

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

In the Matter of the Statement of Issues  
Against:

SANDERSON GEDA BENASFRE  
1231 West Denni Street  
Wilmington, CA 90744

Case No.: 1H 2010 829

OAH No.: 2011070442

**EFFECTIVE DATE OF DECISION AND ORDER**

Having met all licensure requirements, the attached Decision and Order adopted by the Respiratory Care Board of California, Department of Consumer Affairs, on April 5, 2012 shall become effective on April 18, 2012.

Original signed by: \_\_\_\_\_

MURRAY L. OLSON, RCP, RRT-NPS, RPFT  
PRESIDENT, RESPIRATORY CARE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

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Respondent/Applicant.

Case No. 1H 2010 829

OAH No. 2011070442

PROPOSED DECISION

Administrative Law Judge N. Gregory Taylor, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on January 23, 2012.

Randall R. Murphy, Deputy Attorney General represented Stephanie Nunez(Complainant), Executive Officer of the Respiratory Care Board of California (Board), Department of Consumer Affairs, State of California.

Sanderson Geda Benasfre (Respondent) was present and represented himself.

Oral and documentary evidence was received, and the matter argued.

The case was submitted for decision on January 23, 2012.

PARTIES

1. Complainant filed the Statement of Issues in this proceeding in her official capacity.
2. On November 23, 2010, the Board received an application for a Respiratory Care Practitioner License from Sanderson Geda Benasfre (Respondent/Applicant). Prior thereto, on November 8, 2010, Respondent certified under penalty of perjury to the truthfulness of all statements, answers and representations in the application. The Board denied the application on March 16, 2011 and Respondent appealed from that decision.

## JURISDICTION

1. 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.

2. 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).

3. Section 3718 of the Code states:

The Board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter.

4. Section 3732 of the Code states:

(a) The board shall investigate an applicant for a license, before a license is issued, in order to determine whether or not the applicant has the qualifications required by this chapter.

(b) The board may deny an application, or may order the issuance of a license with terms and conditions, for any of the causes specified in this chapter for suspension or revocation of a license, including, but not limited to, those causes specified in Sections 3750, 3750.5, 3752.5, 3752.6, 3755, 3757, 3760, and 3761.

4. 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:

(d) Conviction of a crime that substantially relates to the qualifications, function, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

(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.

5. Section 3750.5 of the Code states:

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

(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 such that the use impaired his or her ability to conduct with safety the practice authorized by his or her license.

6. Section 3752 of the Code states:

A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of any offense which substantially relates to the qualifications, functions, or duties of a respiratory care practitioner is deemed to be a conviction within the meaning of this article. The board shall order the license suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

7. Section 3752.5 of the Code states:

For purposes of Division 1.5 (commencing with Section 475), and this chapter [the Respiratory Care Practice Act], a crime involving bodily injury or attempted bodily injury shall be considered a crime substantially related to the qualifications, functions, or duties of a respiratory care practitioner.

8. California Code of Regulations, title 16, section 1399.370 states:

For the purposes of denial, suspension, or revocation of a license, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to perform the functions authorized by his or her license or in a manner inconsistent with the public health, safety, or welfare. Such crimes or acts shall included but not be limited to those involving the following:

(c) Conviction of a crime involving driving under the influence or reckless driving while under the influence.

## COST RECOVERY

1. Pursuant to the provisions of Business and Professions Code sections 3753.5, and 3753.7, Complainant submitted a cost bill in the amount of \$4,845.00 as its costs in investigating and prosecuting this case.
2. The costs are reasonable in light of the circumstances presented.

## FINDINGS

1. On September 3, 2003, in the California Superior Court, County of Los Angeles, Case Number 3SP01917, Respondent, upon his nolo contendere plea was convicted of violating Penal Code section 273.5, subdivision (a), infliction of corporal injury upon a spouse, a misdemeanor. The court suspended imposition of sentence and placed Respondent on formal probation for 3 years under the following terms and conditions:

- Serve 3 days in the county jail.
- Pay a \$100 Alcohol and Drug Problem Assessment Fee.
- Pay \$200 into the Domestic Violence Fund.
- Pay a \$35 fee for installment payments.
- Pay a \$20 court security fee.
- Donate \$200 to a Battered Woman's Shelter.
- Pay \$100 Restitution to the Court.
- Perform 360 hours of "Caltrans" Service.
- Not own, use or possess any dangerous or deadly weapons.
- Cooperate with public health officer in a plan for a domestic violence Program.
- Don't harass, molest or annoy the victim.
- Obey all laws and further Court orders, and
- Attend two Narcotics Anonymous meetings per week for 52 Weeks.

Respondent complied with the court order. On October 5, 2011, the court found that Respondent had complied with the provisions of probation and expunged the conviction pursuant to Penal Code section 1203.4.

