondent omitted from the above statement, but testified at the hearing, that Cochrane drew his service revolver and pointed it at the victim during the incident.

c. Respondent testified that neither he nor Cochrane beat the victim. Respondent added, however, that even though he never struck the victim, he was nonetheless guilty because he was present, and thus culpable. “As far as the law goes, yes, I was guilty.” Respondent continued at page 24, lines 18-19 of the transcript to say, “I do take responsibility for my part in the incident.” At page 26, lines 2-4 he stated, “I’m not trying to make light of the situation. It did happen. I should have used better judgment and not gone along with what we did, but it did happen.” Absent evidence to the contrary, respondent’s testimony is credited. Since an assault does not as a matter of law require that the victim be “beaten,”¹ respondent’s testimony that he did not beat the victim did not constitute an impermissible attempt to impeach his conviction, but instead constituted permissible “evidence of extenuating circumstances by way of mitigation or explanation . . .” (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449.)

Respondent’s Credibility and Other Character Issues

6. Complainant raised several issues with regard to respondent’s credibility and character.

a. LAPD records were presented pertaining to alleged misconduct by respondent in connection with the arrests on November 6, 1997, of Abner Thomas and Charles Robinson. The proffered records pertained to the alleged planting of rock cocaine by respondent and/or Cochrane on the persons of Thomas and/or Robinson, the false arrest of those individuals, the preparation of false police reports, and the presentation of false testimony in court. The documents submitted at the hearing were somewhat confusing and possibly inconsistent.

In a letter to Thomas dated October 26, 1999, regarding “the incident that occurred on November 6, 1997,” LAPD wrote, “It appears that misconduct occurred involving the officers and the allegations [of misconduct] were sustained.” The letter does not state what specific misconduct was sustained as to respondent specifically. In an August 12, 2003, “Final Penalty Recommendation,” allegations that respondent planted rock cocaine on Robinson, arrested Robinson without cause, and completed a false arrest

¹ For example, Penal Code section 149 provides that a public officer who either “assaults” or “beats” an individual is guilty of the offense.

report, were sustained. In another, undated document (AGO 0175), it appears that numerous allegations were sustained against respondent regarding Robinson's false arrest, the creation of false reports, the making of false statements, and the giving of false testimony, but not explicitly the planting of rock cocaine on Robinson. In a letter to Robinson dated September 13, 2000, LAPD wrote that findings that Robinson had been "falsely arrested, that arrest reports prepared by the officers contained inaccurate information, and that one officer provided false testimony against you in court" were sustained. Again, no explicit reference to the planting of drugs was made. In a letter to respondent dated September 15, 2000, LAPD wrote in general terms that the "complaint investigation" against him "was adjudicated as Sustained."

Documents were presented at the hearing concerning the LAPD investigation underlying the above findings. The information contained in these documents did not necessarily or clearly support the findings. For example, though Robinson told LAPD that he did not have cocaine in his possession at the time of his arrest, he did not explicitly claim that cocaine was planted on him, and, even assuming such a claim could be inferred from his statement, Robinson did not state which officer was the one who planted the drug. It is thus unknown how LAPD came to the conclusion that respondent planted rock cocaine on Robinson. Further, the documentation reflects that findings were sustained against respondent and Cochrane not on the basis of direct evidence that either of them had planted cocaine, but instead primarily on the basis of collateral matters such as alleged discrepancies as to the precise time and location that Thomas, Robinson and other individuals were arrested on the evening in question. The significance of these discrepancies was difficult to discern from the records.

In February 1999, respondent was suspended from duty. On April 5, 1999, prior to the completion of a pending Board of Rights hearing, respondent resigned from LAPD.

Respondent did not file any sort of formal defense (such as a request for a Skelly hearing)² to contest the charges against him, and the decisions sustaining the allegations against respondent were thus made by LAPD in his absence.

Thomas filed a civil suit against the City of Los Angeles. The City settled the suit.

