

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

In the Matter of the Accusation Against:

Case No. 1H 2007 173

ALBERT ACEDO, JR.

Montclair CA 91763

Respiratory Care Practitioner License No. 5001

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Respiratory Care Board of California, Department of Consumer Affairs, as its Decision in the above entitled matter.

This Decision shall become effective on May 28, 2010 .

It is so ORDERED May 18, 2010 .

Original Signed by: _____

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

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

11
12 In the Matter of the Accusation Against:

Case No. 1H-2007-173

13 **ALBERT ACEDO JR., R.C.P.**
14 **Montclair, CA 91763**

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

15 **Respiratory Care Practitioner License No.**
16 **5001**

Respondent.

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18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
19 above-entitled proceedings that the following matters are true:

20 **PARTIES**

21 1. Stephanie Nunez (hereinafter "Complainant") is the Executive Officer of the
22 Respiratory Care Board of California. She brought this action solely in her official capacity and
23 is represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California,
24 by David P. Chan, Deputy Attorney General.

25 2. Respondent ALBERT ACEDO JR., R.C.P. (hereinafter "Respondent") is
26 representing himself in this proceeding and has chosen not to exercise his right to be represented
27 by counsel.

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1 **JURISDICTION**

2 3. On or about June 21, 1985, the Respiratory Care Board of California issued
3 Respiratory Care Practitioner License No. 5001 to ALBERT ACEDO JR., R.C.P. The
4 Respiratory Care Practitioner License was in full force and effect at all times relevant to the
5 charges brought in Accusation No. 1H-2007-173 and will expire on May 31, 2011, unless
6 renewed.

7 4. On February 17, 2010, Accusation No. 1H-2007-173 was filed before the
8 Respiratory Care Board (Board), Department of Consumer Affairs, and is currently pending
9 against Respondent. A true and correct copy of the Accusation and all other statutorily required
10 documents were properly served on Respondent on February 17, 2010. Respondent timely filed
11 his Notice of Defense contesting the Accusation. A true and correct copy of Accusation No.
12 1H-2007-173 is attached hereto as Exhibit A and incorporated herein by reference as if fully set
13 forth herein.

14 **ADVISEMENT AND WAIVERS**

15 5. Respondent has carefully read, and fully understands the charges and
16 allegations in Accusation No. 1H-2007-173. Respondent has also carefully read, and fully
17 understands the effects of this Stipulated Settlement and Disciplinary Order.

18 6. Respondent is fully aware of his legal rights in this matter, including the right to
19 a hearing on the charges and allegations in the Accusation; the right to be represented by counsel
20 at his own expense; the right to confront and cross-examine the witnesses against him; the right to
21 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
22 the attendance of witnesses and the production of documents; the right to reconsideration and
23 court review of an adverse decision; and all other rights accorded by the California
24 Administrative Procedure Act and other applicable laws.

25 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each
26 and every right set forth above.

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1 **CULPABILITY**

2 8. Respondent agrees that, at an administrative hearing, complainant could
3 establish a prima facie case with respect to the charges and allegations contained in Accusation
4 No. 1H-2007-173, a true and correct copy of which is attached hereto as Attachment "A," and
5 that he has thereby subjected his Respiratory Care Practitioner License No. 5001 to disciplinary
6 action. Respondent further agrees to be bound by the Board's imposition of discipline as set forth
7 in the Disciplinary Order below.

8 Respondent agrees that if he ever petitions for early termination or modification of
9 probation, or if an accusation and/or petition to revoke probation is filed against him before the
10 Respiratory Care Board of California, all of the charges and allegations contained in Accusation
11 No. 1H-2007-173 shall be deemed true, correct and fully admitted by respondent for purposes of
12 any such proceeding or any other licensing proceeding involving respondent in the State of
13 California.

14 9. Respondent agrees that his Respiratory Care Practitioner License No. 5001 is
15 subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth
16 in the Disciplinary Order below.

