

**BOARD OF RESPIRATORY CARE EXAMINERS
BOARD MEETING MINUTES**

Thursday, May 17, 2001 at 10:00 a.m.
Presidio Plaza Hotel, 181 W. Broadway, Tucson
Plaza - East and West Rooms

Board Members Present: Chair Jen Chahanovich, Vice-Chair James Matthews, Eric Gibbons, Robert Leitz, Meryl Salit and David Sanderson, M.D.

Board Members Absent:

Staff Present: Mary Hauf Martin, Executive Director
Nancy Marinis, Program and Project Specialist

Board's Legal Counsel: Nancy J. Beck, Assistant Attorney General

I. A. CALL TO ORDER by Chair Jen Chahanovich

The Meeting was called to order at 10:00 a.m. by Board Chair, Jen Chahanovich.

B. DISCUSSION/ACTION ON EXECUTIVE DIRECTOR'S REPORT

1. Discussion/Action on anonymous letter addressing expanded practice issues

The Board reviewed the contents of an anonymous letter received by the Board that addressed expanded practice issues such as intubation, phlebotomy, IV insertion, PICC line insertion, arterial cannulation and assisting physicians in insertion of other hemodynamic monitoring devices and monitoring/maintenance of IABPs.

After reviewing the legislative intent clause which states:

Laws 1990, Chapter 256, § 1. Legislative Intent

“The legislature also recognizes that the practice of respiratory care is a dynamic and changing art and science which is continually evolving to include new developments and more sophisticated techniques in patient care, thus creating a need for continuing education and maintenance of minimum standards of competence for those who practice

this area.

The intent of the legislature in this act is to provide clear legal authority for functions and procedures which have common acceptance and usage. In this act, the legislature also intends to recognize the existence of overlapping functions between physicians, registered nurses, physical and occupational therapists, respiratory care practitioners and other licensed health care personnel and to continue to allow appropriate sharing of functions among the various health care professions.”

After discussion, the Board unanimously agreed that in the presence of facility policies and procedures along with documentation of a training program and a method of tracking continuing competency, respiratory care practitioners in the State of Arizona may perform these procedures.

2. Discussion/Action on administration of Tenecteplase and/or Alteplase and Optison by licensed RCPs. Requested by Frank Miller, Mayo Clinic Hospital

Mr. Miller appeared before the Board. He explained that the administration of Tenecteplase and/or Alteplase would be limited for maintenance of PICC lines only. The administration of Optison is limited to the venue of Cardiac Stress Testing.

After carefully reviewing A.R.S. § 32-3501(5.) (a.); A.A.C. R4-45-101(18.); and the legislative intent clause, the Board unanimously agreed that in the presence of facility policies and procedures along with documentation of a training program and a method of tracking continuing competency, respiratory care practitioners in the State of Arizona may administer Tenecteplase and/or Alteplase only to maintain patency of PICC lines and Optison only as part of Cardiac Stress Testing.

3. Board Office Highlights

Board staff updated the Board on current issues.

4. Legislative Update

The Executive Director updated Board members on legislation passed in the recent session that effects the Board.

II. APPROVAL OF MINUTES

Thursday, April 19, 2001

Dr. Sanderson noted that on page 17 of the April minutes regarding Glenda Frost no action was noted in the motion made by Mr. Leitz.

After discussion Meryl Salit moved that the Board approve the Minutes as amended adding

the word revoke on page 17 regarding the action taken by the Board in Ms. Frost's case. Dr. Sanderson seconded. **The Motion passed unanimously.**

III DISCUSSION/ACTION ON APPLICATIONS FOR LICENSURE

A. Recommended for approval by the Executive Director

Laurel A. Bernat	Anne Brown	Myrna R. Coleman
Richard W. Cornwell	Darick L. Curls	Geri L. Gebauer
Alan L. Go	Lorraine A. Hewin	Stanford T. Higa
Byron G. Kellogg	Matthew J. Lizak	Pedro G. Marquez
Marilyn E. Marshall	Dayna M. Martinez	Kay R. Mugford
Melinda S. Powers	Virginia L. Sciortino	
Jaime E. Townsend-Coffin	Giovanna C. Wall	

James Matthews moved that the Board approve the license applications listed on the Agenda as recommended for approval by the Executive Director. Meryl Salit seconded. **The Motion passed unanimously.**

B. Application for Licensure

Jody L. Lawson, Case No. 00000-00-1458 *

Mr. Lawson was present. The Executive Director summarized for the Board.

On April 28, 2000, Jody Lee Lawson filed an application to the Board for a license to practice respiratory care. Due to admissions made by Mr. Lawson, a determination had to be made as to whether he was qualified and eligible to be issued a temporary license at that time. The Board's Executive Director reviewed Mr. Lawson's application for a license. On his application, Mr. Lawson answered yes to Questions Number 16 and 19. In answer to Question Number 16, Mr. Lawson admitted that his license to practice respiratory care in the State of California had been revoked. In answer to Question Number 19, Mr. Lawson admitted a felony conviction (aggravated battery with a deadly weapon) on or about December 12, 1997, in case number DF97-0083, in Osceola County Florida. Mr. Lawson was granted a temporary license only and on the condition that he enter into a stipulated order of probation.

On May 10, 2000, the Stipulation and Consent Order of Probation granting Mr. Lawson's conditional Temporary License was entered.

The Temporary Probation License was considered by the Board for ratification at its meeting on May 18, 2000. Mr. Lawson did not appear before the Board personally or by legal counsel. The Board reviewed the information provided by Mr. Lawson with his license application. The Board found that the nature of Mr. Lawson's felony offense, aggravated battery with a deadly weapon, established an immediate threat to the public health and safety. Therefore, the Board voted to issue an interim order of summary suspension of Mr. Lawson's temporary license to practice respiratory care in Arizona. The Board also voted to issue a Formal Complaint and Notice of Hearing.

The Board's Interim Order of Summary Suspension was issued to Mr. Lawson on May 23, 2000. On May 23, 2000, Mr. Lawson filed a written motion with the Board waiving his right to 30 days written notice prior to an administrative hearing so that the Board could conduct the hearing on June 15, 2000.

On June 15, 2000, the Board held a meeting to conduct the formal hearing. Mr. Lawson attended the meeting. He told the Board that he was still on his court-ordered probation and would continue to be on probation until mid-December 2000. Mr. Lawson told the Board that, at the time he completes his probation, he will petition the court to have his felony reduced and his civil rights restored. After discussion, the Board voted to offer Mr. Lawson a non-disciplinary Stipulation and Consent Order in which he would agree to not practice on his temporary license, and then the Board would consider his application again when Mr. Lawson provides all of the information and documentation necessary for the Board to determine whether he can safely and skillfully practice respiratory care in Arizona. Mr. Lawson verbally agreed to enter into a Stipulation and Consent Order.

Mr. Lawson entered into the stipulation and consent order with the Board on June 30, 2000.

On December 19, 2000, Mr. Lawson delivered a written statement and an application for clemency with the Florida Board of Corrections to the Board office. Staff determined that Mr. Lawson had not yet filed the application.

On February 6, 2001, Mr. Lawson provided the Board with written documentation which included evidence that he had made application to the Florida Clemency Board. Mr. Lawson also made application for a temporary license extension.