No percipient witnesses testified at the administrative hearing with regard to respondent's alleged misconduct, nor did any LAPD personnel testify to explain the precise nature of the findings sustained against

² *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194.

respondent, or the factual support for or rationale behind those findings. At the hearing, respondent steadfastly denied that he had planted or falsified evidence against any arrestees.

b. LAPD records were presented pertaining to alleged misconduct by respondent in connection with the arrest on September 18, 1998, of Stephen Rodgers, who claimed that respondent and Cochrane planted evidence on him to secure a conviction. LAPD sustained the allegations, apparently on the bases that: (a) a superior court judge, in granting a writ of habeas corpus, concluded that the officers had fabricated evidence; (b) the City of Los Angeles settled a civil suit filed by Rodgers in connection with the incident; and (c) respondent had “been the subject of five additional investigations that contained similar sustained allegations.” However, no evidence as to the underlying facts of the Rodgers incident was proffered at the administrative hearing, nor was documents presented as to the superior court ruling or the settlement. It was also not established that allegations of misconduct had been sustained against respondent in five other cases. The evidence was insufficient to establish that respondent engaged in misconduct in connection with the arrest of Rodgers.

c. LAPD records were presented pertaining to alleged misconduct by respondent in connection with the arrest of several other individuals. The “recommended action” in these cases was “incomplete investigation” or “insufficient evidence to adjudicate.” From this it is inferred that LAPD did not reach a conclusion that respondent had engaged in any misconduct. It was not established that respondent engaged in misconduct in these matters.³

d. In respondent’s narrative statement submitted with his license application, he stated that he left LAPD in 1999 “because of other reasons not surrounding” the incident leading to his Penal Code section 149 conviction. Respondent elaborated that he left LAPD because he was tired of everything that had been going on there, not because of any specific cases. He was tired of dealing with internal affairs and false allegations, and his partner had already been fired in connection with a separate matter. Respondent no longer wanted to be a police officer. From his testimony, it may be inferred that respondent left LAPD in part because of the investigation of his alleged planting of evidence on arrestees. Such a motivation is not, however,

³ It is certainly troubling that numerous allegations of serious misconduct were made against respondent during his tenure with LAPD. However, licensing decisions cannot properly be made based on unproved allegations or innuendo, no matter how numerous or how serious. Further, the misconduct here in question was never alleged in the statement of issues as a basis for denying respondent’s application, and it would thus be improper to deny a license to respondent on the basis thereof, even if the evidence presented at the hearing established such misconduct.

inconsistent with his statement that he did not leave because of the assault conviction.

Respondent also stated in his narrative statement that he had never been in “any kind of trouble,” either before or after the incident leading to his assault conviction. Respondent explained during his testimony that what he meant by this comment was that he had had no other arrests or “trouble with the law” apart from the criminal case. Respondent testified in a calm, non-defensive manner in this regard, and his testimony was not inherently incredible. For example, given the nature of the questions posed on the license application, it was reasonable for respondent to have had criminal prosecution and licensing proceedings in mind when he stated he had never before “been in trouble.”

Accordingly, respondent’s statements and testimony were not clearly inconsistent and did not call into question his credibility.

Background, Rehabilitation, and Present Circumstances

7. Respondent testified that after his resignation from LAPD in 1999, he went back to school to become a limited x-ray technician, and received a certificate and licensure in that field in 2000 or 2001. He worked in that capacity for five years, from 2001 to 2006. In July 2006, he returned to school at Concorde Career College to pursue a career in respiratory care. He engaged in several internships during the course of his training. He received an A.A. degree in November 2007, and passed his state licensing examination the following month. He stated, “I love the medical field, and taking care of patients.” He seeks licensure in respiratory care in order to have the opportunity to become more involved with patients, especially those who are critically ill.

8. Respondent’s probation was terminated on November 12, 2007. Four days later, he had his conviction expunged pursuant to Penal Code section 1203.4. Respondent testified that he finished his probation without incident, and paid restitution as ordered by the court. Absent any evidence to the contrary, it is inferred that respondent complied with all terms and conditions of his probation.

9. Respondent has been married since October 2000. He and his wife have two children, a boy (eight years of age) and a girl (five years of age). The family lives in Rancho Cucamonga. Respondent’s son goes to a parochial school in Upland; respondent has had some involvement with his son’s school and in his son’s Cub Scout troop. Respondent’s wife is a nurse.

