

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

Thursday, October 21, 2004, at 9:00 a.m.
Basement Conference Room B-1
1400 W. Washington, Phoenix AZ

Board Members Present: Chair Robert Leitz, Vice-Chair Toni Rodriguez, Catherine Lindstrom, James Love and John O'Donnell

Board Members Absent: Becky Brimhall

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

Board's Legal Counsel: Marc Harris, Assistant Attorney General

I. A. CALL TO ORDER by Chair Robert Leitz PhD

The Meeting was called to order at 9:05 a.m. by Board Chair Robert Leitz PhD.

B. DISCUSSION/ACTION ON EXECUTIVE DIRECTOR'S REPORT

The Executive Director introduced Marc Harris who will act as Board's Legal Counsel for the meeting.

1. Would it be feasible, practical to have one of the 2005 Board meetings in Tucson?

Board members discussed the possibility of holding a future meeting in Tucson. All were in agreement that as long as facilities are made available it could be easily arranged.

II APPROVAL OF MINUTES

August 23, 2004
September 16, 2004

It was reported to the Board that the minutes from the August meeting were not completed in time to be sent to the Board members for their review. The September minutes are still being prepared. Both sets of minutes will be posted on the web site as "draft."

III DISCUSSION/ACTION ON APPLICATIONS FOR LICENSURE

A. Recommended for approval by the Executive Director

Lori A. Allison	Krystal Ashby	Jessica Barak
Carrie Beadman	Maxine Blackwell	Roberta Bockman
Barbara Brokl	Tia Cadieux	Carla Casey
Dino DeGaetano	Linda Dugan	Rose Fagone
Sharon Farley	Michael Frace	Nathanial Fuerhoff
Stephanie Haas	Sarah Henriksen	Rachel E. Herndon
H. Elizabeth Hinton	Kathryn Givens	Sherry Greenfield
Amelia Holmes	Margaret Jenks	David Jimenez
Sarah Kosta	Donna Kruger	Kyle Mahan
Amber Martinez	Bridget McGowan	Monica D. Orta
Theresa Padberg	Terrell Potts	Clifton Premo
Amy Punke	Jessica Reichheld	Roberta Sabadin
Cynthia Sanders	Lea Schmoer	Rachelle R. Selby
Elizabeth Smolen	Bruno Tassone	Jinelle Thatcher
Kenneth Trudeau	Dorothy Unwin	Robert Vanderwerf
Marcia Vollin	Stephen Ziemak	

Catherine Lindstrom moved that the Board approve the applications of all the individuals listed on the Agenda as recommended by the Executive Director. John O'Donnell seconded the Motion. **The Motion passed unanimously.**

B. Application for Licensure

1. Application Interview

A. Sarah Frasier Case No. 06404-05-1976

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

Ms. