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

In the Matter of the Statement of Issues Against: MATTHEW WAYNE BROMAN 1618 Vosspark Way Sacramento, CA 95835	Case No.: 1H 2010 889 OAH No.: 2011100089

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 September 26, 2012, shall become effective on October 9, 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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In the Matter of the Statement of Issues Against: MATTHEW WAYNE BROMAN 1618 Vosspark Way Sacramento, CA 95835 Respondent.	Case No. 1H-2010-889 OAH No. 2011100089

DECISION AFTER NON-ADOPTION

This matter came on regularly for hearing before Coren D. Wong, Administrative Law Judge (ALJ), Office of Administrative Hearings, at Sacramento, California on March 6, 2012.

Catherine E. Santillan, Senior Legal Analyst, Attorney General's Office, represented complainant Stephanie Nunez, Executive Officer of the Respiratory Care Board ("Board"), Department of Consumer Affairs (Department).

Respondent Matthew Wayne Broman represented himself.

Evidence was received, the record was closed, and the matter was submitted for decision on March 6, 2012.

The Respiratory Care Board ("the Board") considered the proposed decision of the Administrative Law Judge. After due consideration thereof, the Board decline to adopt said proposed decision and thereafter set a date of May 3, 2012 as the final date for the parties to submit written arguments. Written arguments having been received from both parties, and the time for filing written arguments in the matter having expired, and the entire record, including the transcript of said hearing having been read and considered, the Board pursuant to Section 11517 hereby makes the following decision.

SUMMARY

Complainant seeks to deny Respondent's application for licensure as a respiratory care practitioner on the grounds that Respondent's license to work as an emergency medical technician-paramedic was revoked; the acts for which that license was revoked constitute fraudulent, dishonest, or corrupt acts; and he illegally

possessed and misused a controlled substance. Cause exists to deny the application. However, Respondent produced evidence of sufficient rehabilitation such that he is fit for licensure as a respiratory care practitioner on a probationary basis. Therefore, Respondent's application should be granted and a probationary license issued, subject to the terms and conditions specified in the Order below.

FACTUAL FINDINGS

1. On December 23, 2010, The Board received Respondent's Respiratory Care Application for Licensure (application). The Board denied the application on April 8, 2011. Respondent appealed the denial.

2. On July 28, 2011, complainant, acting solely in her official capacity as the Executive Officer of the Board, filed a statement of issues seeking to deny Respondent's application on the grounds that his license to work as an emergency medical technician-paramedic was revoked by the Emergency Medical Services Authority of the State of California on grounds which violate the Respiratory Care Practice Act; the conduct for which that license was revoked constitutes fraudulent, dishonest, or corrupt acts; and he unlawfully possessed and used a controlled substance on at least three occasions.

Prior Discipline by EMSA

3. The Emergency Medical Services Authority of the State of California (EMSA) issued Respondent Emergency Medical Technician-Paramedic license number P16818 on July 6, 2000.

4. On February 7, 2008, EMSA issued a Decision revoking Respondent's Emergency Medical Technician-Paramedic license based on his "commission of any fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions, and duties of prehospital personnel" and "addiction to, the excessive use of, or the misuse of, alcoholic beverages, narcotics, dangerous drugs, or controlled substances." The Decision was effective March 7, 2008.

Fraudulent, Dishonest, or Corrupt Act

5. EMSA's Decision revoking Respondent's Emergency Medical Technician-Paramedic license was based on the following factual findings, which Respondent stipulated were true:

Paramedic personnel for Del Norte Ambulance routinely utilize Sutter Coast Hospital as the re-stocking facility for the drugs used in ambulance transports. On average the hospital dispenses approximately 10-15 carpujets, each filled with 10 mg of morphine [sic] to Del Norte Ambulance paramedics in any given month. In or about October of 2007 [sic] Del Norte Ambulance was advised by the hospital staff that this number had dramatically increased to 47 capujets per month. On or about December 1, 2007, Respondent requested a replacement for a morphine carpujet that had become damaged or contaminated. The hospital sent the carpujet returned by Respondent to a lab for testing. The result of this test showed that the carpujet

did not contain morphine but only normal saline. Respondent was directed by his employer to take a drug test, in [sic] which he tested positive for opiates. When confronted with the discrepancies in Respondent's story pertaining to the damaged or contaminated morphine carpujets, Respondent admitted to removing morphine on two occasions, replacing it with normal saline and presenting it to hospital staff for replacement. In a signed e-mail dated December 7, 2007, Respondent admitted removing morphine on two occasions, expressed remorse for his actions, but insisted that he was not addicted by stating, "I do not have a dependency issue with narcotics, I do not go through withdrawal [sic] and I do not have uncontrollable cravings."