Mr. Lawson was advised in writing that the Board would conduct an temporary license extension application interview and review his current stipulation and consent order at its February meeting.

Mr. Lawson addressed the Board. He informed the Board that he had a respiratory care position pending the approval of his temporary extension.

The Board reviewed all of the documentation provided by Mr. Lawson. The documentation appeared to satisfy the provisions set forth in the most recent stipulation and consent order.

After discussion, the Board voted unanimously to approve the temporary license extension.

The Temporary license was issued on February 16, 2001, valid through June 16, 2001.

In a letter delivered to the Board office on May 8, 2001, Mr. Lawson informed the Board that his application for clemency in the State of Florida had been received but no decision had yet been handed down. He asks that the Board consider his application for a permanent license since his temporary extension is due to expire in June. Board staff indicated to Mr. Lawson that his application would be placed on the May Board meeting Agenda.

Case No. 00000-01-1578

On May 15, 2001, Board staff spoke with Shane Jackson, respiratory therapy supervisor at Maryvale Hospital Medical Center. According to Ms. Jackson, the results of a routine employment background check had revealed that Mr. Lawson's California RCP license had been revoked. He did not disclose this on his employment application with Maryvale.

A subpoena for documents relating to Mr. Lawson's employment application was issued to Maryvale Hospital on May 15, 2001. In response to the subpoena many documents were provided to the Board including a copy of his application for employment.

Review of that application shows the following:

- Mr. Lawson was applying for employment as respiratory therapist
- He listed no current or past professional licenses
- He disclosed no license privileges as being disciplined, suspended or revoked
- He misrepresented his reason for leaving employment at 2 facilities in California listing as his reason for leaving, “relocated to Az.”

After discussion, Robert Leitz moved that the Board deny Mr. Lawson’s license application since he 1) has a felony conviction that has not been set aside by the courts and his civil rights have not been restored, 2) has had his California license revoked for unprofessional conduct relating to his felony conviction in the State of Florida and 3) he committed an act of unprofessional conduct by making a material misrepresentation by omitting information on his employment application at Maryvale Hospital Medical Center. Jen Chahanovich seconded. **The Motion passed by a vote of 5 ayes and 1 nay.** Dr. Sanderson voted against the Motion.

* NOTE: Appears elsewhere on this Agenda

C. Reapplication for Licensure

Christine Chapman
Valerie J. Straw

Michael L. Cole
Maria D. C. Wilcox

Trayc D. Power

James Matthews moved that the Board approve the license reapplications listed on the Agenda. Robert Leitz seconded. **The Motion passed unanimously.**

D. Ratification of Temporary Licenses Issued pursuant to A.R.S. § 32-3521

Chauncey A. Bailey
William D. Brown, Jr.
Jennifer L. Celardo
Kathy E. Eichberger
Amy Leibundgut
Connie L. Perry
Robert J. Sales
Lisa A. Stoller

Alicia M. Belford
Valerie A. Castro
Betty Jo Daniel
Jessica Jardine
Maria J. Lucas
Sharon K. Ralls
Katherine L. Sexton
Jesse R. Tafoya

Victoria G. Bowen
Kathleen Clemente
Olivia J. Elliott
Michael J. Leek
Anthony D. Moody
Doreen F. Rick
Donald L. Spicer
Hla Than

Eric Gibbons moved that the Board ratify the temporary licenses listed on the Agenda. Robert Leitz seconded. **The Motion passed unanimously.**

E. License Renewal Application

Paula S. Soehner, Case No. 00022-01-1572 *

See Agenda Item VIII. 3.A.

* NOTE: Appears elsewhere on this Agenda

F. Ratification of Temporary License Extensions Issued pursuant to A.R.S. 32-3521

Nicolle E. Erdelac
Carolyn R. Williams

Trudi Jo Smith

Monica Tehlikian

Meryl Salit moved that the Board ratify the temporary license extensions listed on the Agenda. James Matthews seconded. **The Motion passed unanimously.**

IV. DISCUSSION/ACTION ON ADMINISTRATIVE CLOSING OF APPLICATION FILES

Recommended for closing of application files.

Summer L. Aguido
Christy L. Haney
Paul R. Richardson, Jr.

Dorilynn Begaye
Brenda J. James
Julie O. Washington

Sandra L. Elkington
Mark S. Proa

Eric Gibbons moved that the Board administratively close the application files listed on the Agenda. James Matthews seconded. **The Motion passed unanimously.**

V. DISCUSSION/ACTION ON ADMINISTRATIVE CLOSING OF TWO YEAR INACTIVE FILES

Recommended for closing of inactive files.

1. Jody L. Anderson
Kai S. Bisby
Kimberlee A. Bridges
Coleen P. Finley
Melvyn Jones
Tonya M. Sanders

Joy M. Berguin
David B. Bourey
James W. Ervin, Jr.
John J. Hellesen
Michael E. Kavalier
Paul A. Satter

Donald A. Bihler
Marla J. Bradley
Erica A. Faigle
Deborah M. Iverson
Vincent W. Mendell
Michael J. Woydziak

2. Andrew J. Ready, license revoked 05/20/99

James Matthews moved that the Board administratively close the two year inactive files listed on the Agenda. Dr. Sanderson seconded. **The Motion passed unanimously.**

VI. DISCUSSION/ACTION ON NOTICES OF LICENSE EXPIRATIONS

A. Notice of License Expirations to the following individuals:

Elaine M. Allin	Timothy G. Brewster	Paul F. Cade
Tori L. Child	Darrel M. Davis	Jennifer L. Fortier
Leslie M. Fulkerson	David E. McDermott	Tina C. Mueller
Carl R. Murphy *	Alton J. Nail	Antonio N. Norton
Paul Petrocci	Albert J. Reitz	Melissa A. Sylvester
Maria J. Velez		

* on probation

Eric Gibbons moved that notice of license expiration be issued to those listed on the Agenda. Robert Leitz seconded. **The Motion passed unanimously.**

VII. DISCUSSION/ACTION ON REINSTATEMENT OF EXPIRED LICENSES

A. Ratify reinstated licenses issued by the Executive Director.

Monica L. Brito	Gretchen H. Couture	Tristan D. Laubhan
Shelly R. Nall		

Meryl Salit moved to ratify these reinstated licenses. James Matthews seconded. **The Motion passed unanimously.**

VIII. CONSIDERATION AND ACTION ON INVESTIGATIONS OF POSSIBLE UNPROFESSIONAL CONDUCT

1. David A. Coss, Case No. 04179-01-1570

Mr. Coss was present. The Executive Director summarized for the Board.

Mr. Coss submitted a license application on November 14, 1996. He was issued license number 04179 on July 17, 1997.

On February 9, 2001, he submitted a complete late license renewal. His license is currently valid through February 4, 2003.

On April 4, 2001, the Board received written notification from Glenn Davis, administrative director of respiratory care services for Good Samaritan Regional Medical Center, GSRMC, that Mr.

Coss had been terminated effective April 2, 2001, after it was determined “that Mr. Coss documented therapy that he did not actually perform.”

On April 24, 2001, Mr. Coss was advised of the allegation in writing. As of this date no written response had been received.

On April 30, 2001, a subpoena was issued to GSRMC for all documentation relating to the termination.

