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7
8 **BEFORE THE**
RESPIRATORY CARE BOARD
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10
11 In the Matter of the Accusation Against:

Case No. 1H-2010-192

12 **JACK STUART BRUNK, RCP**

A C C U S A T I O N

13 1041 Via Adorna
14 Newbury Park, California 91320

15 Respiratory Care Practitioner's License No.
RCP 7304

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity
21 as the Executive Officer of the Respiratory Care Board of California (Board).

22 2. On or about July 26, 1985, the Board issued Respiratory Care Practitioner's License
23 Number RCP 7304 to Jack Stuart Brunk (Respondent). The Respiratory Care Practitioner's
24 License was in full force and effect at all times relevant to the charges brought herein and will
25 expire on May 31, 2012, unless renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board, under the authority of the following
28 laws. All section references are to the Business and Professions Code unless otherwise indicated.

1 4. Section 3750 of the Code states:

2 "The board may order the denial, suspension or revocation of, or the imposition of
3 probationary conditions upon, a license issued under this chapter, for any of the following causes:

4 " . . .

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

8 " . . .

9 "(g) Conviction of a violation of any of the provisions of this chapter or of any
10 provision of Division 2 (commencing with Section 500), or violating, or attempting to
11 violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring
12 to violate any provision or term of this chapter or of any provision of Division 2
13 (commencing with Section 500).

14 " . . .

15 "(j) The commission of any fraudulent, dishonest, or corrupt act which is
16 substantially related to the qualifications, functions, or duties of a respiratory care
17 practitioner.

18 " . . . "

19 5. Section 3752 of the Code states:

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

1 **CAUSE FOR DISCIPLINE**

2 (Conviction of a Crime)

3 10. Respondent is subject to disciplinary action under Business and Professions code
4 sections 3750, subdivisions (d), (g), and (j), and 3752, and Title 16 of the California Code of
5 Regulations section 1399.370, subdivisions (a) and (b), in that he was convicted of crimes
6 substantially related to the qualifications, functions or duties of a respiratory practitioner. In
7 particular, Respondent was convicted of attempting to evade or defeat tax in violation of Title 26
8 of the United States Code section 7201. The facts and circumstances are as follows:

9 11. On or about March 2, 2005, a Grand Jury issued an Indictment in the matter of *United*
10 *States of America v. SDI Future Health, Inc., Todd Stuart Kaplan, Jack Brunk*, in the United
11 States District Court for the District of Nevada, case number CR-S-05-0078-PMP. The
12 Indictment alleged, in part:

13 A. "From on or about the beginning of January 1999, through on or about June 2002,
14 SDI Future Health, Inc., Todd Stuart Kaplan, and Jack Brunk, "conspired to
15 engage, and did engage, in a material scheme and artifice to defraud health care
16 benefit programs and patients of money and property by: (a) administering
17 medically unnecessary diagnostic tests; (b) engaging in false and deceptive
18 practices with respect to physicians, patients, and health care benefit programs to
19 obtain prescriptions and reimbursement for medically unnecessary diagnostic tests;
20 and (c) billing for services not rendered. As part of their effort to carry out their
21 scheme and conspiracy to defraud, the defendants paid illegal kickbacks to
22 physicians to induce them to refer patients to the defendants' diagnostic
23 laboratories."

24 B. "SDI Future Health, Inc. (SDI) was a California corporation engaged in the
25 business of providing medical diagnostic testing to the medical community. SDI
26 owned and operated clinics in Las Vegas, Nevada, and in other cities in more than
27 ten states. The SDI entity included all of its wholly-owned subsidiaries, including
28 Comprehensive Cardiac Care."

1 C. “Jack Brunk was an Executive Vice-President of SDI in charge of clinical
2 operations.”

3 12. In the Indictment, Respondent was charged with:

- 4 A. One count of Conspiracy (Count 1) in violation of Title 18 of the United States
5 Code section 371;
- 6 B. One hundred twenty-three counts of Health Care Fraud (Counts 2 through 125) in
7 violation of Title 18 of the United States Code sections 1347 and 2;
- 8 C. One count of Anti-Kickback Violation-Offer or Payment (Count 126) in violation
9 of Title 42 of the United States Code section 1320a-7b, subdivision (b), and Title
10 18 of the United States Code section 2;
- 11 D. One count of Conspiracy to Commit Money Laundering (Count 127) in violation
12 of Title 18 of the United States Code sections 1956, subdivisions (h) and
13 (a)(1)(A)(i), and 2;
- 14 E. Four separate counts of Attempting to Evade or Defeat Tax (Counts 131 through
15 134) in violation of Title 26 of the United States Code section 7201; and
- 16 F. Three separate counts of Attempting to Evade or Defeat Tax (Counts 135 through
17 137) in violation of Title 26 of the United States Code section 7201 and Title 18 of
18 the United States Code section 2.

19 Moreover, three separate allegations of forfeiture for conspiracy to commit health care
20 fraud (Forfeiture Allegation One), health care fraud (Forfeiture Allegation Two), and money
21 laundering (Forfeiture Allegation Three) were brought against Respondent.