On or about December 18, 2007, an in-person interview was conducted with an Authority investigator and Respondent. During the interview, Respondent admitted to taking morphine from the ambulance for personal use on at least three occasions. Respondent admitted that he remove the morphine from a carpujet and replaced its contents with normal saline. He then took the morphine home and injected it intramuscularly while off duty. In an effort to conceal his action [sic] he presented the carpujet filled with normal saline to hospital staff and was successful in obtaining a replacement cartridge. Respondent additionally admitted to taking morphine on November 30, 2007, while he was on duty at his station. Respondent admitted that he took the syringe of morphine that was locked up in the ambulance, kept the syringe until the next day, and after work injected the morphine into his body intramuscularly. In order to conceal his theft, he concocted the story to hospital staff that the syringe had fallen under the gurney. This carpujet was ultimately tested by the hospital lab and found to be filled with normal saline.

[¶] … [¶]

Good cause exists for revocation of Respondent's EMT-P license pursuant to Health and Safety Code section 1798.200(5), as described in the factual allegations set forth, [sic] above.

6. Respondent's conduct described above constitutes fraudulent, dishonest, or corrupt acts which are substantially related to the qualifications, functions, or duties of a respiratory care practitioner.

Possession and/or Misuse of a Controlled Substance

7. Respondent admitted that he illegally administered morphine to himself on three occasions. Morphine is a Schedule II controlled substance. (Health & Saf. Code, §11055, subd. (b)(1)(L).)

8. On December 5, 2008, Respondent provided a urine sample which tested positive for opiates, a Schedule II controlled substance. (Health & Saf. Code §11055, subd. (b)(1).) But complainant introduced no evidence of the circumstances under which Respondent had ingested the opiates or that the opiates caused him to act in a manner which was dangerous to himself or others. Therefore, there is no factual basis to support a finding that he used opiates in a manner or to an extent

dangerous to himself or others.

9. Respondent is 32 years old. He enrolled in the respiratory care program at American River College in Sacramento, California after his Emergency Medical Technician-Paramedic license was revoked. He completed that program and earned his Associate in Science degree in Respiratory Care on December 16, 2010. Respondent began working as a phlebotomist – first with Diagnostic Laboratories and Radiology and now with Quest Diagnostics – after the Board denied his licensure as a respiratory care practitioner.

10. Respondent testified candidly and openly about his previous drug use and initial efforts to hide that drug use from EMSA and Del Norte Ambulance, his former employer when he was a licensed paramedic. He also admitted that he initially tried to minimize his drug use by admitting only to having self-injected two morphine carpujets and presented those carpujets filled with saline solution for replacement. At the hearing, however, Respondent admitted that it was actually on three occasions which he self-administered the morphine carpujets and then presented those carpujets filled with saline solution for replacement. He explained that at the time of his initial admission, he was scared, trying to save his job, thinking off the top of his head, and not doing a very good job at it. His candor and openness was corroborated by the testimony of Katherine Arnautovic, a former special investigator with EMSA who was assigned to investigate his misconduct, who described Respondent as "forthcoming" during her investigation.

11. Respondent explained that he admitted himself to a methadone treatment program with Bi-Valley Medical Clinic, Inc., in February 2008 and completed that program in February 2011. The program consisted of weekly counseling sessions, each of which was one hour in length. Some counseling sessions were one-on-one with the counselor, while others were with a group of other patients. The progress of his treatment was monitored by a physician, with whom he met approximately every three months. He also was subject to random drug tests on a monthly basis. Respondent testified to a sobriety date of February 17, 2008. His testimony was corroborated by a letter from Elizabeth Shelatz, B.A., R.A.S., his counselor from Bi-Valley Medical Clinic, Inc., except she identified his start date as March 13, 2008. The discrepancy in the evidence of the start date is insignificant. On February 11, 2011, Ms. Shelatz wrote:

"Matthew, you have been on the Methadone Maintenance Program at Bi-Valley Medical Clinic, Inc. since March 13, 2008. You continue to keep your weekly counseling appointments, attend clinic per scheduled [sic] and have negative urinalysis tests since the day of your admit to our maintenance program. You have been successful while in our program.**"**

12. Respondent also submitted a letter from his wife, Tamara Broman, who has lived with him since September 2006. The following portion of Mrs. Broman's letter was compelling:

"After graduation from the Respiratory Care Program in December, [sic] 2010, Matt applied for his license and took the required examinations. He passed

his exams, but was denied licensure due to his history of problems with his paramedic license and drug addiction. Understandably so, this threw Matt into a depression. He didn't thing that he was worth anything anymore. During these times, I watched closely for a slip up in his sobriety, but did not see one. If he was going to relapse, that would have been the time that he would have. He decided to fight the decision and began looking for a job doing something else. He found a job in March and his outlook turned around."

Any inference of bias on the part of Mrs. Broman was dispelled by a letter written by Lisa Viduya, director of the Respiratory Care Program at American River College, who corroborated Mrs. Broman's observations about Respondent maintaining his sobriety. Mrs. Viduya wrote:

"I am writing to you on behalf of my current student, Matthew Broman, who has been in our ARC Respiratory Care Program for four semesters. During the two years in this program, he has shown proficiency in his academic studies as well as his clinical abilities. As the program director and his instructor, I have been able to observe his abilities to excel didactically as well as clinically. Matthew has demonstrated excellent communication skills with his patients, peers and instructors. His clinical preceptors have been very complimentary regarding his clinical performance (over 600 hours). Overall, Matthew has demonstrated the ability to provide a safe working environment for all those he interacts with.

I have been made aware of his past substance abuse problem and have at no time during the program, observed any behavior indicating an altered mental status. On the contrary, Matthew is an active member in our club and participant in our community service projects, tutoring program, and other varied volunteer activities. Based on my experience with Matthew, I would recommend his accepted application to practice respiratory care in the state [sic] of California.

Please don't hesitate to call me if you should have any questions.

Thank you for your time."

13. The Board has adopted criteria for evaluating the rehabilitation of an applicant and his fitness for licensure. California Code of Regulations, title 16, section 1388.372, provides:

> When considering the denial, petition for reinstatement, modification of probation, suspension or revocation of a RCP license, the board will consider the following criteria in evaluating the rehabilitation of such person and his or her eligibility for a license:
>
> (a) The nature and severity of the act(s) or offense(s).
> (b) The total criminal record.
> (c) The time that has elapsed since the commission of the act(s) or offense(s).
> (d) Compliance with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against such person.

(e) Evidence of any subsequent act(s) or crime(s) committed.

(f) Any other evidence of rehabilitation submitted that is acceptable to the board, including:

i. Successful completion of respiratory care courses with a "C" or better, as determined by the institution;
ii. Active continued attendance or successful completion or rehabilitative programs such as 12-step recovery program or psychotherapy counseling;
iii. Letters relating to the quality of practice signed under penalty of perjury from licensed health care providers responsible for the supervision of his/her work.

(g) Statements, letters, attestations of good moral character, or references relating to character, reputation, personality, marital/family status, or habits shall not be considered rehabilitation unless they relate to quality of practice as listed in section (f).

14. Respondent readily admitted the severity of his actions which led to the revocation of his license to work as an emergency medical technician-paramedic. He also is well aware of the fact that as a respiratory care practitioner, he will have access to controlled substances. When asked what assurances he could offer the Board that he will not relapse, Respondent explained that his four years of sobriety and strong support network of family and friends help him maintain his sobriety. Additionally, he testified to having lost a lot due to his prior drug use and repeatedly stated that no "high" was worth risking losing everything he has fought to regain.

15. It has been more than four years since EMSA revoked Respondent's license to work as an emergency medical technician-paramedic and he engaged in the underlying conduct. No evidence was presented that he was engaged in other misconduct in the interim, and he testified that he has not. His testimony was credible. Respondent completed the educational requirements for licensure "with a "C" or better." He also completed a three-year methadone treatment program with Bi-Valley Medical Clinic, Inc. Although he candidly admitted that he "definitely" has a substance abuse problem, he has not participated in any counseling programs since completing the program at Bi-Valley Medical Clinic, Inc. He explained that he was without health insurance for a while and has not had a chance to find a new program since obtaining such insurance.

16. Respondent's previous acts of self-administering morphine and then presenting the carpujets filled with saline solution for replacement under the guise that they were filled with morphine but were somehow compromised, as well as his drug use, are significant. However, the candor and openness with which he testified about his prior actions demonstrates a substantial change in his attitude since engaging in such conduct. His wiliness to "jump through any hoops" to prove himself

worthy of licensure bolsters such conclusion. Furthermore, his three-year participation in a methadone treatment program, sobriety from drugs since starting that program, and character reference letters support the conclusion that he is on his way to overcoming his previous drug abuse. This evidence together suggests the unlikelihood of Respondent repeating his prior misconduct. Nonetheless, because he readily admitted to having a substance abuse problem and that he currently is not participating in any type of drug counseling, he did not establish that he should be granted an unrestricted license. Respondent has met his burden of demonstrating sufficient rehabilitation such that he can provide respiratory care in a manner consistent with the public health, safety, and welfare, subject to probationary terms and conditions. Given the lack of continued counseling, the interest of the public is best served by requiring Respondent to successfully complete a psychological evaluation to identify whether he possess sociological problems that might affect his ability to maintain sobriety. Upon successful completion of the psychological evaluation, his application should be approved and a license issued with probationary terms and conditions specified in the Order below.[1]

Costs of Investigation and Enforcement

17. Complainant has requested costs of investigation and enforcement in the total amount of $3,420.00 pursuant to Business and Professions Code section 3753.5, subdivision (a). At the hearing, she offered, without objection, a Certification of Prosecution Costs; Declaration of Catherine Santillan. Attached to the Certification is a printout of a Matter Time by Professional Type, which describes tasks performed by the Office of the Attorney General as of March 2, 2012. The Board was charged 2,940.00 for that work. The Certification also states that the printout does not include charges for the four hours of work performed by the Office of the Attorney General on March 5, 2012. There is no description however, of the general tasks performed during those four hours.

Only the costs the Board incurred for work performed by the Office of the Attorney General as of March 2, 2012, ($2,940.00) are reasonable for the reasons discussed in Legal Conclusion 7 below.

LEGAL CONCLUSIONS

Cause to Deny Application

1. The Board may deny an application for licensure when the applicant has had a professional license which was issued by another government agency disciplined for engaging in conduct which violates the Respiratory Care Practice Act (Bus. & Prof. Code, §3750, subd. (m).) Respondent's Emergency Medical Technician-Paramedic license was revoked because he committed a fraudulent, dishonest, or corrupt act. (Factual Finding 4.) It was also revoked because of his

[1] Business and Professions Code section 3754 states: "The board may deny an application for, or issue with terms and conditions, or suspend or revoke, or impose probationary conditions upon, a license in any decision made after a hearing, as provided in Section 3753."

addiction, excessive use of, or misuse of alcoholic beverages, narcotics, dangerous drugs, or controlled substances. (ibid.) Such conduct violates the Respiratory Care Practice Act. (See, Bus. & Prof. Code, §§ 3750, subd. (m); 3750.5, subd, (b).) Therefore, cause exists pursuant to Business and Professions Code section 3750, subdivision (m), to deny his application.

2. The Board may deny an application for licensure when the applicant has committed "any fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions, or duties of a respiratory care practitioner." (Bus. & Prof. Code, § 3750, subd. (j).) For the reasons discussed in Factual Finding 6, Respondent engaged in such conduct when he, on three occasions, self-administered morphine and then presented the carpujets filled with saline solution for replacement under the guise that they were still filled with morphine but were somehow compromised. Therefore, cause exists pursuant to Business and Professions Code sections 3750, subdivisions (j) to deny his application.

3. The Board may deny an application for licensure when the applicant has administered a controlled substance to himself in violation of the law. (Bus. & Prof. Code. § 3750.5, subd. (a).) For the reasons discussed in Factual Finding 7, cause exists to deny Respondent's application pursuant to Business and Professions Code section 3750.5, subdivision (a), based on his self-administration of morphine in violation of the law.

