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

12 In the Matter of the Statement of Issues Against:

Case No. 1H 2008 319

13 JANICE CABASAL AQUINO
3040 E. Cecelia Street
14 West Covina, California 91789

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

15 Respondent.

16
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
18 above-entitled proceedings that the following matters are true:

19 PARTIES

20 1. Stephanie Nunez (Complainant) is the Executive Officer of the
21 Respiratory Care Board of California (Board). She brought this action solely in her official
22 capacity and is represented in this matter by Edmund G. Brown Jr., Attorney General of the State
23 of California, by Elaine Gyurko, Senior Legal Analyst.

24 2. Janice Cabasal Aquino (Respondent) is representing herself in this
25 proceeding and has chosen not to exercise her right to be represented by counsel.

26 3. On or about May 16, 2008, Respondent submitted an application for
27 licensure to the Board. On or about November 24, 2008, the Board denied Respondent's
28 application. On or about December 11, 2008, Respondent requested a hearing.

1 JURISDICTION

2 4. Statement of Issues No. 1H 2008 319 was filed before the Board and is
3 currently pending against Respondent. The Statement of Issues and all other statutorily required
4 documents were properly served on Respondent on March 23, 2009. Respondent timely filed her
5 Notice of Defense contesting the Statement of Issues. A copy of Statement of Issues No. 1H
6 2008 319 is attached as Exhibit 1 and incorporated herein by reference.

7 ADVISEMENT AND WAIVERS

8 5. Respondent has carefully read and understands the charges and allegations
9 in Statement of Issues No. 1H 2008 319. Respondent has also carefully read and understands the
10 effects of this Stipulated Settlement and Disciplinary Order.

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

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

20 CULPABILITY

21 8. Respondent admits the truth of each and every charge and allegation in
22 Statement of Issues No. 1H 2008 319.

23 9. Respondent agrees that her Respiratory Care Practitioner License is
24 subject to denial, and she agrees to be bound by the Board's imposition of discipline as set forth
25 in the Disciplinary Order below.

26 CONTINGENCY

27 10. This stipulation shall be subject to approval by the Board. Respondent
28 understands and agrees that the Board's staff and counsel for Complainant may communicate

1 probation period. The frequency and location of testing will be determined by the Board.

2 At all times, Respondent shall fully cooperate with the Board or any of its
3 representatives, and shall, when directed, appear for testing as requested, and submit to such tests
4 and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other
5 controlled substances.

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

11 Failure to submit to testing or appear as requested by any Board representative for
12 testing, as directed, shall constitute a violation of probation, and shall result in the filing of an
13 accusation and/or a petition to revoke probation against Respondent's respiratory care
14 practitioner license.

15 3. ABSTENTION FROM USE OF DRUGS AND ALCOHOL Respondent
16 shall completely abstain from the possession or use of alcohol, controlled substances, dangerous
17 drugs, any and all other mood altering drugs, substances and their associated paraphernalia,
18 except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented
19 medical treatment.

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

24 Respondent shall ensure that she is not in the presence of or in the same physical
25 location as individuals who are using illegal substances, even if Respondent is not personally
26 ingesting the drug(s).

27 Any positive result that registers over the established laboratory cutoff level shall
28 constitute a violation of probation, and shall result in the filing of an accusation and/or a petition

1 to revoke probation against Respondent's respiratory care practitioner license.

2 Respondent also understands and agrees that any positive result that registers over
3 the established laboratory cutoff level shall be reported to each of Respondent's employers.

4 4. RESTRICTION OF PRACTICE Respondent may not be employed or
5 function as a member of a respiratory care management or supervisory staff during the entire
6 length of probation. This includes lead functions.

7 Respondent is prohibited from working in home care unless it is under direct
8 supervision and personal observation.

9 5. SUPERVISOR QUARTERLY REPORTS Supervisor Quarterly Reports
10 of Performance are due for each year of probation and the entire length of probation from each
11 employer, as follows:

12 For the period covering January 1st through March 31st, reports are to be completed and
13 submitted between April 1st and April 7th. For the period covering April 1st through June 30th,
14 reports are to be completed and submitted between July 1st and July 7th. For the period covering
15 July 1st through September 30th, reports are to be completed and submitted between October 1st
16 and October 7th. For the period covering October 1st through December 31st, reports are to be
17 completed and submitted between January 1st and January 7th. Respondent is ultimately
18 responsible for ensuring her employer(s) submits complete and timely reports. Failure to ensure
19 each employer submits complete and timely reports shall constitute a violation of probation.

20 6. OBEY ALL LAWS Respondent shall obey all laws, whether federal,
21 state, or local. Respondent shall also obey all regulations governing the practice of respiratory
22 care in California.

