

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

In the Matter of the Accusation Against:

PARKER T. BAILEY
15114 Monterey Avenue
Chino Hills, CA 91709

Case No.: R-2073

OAH No.: L2007060296

DECISION AND ORDER

The attached proposed Decision of the Administrative Law Judge 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 August 29, 2007.

It is so ORDERED August 22, 2007.

Original signed by: _____

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

BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
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In the Matter of the Accusation Against:

PARKER T. BAILEY,

Respondent.

Case No. R-2073

OAH No. L2007060296

PROPOSED DECISION

Ralph B. Dash, Administrative Law Judge, Office of Administrative Hearings, heard this matter on July 2, 2007, at Los Angeles, California.

Chris Leong, Deputy Attorney General, represented Complainant.

Parker T. Bailey (Respondent) represented himself.

Oral and documentary evidence having been received and the matter having been submitted, the Administrative Law Judge makes the following Proposed Decision.

FINDINGS OF FACT

1. Stephanie Nunez made the Accusation in her official capacity as the Executive Officer of the Respiratory Care Board of California (Board).
2. At all times pertinent hereto, Respondent was, and now is, licensed by the Board as a respiratory care therapist, Respiratory Care Practitioner License Number 5730. On May 17, 2007, Respondent's license was suspended pursuant to a Petition for Interim Order of Suspension. The license remains suspended until the Board makes a final decision on the Accusation.
3. For 25 years, until March 8, 2007, Respondent had been an employee of Presbyterian Intercommunity Hospital in Whittier, California. He was suspended from employment on that date for his admitted use of drugs he had taken from the hospital. Respondent was formally terminated from employment on April 4, 2007. Although he had been suspended from employment on March 8, 2007, Respondent was observed, dressed in scrubs in the surgical area of the hospital, on April 1, 2007. Respondent stated that his only reason for being there was to retrieve some personal items, and that he could not enter the surgical area without wearing scrubs.

4. Respondent began his drug abuse (morphine,¹ Demerol² and fentanyl³) in June 2006. He gave various reasons for his drug use. In a declaration Respondent signed under penalty of perjury, Respondent stated that he began using drugs out of depression arising from marital and work related problems. At the hearing of this matter, Respondent stated that he had had five shoulder surgeries, and his shoulder was "still bothering" him when he began his drug abuse.

5. Respondent stole the drugs he used from his employer. His theft was done in a cold and calculating manner designed to ensure that he would not be caught. Respondent worked in and near the operating suite at the hospital. The drugs in question were stored in single dose units called "carpujets," which is a vial containing the drug and the drug delivery system (syringe). On numerous different occasions, Respondent would go into the supply room, take one or more of the carpujets, break open the seal using a surgical blade, extract the drug it contained, refill the vial with saline solution, then glue down the original seal and return the carpujets back to the supply room.

6. Respondent understood not only that he was stealing drugs, but that his replacement of the narcotics with non-analgesic saline put patients at risk. The exact number of carpujets Respondent adulterated was not established with certainty. Respondent admitted doing it "50 to 75 times," while hospital staff placed the number at between 100 and 150. On occasion, Respondent was under the influence of drugs while he was at work.

7. On the same date he was suspended from employment, Respondent entered a five day in-patient program at Charter Oak Behavioral Health Clinic and became drug-free. He then enrolled immediately in the Charter Oak Intensive Outpatient Program, completing the same on May 3, 2007, after 32 sessions. During this period, Respondent attended three or more 12-step meetings per week, and actively participated in all of Charter Oak's programs. According to the Coordinator of Addiction Medicine Services at Charter Oak, Respondent has developed a "proactive sober support group." Respondent was advised to continue with "aftercare" at least once per week for a one year period, and he has continued with aftercare as advised.

8. Respondent began his testimony with what appeared to be a heartfelt apology to the Board, to his employer, to the patients he may have harmed, and to his family. His "actions were horrible," and his "shame and guilt [were] overwhelming." Respondent is "happy with himself" for being drug-free, and is enjoying a renewed active relationship with

¹ Morphine is a Schedule II (highly addictive) pure opioid analgesic used for moderate to severe pain.