2. The facts and circumstances leading to Respondent's 2003 conviction are as follows: Respondent and his wife got into an argument and police were called to their residence. Respondent admitted to the arresting officers that he had punched his seven month pregnant wife in the stomach, knocking her to the floor. He further admitted that he had then pinned her on the ground in a choke hold, and choked her with his hands and arms. Finally, he stated that he had been using methamphetamines within the last two days and had used the drugs previously for an unstated period of time.

3. On October 27, 2005, in the California Superior Court, County of Los Angeles, in case number 5LM07276, Respondent upon his nolo contendere plea, was convicted of violating Penal Code section 243, subdivision (e) (1), battery against a spouse, a

misdemeanor. The court suspended the imposition of sentence and placed Respondent on summary probation for 3 years on certain terms and conditions including:

- Serving 30 days in the county jail.
- Paying \$100 Alcohol and Drug Problem Assessment Fee.
- Paying \$400 into the domestic Violence Fund.
- Paying \$35 fee installment payments.
- Paying a \$20 court security assessment fee.
- Donating \$200 to a Battered Woman's Shelter.
- Paying \$100 Restitution to the Court.
- Performing 40 hours of "Caltrans" service and
- Reporting to the public health investigator.

4. The facts and circumstances surrounding Respondent's 2005 conviction are as follows: Respondent and his wife got into an argument. She called the police and Respondent fled the scene. According to his wife, Respondent repeatedly punched her in the face. Respondent was subsequently arrested.

5. On July 26, 2011, the court found that Respondent had completed the conditions of his 2005 probation and expunged the conviction.

6. On October 30, 2002, while on duty as a licensed vocational nurse Respondent was requested by his employer to submit to a random drug-screening test. The drug-screening showed "positive" results for the presence of amphetamine and methamphetamine.

7. On May 19, 2003, during an interview with an investigator of the Division of Investigation of the California Department of Consumer Affairs, Respondent admitted smoking crystal methamphetamine in the fall of 2001 and again smoking methamphetamine on May 16, 2003. Respondent voluntarily provided the investigator a urine sample to be tested. The test results came back positive.

8. As result of the facts set forth in Findings 6 and 7, an accusation was filed against Respondent's Vocational Nurse License, number VN 168227. On November 20, 2005, Respondent's Vocational Nurse License was revoked in Vocational Nurse Board Case Number 6806.

9. Respondent was a Licensed Vocational Nurse for 12 years from 1993 to 2005. As noted above the license was revoked for his use of drugs and has not been renewed.

10. Respondent is currently employed as a mechanic in an oil refinery. Respondent's employer requires all employees to submit to bi-weekly drug testing. Respondent submitted four recent test results showing the negative presence of drugs.

11. Respondent completed a 52 week domestic violence course and a 30 day outpatient substance abuse program in 2011. His court probation ended in 2008.

12. Respondent has been clean and sober since 2008. This followed a relapse which he had in that year.

13. Respondent lives with his wife and four children ages 14, 9, 8, and 3. They live with Respondent's father-in-law.

14. Respondent submitted two letters of reference. One was from the Director of Clinical Education at Concorde Career College and the other was from a fellow student at that facility. Both praised Respondent's abilities and highly recommended him. They indicated an awareness of his prior problems and stated that he had worked to overcome them. Respondent received his respiratory education at Concorde College.

15. Respondent takes full responsibility for all that he has done and views what he did in the past with regret. He believes that he is a different person today than he was in the past.

#### LEGAL CONCLUSIONS

1. Respondent's criminal convictions set forth in Findings 1 through 5 are substantially related to the qualifications, functions or duties of a licensee of the Board in that the crimes involved attempted bodily injury. Code section 3752.5.

2. Pursuant to the provisions Code section 3750, subdivision (d), Respondent's license application is subject to denial since the crimes of which he was convicted are substantially related to the qualifications, functions or duties of a licensee of the Board.

3. Pursuant to the provisions of Code section 3750, subdivision (m), Respondent's license application is subject to denial in that Respondent's Vocational Nurse License was revoked on November 20, 2005. Findings 6 through 8.

4. Pursuant to the provisions of Code section 3750.5, Respondent's license application is subject to denial in that Respondent used a controlled substance in a manner dangerous or injurious to himself or others. Findings 6 through 8.

5. Respondent presents a difficult case. His drug use and physical attacks on his wife are most serious. Further he was on drugs for an extended time. Respondent has completed programs to assist him in overcoming this problem. Respondent has also completed an anger management course. It is six years since his most recent criminal conviction. Both of Respondent's criminal convictions have been expunged. It has been four years since Respondent's most recent use of drugs. He currently is regularly tested for drugs by his present employer. Taking all of this into consideration, a probationary license provides appropriate protection of the public.