On May 2, 2001, Mr. Coss was advised in writing that the Board would consider this matter at its May meeting.

Documents received on May 14, 2001, from Good Samaritan Regional Medical Center in response to the Board subpoena issued on April 30, 2001, included the following:

- C Employee Status Change Notice indicating that Mr. Coss was terminated for “Falsification of patient record” effective 04/02/01
- C Notice of Discharge/Termination dated and signed on 04/02/01 by Mr. Coss and his supervisor Glenn Davis
- C Investigative report regarding patient MM compiled by Mr. Coss’s immediate supervisor, Doreen Cherub
- C Respiratory Care Treatment Record for patient MM including entries made by Mr. Coss on 03/27/01
- C Respiratory Care Department Assignment & Log Sheet for Mr. Coss for the day shift on 03/27/01 including charges submitted for patient MM
- C Pharmacy report for “user” David Coss for the period covering 03/26/01 through 03/30/01 including medications “removed” or checked out for patient MM

Mr. Coss addressed the Board. He stated that he did administer SVN treatments to patient MM as documented even though the pharmacy reports indicates that he only checked out one dose of medication for that shift for that patient. He added that it was a “common practice” to remove extra medications from the PYXYS system either from that patient’s supply or even from another patient’s supply to use on the patient it was charged to or other patients or even to personally stockpile for use on patients in the future. He stated that he did CPT for about 7 minutes on patient MM in the morning but did not attempt other CPT treatments later in the shift. He admits that he did enter CPT as performed on the log sheet which would result in the patient being billed for that therapy.

Mr. Coss was warned by the Board that his blatant misuse of the pharmacy system may be considered fraud since patients may be charged for medications that they did not receive.

After discussion, Robert Leitz moved that the Board offer Mr. Coss a stipulated decree of censure for falsifying patient medical records. Jen Chahanovich seconded. After further discussion Mr. Leitz and Ms. Chahanovich withdrew their Motion. Meryl Salit then moved that the Board offer Mr. Coss a stipulated decree of censure and a 3 year term of probation that would include a provision to complete the ethics class offered through the Maricopa Community College System. Eric Gibbons seconded. **The Motion passed unanimously.** Mr. Coss indicated to the Board that he would accept the stipulated order.

2. Jean E. Mathews, Case No. 00173-01-1571

Ms. Mathews was present. The Executive Director summarized for the Board.

Ms. Mathews submitted a license application on December 10, 1991. She was issued license number 00173 on September 16, 1992. Her license is currently valid through August 30, 2002.

Ms. Mathews and her husband own Professional Respiratory Care Services, Inc., PRCS.

Latease Brown was employed by PRCS. On April 3, 2001, the Board received an allegation of unprofessional conduct against Ms. Brown from PRCS. According to the letter of complaint and attached documentation, on March 6, 2001, after receiving a complaint from a facility regarding Ms. Brown, management staff from PRCS went to the facility where Ms. Brown was on assignment. Doug and Jean Mathews escorted her off the facility campus and to a Sonora Quest Laboratories location where Ms. Brown submitted to a drug screen. The drug screen was positive for illegal substances.

The Board considered the allegation against Ms. Brown at its April meeting and voted to issued a formal complaint and hold a hearing.

The Board voiced concern that Ms. Brown was escorted off hospital property by Jean and Doug Mathews, owners of PRCS, after it was reported to PRCS that Ms. Brown was "behaving irrationally" and then escorted by Ms. Mathews to be drug screened. The drug screen results were positive for illegal substances but the matter was not reported to the Board until almost one month later. Ms. Brown's actions and behavior were of obvious concern to the facility. The public health and welfare may have been jeopardized by Ms. Brown's behavior. After further discussion, the Board voted to open a separate investigation. Jean Mathews, a licensee of the Board, would be notified that an allegation of unprofessional conduct has been opened to determine why the matter was not reported to the Board in a timely manner.

Ms. Mathews was advised of the Board's action in writing on April 23, 2001.

On April 26, 2001, Ms. Mathews hand delivered her response along with documentation. In her written response Ms. Mathews reported that their agency did not work Ms. Brown from the period of the positive drug screen until the time of her termination. In closing she states the following, "...let me say that the circumstances here were in no way intended as disrespect for the Board, its important functions, or the public. What happened here happened because of our desire to comply with the law. Although neither 32-3553(A) nor (D) contain any requirement or indication as to *when* a report under those provisions must be made, we believe that our new policy will ensure that, should the situation arise again, we will report under 32-3553 (A) as soon as reasonably possible, and then again (if necessary) under 32-3553(D) at a later time."

The Board recognized that PRCS had readdressed its reporting policy and made amendments. The Board members reiterated the vital importance that any serious incidence of unprofessional behavior must be reported as soon as possible to protect the public good. Reporting of the unprofessional conduct could prevent the licensee under scrutiny from moving on to another employer and continuing the same behavior.

After discussion, Meryl Salit moved that the matter be dismissed since Ms. Mathews had demonstrated that PRCS had modified its reporting policy. Eric Gibbons seconded. **The Motion passed unanimously.**

3. A. Paula S. Soehner, Case No. 00022-01-1572 *

Ms. Soehner was present. Eric Gibbons recused himself . The Executive Director summarized.

Ms. Soehner submitted a license application on November 6, 1991. She was issued license number 00022 on March 19, 1992.

Ms. Soehner submitted timely license renewals in 1994, 1996 and 1998.

On April 18, 2000, Ms. Soehner was notified in writing at her address of record that her license had expired.

On or about April 20, 2001, Ms. Soehner submitted a written request along with the fee for a duplicate license. Board staff notified her in writing that her request could not be honored since she no longer held a valid license. A late license renewal package was returned Ms. Soehner.

On April 26, 2001, Ms. Soehner submitted a late license renewal application. On the attached Consent Order, Ms. Soehner admitted that she has been employed by Winslow Respiratory Services during the period that her license has been expired. Her supervisor, Michael Hartnett verified this information with Board staff in a telephone call on April 26, 2001.

On April 30, 2001, Ms. Soehner was advised in writing of the allegation that she had worked as a respiratory care practitioner in the State of Arizona since March 19, 2000. No response has been received.

In her response received on May 9, 2001, Ms Soehner denies knowing that her license had expired until her request for a duplicate license was denied.

Ms. Soehner was advised in writing that the Board would consider this matter at its May meeting.

Ms. Soehner addressed the Board.

After discussion, James Matthews moved that the Board issue a letter of concern and offer a stipulated order fixing a term of probation which would include an administrative penalty of \$500 for working without a license and completion of the ethics class offered on line through the Maricopa Community College System. **The Motion died for lack of a second.** After further discussion, Meryl Salit moved that the Board renew Ms. Soehner's license only and on the condition that she accept a stipulated order for a decree of censure and a term of probation which would include an administrative penalty of \$500 and completion of the ethics class offered on line through the Maricopa Community College System for working without a license. Jen Chahanovich seconded. **The Motion passed unanimously.** Ms. Soehner indicated to the Board that she would accept the terms of the offer.

B. Michael J. Hartnett, Case No. 00020-01-1573

Mr. Hartnett was present. The Executive Director summarized for the Board.

Mr. Hartnett submitted a license application on November 6, 1991. He was issued license number 00020 on March 19, 1992. Mr. Hartnett submitted timely license renewals in 1994, 1996, 1998 and 2000. His license is currently valid through September 12, 2002.

