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

11 In the Matter of the Accusation Against:

Case No. 7002015000762

12 **JUAN J. CASTANEDA, RCP**
13 **44146 Fenhold Street**
Lancaster, CA 93535

DEFAULT DECISION
AND ORDER

14 **Respiratory Care Practitioner License No.**
15 **RCP 29408,**

[Gov. Code, §11520]

16 Respondent.

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18 **FINDINGS OF FACT**

19 1. On or about November 6, 2015, Complainant Stephanie Nunez, in her official
20 capacity as the Executive Officer of the Respiratory Care Board of California (Board),
21 Department of Consumer Affairs, filed Accusation No. 7002015000762 against Juan J.
22 Castaneda, RCP (Respondent) before the Board.

23 2. On or about November 4, 2009, the Board issued Respiratory Care Practitioner
24 License No. RCP 29408 to Respondent. The Respiratory Care Practitioner License was in full
25 force and effect at all times relevant to the charges brought herein and will expire on July 31,
26 2016, unless renewed. A certified copy of Respondent's Certificate of Licensure is attached as
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1 Exhibit A¹ in the separate accompanying Default Decision Evidence Packet and incorporated by
2 reference if fully set forth herein.

3 3. On or about October 8, 2015, an *ex parte* Interim Suspension Order was issued
4 based on the allegations contained in Accusation No. 7002015000762. A copy of the *ex parte*
5 Interim Suspension Order is attached as Exhibit B, and is incorporated herein by reference.

6 4. On or about October 30, 2015, following a noticed hearing, an Interim Suspension
7 Order was issued based on the allegations in Accusation No. 7002015000762, and remains in
8 effect. A copy of the Interim Suspension Order is attached as Exhibit C, and is incorporated
9 herein by reference.

10 5. On or about November 6, 2015, Tara Yoshikawa, an employee of the Board,
11 served by Regular and Certified Mail a copy of the Accusation No. 7002015000762, Statement to
12 Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5,
13 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is 44146
14 Fenhold Street, Lancaster, CA 93535. A copy of the Accusation, the related documents, and
15 Declaration of Service are attached as Exhibit D, and are incorporated herein by reference.²

16 6. Service of the Accusation was effective as a matter of law under the provisions of
17 Government Code section 11505, subdivision (c).

18 7. Government Code section 11506 states, in pertinent part:

19 "(c) The respondent shall be entitled to a hearing on the merits if the respondent files a
20 notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation
21 not expressly admitted. Failure to file a notice of defense shall constitute a waiver of
22 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

23 8. A Notice of Defense in answer to Accusation No. 7002015000762 was due from
24 Respondent within 15 days after service of the Accusation. To date, Respondent has not

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26 _____
27 ¹ The Exhibits referred to herein, which are true and correct copies of the originals, are
28 contained in the separate accompanying "Default Decision Evidence Packet."

1 submitted a Notice of Defense to the Board or its counsel of record in this matter. Respondent
2 has, therefore, waived his right to a hearing on the merits of Accusation No. 7002015000762.

3 9. A courtesy notice of default was served on Respondent by OnTrac overnight
4 courier on December 2, 2015. A copy of said notice is attached as Exhibit E, and is incorporated
5 herein by reference.

6 10. On or about December 4, 2015, the aforementioned Accusation No.
7 7002015000762, Statement to Respondent, Notice of Defense, Request for Discovery, and
8 Government Code sections, sent to Respondent via Certified Mail, were returned by the U.S.
9 Postal Service marked "NOT DELIVERABLE AS ADDRESSED, UNABLE TO FORWARD."
10 A copy of the Certified envelope returned by the post office is attached as Exhibit F, and is
11 incorporated herein by reference.

12 11. The aforementioned documents sent to Respondent via regular mail have not been
13 returned by the U.S. Postal Service.

14 12. The Declaration of Deputy Attorney General Christina L. Sein attesting to the
15 foregoing facts is attached as Exhibit G and is incorporated herein by reference.

16 13. Section 3710, subdivision (a), of the Code states, in pertinent part:

17 “(a) The Respiratory Care Board of California, hereafter referred to as the board, shall
18 enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act].”

19 14. Section 3718 of the Code states:

20 “The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as
21 provided in this chapter.”

22 15. Section 3750.5 of the Code states, in pertinent part:

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

26 “(a) Obtained, possessed, used, or administered to himself or herself in violation of law, or
27 furnished or administered to another, any controlled substances as defined in Division 10
28 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug as

1 defined in Article 2 (commencing with Section 4015) of Chapter 9, except as directed by a
2 licensed physician and surgeon, dentist, podiatrist, or other authorized health care provider, or
3 illegally possessed any associated paraphernalia.

4 “(b) Used any controlled substance as defined in Division 10 (commencing with
5 Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Article
6 2 (commencing with Section 4015) of Chapter 9 of this code, or alcoholic beverages, to an
7 extent or in a manner dangerous or injurious to himself or herself, or to others, or that
8 impaired his or her ability to conduct with safety the practice authorized by his or her
9 license.

10 “....”

11 16. Section 4022 of the Code states:

12 “Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self-use
13 in humans or animals, and includes the following:

14 “(a) Any drug that bears the legend: “Caution: federal law prohibits dispensing without
15 prescription,” “Rx only,” or words of similar import.

16 “(b) Any device that bears the statement: “Caution: federal law restricts this device to sale
17 by or on the order of a _____,” “Rx only,” or words of similar import, the blank to be filled in
18 with the designation of the practitioner licensed to use or order use of the device.

19 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
20 prescription or furnished pursuant to Section 4006.”

21 17. Section 3753.5, subdivision (a) of the Code states:

22 “In any order issued in resolution of a disciplinary proceeding before the board, the board
23 or the administrative law judge may direct any practitioner or applicant found to have committed
24 a violation or violations of law or any term and condition of board probation to pay to the board a
25 sum not to exceed the costs of the investigation and prosecution of the case. A certified copy of
26 the actual costs, or a good faith estimate of costs where actual costs are not available, signed by
27 the official custodian of the record or his or her designated representative shall be prima facie
28 evidence of the actual costs of the investigation and prosecution of the case.”

1 Accusation No. 7002015000762 and the related documents and Declaration of Service are
2 attached as Exhibit B.

3 3. The Board has jurisdiction to adjudicate this case by default.

4 4. Pursuant to its authority under California Government Code section 11520, and by
5 reason of the Findings of Fact contained in paragraphs 1 through 22, above, and Determination of
6 Issues 1, 2, and 3, above, the Respiratory Care Board finds that Respondent Juan J. Castaneda has
7 subjected his Respiratory Care Practitioner License No. 29408 to disciplinary action based upon
8 the following violations alleged in Accusation No. 7002015000762:

9 a. Obtained, Possessed, Used, or Administered a Dangerous Drug:

10 Respondent's license is subject to discipline pursuant to Code sections 3750.5, subdivision (a),
11 and 4022 in that he obtained, possessed, used, and/or administered to himself a dangerous drug –
12 propofol – during his work shift at his place of employment. See Exhibits F through L.

13 b. Use of a Dangerous Drug in a Dangerous Manner: Respondent's license

14 is subject to discipline pursuant to Code sections 3750.5, subdivision (b), and 4022 in that he used
15 a dangerous drug – propofol – to an extent or in a manner dangerous or injurious to himself, or to
16 others, and/or that impaired his ability to conduct with safety the practice authorized by his
17 license. See Exhibits F through L.

18 **ORDER**

19 **IT IS SO ORDERED** that Respiratory Care Practitioner License No. RCP 29408,
20 heretofore issued to Respondent Juan J. Castaneda, RCP, is revoked.

21 Respondent is ordered to reimburse the Respiratory Care Board the amount of \$15,932.50
22 for its investigative and enforcement costs. The filing of bankruptcy by Respondent shall not
23 relieve Respondent of his responsibility to reimburse the Board for its costs. Respondent's
24 Respiratory Care Practitioner License No. RCP 29408 may not be renewed or reinstated unless all
25 costs ordered under Business and Professions Code section 3753.5 have been paid.

26 If Respondent ever files an application for relicensure or reinstatement in the State of
27 California, the Board shall treat it as a petition for reinstatement of a revoked license.

28 Respondent must comply with all the laws, regulations and procedures for reinstatement of a

1 revoked license in effect at the time the petition is filed.

2 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
3 written motion requesting that the Decision be vacated and stating the grounds relied on within
4 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
5 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

6 This Decision shall become effective on April 20, 2016.

7 It is so ORDERED March 21, 2016.

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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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