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

In the Matter of the Accusation Against: **ARIC RAYMONDO BRIENO** **1633 E. Bianchi Road, Apt. 104** **Stockton, CA 95210** **Respiratory Care Practitioner License No. 29650** Respondent	Case No. 7002015000205 **DEFAULT DECISION AND ORDER** [Gov. Code §11520]

FINDINGS OF FACT

1. On or about November 14, 2014, Complainant Stephanie Nunez, in her official capacity as the Executive Officer of the Respiratory Care Board (Board) of California, Department of Consumer Affairs, filed Accusation No. 7002015000205 against Aric Raymondo Brieno (Respondent) before the Respiratory Care Board. A true and correct copy of the Accusation is attached as **Exhibit 1** in the separate accompanying "Default Decision Evidence Packet." [1]

2. On or about February 1, 2010, the Board issued Respiratory Care Practitioner License No. 29650 to Respondent. The Respiratory Care Practitioner License was in full force and effect

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

at all times relevant to the charges brought herein and expired on October 31, 2014[2]. A true and correct copy of the Certificate of Licensure is attached as **Exhibit 2** in the Default Decision Evidence Packet.

3. On or about November 14, 2014, an employee of the Complainant Agency served by Certified and First Class Mail a copy of the Accusation No. 7002015000205, Statement to Respondent, Request for Discovery, Notice of Defense, a copy of relevant Government Code Sections to Respondent's address of record with the Board, which was and is 1633 E. Bianchi Road, Apt. 104, Stockton, CA 95210.

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

The U.S. Postal Service website states that the certified mail delivery was not claimed. The certified mail envelope containing the Accusation was returned to the Board on January 26, 2015, stamped "Return to Sender Vacant Unable to Forward Return to Sender."[3] The Accusation served by regular mail was not returned to the Board. A true and correct copy of the certified mail envelope and Postal Service Track and Confirm print out is attached as **Exhibit 3** in the Default Decision Evidence Packet.

5. Government Code section 11506 states, in pertinent part:

"(c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation

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[2] Section 118, subdivision (b), of the Business and Professions Code states:

"The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground."

[3] The certified mail envelope containing the Accusation contained a second label marked "Notify Sender of New Address Brieno Aric 9931 Hyatt Resort Drive Apt 1537 San Antonio TX 78251." Respondent never changed his address of record to reflect the Texas address. The Postal Service left a notice at the Texas address which Respondent did not claim.

not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

Respondent failed to file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 7002015000205.

6. California Government Code section 11520 states, in pertinent part:

"(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent."

7. Certified copies of the State of Texas Department of State Health Services Notice of Violation and Agreed Order for Revocation are attached as **Exhibit 4** in the Default Decision Evidence Packet.

8. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on Respondent's express admissions by way of default and the evidence before it, contained in Exhibits 1, 2, 3, 4, and 5, finds that the allegations in Accusation No. 7002015000205 are true.

9. The Respiratory Care Board further finds that pursuant to Business and Professions Code section 3753.5, the costs of investigation and enforcement of the case prayed for in the Accusation total $870.00, based on the Certifications of Costs contained in **Exhibit 5**.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Aric Raymondo Brieno has subjected his Respiratory Care Practitioner License No. 29650 to discipline.

2. Pursuant to its authority under California Government Code section 11520, and based on the evidence before it, the Board hereby finds that the charges and allegations contained in Accusation No. 7002015000205, and the Findings of Fact contained in paragraphs 1 through 9, above, and each of them, separately and severally, are true and correct. A copy of the Accusation and the related documents and Declaration of Service are attached.

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

4. The Respiratory Care Board is authorized to revoke Respondent's Respiratory Care Practitioner License based upon the following violations alleged in Accusation No. 7002015000205:

A. On September 9, 2010, the Texas Department of State Health Services (TDSHS) issued an Agreed Order for Revocation of Respondent's respiratory care practitioner certificate. TDSHS investigated complaints about Respondent's practice and on July 28, 2010, TDSHS informed Respondent of a Notice of Violation.

B. The Notice of Violation alleged that on or about September 29, 2009, while practicing respiratory care at North Central Baptist Hospital in San Antonio, Texas, Respondent engaged in unethical conduct when he improperly obtained narcotic drugs from an Acudose machine without authorization. His act was alleged to be in violation of Texas Occupational Code (TOC) section 604.201(b)(3) which authorized TDSHS to take disciplinary action if the department determined that a certificate holder " is addicted to or has improperly obtained, possessed, used, or distributed a habit-forming drug or narcotic or is habitually intemperate in the use of alcoholic beverages." Revocation of Respondent's license certification was proposed for this violation. Also, Respondent failed to notify TDSHS of his change of mailing address in violation of 25 Texas Administrative Code section 140.212(1)(K).

C. On or about August 1, 2010, Respondent signed a Response to Notice of Violation, admitted the allegations in the Notice of Violation, and accepted the proposed action for revocation of his RCP certification.

D. Respondent's conduct and the action of the Texas Department of State Health Services constitute cause to discipline Respondent's license within the meaning of Business and Professions code sections 3750(g) , 3750(m) and 141 [discipline by another jurisdiction].

ORDER

IT IS SO ORDERED that Respiratory Care Practitioner License No. 29650, heretofore issued to Respondent Aric Raymondo Brieno, is revoked.

