

1 **BEFORE THE ARIZONA STATE BOARD OF**  
2 **RESPIRATORY CARE EXAMINERS**

3 In the Matter of: ) **CASE NO. C003823-18-007914**  
4 )  
4 **KIMBERLY STEWART, RCP** ) **FINDINGS OF FACT, CONCLUSIONS**  
Holder of License No. **007914** ) **OF LAW, AND NON-DISCIPLINARY**  
5 ) **ORDER**  
6 For the Practice of Respiratory Care )  
In the State of Arizona )  
7 \_\_\_\_\_ )

8 Kimberly Stewart, RCP (“Respondent”), holder of license number 007914 appeared and  
9 represented herself before the Arizona State Board of Respiratory Care Examiners (“Board”) for  
10 an informal interview on Thursday, April 19, 2018. Following the testimony of the witness and  
11 presentation of evidence, the Board issues the following Order.

12 **FINDINGS OF FACT**

13 1. The Arizona State Board of Respiratory Care Examiners is the duly constituted  
14 agency for licensing and regulating of the practice of respiratory care in the State of Arizona and  
15 has jurisdiction over Respondent as a licensee of the Board and the subject matter pursuant to  
16 A.R.S. § 32-3501, *et seq.*

17 2. Kimberly Stewart, RCP, is the holder of License Number 007914, which enables  
18 her to practice respiratory care in the State of Arizona.

19 3. Respondent’s license to practice respiratory care was originally issued on October  
20 18, 2007 and expires on April 12, 2019.

21 4. On August 27, 2017, Respondent was arrested for Driving Under the Influence –  
22 Liquor/Vapor/Drugs.

23 5. Respondent self-reported the 2017 arrest to the Board on November 6, 2017 and  
24 acknowledged under Oath that she had made a poor decision to drive while intoxicated.

25 6. Respondent’s history with the Board includes two previous DUI convictions  
26 dating back to July 2, 1992 and November 15, 2011. In addition, Respondent was cited for  
driving with a suspended license on December 18, 2017.

**CONCLUSIONS OF LAW**

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2           1.       The conduct described in the Findings of Fact constitute grounds for disciplinary  
3 action pursuant to A.R.S. §§ 32-3552(A)(3) and violate the provisions of A.R.S. § 32-3501(9)(a),  
4 which states, “Committing a felony, whether or not involving moral turpitude, or a misdemeanor  
5 involving moral turpitude.”

6           2.       The conduct described in the Findings of Fact constitutes grounds for disciplinary  
7 action pursuant to A.R.S. § 32-3552(A)(3) and violates the provisions of A.R.S. § 32-3501(9)(b)  
8 which states, “Habitual intemperance in the use of alcohol.”

9           3.       The conduct described in the Findings of Fact constitute grounds for disciplinary  
10 action pursuant to A.R.S. §§ 32-3552(A)(3) and violate the provisions of A.R.S. § 32-3501(9)(g),  
11 which states, “Immorality or misconduct that tends to discredit the respiratory therapy  
12 profession.”

13           4.       The conduct described in the Findings of Fact constitute grounds for disciplinary  
14 action pursuant to A.R.S. §§ 32-3552(A)(3) and violate the provisions of A.R.S. § 32-3501(9)(i),  
15 which states, “Any conduct or practice which is contrary to recognized standards of ethics of the  
16 respiratory therapy profession or any conduct or practice which does or might constitute a danger  
17 to the health, welfare or safety of the patient or the public.”

18           5.       The conduct described in the Findings of Fact constitute grounds for disciplinary  
19 action pursuant to A.R.S. §§ 32-3552(A)(3) and violate the provisions of A.R.S. § 32-3501(9)(k),  
20 which states, “Violating or attempting to violate, directly or indirectly, or assisting in or abetting  
21 the violation of or conspiring to violate a provision of this chapter.”