10. Except for internships during school, Respondent did not work during the time he pursued his respiratory care training. By way of his written arguments dated January 5, 2009, Respondent claims to be currently employed in the medical field by the same employer that he worked for before he pursued his respiratory care degree.

11. Respondent testified in a sincere, honest, credible, non-defensive manner.

12. The following documents were submitted on respondent's behalf:

a. In a letter July 21, 2008, letter, Melissa Hale, a Riverside County Deputy Public Defender who has known respondent for three years, and whose children "attend school together" and are best friends, described respondent as a "morally upstanding individual," whom she has "found . . . to be trustworthy, kind, generous, intelligent, and an incredibly loving individual," one whom "I can always count on for help." Hale described respondent's substantial involvement with their children's school and his assistance in the Cub Scout program their two sons attend. Hale expressed great surprise when respondent confided in her of "his situation with the Los Angeles Superior Court and the active case that he had there." Hale places respondent in the "category" of those "who have had an unfortunate incident, but who learn from it and never have a problem again." Hale believes respondent has "made the decision to change" his life and has been rehabilitated.

b. Three individuals employed by Golden West Medical Center, where respondent once worked, wrote letters on his behalf, and all spoke highly of him.⁴

c. In a July 28, 2008, letter, Joe Monsale, an instructor at Concorde Career College, wrote that respondent "exemplified excellent behavior and professionalism in the classroom environment," during the two courses that respondent took from Monsale. Monsale found respondent eager to learn and noted that he had "helped his fellow classmates in holding study group sessions outside of class time." Monsale also observed the "good rapport" that respondent developed with staff and patients in the clinical setting. Respondent's cumulative GPA at Concorde was 3.73.

d. In an undated, unsigned letter,⁵ registered nurse Wendi Hafner, a co-worker of respondent's wife, wrote that she and her husband are good friends of respondent and his wife. Hafner did not appear to have first-hand knowledge of respondent's professional qualifications or abilities, but spoke highly of him on a personal level, referring to him as "always on time, ready for new experiences, dependable, responsible, very intelligent, and one of our dearest friends."

⁴ The text of two of the three letters, though purportedly written by different individuals, was almost identical. On that basis, it is inferred that one person wrote both letters, though that does not necessarily mean that they don't reflect the actual opinions of both individuals.

⁵ The document appears to be a print out of an email attachment, transmitted on July 31, 2008.

13. In the summer of 1998, respondent and Cochrane, under circumstances involving a substantial risk to their own lives, saved the life of a man who intended to kill himself by jumping off a sign attached to a freeway overpass. Both respondent and his partner were awarded a Bureau Commendation for their efforts.

Costs

14. A Declaration of Costs established that counsel for complainant spent 41.75 hours preparing for the hearing in this matter, and that the board was charged \$158 per hour for counsel's services. Total costs were claimed in the amount of \$6,596.50. It is found that these costs were reasonable.

LEGAL CONCLUSIONS

The Burden and Standard of Proof

1. In the absence of a statute to the contrary, the burden of proof is on the applicant for a license or permit. (*Breakzone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205, 1224-1225; *Southern California Jockey Club, Inc. v. California Horse Racing Board* (1950) 36 Cal.2d 167, 177.)

2. The standard of proof in this proceeding is a preponderance of the evidence. (Evid. Code, § 115.) "The phrase 'preponderance of evidence' is usually defined in terms of probability of truth, e.g., 'such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth.' (BAJI (8th ed.), No. 2.60.)" (1 Witkin, Evidence, Burden of Proof and Presumptions § 35 (4th ed 2000).)

Applicable Statutes

3. Business and Professions Code section 3750 provides in pertinent part:

"The board may order the denial . . . of . . . a license issued under this chapter for any of the following causes:

* * *

(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner."

4. Business and Professions Code section 3752.5 provides:

"For purposes of Division 1.5 (commencing with Section 475), and this chapter, a crime involving bodily injury or attempted bodily injury shall be

considered a crime substantially related to the qualifications, functions, or duties of a respiratory care practitioner.”

5. California Code of Regulations, title 16, section 1399.370, provides in pertinent part:

“For the purposes of denial . . . 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.”