Respondent is ordered to reimburse the Respiratory Care Board the amount of $870.00 for its investigative and enforcement costs. The filing of bankruptcy by Respondent shall not relieve

Respondent of his responsibility to reimburse the Board for its costs. Respondent's Respiratory Care Practitioner License may not be renewed or reinstated unless all costs ordered under Business and Professions Code section 3753.5 have been paid.

If Respondent ever files an application for relicensure or reinstatement in the State of California, the Board shall treat it as a petition for reinstatement of a revoked license. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed.

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

This Decision shall become effective on March 20, 2015.

It is so ORDERED February 18, 2015.

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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Exhibit A

Accusation No. 7002015000205

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In the Matter of the Accusation Against**:** **ARIC RAYMONDO BRIENO** **1633 E. Bianchi Road, Apt. 104** **Stockton, CA 95210** **Respiratory Care Practitioner License No. 29650** Respondent.	Case No. 7002015000205 **A C C U S A T I O N**

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board (Board) of California, Department of Consumer Affairs.

2. On or about February 1, 2010, the Board issued Respiratory Care Practitioner License Number 29650 to Aric Raymondo Brieno (Respondent). The Respiratory Care Practitioner License was in full force and effect at all times relevant to the charges brought herein. Respiratory Care Practitioner License No. 29650 expired on October 31, 2014, and has not been renewed.

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JURISDICTION

3. This Accusation is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 3710 of the Code states: "The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act]."

5. Section 3718 of the Code states: "The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter."

6. Section 118, subdivision (b) of the Code states:

> "The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground."

7. Section 3750 of the Code states:

"The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

> "…"
>
> "(g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this chapter or of any provision of Division 2 (commencing with Section 500).

"(m) Denial, suspension, or revocation of any license to practice by another agency, state, or territory of the United States for any act or omission that would constitute grounds for the denial, suspension, or revocation of a license in this state."

8. Section 141 of the Code provides:

> "(a) For any licensee holding a license issued by a board under the jurisdiction of a department, a disciplinary action taken by another state, by any agency of the federal government, or by another country for any act substantially related to the practice regulated by the California license, may be ground for disciplinary action by the respective state licensing board. A certified copy of the record of the disciplinary action taken against the licensee by another state, an agency of the federal government, or by another country shall be conclusive evidence of the events related therein.
>
> "(b) Nothing in this section shall preclude a board from applying a specific statutory provision in the licensing act administered by the board that provides for discipline based upon a disciplinary action taken against the licensee by another state, an agency of the federal government, or another country."

COST RECOVERY

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

"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 or any term and condition of board probation 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."

10. Section 3753.7 of the Code states:

"For purposes of the Respiratory Care Practice Act, costs of prosecution shall include attorney general or other prosecuting attorney fees, expert witness fees, and other administrative, filing, and service fees."

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/ / /

11. Section 3753.1 of the Code states:

"(a) An administrative disciplinary decision imposing terms of probation may include, among other things, a requirement that the licensee probationer pay the monetary costs associated with monitoring the probation. "

FIRST CAUSE FOR DISCIPLINE

(Discipline, Denial, Suspension or Revocation Imposed by Another State)

12. Respondent has subjected his Respiratory Care Practitioner License No. 29650 to disciplinary action under sections 141, and/or 3750, as defined by section 3750, subdivisions (g) and 3750, subdivision (m) of the Code, in that Respondent's Respiratory Care Certification was revoked by the Texas Department of State Health Services, as more particularly alleged hereinafter:

13. On September 9, 2010, the Texas Department of State Health Services (TDSHS) issued an Agreed Order for Revocation of Respondent's respiratory care practitioner certificate. TDSHS investigated complaints about Respondent's practice and on July 28, 2010, TDSHS informed Respondent of a Notice of Violation.

14. The Notice of Violation alleged that on or about September 29, 2009, while practicing respiratory care at North Central Baptist Hospital in San Antonio, Texas, Respondent engaged in unethical conduct when he improperly obtained narcotic drugs from an Acudose machine without authorization. His act was alleged to be in violation of TOC section 604.201(b)(3) which authorized TDSHS to take disciplinary action if the department determined that a certificate holder " is addicted to or has improperly obtained, possessed, used, or distributed a habit-forming drug or narcotic or is habitually intemperate in the use of alcoholic beverages." Revocation of Respondent's license certification was proposed for this violation. Also, Respondent failed to notify TDSHS of his change of mailing address in violation of 25 TAC section 140.212(1)(K).

15. On or about August 1, 2010, Respondent signed a Response to Notice of Violation, admitted the allegations in the Notice of Violation, and accepted the proposed action for

revocation of his RCP certification. A copy of the Agreed Order for Revocation issued by the Texas Department of State Health Services is attached as Exhibit A.

16. Respondent's conduct and the action of the Texas Department of State Health Services as set forth in paragraphs 13 through 15 above constitute cause to discipline Respondent's license within the meaning of code sections 3750(g) , 3750(m) and 141 [discipline by another jurisdiction].

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

1. Revoking or suspending Respiratory Care Practitioner License Number 29650, issued to Aric Raymondo Brieno;

2. Ordering Aric Raymondo Brieno to pay the Respiratory Care Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring; and

3. Taking such other and further action as deemed necessary and proper.

DATED: November 14, 2014

Original signed by Liane Freels for:
STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
Department of Consumer Affairs
State of California
Complainant

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