17 **CONTINGENCY**

18 10. This stipulation shall be subject to approval by the Respiratory Care Board.
19 Respondent understands and agrees that counsel for Complainant and the staff of the Respiratory
20 Care Board of California may communicate directly with the Board regarding this stipulation and
21 settlement, without notice to or participation by Respondent. By signing the stipulation,
22 Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the
23 stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this
24 stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of
25 no force or effect, except for this paragraph, it shall be inadmissible in any legal action between
26 the parties, and the Board shall not be disqualified from further action by having considered this
27 matter.

1 California.

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

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

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

12 For the period covering January 1st through March 31st, reports are to be completed
13 and submitted between April 1st and April 7th. For the period covering April 1st through June 30th,
14 reports are to be completed and submitted between July 1st and July 7th. For the period covering
15 July 1st through September 30th, reports are to be completed and submitted between October 1st
16 and October 7th. For the period covering October 1st through December 31st, reports are to be
17 completed and submitted between January 1st and January 7th.

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

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

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

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

28 Failure to appear for any scheduled meeting or examination, or cooperate with the

1 requirements of the program, including timely submission of requested information, shall
2 constitute a violation of probation and will result in the filing of an accusation and/or a petition to
3 revoke probation against Respondent's respiratory care practitioner license.

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

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

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

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

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

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

24 7. EMPLOYMENT REQUIREMENT Respondent shall be employed a minimum of
25 24 hours per week as a respiratory care practitioner for a minimum of 2/3 of his probation period.

26 Respondent may substitute successful completion of a minimum of thirty (30)
27 additional continuing education hours, beyond that which is required for license renewal, for each
28 8 months of employment required. Respondent shall submit proof to the Board of successful

1 completion of all continuing education requirements. Respondent is responsible for paying all
2 costs associated with fulfilling this term and condition of probation.

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

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

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

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

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

27 Respondent shall also notify his probation monitor AND the Board IN WRITING of
28 any changes of residence or mailing address within 14 days. P.O. Boxes are accepted for mailing

1 purposes, however the Respondent must also provide his physical residence address as well.

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

13 11. COST RECOVERY Respondent shall pay to the Board a sum not to exceed the
14 costs of the investigation and prosecution of this case. That sum shall be \$2,890.00 and shall be
15 paid in full directly to the Board, in equal quarterly payments, within 12 months from the
16 effective date of this decision. Cost recovery will not be tolled.

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

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

27 Consideration to financial hardship will not be given should Respondent violate this
28 term and condition, unless an unexpected AND unavoidable hardship is established from the date

1 of this order to the date payment(s) is due.

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

4 12. TOLLING FOR OUT-OF-STATE RESIDENCE OR PRACTICE

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

12 13. VALID LICENSE STATUS Respondent shall maintain a current, active and
13 valid license for the length of the probation period. Failure to pay all fees and meet Continuing
14 Education requirements prior to his license expiration date shall constitute a violation of
15 probation.

16 14. VIOLATION OF PROBATION If Respondent violates any term of the
17 probation in any respect, the Board, after giving Respondent notice and the opportunity to be
18 heard, may revoke probation and carry out the disciplinary order that was stayed. If a petition to
19 revoke probation is filed against Respondent during probation, the Board shall have continuing
20 jurisdiction and the period of probation shall be extended until the matter is final. No petition for
21 modification of penalty shall be considered while there is an accusation or petition to revoke
22 probation or other penalty pending against Respondent.

23 15. COMPLETION OF PROBATION Upon successful completion of probation,
24 Respondent's license shall be fully restored.

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ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Respiratory Care Practitioner License No. 5001. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Respiratory Care Board.

DATED: March 29, 2010 Original Signed By: _____
ALBERT ACEDO JR., R.C.P.
Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Respiratory Care Board of the Department of Consumer Affairs.

Dated: April 1, 2010

Respectfully Submitted,
EDMUND G. BROWN JR.
Attorney General of California
THOMAS S. LAZAR
Supervising Deputy Attorney General

Original Signed By: _____
DAVID P. CHAN
Deputy Attorney General
Attorneys for Complainant

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