4. The Board may deny an application for licensure when the applicant has used a controlled substance in an extent or in a manner dangerous or injurious to himself or others. (Bus. & Prof. Code, § 3750.5, subd. (b).) As discussed in Factual Finding 8, there is no evidence of the circumstances under which Respondent ingested the opiates or the manner in which he reacted, if at all, to having ingested opiates. Therefore, no cause exists pursuant to Business and Professions Code section 3750.5, subdivision (b), to deny his application.

5. For the reasons discussed in Legal Conclusions 1 through 3, individually and collectively, cause exists to deny Respondent's application for licensure as a respiratory care practitioner. However, he has established some level of rehabilitation to warrant issuing him a license, with probationary terms and conditions specified in the Order below, for the reasons discussed in Factual Findings 13 through 16. Therefore, upon successful completion of a psychological evaluation as noted in the Order below, his application shall be granted, immediately revoked and be placed on probation for a period of five (5) years subject to the terms and conditions specified below to include the level of relapse prevention services noted in the psychological evaluation.

Award of Costs

6. Business and Professions Code section 3753.5, subdivision (a), provides:

> 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 the 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.

California Code of Regulations, title 1, section 1042, subdivision (b), states the following about cost recovery:

> Except as otherwise provided by law, proof of cost at the Hearing may be made by Declaration that contain specific and sufficient facts to support findings regarding actual costs incurred and the reasonableness of the costs, which shall be presented as follows:
>
> (1) For services provided by a regular agency employee, the Declaration may be executed by the agency or its designee and shall describe the general tasks performed, the time spent on each task and the method of calculating the cost. For other costs, the bill, invoice or similar supporting document shall be attached to the Declaration.
>
> (2) For services provided by persons who are not agency employees, the Declaration shall be executed by the person providing the service and describe the general tasks performed, the time spent on each task and the hourly rate or other compensation for the service. In lieu of this Declaration, the agency may attach to its Declaration copies of the time and billing records submitted by the service provider.

In Zuckerman v. Board of Chiropractic Examiners (2002) 29 Cal.4th 32, the California Supreme Court set for factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 3753.5, subdivision (a). These factors include: 1) the licentiate's success in getting the charges dismissed or reduced; 2) the licentiate's subjective good faith belief in the merits of his or her position; 3) whether the licentiate raised a colorable challenge to the proposed discipline; 4) the licentiate's financial ability to pay; and 5) whether the scope of the investigation was appropriate in light of the alleged misconduct. (Id., at p.45.)

7. The Certification of Prosecution Costs is prima facie evidence that the Board incurred costs of investigation and enforcement in the amount of $2,940.00 as of March 2, 2012. (Bus. & Prof. Code, § 3753.5, subd. (a); Factual Finding 17.) Respondent did not rebut this evidence. Ms. Santillian's declaration that she spent an additional four hours working on this matter on March 5, 2012, however, is insufficient evidence to establish that the Board actually incurred costs for that work because no description of the general tasks performed was provided. (Factual Finding 17; see, Cal. Code of Regs., tit. 1, § 1042, subd. (b)(2).)

Therefore, after considering the relevant evidence and the pertinent Zuckerman factors, costs in the amount of $2,940.00 are awarded as set forth in the Order below.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Respondent Matthew Wayne Broman's Respiratory Care Practitioner Application for Licensure is denied. However, upon Respondent's completion of a Psychological Evaluation, to the Board's satisfaction, as a condition precedent, Respondent shall be issued a license to practice respiratory care. Upon issuance of the license, the license shall be immediately revoked, with revocation stayed for a period of five (5) years subject to the terms and conditions of probation below.

Condition precedent to Issuance of License:

PSYCHOLOGICAL EVALUATION. Within 60 days of the effective date of this Decision, Respondent shall, at his own expense, have a mental health examination, including psychological assessment and testing as appropriate, to determine his capacity to perform professional duties with safety to self and to the public. The evaluation shall also make recommendations as necessary regarding whether Respondent should participate in additional relapse prevention services. The examination shall be performed by a licensed psychiatrist or psychologist who has established expertise in the field of alcohol and drug assessment, treatment, and recovery. Respondent shall provide the evaluator with a copy of the Board's disciplinary order prior to the evaluation. The examiner must submit a written report of his or her assessment and recommendations to the Board. Recommendations for prohibition of practice for safety of patients, treatment, therapy or counseling made as a result of the mental health examination will be instituted and followed by Respondent. All costs incurred for evaluation and treatment are the responsibility of the Respondent.