22           6.       The conduct described in the Findings of Fact constitute grounds for disciplinary  
23 action pursuant to A.R.S. §§ 32-3552(A) (3) and violate the provisions of A.A.C. R4-45-214 (6),  
24 which states, “Endangering a patient’s or the public’s physical or emotional health or safety or  
25 engaging in conduct or practice that may be reasonably expected to do so.”  
26

1 **ORDER**

2 Based upon the foregoing Findings of Fact and Conclusions of Law, **IT IS HEREBY**  
3 **ORDERED THAT** Kimberly Stewart, RCP, holder of license number 007914, shall be placed  
4 on a non-disciplinary rehabilitative **PROBATION** for a period of three (3) years, subject to the  
5 following terms and conditions:

6 1. **Individual Counseling or Participation in AA/NA.** Respondent shall enter into  
7 individual counseling. Respondent shall participate in individual counseling at least  
8 weekly, or as recommended by a substance abuse evaluator, whichever is more  
9 often. Upon entry, Respondent shall execute the appropriate release of information  
10 form allowing the program to provide records and inform the Board of Respondent's  
11 entry and progress. Respondent shall also request the program to submit to the  
12 Board, in writing, evidence of satisfactory participation and progress in counseling.  
13 Such reports are due on a quarterly basis from the date of entry into the program for  
14 the remainder of the probationary period. If Respondent declines or discontinues  
15 weekly counseling, Respondent must instead participate in Alcoholics Anonymous,  
16 Narcotics Anonymous, or an equivalent program. If Respondent participates in  
17 AA/NA, Respondent must participate in at least three (3) weekly meetings. The  
18 meetings must be on three (3) separate days per week. If circumstances require,  
19 Respondent may attend up to one (1) meeting per week on-line. Respondent shall  
20 submit to the Board, in writing, on Board approved forms, quarterly reports with the  
21 following information:

- 22 a. Name of 12-Step Group  
23 b. Name or initials of another individual in attendance at each  
24 meeting  
25 c. Date and time of meeting  
26 d. Location and address of meeting place

1 e. Name and phone number of organizing/administering person

2 f. Name and phone number of sponsor

3 2. **Mandatory and Random Drug Testing.** Respondent shall comply immediately  
4 (within 2 hours) with telephonic, electronic, or in person requests from the Board, or  
5 its agents or designees, to submit to witnessed random biological fluid collection for  
6 mandatory and random drug testing. The Board may, at its discretion, request these  
7 tests weekly (not to exceed four requests per month) during the first six (6) months  
8 of this Order. These tests must be, at a minimum, a 10-Panel that includes  
9 ethylglucaronide alcohol screening. And Respondent shall authorize any person or  
10 organization conducting tests on these collected samples to provide testing results to  
11 the Board. Failure to provide and/or update contact information for mandatory  
12 testing is a violation of this order. In addition, any occurrence of the following  
13 conditions constitutes noncompliance with this Consent Agreement: a positive drug  
14 test showing evidence of any drug other than an authorized drug; submission of a  
15 specimen where the integrity has been compromised, as indicated by the presence of  
16 adulterants; an abnormal result for low creatinine level; and submission of a urine  
17 sample that is below the acceptable volume or temperature to be tested. A positive  
18 drug test showing evidence of any drug other than an authorized drug may result in  
19 summary suspension of Respondent's license. Failure to submit to a drug test on a  
20 day when a test has been required by the Board, its agents or designees, or the  
21 laboratory may be considered a positive result and may also result in summary  
22 suspension of Respondent's license.  
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25 3. **Abstain from Alcohol; Unauthorized Drug Use/Proof of Prescription.**

26 Respondent shall not ingest or take any alcohol, or products containing alcohol.

1 Respondent shall not ingest or take any drugs or medications whatsoever (except  
2 for plain aspirin and/or plain acetaminophen), whether controlled substances,  
3 prescription-only drugs or over-the-counter preparations, unless such drug or  
4 medication was prescribed for him/her by his/her treating physician. Respondent  
5 must have a current prescription for any prescription-only drugs or over-the-counter  
6 preparations taken. Respondent shall provide a copy of all mood-altering or  
7 controlled substance prescriptions written for the Respondent **within 72 hours after**  
8 **the prescription has been filled.** Further Respondent shall provide the Board office  
9 with prescription information relating to dosage and frequency within 72 hours.

- 10
- 11 4. **Employer Notification.** Respondent shall inform current, and any future,  
12 employer(s) of this Order. Respondent shall immediately provide current  
13 employer(s) with a copy of this Order, and any future employer(s) with a copy of  
14 this Order at time of application. Respondent shall cause employer(s) to notify the  
15 Board, via email or facsimile, when the employer(s) receive a copy of this Order.
- 16 5. **Quarterly Reports from Employer.** Respondent shall cause employer(s) to file  
17 reports with the Board on work performance. These reports must be received by the  
18 15th day of: March, June, September and December
- 19 6. **Quarterly Reports from Ignition Interlock.** Respondent shall cause his/her breath-  
20 testing ignition interlocks reports to be submitted to the Board, if any. These reports  
21 must be received by the 15<sup>th</sup> Day of March, June, September, and December until  
22 such time as the device is no longer mandated for use, if at all.
- 23
- 24 7. **Release of Information Forms.** Respondent shall sign all release of information  
25 forms as required by the Board or its designee and return them to the Board within  
26 10 days of the Board's written request. If Respondent fails to execute the releases,  
license holder may be subject to disciplinary action.