22 13. On or about November 2, 2009, Respondent entered into a plea agreement, wherein
23 he pled guilty to Count One-Hundred Thirty-Two (132) of the Indictment charging him with
24 Attempt to Evade or Defeat Tax, in violation of Title 26 of the United States Code section 7201.
25 Therefore, the elements of the crime were established: (1) Brunk owed more income tax for the
26 calendar year 1999, than was declared due on his income tax return; (2) Brunk knew that more
27 federal income tax was owed than was declared due on his income tax return; (3) Brunk made an
28

1 affirmative attempt to evade or defeat an income tax; and (4) in attempting to evade or defeat
2 such additional tax, Brunk acted willfully.

3 14. On or about February 8, 2010, during the sentencing and disposition hearing,
4 Respondent's plea was accepted and entered. Notably, under the *Facts that Support Guilty Plea*
5 section, Respondent admitted the following:

6 a. Respondent was employed as an Executive Vice-President of SDI Future
7 Health, Inc. (SDI), a provider of diagnostic medical services, which included the provision of
8 tests for diagnosing sleep disorders.

9 b. As an Executive Vice-President at SDI, Respondent was required by law to
10 report to the IRS all income derived from salary and other benefits that SDI paid to Respondent as
11 compensation for his employment.

12 c. During the tax year 1999, Respondent reported no income received from SDI
13 when, in truth and in fact, his reportable income derived from compensation paid to him by SDI
14 was in excess of \$89,700, resulting in unreported income and undeclared tax due and owing in an
15 amount in excess of \$25,000.

16 d. Respondent knew that more federal income tax was due and owing than was
17 reported on his return for the tax year 1999.

18 e. Respondent made affirmative attempts to evade or defeat an income tax by
19 causing SDI's accounts payable clerk to book his bi-weekly salary payments as "loans" on SDI's
20 ledgers and to file forms with the IRS that under-reported the amount of compensation paid to
21 him as salary and benefits.

22 f. By his actions, Respondent acted willfully and with the purpose of evading or
23 defeating the income tax due and owing to the United States.

24 15. Furthermore, on or about February 8, 2010, during the sentencing and disposition
25 hearing, on the Government's motion, the court dismissed Counts 1 through 127, 131, and 133
26 through 137 in the interest of justice. Pursuant to the Sentencing Reform Act of 1984, the Court
27 suspended the imposition of sentence and placed Respondent on probation for a term of three
28 years under the following conditions:

- 1 (1) Respondent shall not commit another federal, state, or local crime.
- 2 (2) Respondent shall not possess or have under his control a firearm, destructive
3 device, or any other dangerous weapon, as defined by federal, state, or local
4 law.
- 5 (3) Respondent shall cooperate and arrange with the Internal Revenue Service to
6 pay all past and present taxes, interest, and penalties owed, and timely file
7 accurate and lawful income tax returns and show proof of same to the probation
8 officer.
- 9 (4) Respondent shall provide the probation officer access to any requested financial
10 information, including personal income tax returns, authorization for release of
11 credit information and any other business financial information in which he has
12 control or interest.
- 13 (5) Respondent shall keep the supervising probation officer apprised of all future
14 travel plans.

15 Additionally, the Court ordered Respondent to pay to the United States a criminal monetary
16 penalty of \$100, due immediately, and to comply with the standard conditions of supervision with
17 his probation officer.

18 **SECOND CAUSE FOR DISCIPLINE**

19 (Fraud or Dishonest Act)

20 16. Respondent is subject to disciplinary action under Business and Professions Code
21 section 3750, subdivision (j), and Title 16 of the California Code of Regulations section
22 1399.370, subdivision (b), in that he committed fraud or a dishonest act when he willfully
23 failed to report any income received from SDI when, in truth and in fact, his reportable income
24 derived from compensation paid to him by SDI was in excess of \$89,700, resulting in unreported
25 income and undeclared tax due and owing in an amount in excess of \$25,000 during the 1999 tax
26 year, and when he made affirmative attempts to evade or defeat an income tax by causing SDI's
27 accounts payable clerk to book his bi-weekly salary payments as "loans" on SDI's ledgers and to
28

1 file forms with the IRS that under-reported the amount of compensation paid to him as salary and
2 benefits. The circumstances are as follows:

3 17. Paragraphs 10 to 15, inclusive, above are incorporated herein by reference as if
4 fully set forth.

5 **PRAYER**

6 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
7 and that following the hearing, the Respiratory Care Board of California issue a decision:

8 1. Revoking or suspending Respiratory Care Practitioner's License Number RCP 7304,
9 issued to Jack Stuart Brunk.

10 2. Ordering Jack Stuart Brunk to pay the Board the costs of the investigation and
11 enforcement of this case, and if placed on probation, the costs of probation monitoring;

12 3. Taking such other and further action as deemed necessary and proper.

13
14 DATED: March 25, 2011

Original Signed by Liane Freels for:

15 STEPHANIE NUÑEZ
16 Executive Officer
17 Respiratory Care Board of California
18 State of California
19 *Complainant*

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