In a phone call with Board staff on April 26, 2001, Mr. Hartnett verified that Paula Soehner

had worked without a license under his supervision since March 19, 2000.

Mr. Hartnett was advised of the allegation in writing on April 30, 2001.

In his written response received on May 7, 2001, Mr. Hartnett states that he not aware that Ms. Soehner's license had expired until April 25, 2001. He states that Winslow Respiratory Services has never had a license tracking policy but that because of this event a policy was developed. He attached a copy and provided an explanation.

Mr. Hartnett was advised in writing that the Board would consider this matter at its May meeting.

Mr. Hartnett discussed Winslow Respiratory Services new policy with the Board.

After discussion, Meryl Salit moved that the Board issue a letter of concern. Jen Chahanovich seconded. **The Motion passed unanimously.**

4. A. Colleen C. Scripture, Case No. 03322-01-1574

Ms. Scripture was present. The Executive Director summarized for the Board.

Ms. Scripture submitted a license application on September 13, 1994. She was issued license number 03322 on November 16, 1995.

On April 29, 1997, Ms. Scripture was advised in writing that her license had expired.

She submitted a complete late license renewal on June 13, 1997. On the attached Consent Order she denied working during the period that her license was expired. This information was verified by her supervisor.

Ms. Scripture submitted a timely license renewal in 1999.

On April 9, 2001, Ms. Scripture submitted an incomplete license renewal, she failed to attach evidence of 20 CEUs as required on the audit renewal form. Board staff telephoned Ms. Scripture to advise her of this information. She assured Board staff that she would fax the CEUs so the incomplete renewal was held.

On or about April 16, 2001, no CEUs had been received. Ms. Scripture's renewal was returned by mail.

On or about April 23, 2001, the Board received a partially legible facsimile transmission from Ms. Scripture regarding her CEUs but no CEUs were sent.

On April 25, 2001, Ms. Scripture's license expired.

On April 26, 2001, Ms. Scripture called the office leaving a voice mail message confirming that her license was renewed. Upon receiving the Voice mail message, Board staff called Ms. Scripture's home phone number leaving a voice mail message that her renewal had not been received and that her license was not renewed. Ms. Scripture called later that afternoon stating that she had just received the message. She was informed that her license was not renewed and would not be until a complete renewal package was received.

On April 27, 2001, Ms. Scripture came to the Board office to renew her license. On the attached Consent Order she neither confirmed or denied working after her license had expired.

On April 27, 2001, Board staff spoke with Ms. Scripture's employer, James Kentner, respiratory care supervisor at Chandler Regional Hospital. Mr. Kentner confirmed that Ms. Scripture had worked on April 26, 2001, from 2 p.m. tp 10 p.m.

Ms. Scripture was advised of the allegation in writing on April 30, 2001.

In her written response received on May 8, 2001, Ms. Scripture states that she was aware of the expiration date of her license and adds, "I thought everything was in order on April 25th. Did not find out until April 26th that things were not in order." In closing she states, "I find no fault with the hospital or my supervisors Jim Kentner, Betsy Cisson. They do a fine job of notifying a RCP when their license is about to expire. But as I stated I thought everything was in order and did not find out until the afternoon of April 26th."

Ms. Scripture was advised in writing that the Board would consider this matter at its May meeting.

Ms. Scripture explained to the Board that after she had found out her license was not renewed she was already at work. Ms. Scripture stated that she informed the shift supervisor, Pamela Patterson, that her license was not valid. According to Ms. Scripture, Ms. Patterson asked her to finish the shift even though she did not have a valid license because of the available staffing.

After discussion, Meryl Salit moved that the Board offer Ms. Scripture a stipulated order in she would admit that she practiced without a license and agree to probationary terms, including her payment of a penalty of \$50 for violating the law. James Matthews seconded. **The Motion passed unanimously.** Ms. Scripture verbally agreed to enter into a stipulated disciplinary order. After further discussion, Meryl Salit moved that the Board open an investigation and advise Pamela Patterson of the allegation that she had knowingly allowed Colleen Scripture to work without a license. James Matthews seconded. **The Motion passed unanimously.**

B. James H. Kentner, Case No. 01307-01-1575

Mr. Kentner was present. The Executive Director summarized for the Board.

Mr. Kentner submitted a license application on December 31, 1991. He was issued license number 01307 on December 31, 1992.

On April 27, 2001, Mr. Kentner confirmed in a telephone call with Board staff that Ms. Scripture had worked under his supervision for one day without a license.

Mr. Kentner was advised of the allegation in writing on April 30, 2001. In his written response received on May 4, 2001, he states that he was not aware that Ms. Scripture had worked without a license until the morning after she had worked an evening shift. He states that she was removed from the schedule until she could provide evidence that she had renewed her license. He explained their license tracking policy and attached a copy of Chandler Regional's HR policy.

On May 2, 2001, he was advised in writing that the Board would consider the matter at its May meeting.

Mr. Kentner discussed the circumstances of the incident with the Board.

After discussion, Robert Leitz moved that the Board dismiss the allegation. Eric Gibbons seconded. **The Motion passed unanimously.**

Board members inquired how staff determines which supervisor to ask to appear regarding employees working without a license. Staff explained that when the licensee files a Consent Order they are asked to name a supervisor and it is that individual who is called before the Board to address the issue.

Board members expressed concern over the number of RCPs who are brought before the Board for working without a license. It was the consensus opinion that since licensure has been in place for 10 years there is no excuse for supervisors not to have a policy for monitoring license expirations. The Board members indicated that in the future they will look at allegations of allowing a RCP to work without a valid license very closely and consider disciplinary action for supervisors including the payment of a penalty for allowing non-licensed individuals to practice.

5. Jody Lee Lawson, Case No. 00000-01-1578 *

See Agenda item III.B.

* NOTE: Appears elsewhere on this Agenda

IX. CONSIDERATION AND ACTION ON INFORMAL INTERVIEWS PURSUANT TO A.R.S. 32-3553(G)

X. CONSIDERATION AND ACTION ON FORMAL COMPLAINT HEARINGS PURSUANT TO A.R.S. 32-3553(H)

1. Paula K. Ziegler, Case No. 02387-01-1545 & 02387-01-1549

Ms. Ziegler was not present. The case was presented on behalf of the State by Assistant Attorney General, Nancy Beck. The hearing was recorded on audio tape.

Ms. Ziegler submitted a license application on November 19, 1992. She was issued license number 02387 on October 23, 1993. Her license is currently valid through December 13, 2001.

On May 25, 2000, Ms. Ziegler was issued a Decree of Censure after it was found that she was a no call/no show at Hacienda de Los Angeles on March 1, 2000.

Case No. 02387-01-1545

On February 1, 2001, the Board received written notification from John Coleman, director of respiratory services at Plaza Healthcare, that Ms. Ziegler had been terminated for being a no call/no show for scheduled shifts at that facility on January 28 and 29, 2001.

On February 22, 2001, Ms. Ziegler was advised of the allegation in writing. Ms. Ziegler responded via facsimile received on March 2, 2001. The facsimile transmission was partially illegible but appears to state that she had to take time off work for a "personal family emergency" but did not inform Mr. Coleman. She lists her current employer as Immediate Respiratory Staffers, IRS. In her response she provided a "temporary" change of address.