Analysis

6. Based on the foregoing authority, the board may deny the issuance of a respiratory care practitioner license when an applicant has been convicted of a substantially-related crime, i.e., one that evidences present or potential unfitness to perform the functions authorized by a license or in a manner inconsistent with the public health, safety, or welfare. Substantially-related crimes include specifically those that: (a) involve bodily injury or attempted bodily injury; and (b) involve violations of any provisions of the Respiratory Care Act. (Bus. & Prof. Code, §§ 3750, subd. (d) and 3752.5; Cal. Code Regs., tit. 16, § 1399.370, subd. (a).)

7. Respondent’s Penal Code section 149 conviction involved bodily injury and thus was substantially related within the meaning of the above authority. Accordingly, the board is legally authorized to deny respondent a license. Whether in fact such denial is appropriate must next be considered.

Neither the statute nor the regulations provides guidance as to the circumstances under which denial of a license on the basis of a conviction for a substantially-related crime is warranted. The board’s disciplinary guidelines, while not directly addressing this issue, do provide guidance as to some of the factors that administrative law judges may consider “in providing for discipline in their proposed decisions.” In this regard:

EVIDENCE IN AGGRAVATION OF PENALTY

1. Patient’s trust, health, safety or well-being was jeopardized.
2. Patient’s or employer’s trust violated (i.e. theft, embezzlement, fraud, etc...).
3. Violations involved or were in the presence of children.
4. History of prior discipline.

5. Patterned behavior: Respondent has a history of one or more violations or convictions related to the current violation(s).
6. Perjury on official Board forms.
7. Violent nature of crime or act.
8. Violation of Board Probation.
9. Failure to provide a specimen for testing in violation of terms and conditions of probation.

EVIDENCE IN MITIGATION OF PENALTY

1. Recognition by Respondent of his or her wrongdoing and demonstration of corrective action to prevent recurrence.
2. Respondent was forthcoming and reported violation or conviction to the Board.
3. A substantial amount of time since the violation or conviction (generally 4 or more years) occurred.
4. No prior criminal or disciplinary history.”

More generally, the guidelines provide:

“The Respiratory Care Board of California (Board) licenses the practice of respiratory care in the State of California. The Board is mandated to protect the public from unauthorized and unqualified practice of respiratory care and from unprofessional conduct by persons licensed to practice respiratory care. The Board has the authority to issue or deny, suspend, and revoke licenses to practice respiratory care as provided in the Respiratory Care Practice Act and respiratory care regulations (Bus. & Prof. Code, §§ 475, 490, 3718, 3733, 3750, 3750.5, 3754, 3754.5, 3755, and Cal. Code Regs., tit. 16, §§ 1399.303, 1399.370, 1399.374).

The Board’s mission is to protect and serve the consumer by enforcing the Respiratory Care Practice Act and its regulations, expanding the delivery and availability of services, and promoting the profession by increasing public awareness of respiratory care as a profession and supporting the development and education of all respiratory care practitioners.

The Board strives to ensure that only eligible, qualified, capable and competent individuals are licensed, and to expeditiously respond to all consumer complaints by efficiently and effectively investigating every complaint and pursuing disciplinary action in all appropriate cases. Finally, the Board strives to ensure that appropriate post-disciplinary monitoring occurs.”

8. Based on the guidelines, the ultimate inquiry in this case is whether the granting of a respiratory care therapist license to respondent would, because of his conviction, be inconsistent with the public health, safety, and welfare.

It is concluded that the granting of a respiratory care therapist license to respondent, upon appropriate probationary terms and conditions, would be consistent with the public health, safety, and welfare.

Without question, the crime of which respondent was convicted was serious, especially in that it involved action by a person vested with public authority against a very vulnerable member of society. The Board takes these matters seriously as the average patient seen by respiratory care therapists are also vulnerable. Though respondent's victim did most likely suffer injury, the incident occurred over ten years ago, and respondent's testimony reflected sufficient acceptance of responsibility on his part with regard to the incident. In addition, he successfully completed probation, and his conviction was expunged. Moreover, the incident in question was the only criminal conviction, there being no other criminal conviction before or since that incident. Further, in the years since the incident occurred, respondent has had fairly steady employment (other than when he was in school); he successfully completed an educational program in respiratory therapy, and passed a licensing examination. He is now married; he and his wife have two children, and respondent seems at present to have a stable family life. He seems sincere in his desire to help people by serving in the respiratory care field. Finally, the crime occurred within the unique context of his employment as a police officer, an occupation which presents stresses and pressures of a unique nature. While this observation in no way excuses respondent from his criminal conduct, it is relevant to an assessment of whether he is likely to re-offend, now that he is completely removed from the environment in which his criminal conduct occurred.