² Demerol, the brand name for meperidine is a Schedule II narcotic analgesic with multiple actions qualitatively similar to those of morphine. Respondent's use of Demerol was not charged in the Accusation. However, at the hearing of this matter, Respondent admitted his theft and use of this dangerous drug. That conduct is considered herein as a "factor in aggravation" in the determination of the below disciplinary order.

³ Fentanyl is a Schedule II opioid agonist used for analgesia and sedation

his children, as well as a "renewed relationship with God." He is convinced that he will not relapse. His period of sobriety has been approximately four months.

9. Respondent is currently employed as a clinical consultant for a medical distributor, and earns enough to support himself and also keep current with his spousal and child support obligations. He does not need his respiratory care practitioner's license for his current employment.

10. Official Notice is taken that the mandate of the Board is to protect and serve the consumer by administering and enforcing the Respiratory Care Practice Act and its regulations in the interest of the safe practice of respiratory care. (Bus. & Prof. Code, §§ 3701, 3710.1.) Licensed Respiratory Care Practitioners (RCPs) regularly perform critical lifesaving and life support procedures prescribed by physicians that directly affect major organs of the body. RCPs provide care directly to the patient in either a hospital setting or the patient's home. Patients may be suffering from lung cancer, emphysema, asthma, or cystic fibrosis, or may be premature infants whose lungs have not yet fully developed. In other words, an RCP works with high-risk patients.

11. The Board reasonably incurred costs in connection with the investigation and prosecution of this matter, including fees of the Attorney General, in the sum of \$9,796.

* * * * *

CONCLUSIONS OF LAW

1. Respondent's use of morphine and fentanyl, as set forth in Findings 3, 4, 5 and 6 constitutes a violation Business and Professions Code sections 2239, subdivision (a), 3750, subdivision (g), and 3750.5, subdivisions (a) and (b), thereby subjecting Respondent's respiratory care practitioner's license to discipline.

2. The Board is entitled to recover from Respondent its costs of investigation and prosecution of this matter, including fees of the Attorney General, in the amount of \$9,796, under the provisions of Business and Professions Code sections 3753.5, subdivision (a), and 3753.7.

3. Under *Zuckerman v. State Board of Chiropractic Examiners*, (2002) 29 Cal.App. 4th 32, 45, the Board must exercise its discretion to reduce or eliminate cost awards in a manner which will ensure that the cost award statutes do not deter licensees with potentially meritorious claims or defenses from exercising their right to a hearing. "Thus the Board may not assess the full costs of investigation and prosecution when to do so will unfairly penalize a [licensee] who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed." (*Id.*) The Board, in imposing costs in such situations, must consider the licensee's subjective good faith belief in the merits of his or her position and the Board must consider whether or not the licensee has raised a colorable defense. The Board must consider the licensee's

ability to make payment. Finally, the Board “. . . may not assess the full costs of investigation and prosecution when it has conducted a disproportionately large investigation and prosecution to prove that a [licensee] engaged in relatively innocuous conduct”. (*Id.*, footnote omitted.)

4. Considering all of the *Zuckerman* factors, there is no reason to reduce the award of costs at all, by reason of Findings 3 through 10. However, in light of the severity of the below Order, it would be unduly punitive to require Respondent to pay these costs at this time. Rather, requiring Respondent to pay said costs as a condition precedent to his relicensure would be appropriate.

* * * * *

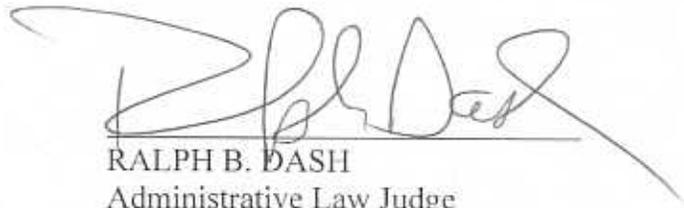
ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

1. Respiratory Care Practitioner License Number 5730 issued to Respondent Parker T. Bailey, together with all licensing rights appurtenant thereto, is revoked.

2. As a condition precedent to the Board's reissuance of said license at some future period, the Board may require Respondent Parker T. Bailey to pay it the sum of \$9,796 in such manner as the Board, in its discretion, deems appropriate.

Date: 7-18-07



RALPH B. DASH
Administrative Law Judge
Office of Administrative Hearings