Case No. 02387-01-1549

On February 28, 2001, the Board received written notification from Lisa Bosch, cardiopulmonary supervisor at Valley Lutheran Hospital, that Ms. Ziegler had been a no call/no show for a scheduled night shift through IRS on February 24, 2001.

On March 1, 2001, Ms. Ziegler was advised of this second allegation in writing. No response has been received.

On March 2, 2001, Ms. Ziegler was advised in writing that the Board would consider this matter at its next meeting. Both the notice of Board meeting and a copy of the second letter of allegation were sent to the Temporary address provided by Ms. Ziegler.

Ms. Ziegler did not appear. The Board reviewed the information and the fact that Ms. Ziegler was issued a decree of censure for being a no call/no show less than one year previously.

After discussion, the Board voted unanimously to issue a formal complaint and hold a hearing.

The complaint and notice of hearing were issued on March 29, 2001, by US certified mail/return receipt. On April 18, 2001, the document was returned by the postal service marked "unclaimed."

On or about April 17, 2001, Ms. Ziegler called the Board office and spoke with staff. She stated that she had a new permanent address and would provide it in writing to the Board. She never submitted a new address.

On May 3, 2001, the complaint and notice of hearing were resent regular mail to the temporary address provided by Ms. Ziegler to the Board on March 2, 2001. No written response has been received.

On May 7, 2001, the Board was notified in writing by Immediate Respiratory Staffers, IRS, that Ms. Ziegler had been terminated as a result of a continuing problem with no call/no show.

John Coleman and Mark Finkelstein were each issued a subpoena to appear for the formal complaint hearing.

Ms. Beck read a letter into the record, received on May 16, 2001, via facsimile from Ms. Ziegler, that indicated Ms. Ziegler was: "temporarily without transportation and was unable to find a ride" to the administrative hearing. The facsimile from Ms. Ziegler contained neither an affirmation nor a denial of the information in the Board's Complaint.

Meryl Salit moved that the Board postpone the hearing to allow Ms. Ziegler the opportunity to attend and participate. Dr. Sanderson seconded. After discussion, Dr. Sanderson withdrew his second. **The Motion died for lack of a second.**

The Board received testimony from the following individuals whose appearance had been subpoenaed: John Coleman, RCP, Director of Respiratory Care Services, Plaza Healthcare; and Mark Finkelstein, RCP, President, Immediate Respiratory Staffers, Inc. (IRS) Mr. Coleman stated that all the information the Board had regarding the allegations against Ms. Ziegler was true to the best of his knowledge and that due to the high acuity level of many of the patients Ms. Ziegler was supposed to have provided respiratory care for, that he believed Ms. Ziegler's conduct was negligent. Mr. Finkelstein testified that all the information the Board had was true and, in addition, that Ms. Ziegler had been terminated from IRS due to even more instances occurring of her being a no call/no show. Mr. Finkelstein stated that he felt that Ms. Ziegler's repeated failure to report for duty and provide respiratory care for patients at facilities that were depending on her was highly unprofessional.

After discussion, Eric Gibbons moved that the Board accept the findings of fact and conclusions of law as set forth in the complaint and notice of hearing. Robert Leitz seconded. **The Motion passed unanimously.** Eric Gibbons then moved that the Board revoke Ms. Ziegler's license to practice respiratory care in the State of Arizona. James Matthews seconded. **The Motion passed**

unanimously.

2. Howard W. Holz III, Case No. 03028-01-1542

Mr. Holz was not present. The case was presented on behalf of the State by Assistant Attorney General, Nancy Beck. The hearing was recorded on audio tape.

Ms. Beck informed the Board that a written request for continuance was received on May 14, 2001, via facsimile from Mr. Holz. According to the written request, Mr. Holz was unable to attend the hearing due to personal reasons.

The Board members reviewed the full text of the written request for continuance.

After discussion, Jen Chahanovich moved that the Board grant a continuance until the June Board meeting. Eric Gibbons seconded. **The Motion passed by a vote of 5 ayes and 1 nay.** Robert Leitz voted against the Motion.

3. Richard W. Gonse, Case No. 04553-01-1562

Mr. Gonse was not present. The case was presented on behalf of the State by Assistant Attorney General, Nancy Beck. The hearing was recorded on audio tape.

Richard W. Gonse, RCP, is the holder of License No. 04553 to practice respiratory care in the State of Arizona. His license is currently valid through August 9, 2001.

On May 10, 1999, Mr. Gonse entered into a stipulated order of probation with the Board after it was found that he was habitually intemperate in the use of alcohol.

On February 15, 2001, the Board held its monthly meeting, in part to conduct an informal interview with Mr. Gonse. Although Mr. Gonse was sent a letter, to his address of record, that gave him notice of the time, place and location of the meeting; he did not appear in person or represented by legal counsel. Mr. Gonse's employer, Mark Finkelstein, addressed the Board and offered that Mr. Gonse may not be present because of illness. After discussion, the Board voted to table the informal interview until the following month.

On March 15, 2001, at a public meeting, the Board found that Mr. Gonse was in material violation of the terms of his probationary order. The Board voted unanimously to issue a decree of censure for his non-compliance and to fix a new period and terms of probation best adapted to protect the public health and rehabilitate Mr. Gonse.

The Board's order was issued to Mr. Gonse on March 23, 2001. All of the terms of the original stipulated order of probation were included in the March 23, 2001, order. And, additional terms were added.

**ALLEGATIONS OF UNPROFESSIONAL CONDUCT AND
NON-COMPLIANCE WITH PROBATION**

To request that he report for a drug screen, on Friday, March 16, 2001, Board staff called the pager number that Mr. Gonse has designated as the number where he can be reached at all times leaving a call-back number. Mr. Gonse did not return the page until Tuesday, March 22, 2001. This action by Mr. Gonse constitutes a violation of Mr. Gonse's probationary order.

On April 2, 2001, the Board received documentation regarding Mr. Gonse from the City of

Phoenix Police Department in response to a Board subpoena. The documents received were evidence that Mr. Gonse had violated several terms of his probation, 1) that he was found in possession of crack cocaine and drug paraphernalia by Phoenix police and charged with a class 4 and class 6 felony; 2) that he admitted on more than one occasion to Phoenix police that he smokes crack which is an admission of an act defined as unprofessional conduct; 3) that he was arrested for theft and when police questioned him at the time of the arrest he was intoxicated; and 4) that he had been arrested for public intoxication.

To request that he report for a drug screen, at 3:55 p.m., on Monday April 2, 2001, Board staff called the pager number that Mr. Gonse has designated as the number where he can be reached at all times leaving a call-back number. Mr. Gonse did not return the page until Wednesday, April 4, 2001, at which time he left a message stating that he was ill. This action by Mr. Gonse constitutes a violation of Mr. Gonse's probationary order.

At 2:00 p.m., on April 3, 2001, Board staff called the pager number that Mr. Gonse has designated as the number where he can be reached at all times, leaving a call-back number, to inform him of the allegation and the conference call Board meeting, but he did not return the page until 1:00 p.m. on April 4, 2001, at which time he left a message stating that he was ill.