## ORDER

Respondent Sanderson Geda Benasfre's application for a Respiratory Care Practitioner License is denied. However, said denial is stayed and Respondent shall be issued a probationary license for a period of five years from the effective date of this decision on the following terms and conditions:

**1. OBEY ALL LAWS** Respondent shall obey all laws, whether federal, state, or local. The Respondent shall also obey all regulations governing the practice of respiratory care in California.

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

**2. QUARTERLY REPORTS** Respondent shall file quarterly reports of compliance under penalty of perjury, on forms to be provided, to the probation monitor assigned by the Board. Omission or falsification in any manner of any information on these reports shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license.

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

For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.

For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.

For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.

For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

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

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

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

Respondent is encouraged to contact the Board's Probation Program at any time he/she has a

question or concern regarding his/her terms and conditions of probation.

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

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

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

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

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

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

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

**5. EMPLOYMENT REQUIREMENT** Respondent shall be employed a minimum of 24 hours per week as a respiratory care practitioner for a minimum of 2/3 of his/her probation period.

Respondent may substitute successful completion of a minimum of thirty (30) additional continuing education hours, beyond that which is required for license renewal, for each 8 months of employment required. Respondent shall submit

proof to the Board of successful completion of all continuing education requirements. Respondent is responsible for paying all costs associated with fulfilling this term and condition of probation.

**6. NOTICE TO EMPLOYER** Respondent shall be required to inform his/her employer, and each subsequent employer during the probation period, of this decision imposed by this decision by providing his/her supervisor and director and all subsequent supervisors and directors with a copy of the decision and order, and the Statement(s) of Issues or Accusation(s) in this matter prior to the beginning of or returning to employment or within 14 days from each change in a supervisor or director.

If Respondent is employed by or through a registry [and is not restricted from working for a registry], Respondent shall make each hospital or establishment to which he/she is sent aware of the discipline imposed by this decision by providing his/her direct supervisor and administrator at each hospital or establishment with a copy of this decision, and the Statement(s) of Issues or Accusation(s) in this matter prior to the beginning of employment. This must be done each time there is a change in supervisors or administrators.

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

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

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

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

**8. COST RECOVERY** Respondent shall pay to the Board a sum not to exceed the costs of the investigation and prosecution of this case. That sum shall

be

\$ 4,845.00 and shall be paid in full directly to the Board, in equal quarterly payments, within 12 months from the effective date of this decision. Cost recovery will not be tolled.

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

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

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

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

**9. TOLLING FOR OUT-OF-STATE RESIDENCE OR PRACTICE**

Periods of residency or practice outside California, whether the periods of residency or practice are temporary or permanent, will toll the probation period but will not toll the cost recovery requirement, nor the probation monitoring costs incurred. Travel out of California for more than 30 days must be reported to the Board in writing prior to departure. Respondent shall notify the Board, in writing, within 14 days, upon his/her return to California and prior to the commencement of any employment where representation as a respiratory care practitioner is/was provided.

**10. VALID LICENSE STATUS** Respondent shall maintain a current, active and valid license for the length of the probation period. Failure to pay all fees and meet CE requirements prior to his/her license expiration date shall constitute a violation of probation.

**11. VIOLATION OF PROBATION** If Respondent violates any term of the probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If a petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction and the period of probation shall be extended until the matter is final. No petition for modification

of penalty shall be considered while there is an accusation or petition to revoke probation or other penalty pending against Respondent.

**12. COMPLETION OF PROBATION** Upon successful completion of probation, Respondent's license shall be fully restored.

**13. WORK SCHEDULES** Respondent shall be required to submit to the probation monitor work schedules on a weekly/monthly basis for the length of probation. Respondent shall ensure the Board has a copy of her/his current work schedule at all times for each place of employment.

Failure to submit current work schedules on a continuous basis, shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license.

**14. BIOLOGICAL FLUID TESTING** Respondent, at his/her expense, shall participate in random testing, including but not limited to biological fluid testing (i.e. urine, blood, saliva), breathalyzer, hair follicle testing, or any drug screening program approved by the Board. Test costs range from \$21.00 to \$200.00 each. The length of time shall be for the entire probation period. The frequency and location of testing will be determined by the Board.

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

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

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

**15. ABSTENTION FROM USE OF MOOD ALTERING SUBSTANCES** Respondent shall completely abstain from the possession or use of alcohol, any and all other mood altering drugs, substances and their associated paraphernalia, except when the drugs are lawfully prescribed by a licensed practitioner as part of

a documented medical treatment.

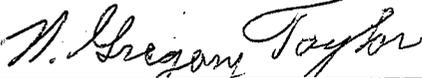
Respondent shall execute a release authorizing the release of pharmacy and prescribing records as well as physical and mental health medical records. Respondent shall also provide information of treating physicians, counselors or any other treating professional as requested by the Board.

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

Any positive result that registers over the established laboratory cutoff level shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license.

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

Dated: February 22, 2012.

  
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N. GREGORY TAYLOR  
Administrative Law Judge  
Office of Administrative Hearings