- 1 8. **Quarterly Interviews with the Board or Its Designee.** Respondent shall appear in  
2 person or if residing out of state, telephonically for interviews with the Board or its  
3 designee upon request and reasonable notice.
- 4 9. **Change of Employment; Personal Address; Telephone Number; Email**  
5 **Address.** Respondent shall notify the Board, in writing, immediately, via facsimile,  
6 email, or personal delivery of letter, of any change in employment, personal address,  
7 telephone number, or email address.
- 8 10. **Notification of Extended Absences.**  
9 Respondent shall notify the Board, via facsimile or email, or any instance where  
10 he/she makes plans to be away from his/her place of employment or home for more  
11 than three (3) continuous days.
- 12 11. **Obey all Laws.** Respondent shall obey all federal, state and local laws, and all  
13 laws/rules governing the practice of respiratory care in this state. Offenses or  
14 convictions such as driving under the influence may subject Respondent to further  
15 disciplinary action. Minor civil traffic violations are excluded.
- 16 12. **Costs.** Respondent shall bear all costs of complying with this Order.
- 17 13. **Renewal of License.** In the event the license is scheduled to expire during the  
18 duration of this Order, Respondent shall apply for renewal of the license and pay the  
19 applicable fee before the expiration date. Failure to renew within seven days of the  
20 effective date of this Order, if it is expired; or failure to renew a license by the  
21 scheduled expiration date; shall be considered as noncompliance and may be subject  
22 Respondent to further disciplinary action.
- 23 14. **Duration.** This Order shall remain effective for three (3) years from the effective  
24 date; and, after one (1) year, Respondent may apply to the Board to seek  
25 modification of the Probation upon showing satisfactory compliance with the Order  
26 during the period of probation

1 15. **Violation of Probation.** If Respondent is noncompliant with this Consent  
2 Agreement in any respect, the Board may revoke Probation and take further  
3 disciplinary action after affording Respondent notice and an opportunity to be heard.  
4 If a complaint concerning noncompliance with this Consent Agreement is filed  
5 against Respondent during the period of Probation, the Board shall have continuing  
6 jurisdiction until the matter is final and the period of Probation shall be extended  
7 until the matter is final.

8 16. **Voluntary Surrender of License.** Respondent may, at any time this Consent  
9 Agreement is in effect, voluntarily surrender her license with the understanding that  
10 the same will be treated and considered as a revocation of the license by the Board.

11 **NOTICE**

12 In order to be eligible for judicial review pursuant to Title 12, Chapter 7, Article 6, you  
13 are required to exhaust your administrative remedies by filing a motion for rehearing or review  
14 of the Board's decision within thirty-five days after these Findings of Fact, Conclusions of Law,  
15 and Order are mailed to you at your last known address, or thirty days after they are personally  
16 served upon you. Pursuant to A.R.S. § 41-1092.09(B), you are notified that failure to file a  
17 motion for rehearing or review at the Board's office by that date has the effect of prohibiting you  
18 from seeking judicial review of the Board's decision

19  
20 DATED THIS 24<sup>TH</sup> DAY OF APRIL, 2018.



ARIZONA STATE BOARD OF RESPIRATORY CARE

\_\_\_\_\_  
Jack Confer  
Executive Director

1 Original Consent Agreement for  
2 Findings of Fact, Conclusions of Law  
3 And Non-Disciplinary Order filed this  
4 24<sup>th</sup> day of April, 2018 with the:

5 Arizona Board of Respiratory Examiners  
6 1740 West Adams Street, Suite 3406  
7 Phoenix, AZ 85007

8 Copy of the foregoing sent by electronic,  
9 regular and certified mail this 24<sup>th</sup> day  
10 of April, 2018 to:

11 Kimberly Stewart, RCP  
12 Address on Record

13 Copy of the foregoing sent by electronic  
14 mail this 24<sup>th</sup> day of April, 2018 to:

15 Frankie Eckberg, AAG  
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