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

25 7. QUARTERLY REPORTS Respondent shall file quarterly reports of
26 compliance under penalty of perjury, on forms to be provided to the probation monitor assigned
27 by the Board. Omission or falsification in any manner of any information on these reports shall
28 constitute a violation of probation, and shall result in the filing of an accusation and/or a petition

1 to revoke probation against Respondent's respiratory care practitioner license.

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

5 For the period covering January 1st through March 31st, reports are to be
6 completed and submitted between April 1st and April 7th. For the period covering April 1st
7 through June 30th, reports are to be completed and submitted between July 1st and July 7th. For
8 the period covering July 1st through September 30th, reports are to be completed and submitted
9 between October 1st and October 7th. For the period covering October 1st through December 31st,
10 reports are to be completed and submitted between January 1st and January 7th.

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

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

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

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

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

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

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

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

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

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

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

20 10. EMPLOYMENT REQUIREMENT Respondent shall be employed a
21 minimum of 24 hours per week as a respiratory care practitioner for a minimum of 2/3 of her
22 probation period.

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

28 11. NOTICE TO EMPLOYER Respondent shall be required to inform her

1 employer, and each subsequent employer during the probation period, of the discipline imposed
2 by this decision by providing her supervisor and director and all subsequent supervisors and
3 directors with a copy of the decision and order, and the Statement of Issues in this matter prior to
4 the beginning of or returning to employment or within 14 days from each change in a supervisor
5 or director.

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

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

15 Respondent shall execute a release authorizing the Board or any of its
16 representatives to review and obtain copies of all employment records and discuss and inquire of
17 the probationary status with any of Respondent's supervisors or directors.

18 12. CHANGES OF EMPLOYMENT OR RESIDENCE Respondent shall
19 notify the Board, and appointed probation monitor, in writing, of any and all changes of
20 employment, location, and address within 14 days of such change. This includes, but is not
21 limited to, applying for employment, termination or resignation from employment, change in
22 employment status, change in supervisors, administrators or directors.

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

27 13. SURRENDER OF LICENSE Following the effective date of this
28 decision, if Respondent ceases practicing due to retirement, health reasons or is otherwise unable

1 to satisfy the terms and conditions of probation, she may request the voluntary surrender of her
2 license. The Board reserves the right to evaluate Respondent's request and to exercise its
3 discretion whether or not to grant the request or to take any other action deemed appropriate and
4 reasonable under the circumstances. Upon formal acceptance of the surrender, within 15
5 calendar days, Respondent shall deliver her wallet and wall certificate to the Board or its
6 designee and she shall no longer practice respiratory care. Respondent will no longer be subject
7 to the terms and conditions of probation and the surrender of Respondent's license shall be
8 deemed disciplinary action. If Respondent re-applies for a respiratory care license, the
9 application shall be treated as a petition for reinstatement of a revoked license.

10 14. COST RECOVERY Respondent shall pay to the Board a sum not to
11 exceed the costs of the investigation and prosecution of this case. That sum shall be \$1,291.00
12 and shall be paid in full directly to the Board, in equal quarterly payments, within 12 months
13 from the effective date of this decision. Cost recovery will not be tolled.

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

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

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

27 The filing of bankruptcy by the Respondent shall not relieve the Respondent of
28 her responsibility to reimburse the Board for these costs.

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

8 16. VALID LICENSE STATUS Respondent shall maintain a current, active
9 and valid license for the length of the probation period. Failure to pay all fees and meet
10 Continuing Education requirements prior to her license expiration date shall constitute a
11 violation of probation.

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

19 18. COMPLETION OF PROBATION Upon successful completion of
20 probation, Respondent's license shall be fully restored.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order, and I fully understand the terms and conditions and other matters contained therein. I understand the effect this stipulation will have on my Respiratory Care Practitioner License. I enter into this Stipulated Settlement voluntarily, knowingly and intelligently and agree to be bound by the Disciplinary Order and Decision of the Respiratory Care Board.

DATED: June 2, 2009.

Original signed by: _____
JANICE CABASAL AQUINO
Respondent

ENDORSEMENT

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

DATED: July 1, 2009.

EDMUND G. BROWN JR., Attorney General
of the State of California
PAUL C. AMENT
Supervising Deputy Attorney General

Original signed by: _____
ELAINE GYURKO
Senior Legal Analyst

Attorneys for Complainant

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

In the Matter of the Statement of Issues Against:

Case No. 1H 2008 319

JANICE CABASAL AQUINO
3040 E. Cecelia Street
West Covina, California 91789

Respondent.

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Respiratory Care Board, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on September 24, 2009.

It is so ORDERED September 10, 2009.

Original signed by: _____

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