The Board held a public meeting at 2:00 p.m., on April 4, 2001, via telephone conference call, to determine whether there was good cause to issue an interim order of summary suspension of Mr. Gonse's license to practice respiratory care. The Board's Executive Director duly caused the meeting to be noticed in accordance with the Arizona Open Meeting Law. Mr. Gonse did not appear at the conference call meeting, either in person or by legal counsel. Evidence was presented to the Board that Mr. Gonse had, on February 9, 2001, been arrested and charged with two (2) felony counts: possession of narcotic drugs, class 4 felony; and possession of drug paraphernalia, class 6 felony. A Phoenix Police Department report includes the following statement: "Richard said that he has known (Investigative Lead) Rebecca for a while from being on the street and smoking crack cocaine together." Evidence was also presented to the Board that on May 18, 2000, a Phoenix Police officer wrote in a report: "Richard Gonse admitted to us as being a narcotics smoker."

After discussion, the Board voted unanimously to issue an interim order of summary suspension of Richard W. Gonse's license to practice respiratory care in Arizona since the evidence established that Mr. Gonse's behavior establishes an immediate threat to the public health and safety and issue Formal Complaint and Notice of Hearing.

The complaint and notice of hearing were issued via US certified mail/return receipt to Mr. Gonse's address of record, Immediate Respiratory Staffers on April 5, 2001. The return receipt indicates delivery on April 6, 2001.

On May 10, 2001, the Board received via facsimile transmission, a signed written statement from Mr. Gonse. In his written statement Mr. Gonse admitted to all the allegations.

After discussion, Eric Gibbons moved that the Board accept the findings of fact and conclusions of law as set forth in the complaint and notice of hearing. James Matthews seconded. **The Motion passed unanimously.** James Matthews then moved that the Board revoke the license of Mr. Gonse. Meryl Salit seconded. **The Motion passed unanimously.**

XI. CONSIDERATION AND ACTION ON PREVIOUS BOARD ACTION

1. Written motion for modification/lifting of current order of probation
 - A. Kathy Yoder, Case No. 05039-98-1356

Ms. Yoder was present. The Executive Director summarized for the Board.

Kathy Yoder filed an application for a license to practice respiratory care in Arizona on February 18, 1999. On her license application, Ms. Yoder disclosed that she had been convicted of DUI in 1996. She attached court documents showing that fines were paid, alcohol assessment was completed and time was served. In her attached written statement, Ms. Yoder stated that she is in recovery and had been involved in a 12 step program for approximately three years. Ms. Yoder stated that she was not practicing respiratory care at the time of her conviction.

The results of the fingerprint background check support the information provided by Ms. Yoder.

On May 20, 1999, the Board held a meeting to consider Ms. Yoder's license application and her admission that she has an on-going condition that does or might impair her ability to safely and skillfully practice. Ms. Yoder attended the meeting. After discussion, the Board voted to offer Ms. Yoder a stipulated order that would grant her license and place her on a non-disciplinary rehabilitative probation for a period of 5 years with the option to petition the Board for modification after a period of 1 year. Ms. Yoder verbally agreed to enter into a stipulated order.

Ms. Yoder entered into the probation order for rehabilitation with the Board on June 9, 1999.

Ms. Yoder has resided in the State of Colorado for the duration of her order for rehabilitation. She recently filed a timely license renewal, her license is currently valid through April 8, 2003.

On March 26, 2001, Ms. Yoder filed a written request with the Board asking that her probation be lifted.

Ms. Yoder was advised in writing that the Board would consider her request at its May meeting.

Review of Ms. Yoder's compliance shows that she appears to be in full compliance with her current order.

The Board reviewed Ms. Yoder's current situation with her. She provided letters of support for the Board to consider. She informed the Board that she intended to move back to Tucson the end of May and provided a telephone number and address change.

After discussion, Meryl Salit moved that the Board lift the order of probation. James Matthews seconded. **The Motion passed unanimously.**

- B. Victor N. Gonzalez, Case No. 03558-98-1325

Victor N Gonzalez, R.C.P., is the holder of License No. 03558 to practice respiratory care in the State of Arizona. His license is currently on probation and valid through November 10, 2002.

BACKGROUND: ORIGINAL STIPULATION AND CONSENT ORDER

On March 30, 1995, Victor N Gonzalez applied for a license. On his application, Mr.

Gonzalez answered "no" to Question Number 19 which asks if an applicant has ever been arrested or charged or convicted or pled no contest to any violation of the law. On June 12, 1995, the Board received a letter from Carondelet St. Mary's in Tucson which stated that Mr. Gonzalez had been terminated for "falsification of employment application." The letter says that Mr. Gonzalez had indicated on his employment application that he had never been convicted of a crime, but that a routine hospital employment background check revealed that he had a criminal record. Pursuant to hospital policy, Mr. Gonzalez was terminated. In response to the Board's subpoena, Carondelet provided a copy of its security check. It contained a letter from the Arizona Department of Corrections which stated that Mr. Gonzalez had been convicted of a drug related felony in 1990. Mr. Gonzalez admitted falsifying his application had stated his apology.

During the course of the investigation into Mr. Gonzalez' application for licensure, Board staff found documentation regarding an allegation of unprofessional conduct against Mr. Gonzalez, which was working on a Temporary License without supervision and working on an expired Temporary License.

On June 24, 1996, Mr. Gonzalez provided evidence to the Board that his civil rights had been restored on June 24, 1996.

Based upon the foregoing, on June 27, 1996 the Board held a meeting to consider Mr. Gonzalez' Application for licensure. Mr. Gonzalez attended the meeting. During the discussion, Mr. Gonzalez admitted to: falsifying his Application; working on a Temporary License without supervision; and working on an expired license for a total of 33 days. The Board voted to grant Mr. Gonzalez a license only and on the condition that he stipulate to a Decree of Censure and a period of probation.

On July 8, 1996, Mr. Gonzalez signed the Stipulated Order and returned it to the Board. The Board's Executive Director signed it upon receipt, on July 9, 1996, placing the Order into effect.

At the time he entered into the Stipulated Order, Mr. Gonzalez informed the Board that he was not currently employed as an R.C.P. Mr. Gonzalez did not cause any employer to submit quarterly reports on his behalf or give any other type of notice to the Board that he had gained employment as an R.C.P.

On December 5, 1996, as part of another, routine investigation, the Board received information that Mr. Gonzalez was employed at Southeast Arizona Medical Center in Douglas, Arizona.

On December 9, 1996, Board Staff attempted to contact Mr. Gonzalez at his telephone number of record to request that he submit to a random drug screen. The telephone number had been disconnected.

The Board received no quarterly reports from Mr. Gonzalez's employer, no change of address, no change of telephone number. The Board was unable to contact him to request a random urine drug screen. In light of this, Mr. Gonzalez appeared to be in violation of his Probationary Order.

A letter advising Mr. Gonzalez that the Board would be considering his compliance with his Probationary Order was sent to his address of record, via U.S. certified mail, return receipt requested, on January 6, 1997.

On January 16, 1997, the Board held its regular monthly public meeting, in part to consider the allegation that the Respondent was not in compliance with his Probationary Order. Mr.