Terms and Conditions of Probation:

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 three (3) 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.

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, appear as requested by the Board, and submit Annual Reports, Identification Update reports or other reports similar in nature, as requested and directed by the Board or its representative.

   Respondent shall provide to the Board the names, physical work addresses, work mailing addresses, telephone numbers, and e-mail addresses of all employers, human resources personnel, directors, managers, supervisors, and contractors, and any person providing direct supervision, and shall give specific, written consent that the Respondent authorizes the Board and its representatives and the employers, human resources personnel, directors, managers, supervisors, and contractors, and any person providing direct supervision, to communicate regarding the Respondent's work status, performance, and monitoring. Monitoring includes, but is not limited to, any violation or potential violation of any probationary term and condition.

   Respondent is encouraged to contact the Board's Probation Program at any time he has a question or concern regarding his terms and conditions of probation.

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. Probation monitoring costs will not be tolled.

   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 shall be required, instead to submit an explanation of why he is unable to submit the costs, and the date(s) he 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 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 probation period.

   Respondent may substitute successful completion of a minimum of 30 additional continuing education hours, beyond that which is required for license renewal, for each eight (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 all current and subsequent employers, directors, managers, supervisors, and contractors during the probation period, of the discipline imposed by this decision by providing his current and subsequent human resources

personnel, directors, managers, supervisors, and contractors with a complete 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 three (3) 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 also make each hospital or establishment to which he is sent aware of the discipline imposed by this decision by providing his human resources personnel, manager, and supervisor for each shift, 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.

In addition, any employer, director, manager, supervisor or contractor, shall report to the Board immediately, within 24 hours, if he/she suspects Respondent is under the influence of alcohol or any substance or has had any occurrence of substance abuse.

7. **SUPERVISOR QUARTERLY REPORTS.** Supervisor Quarterly Reports of Performance are due for each year of probation and the entire length of probation from each employer, 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.

   Respondent is ultimately responsible for ensuring his employer(s) submits complete and timely reports.

8. **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 three (3) 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 probation monitor AND the Board IN WRITING of any changes of residence or mailing address within three (3) days. P.O. Boxes are accepted for mailing purposes, however the Respondent must also provide his physical residence address as well.

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 obey all laws, quarterly reports, probation monitoring program, probation monitoring costs, or cost recovery requirements. 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 three (3) days, upon his return to California and prior to the commencement of any employment where representation as a respiratory care practitioner is/was provided.

   Respondent's license shall automatically be cancelled if Respondent's cumulative period tolling is greater than five (5) years. However, the cancellation of the license does not relieve the Respondent from outstanding cost recovery or probation monitoring costs.

10. **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 $2,940.00 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 shall be required, instead to submit an explanation of why he is unable to submit these costs in part or in entirety, and the date(s) he 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 responsibility to reimburse the Board for these costs.

11. **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 license expiration date shall constitute a violation of probation.

12. **VIOLATION OF PROBATION.** If Respondent commits a "Major Violation," as identified in the Disciplinary Guidelines, incorporated by reference pursuant to section 1399.374, he shall receive a notice to cease the practice of respiratory care, as directed by the Board. The Board shall attempt to contact Respondent by electronic and/or telephonic means to advise him of the notice to cease practice and shall deliver such notice by certified and regular mail. The Board shall update its licensing database to reflect the status of the license.

    If the Respondent is ordered to cease practice, he may file a written appeal, within 10 days of the date of the notice to cease practice, to provide additional evidence disputing the finding of the violation(s) that was cause for the notice to cease practice. The Executive Officer will review the appeal and make a determination in the matter, within 10 days from the date the written appeal and all supporting evidence or documentation is received. The probationer shall be notified of the outcome by certified mail.

    Respondent shall not resume the practice of respiratory care until a final decision on an accusation and/or petition to revoke probation is made or until such time as the Board delivers written notification that the notice to cease practice has been dissolved. The cessation of practice shall not apply to the reduction of the probationary time period.

    The Board will contact the Respondent and his employers, human resources personnel, directors, managers, supervisors, and contractors and notify them that Respondent has been issued a notice to cease practice.

    In addition, 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.