9. By reason of Factual Findings 1 through 13, and Legal Conclusions 1 through 8, cause exists to deny respondent a respiratory care therapist license; however such license shall be granted, and immediately placed on probation under appropriate terms and conditions.

10. Business and Professions Code section 3753.5 provides in part:

“(a) 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. A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the official custodian of the record or his or her designated representative shall be prima facie evidence of the actual costs of the investigation and prosecution of the case.

(b) The costs shall be assessed by the administrative law judge and shall not be increased by the board; however, the costs may be imposed or increased by the board if it does not adopt the proposed decision of the case”

Business and Professions Code section 3753.7 provides:

“For purposes of this chapter, costs of prosecution shall include attorney general or other prosecuting attorney fees, expert witness fees, and other administrative, filing, and service fees.”

As noted in the disciplinary guidelines, the Board seeks recovery of costs because the burden of payment of costs of investigation and prosecution of disciplinary cases should fall upon those whose proven conduct has required investigation. Factual Findings 1 through 13 and Legal Conclusions 1-8 support the conclusion that the circumstances surrounding respondent’s conviction required investigation by the Board. It has been found that respondent, by virtue of his criminal conviction, violated the Business and Professions Code.

In accordance with *Zuckerman v. State Board of Chiropractors*, the Board must exercise its discretion to reduce or eliminate costs so that respondents are not deterred from exercising their right to a hearing. *Zuckerman v. State Board of Chiropractors (2002) 29 Cal.4th 32, 45*. The Board must therefore entertain four considerations.

The first is whether respondent used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed. Respondent here provided evidence which resulted in the reduction in the severity of the discipline. By way of evidence noted in Factual Findings 5(c), respondent demonstrated that he recognized and took responsibility for his part in the wrongdoing. He was additionally forthcoming and disclosed the conviction on his application for licensure. Finally, he demonstrated that a substantial amount of time has passed since the conviction. In accordance with the Board’s Disciplinary Guidelines, this evidence is sufficient to mitigate the penalty. Respondent has therefore successfully satisfied the first *Zuckerman* consideration.

The next consideration is whether respondent has raised a colorable challenge to the proposed discipline. The same analysis in the previous paragraph also demonstrates that the second consideration is also satisfied.

The third consideration is whether respondent will be financially able to make later payments. Though respondent did not present direct financial information, he provided in paragraph three of his written arguments on non-adoption that he is currently employed. The record also demonstrates that respondent’s wife continues to be employed as a registered nurse. Therefore, this information provides sufficient evidence that respondent is financially able to make payments.

The final consideration is whether the Board's investigation and prosecution was disproportionately large relative to the nature of the misconduct. The evidence here supports the finding that the scope of the investigation and prosecution and their associated costs were reasonable and therefore were not disproportionate relative to the misconduct. Therefore, under the guidance provided by *Zuckerman* the Board hereby reduces the costs to \$6,000.

ORDER

The application of respondent Christopher Del Coppock for licensure as a respiratory care practitioner is hereby granted; subject to the determination by the board that respondent has met all licensing requirements. Respondent's license shall immediately be revoked, the order of revocation shall immediately be stayed, and respondent shall immediately be placed on probation for a period of three years on the following conditions:

1. OBEY ALL LAWS

Respondent shall obey all laws, whether federal, state, or local. The Respondent shall also obey all regulations governing the practice of respiratory care in California.

Respondent shall notify the Board in writing within 14 days of any incident resulting in his/her arrest, or charges filed against, or a citation issued against, Respondent.

2. QUARTERLY REPORTS

Respondent shall file quarterly reports of compliance under penalty of perjury, on forms to be provided, to the probation monitor assigned by the Board. Omission or falsification in any manner of any information on these reports shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license.

Quarterly report forms will be provided by the Board. Respondent is responsible for contacting the Board to obtain additional forms if needed. Quarterly reports are due for each year of probation and the entire length of probation as follows:

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

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

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

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

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

3. PROBATION MONITORING PROGRAM

Respondent shall comply with requirements of the Board appointed probation monitoring program, and shall, upon reasonable request, report to or appear to a local venue as directed.

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

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

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

4. PROBATION MONITORING COSTS

All costs incurred for probation monitoring during the entire probation shall be paid by the Respondent. The monthly cost may be adjusted as expenses are reduced or increased. Respondent's failure to comply with all terms and conditions may also cause this amount to be increased.

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

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

Respondent understands that failure to submit costs timely is a violation of probation and submission of evidence demonstrating financial hardship does not preclude the Board from pursuing further disciplinary action. However, Respondent understands

that by providing evidence and supporting documentation of financial hardship it may delay further disciplinary action.

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

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

5. EMPLOYMENT REQUIREMENT

Respondent shall be employed a minimum of 24 hours per week as a respiratory care practitioner for a minimum of 2/3 of his/her probation period.

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

6. NOTICE TO EMPLOYER

Respondent shall be required to inform his/her employer, and each subsequent employer during the probation period, of the discipline imposed by this decision by providing his/her supervisor and director and all subsequent supervisors and directors with a copy of the decision and order, and the Statement(s) of Issues or Accusation(s) in this matter prior to the beginning of or returning to employment or within 14 days from each change in a supervisor or director.

If Respondent is employed by or through a registry, Respondent shall make each hospital or establishment to which he/she is sent aware of the discipline imposed by this decision by providing his/her direct supervisor and administrator at each hospital or establishment with a copy of this decision, and the Statement(s) of Issues or Accusation(s) in this matter prior to the beginning of employment. This must be done each time there is a change in supervisors or administrators.

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

Respondent shall execute a release authorizing the Board or any of its representatives to review and obtain copies of all employment records and discuss and

inquire of the probationary status with any of Respondent's supervisors or directors.

7. CHANGES OF EMPLOYMENT OR RESIDENCE

Respondent shall notify the Board, and appointed probation monitor, in writing, of any and all changes of employment, location, and address within 14 days of such change. This includes but is not limited to applying for employment, termination or resignation from employment, change in employment status, change in supervisors, administrators or directors.

Respondent shall also notify his/her probation monitor AND the Board IN WRITING of any changes of residence or mailing address within 14 days. P.O. Boxes are accepted for mailing purposes; however the Respondent must also provide his/her physical residence address as well.

8. TOLLING FOR OUT-OF-STATE RESIDENCE OR PRACTICE

Periods of residency or practice outside California, whether the periods of residency or practice are temporary or permanent, will toll the probation period but will not toll the cost recovery requirement, nor the probation monitoring costs incurred. Travel out of California for more than 30 days must be reported to the Board in writing prior to departure. Respondent shall notify the Board, in writing, within 14 days, upon his/her return to California and prior to the commencement of any employment where representation as a respiratory care practitioner is/was provided.

9. VALID LICENSE STATUS

Respondent shall maintain a current, active and valid license for the length of the probation period. Failure to pay all fees and meet CE requirements prior to his/her license expiration date shall constitute a violation of probation.

10. VIOLATION OF PROBATION

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

11. COMPLETION OF PROBATION

Upon successful completion of probation, Respondent's license shall be fully restored.

12. COST RECOVERY

Respondent shall pay to the Board a sum not to exceed the costs of the investigation and prosecution of this case. That sum shall be \$6,000 and shall be paid in full directly to the Board, in equal quarterly payments within 24 months from the effective date of this decision. Cost recovery will not be tolled.

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

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

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

The filing of bankruptcy by the respondent shall not relieve the Respondent of his responsibility to reimburse the Board for these costs.

13. SUPERVISOR QUARTERLY REPORTS

Supervisor Quarterly Reports of Performance are due for each year of probation and the entire length of probation from each employer, as follows:

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

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

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

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

Respondent is ultimately responsible for ensuring his/her employer(s) submits complete and timely reports. Failure to ensure each employer submits complete and timely reports shall constitute a violation of probation.

14. DIRECT SUPERVISION

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

This Decision shall become effective on _____.

DATED: _____

LARRY L. RENNER
President