Gonzalez attended the meeting. Mr. Gonzalez admitted that he had failed to comply with his Probationary Order. The Board found that Mr. Gonzalez had violated his original Order. After discussion, the Board voted to offer Mr. Gonzalez a new, modified Stipulation and Consent Order which would consist of: a Decree of Censure for violating a Board Order; a longer term of Probation with stricter terms of probation, including a provision for Mr. Gonzalez to cause his employer to submit monthly reports.

A Modified Stipulation and Consent Order was prepared and sent to Mr. Gonzalez on January 22, 1997. Mr. Gonzalez signed the Modified Order on January 30, 1997, and returned it to the Board office. The Board's Executive Director signed the document upon receipt, on February 3, 1997, placing the Modified Order into effect.

On February 3, 1997, the Board received another allegation of unprofessional conduct against Mr. Gonzalez from personnel at Tucson Medical Center (TMC.) The allegation was that Mr. Gonzalez failed to disclose accurate information on his application for employment with TMC.

A review of the time frame involved in this allegation reveals that Mr. Gonzalez' employment interview occurred after his appearance at the January, 1997, Board meeting.

Mr. Gonzalez was sent a letter on February 4, 1997, asking him to confirm or deny the most recent allegation.

Mr. Gonzalez wrote a letter to the Board, received on February 11, 1997. He neither confirmed nor denied the allegations.

In a separate letter regarding this allegation, which was received by the Board on February 18, 1997, Mr. Gonzalez stated that on February 12, 1997, he dropped off a copy of his Modified Order at TMC, thereby admitting that he had failed to provide this information previously.

On February 5, 1997, the Board received a monthly report from Mr. Gonzalez's known employer, Copper Queen Community Hospital, as required in Mr. Gonzalez's Modified Stipulation and Consent Order. In addition to an affirmation that Mr. Gonzalez continued to be employed at that facility, Mr. Gonzalez's supervisor, Robert Shockley, told the Board that in addition to being employed at Copper Queen Hospital, Mr. Gonzalez was also employed part time at the Sierra Vista and Douglas Hospitals. According to Mr. Shockley, he had encouraged Mr. Gonzalez to report these other employers to the Board.

On February 10, 1997, Mr. Gonzalez was sent a letter asking him to confirm or deny the following allegations which would indicate non-compliance with the Modified Stipulation and Consent Order: employment as an RCP at facilities in Douglas and/or Sierra Vista, Arizona; failure to inform these hospitals of his probation; if indicated on employment applications, failure to inform these institutions of his past criminal activity; and, following his entry into the Modified Order, failure to inform these institutions that they must file monthly reports to the Board regarding his employment.

On February 24, 1997, the Board received a letter from personnel at Southeast Arizona Medical Center in Douglas, Arizona, acknowledging Mr. Gonzalez' employment.

On February 26, 1997, the Board met in a public meeting, via telephone conference call, to review the allegations regarding Mr. Gonzalez's compliance with his Modified Order. The Board's Executive Director duly caused the matter to be noticed in accordance with the Arizona Open Meeting Law. Mr. Gonzalez was not present. The Board found that substantial evidence existed to believe that Mr. Gonzalez may have failed to comply with the terms of his probation and voted to

issue a formal complaint to consider suspension or revocation of his license, and to hold a formal hearing for that purpose.

The complaint and notice of hearing were issued on February 26, 1997.

On March 20, 1997, the Board held its regular monthly public meeting, in part to consider suspending or revoking Mr. Gonzalez' license to practice respiratory care. Mr. Gonzalez was present and participated in the deliberations. He admitted that each of the allegations as set forth in the Board's Complaint and Notice of Hearing was true. After discussion, the Board voted: to issue a Decree of Censure; to Suspend Respondent's license to practice respiratory care in Arizona for a period of 90 day; and at the end of the 90 day period, to continue with the terms and conditions set forth in his Modified Stipulation and Consent Order.

On December 21, 1998, the Board received a written request from Mr. Gonzalez for the Board to consider modifying or lifting his Board-ordered term of probation.

A review of Mr. Gonzalez's probationary compliance file revealed that all monthly reports had not been received but Mr. Gonzalez appeared otherwise to be in compliance.

Mr. Gonzalez was notified, in writing, that the Board would be considering his petition to lift or modify his probation at its public meeting in January 1999.

On January 21, 1999, the Board met for the purpose of considering Respondent's written petition to lift or modify his term of probation. Mr. Gonzalez told the Board that he felt he had benefitted from his term of probation.

The Board reviewed all the information and, after discussion, the voted unanimously to amend Mr. Gonzalez's current order of probation by reducing the employer quarterly reports from monthly to quarterly.

On April 10, 2001, the Board received the following written request from Mr. Gonzalez:

"Dear Board Members,

It's been over 2 years since I last appeared before you or heard from you. I would like the opportunity to have my probation terms changed or better yet, dropped. Since being on probation, I have taken and passed all of the NBRC exams. Not once have you received a negative letter from my Employer/Supervisor. I honestly believe I've been on probation long enough and have more that proven my value as a Respiratory Therapist.

Sincerely, (signed) Victor N. Gonzalez"

Mr. Gonzalez was notified in writing that the Board would consider his request at its May meeting.

Current review of compliance shows that 4 quarterly reports: September 1999, June 2000, December 2000 and March 2001 were not received. On Monday, May 14, 2001, Board staff called the telephone number provided by Mr. Gonzales and left a detailed voice mail message requesting that he submit to a drug screen. After business hours that day, Mr. Gonzalez telephoned the Board office reporting that he had just received the message. He left a cell phone number and stated, "if you call me tomorrow I'll be glad to honor your request."

The Board reviewed all the current information with Mr. Gonzalez.

After discussion, Robert Leitz moved that the Board deny Mr. Gonzalez' request since he was not in compliance with his current order. Jen Chahanovich seconded. **The Motion passed**

unanimously.

2. Informal Interview Regarding Probation Compliance

A. Donna L. Damon, Case No. 04454-98-1303

Ms. Damon was not present. The Executive Director summarized for the Board.

Ms. Damon is the holder of license number 04454. Her license is currently valid through December 19, 2001.

On December 18, 1998, Ms. Damon entered into a stipulated order of probation with the Board after it was found that she had tested positive for alcohol on a for cause drug screen while on duty at Tucson Medical Center, TMC. Ms. Damon was evaluated for the Employee Assistance Program and her assessment indicated that she exhibited the behavior of an alcoholic. Ms. Damon admitted to the Board that she was habitually intemperate in the use of alcohol.

On January 16, 2001, the Board received a letter from Ms. Damon requesting "a review hearing with consideration of a suspension of the remaining probation period."

On February 1, 2001, Ms. Damon was advised in writing that the Board would consider her request. She was advised to bring along any supporting documentation.

Ms. Damon appeared for an informal interview regarding her compliance with her current order of probation at the February 2001 Board meeting. At that time, she told the Board that she had been attending 12 step meetings but thought that her former employer, TMC, had provided the Board with her attendance records. When asked why she had not forwarded her 12 step forms after leaving TMC she had no response. When asked why she had not informed the Board that she had left TMC she offered no response.

Ms. Damon provided the Board with some poorly documented 12 step attendance logs.

In early May a second compliance review was conducted by staff. Ms. Damon had not provided any information to the Board regarding a current employer, any further 12 step logs and staff was unable to reach her by telephone to request that she report for a random drug screen.

