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

In the Matter of the Ex Parte Petition for Interim Order of Suspension Against: JUAN J. CASTANEDA, R.C.P., Respiratory Care Practitioner's License Number RCP 29408, Respondent.	Case No. 7002015000762 OAH No. 2015100038

EX PARTE INTERIM ORDER OF SUSPENSION

On October 6, 2015, Petitioner Stephanie Nunez, Executive Director of the Respiratory Care Board of California, presented an ex parte petition, pursuant to Business and Professions Code section 494, for an interim order of suspension of respiratory care practitioner's license number 29408 issued to Juan J. Castaneda (Respondent).

Christina L. Sein, Deputy Attorney General, represented Petitioner.

The pleadings were served and due notice of the time and place for hearing were given. Respondent failed to appear. Ms. Sein represented that she had spoken to Respondent shortly prior to the time the hearing was to commence and that Respondent told her he would not appear and that no one should wait for him.

The matter was assigned to Ralph B. Dash, Administrative Law Judge, Office of Administrative hearings at Los Angeles California, who read and considered the ex parte petition, the declarations and points and authorities filed in support thereof, and heard argument thereon. The Administrative Law Judge now issues the applied-for order and sets a noticed hearing for 20 days from the date of the issuance of this Order.

FINDINGS OF FACT

1. Stephanie Nunez made the ex parte petition in her official capacity as Executive Director of the Respiratory Care Board of California (Board).

2. At all times pertinent hereto, Respondent was and now is licensed by the Board as a respiratory care practitioner, license number 29408. Said license is in full force and effect and is due to expire on July 31, 2016.

3. At all times pertinent hereto, Respondent was employed at the Antelope Valley District Hospital (AVDH).

4. Respondent, who worked the night shift, was supposed to report for a shift change on the morning of April 30, 2015. He failed to do so. Respondent was discovered in the Pulmonary Lab of AVDH, lying supine on the floor with his head bent to one side. His feet were located in the bathroom and his body and head were in the lab area. A tourniquet was on Respondent's arm and a syringe containing approximately one-half cc of liquid was located on the floor next to him. There was dried blood on his arm and blood on the floor. He was not breathing, looked white, and appeared to be lifeless. A Code Blue was called.

5. As Respondent's head was turned to help facilitate taking a pulse, Respondent began to wake up. He was wearing a paper gown. Respondent was brought down to the Emergency Department where his clothes were removed and he was changed into a patient gown. Multiple bottles of propofol (brand name is Diprivan), as well as used syringes, needles and metallic flexible tubing that appeared to be a respiratory stylet, were found in his clothing. Propofol is a short-acting, intravenously administered hypnotic/amnestic agent. Its uses include the induction and maintenance of general anesthesia, sedation for mechanically ventilated patients, and procedural sedation. No healthcare provider lawfully prescribed propofol for Respondent's use.

6. Respondent was noted to have multiple track marks on the inside portion of his elbow and both ankles. He admitted to having abused propofol for at least a matter of weeks, and possibly months. Respondent admitted suicidal ideation (according to AVDH records he had this ideation "with a plan") for up to one year.

CONCLUSIONS OF LAW

1. Business and Professions Code section 494 provides, in pertinent part:

(a) A board or an administrative law judge sitting alone, as provided in subdivision (h), may, upon petition, issue an interim order suspending any licentiate or imposing license restrictions, including, but not limited to, mandatory biological fluid testing, supervision, or remedial training. The petition shall include affidavits that demonstrate, to the satisfaction of the board, both of the following:

(1) The licentiate has engaged in acts or omissions constituting a violation of this code or has been convicted of a crime substantially related to the licensed activity.

(2) Permitting the licentiate to continue to engage in the licensed activity, or permitting the licentiate to continue in the licensed activity without restrictions, would endanger the public health, safety, or welfare.

(b) No interim order provided for in this section shall be issued without notice to the licentiate unless it appears from the petition and supporting documents that serious injury would result to the public before the matter could be heard on notice.

3. Business and Professions Code section 3750.5 provides, in pertinent part:

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

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

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

4. Propofol is a dangerous drug as that term is used in Business and Professions Code section 3750.5, subdivisions (a) and (b).

5. Propofol is not a controlled substance as that term is used in Business and Professions Code section 3750.5, subdivisions (a) and (b).

6. As set forth in Findings 4 through 6, Respondent violated the provisions of Business and Professions Code section 3750.5, subdivision (a) in that, without the benefit of

a legitimate prescription from a healthcare provider, he possessed and administered propofol to himself.

7. As set forth in Findings 4 through 6, Respondent violated the provisions of Business and Professions Code section 3750.5, subdivision (b), in that he used propofol "to an extent or in a manner dangerous or injurious to himself" and that his "ability to conduct with safety the practice authorized by his . . . license" was impaired thereby.

8. Permitting Respondent to continue to engage in his licensed activity would endanger the public health, safety and welfare.

9. It appears from the petition and supporting documents that serious injury would result to the public before the matter could be heard on the 15 days' notice otherwise required by Business and Professions Code section 494, subdivision (b).

WHEREFORE, THE FOLLOWING ORDER is hereby made:

1. Pending a noticed hearing on the Petition for Interim Suspension Order, Respondent's respiratory care practitioner's license number 29408 is suspended.

2. During this period of suspension, Respondent shall not:

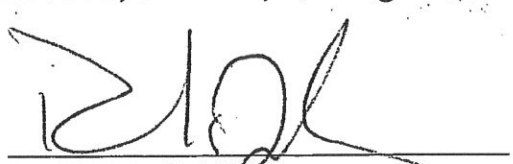
a. Practice or attempt to practice any aspect of respiratory care in the State of California.

b. Advertise, by any means, or hold himself out as practicing or available to provide respiratory care.

c. Do any other act, not specifically prohibited above, for which a respiratory care practitioner's license is required.

3. A noticed hearing is hereby set for October 28, 2015, at 9:00 a.m. at the Office of Administrative Hearings, 320 West Fourth Street, Suite 630, Los Angeles, California,

Date: 10-8-15



RALPH B. DASH
Administrative Law Judge
Office of Administrative Hearings