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

10 In the Matter of the Accusation & Petition to
11 Revoke Probation Against:

Case No. D1 2008 607

12 **SEFERINO LOUIE AGUERO**
13 **1947 N. Cindy Street**
Visalia, CA 93291

DEFAULT DECISION
AND ORDER

14 **Respiratory Care Practitioner License No.**
15 **30071**

[Gov. Code §11520]

16 Respondent

17
18 FINDINGS OF FACT

19 1. On or about February 7, 2011, Complainant Stephanie Nunez, in her official capacity
20 as the Executive Officer of the Respiratory Care Board of California, Department of Consumer
21 Affairs, filed Accusation and Petition to Revoke Probation No. D1 2008 607 against Seferino
22 Louie Aguero (Respondent) before the Respiratory Care Board.

23 2. On or about July 9, 2010, the Respiratory Care Board (Board) issued Respiratory
24 Care Practitioner License No. 30071 to Respondent. The Respiratory Care Practitioner License
25 was in full force and effect at all times relevant to the charges brought herein and expired on
26 February 28, 2011.

27 3. On or about February 7, 2011, Stephanie M. Aguirre, an employee of the
28 Complainant Agency, served by Certified and First Class Mail a copy of the Accusation and

1 Petition to Revoke Probation No. D1 2008 607, Statement to Respondent, Notice of Defense,
2 Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to
3 Respondent's address of record with the Board, which was and is 1947 N. Cindy Street, Visalia,
4 CA 93291. A copy of the Accusation and Petition to Revoke Probation, the related documents,
5 and Declaration of Service are attached as Exhibit A, and are incorporated herein by reference.

6 4. Service of the Accusation and Petition to Revoke Probation was effective as a matter
7 of law under the provisions of Government Code section 11505, subdivision (c).

8 On or about February 10, 2011, Respondent signed for receipt of the certified mail delivery
9 of the Accusation and Petition to Revoke Probation. A copy of the certified mail receipt returned
10 by the post office is attached as Exhibit B, and is incorporated herein by reference.

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

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

16 Respondent failed to file a Notice of Defense within 15 days after service upon him of the
17 Accusation and Petition to Revoke Probation, and therefore waived his right to a hearing on the
18 merits of Accusation and Petition to Revoke Probation No. D1 2008 607.

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

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

23 7. Pursuant to its authority under Government Code section 11520, the Board finds
24 Respondent is in default. The Board will take action without further hearing and, based on
25 Respondent's express admissions by way of default and the evidence before it, contained in
26 exhibits A, B, C and D, finds that the allegations in Accusation and Petition to Revoke Probation
27 No. D1 2008 607 are true.

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1 The Respiratory Care Board further finds that pursuant to Business and Professions Code
2 section 3753.5, the costs of investigation and enforcement of the case prayed for in the instand
3 case total \$1,350.00, based on the Certification of Costs contained in Exhibit D.

4 DETERMINATION OF ISSUES

5 1. Based on the foregoing findings of fact, Respondent Seferino Louie Agüero has
6 subjected his Respiratory Care Practitioner License No. 30071 to discipline.

7 2. A copy of the Accusation and Petition to Revoke Probation and the related documents
8 and Declaration of Service are attached.

9 3. The agency has jurisdiction to adjudicate this case by default.

10 4. The Respiratory Care Board is authorized to revoke Respondent's Respiratory Care
11 Practitioner License based upon his failure to comply with the code section 3750(j) [dishonest
12 act] in that he attempted to use another person's urine sample as his own to evade detection of
13 ingesting alcohol, and he is in violation of Probation Condition 2 [biological fluid testing] for
14 failure to telephone CVI on a daily basis and failure to provide a specimen on eight occasions,
15 Probation Condition 3 [abstention from alcohol] in that he admitted he drank alcohol, Probation
16 Condition 9 [probation monitoring costs] in that he failed to make monthly probation payments
17 from July 2010 until February 2011, the date the Accusation and Petition to Revoke Probation
18 was filed, and Probation Condition 14 [cost recovery] in that he failed to make quarterly
19 payments of \$210.00 due October 9, 2010 and January 9, 2011. Respondent owes costs in the
20 amount of \$2,010.00 for case no. 1H 2008 607 and \$1,350.00 for case D1 2008 607 for a total of
21 \$3,360.00.

22 ORDER

23 IT IS SO ORDERED that Respiratory Care Practitioner License No. 30071, heretofore
24 issued to Respondent Seferino Louie Agüero, is revoked.

25 Respondent is ordered to reimburse the Respiratory Care Board the amount of \$3,360.00
26 for its investigative and enforcement costs in the current case and case no. D1 2008 607. The
27 filing of bankruptcy by Respondent shall not relieve Respondent of his responsibility to reimburse
28 the Board for its costs. Respondent's Respiratory Care Practitioner License may not be renewed

1 or reinstated unless all costs ordered under Business and Professions Code section 3753.5 have
2 been paid.

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

7 This Decision shall become effective on May 20, 2011.

8 It is so ORDERED April 20, 2011.

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