On May 2, 2001, Ms. Damon was notified in writing that the Board would conduct an informal interview regarding her current compliance with her order of probation at its May meeting..

The Board carefully reviewed all the information.

After discussion, Eric Gibbons moved that the Board issue a formal complaint and hold a hearing since it appeared that Ms. Damon was in material non-compliance with her current order of probation. Meryl Salit seconded. **The Motion passed unanimously.**

B. Eduardo J. Mendoza, Case Nos. 00000-01-1488 & 00000-01-1547

Mr. Mendoza was present. The Executive Director summarized for the Board.

On July 20, 2000, Mr. Mendoza was issued a temporary license after the Board reviewed his application which disclosed that he had been convicted of a drug related offense involving a minor in 1991, and considered the allegation that he had worked one day without a license. When he appeared before the Board, Mr. Mendoza assured the Board that the last time he had used illegal

drugs was in 1991. Mr. Mendoza's license was granted on the condition that he pay an administrative penalty of \$50 for working without a license. Mr. Mendoza paid the administrative penalty and his temporary license was issued on July 24, 2000, it is currently valid through March 24, 2001.

On August 10, 2000, the Board received the criminal background check report from the Arizona Department of Public Service, DPS. The report revealed information not disclosed by Mr. Mendoza on his license application. Board staff contacted the jurisdiction, and through a public records request, determined that a warrant had been issued for Mr. Mendoza's arrest by the Casa Grande Justice Court. Mr. Mendoza had been arrested on or about October 3, 1999, for possession of marijuana and possession of drug paraphernalia and had been ordered to appear to answer to these charges in Casa Grande Justice Court. Mr. Mendoza failed to appear, so DPS issued a warrant for his arrest.

Mr. Mendoza was advised in writing of this information on August 22, 2000. In his written response received on August 24, 2000, Mr. Mendoza denied the charges and stated that he has not been arrested since the 1991 incident. Mr. Mendoza stated that he had set an appearance before a judge for Tuesday, August 29, 2000, and would provide "all materials for the Board for review."

On January 5, 2001, in response to a Board subpoena, DPS provided the following:

- C DPS offense report showing that on October 3, 1999, Mr. Mendoza was arrested for possession of marijuana and drug paraphernalia. A substance believed to be marijuana along with other items was seized as evidence.
- C Non-redacted DPS continuation report outlining evidence gathered, a synopsis of the events, written narrative and disposition of the subject and vehicle.
- C DPS scientific analysis request and evidence inventory sheet.
- C DPS scientific examination report showing that items included in evidence were analyzed and found to contain a useable amount of marijuana.

On February 9, 2001, the Board received written notification from Jean Mathews, President, PRCS, that a positive drug screen had been reported on Mr. Mendoza by Eric Gibbons, Director of Respiratory Care Services, Mt. Graham Community Hospital, Safford. Mr. Mendoza was on assignment for PRCS at Mt. Graham Community Hospital. Ms. Mathews attached the drug screen results which show that Mr. Mendoza tested positive for Marijuana on a drug screen collected on February 7, 2001, the results were confirmed by GC/MS.

On February 12, 2001, Mr. Mendoza was advised in writing of the allegation received on February 9, 2001. In addition he was informed that the Board would consider this matter at its February meeting.

A second letter on February 12, 2001, advised Mr. Mendoza that the Board would consider his license application at the February meeting.

On February 12, 2001, the Board received notification from Bucky Cavasoz, at TASC in Tucson. According to Ms. Cavasoz, Mr. Mendoza was enrolled in TASC, a drug diversion program offered through the court system, on January 8, 2001, through the Pinal County court system.

On February 15, 2001, the Board held its monthly meeting to consider whether or not to grant a license to Mr. Mendoza considering the serious nature of the allegations of unprofessional conduct

against him, and, if the Board was going to issue him license, under what conditions the license would be granted. The Board reviewed all of the information it had gathered in its investigation and discussed it with Mr. Mendoza.

The Board found that Mr. Mendoza had engaged in the violations of several of the laws and rules governing the practice of respiratory care in Arizona. After a lengthy discussion, the Board voted grant Mr. Mendoza a license but issue a decree of censure and to fix a period and terms of probation.

The decree of censure and order of probation were issued on February 16, 2001.

A compliance review conducted in early May by Board staff showed that on 2 separate occasions Mr. Mendoza failed to respond in a timely manner to report for a random drug screen. Consequently, Mr. Mendoza changed his phone number of record with the Board and there have been no further problems. On 2 separate occasions the random drug screen report indicated a diluted sample and resulted in retesting. With the exception of the 2 diluted specimens all random drug screens have been negative.

On May 1, 2001, Mr. Mendoza submitted a copy of his certificate of completion from TASC.

On May 2, 2001, Mr. Mendoza was advised in writing that the Board would conduct an interview regarding his compliance with his current order of probation at its May meeting.

Mr. Mendoza reviewed his current situation with the Board. Assistant Attorney General, Nancy Beck informed Mr. Mendoza that with some State regulatory agencies a diluted sample is considered a positive screen.

Since it appeared that Mr. Mendoza is in compliance with the spirit of his current order no action was taken.

C. Dennis J. Wahrer, Case No. 05420-01-1535

Mr. Wahrer was not present. The Executive Director summarized.

Mr. Wahrer was issued license number 05420 on May 18, 2000.

Results of the criminal background check on Mr. Wahrer revealed no information not disclosed by him on his re-application.

Mr. Wahrer entered into a stipulated order of probation with the Board on February 27, 2001, after it was determined that he had tested positive for an illegal substance on a pre-employment drug screen for Summit Hospital of Southeast Arizona.

On May 1st and 2nd, 2001, Board staff made a number of attempts to reach Mr. Wahrer at the phone number he had provided to request that he report for a random drug screen. Staff was unable to reach Mr. Wahrer.

On May 2, 2001, Mr. Wahrer was advised in writing that the Board would conduct an interview regarding his compliance with his current order of probation at its May meeting.

On May 15, 2001, the Board was notified by Mr. Wahrer supervisor, Susan Lohse, that he would be unable to attend the May 17th meeting due to illness.

On May 16, 2001, the Board received a facsimile transmission from Mr. Wahrer confirming he would be unable to attend the meeting due to illness and asking that the informal compliance interview be postponed until June.

The Board considered this information. After discussion, James Matthews moved that the board table the matter until the June meeting and directed staff to contact Mr. Wahrer in writing advising his that staff was unable to reach him by telephone to request that he report for a random drug screen. Eric Gibbons seconded. **The Motion passed unanimously.**

XII. CALL TO THE PUBLIC

There was no public comment.

XIII. EXECUTIVE SESSION

The Board may vote to go into Executive Session to review confidential material pursuant to A.R.S. §38-431.03(A)(2), or with its legal counsel, for legal advice regarding matters noticed on this Agenda pursuant to A.R.S. §38-431.03(A)(3).

XIV. ESTABLISH DATE AND TIME OF NEXT BOARD MEETING

Thursday, June 21, 2001, at 9:00 a.m.

XV. ADJOURNMENT

James Mathews moved to adjourn the meeting at 3:15 p.m. Eric Gibbons seconded. **The Motion passed unanimously.**

DATED this ___ day of May 2001.

MARY HAUF MARTIN
Executive Director