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

14. **BIOLOGICAL FLUID TESTING.** Respondent, at his expense, shall participate in random testing, including but not limited to biological fluid testing (i.e. urine, blood, saliva), breathalyzer, hair follicle testing, and/or any drug screening program approved by the Board.

    Respondent shall be required to make daily contact, to determine if he is required to submit a specimen for testing, each day, including weekends, holidays, and vacations in or outside of California, at a lab approved by the Board. Board representatives may also appear unannounced, at any time to collect a specimen. All collections will be observed.

    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. All alternative testing sites, due to vacation or travel outside of California must be approved by the Board, 30 days prior to the vacation or travel.

    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.

    If Respondent tests positive for a banned substance (including testing positive for ETG), the Board will contact the Respondent and his employers, human resources personnel, directors, managers, supervisors, and/or contractors and notify them of the positive test, including the substance(s) and levels detected. Thereafter, the Board may contact the specimen collector, laboratory, Respondent, treating physician, treatment provider and/or support group facilitators to determine whether the positive test is evidence of prohibited use. If the Board determines the positive test is not evidence of prohibited use, the Board shall inform the Respondent and others previously contacted, that the positive test was not a violation of his probationary order.

15. **CHEMICAL DEPENDENCY SUPPORT AND RECOVERY GROUPS.** Within five (5) days of the effective date of the Decision, Respondent shall begin attendance at a chemical dependency support group (e.g. Alcoholic Anonymous, Narcotics Anonymous, Nurse Support Group). Verified documentation of attendance shall be submitted by Respondent with each

written report as required by the Board. Respondent shall continue attendance in such a group for the duration of probation.

16. **ABSTENTION FROM USE OF MOOD ALTERING SUBSTANCES.** For purposes of these terms and conditions, a banned substance includes alcohol, marijuana, controlled substances and any and all other mood altering drugs and substances. Respondent shall completely abstain from the possession or use of all banned substances and their associated paraphernalia. Respondent may take other medication when lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Respondent shall provide the Board a copy of a prescription within five (5) days of the date the prescription was filled.

    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 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). Respondent shall also ensure he is not ingesting or using any product that contains trace amounts of alcohol or any other banned substances (including but not limited to: cold/flu medications, cough syrups, diet pills/products, mouth wash, skin care or hygiene products, perfumes, poppy seeds, dessert or any foods, etc...).

    Any positive result that registers over the established laboratory cutoff level for a banned substance, shall be reported to each of Respondent's employers.

17. **PSYCHOLOGICAL EVALUATION.** On a periodic basis as may be required or directed by the Board, or as recommended as part of the Psychological Evaluation conducted as a condition precedent to licensure, Respondent shall, at his own expense, have a mental health examination, including psychological assessment and testing as appropriate, to determine his capacity to perform professional duties with safety to self and to the public. The evaluation shall also make recommendations as necessary regarding whether Respondent should participate in additional relapse prevention services. The examination shall be performed by a licensed psychiatrist or psychologist appointed by the Board who has established expertise in the field of alcohol and drug assessment, treatment, and recovery. Respondent shall provide the evaluator with a copy of the Board's disciplinary order prior to the evaluation. The examiner must submit a written report of his or her assessment and recommendations to the Board. Recommendations for cessation of practice for safety of patients, treatment, therapy or counseling made as a result of the mental health examination will be instituted and followed by

Respondent. All costs incurred for evaluation and treatment are the responsibility of the Respondent.

Respondent shall execute a release authorizing the evaluator to divulge the aforementioned information to the Board.

18. **SURRENDER OF LICENSE.** Following the effective date of this decision, if Respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, he may request the voluntary surrender of his license. The Board reserves the right to evaluate Respondent's request and to exercise its discretion whether or not to grant the request or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, within 15 calendar days Respondent shall deliver his wallet and wall certificate to the Board or its designee and he shall no longer practice respiratory care. Respondent will no longer be subject to the terms and conditions of probation and the surrender of Respondent's license shall be deemed disciplinary action. If Respondent re-applies for a respiratory care license, the application shall be treated as a petition for reinstatement of a revoked license.

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

IT IS SO ORDERED on this 3rd day of July, 2012

Original signed by: _____.
MURRAY OLSON, RCP, RRT-NPS, RPFT
PRESIDENT, RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA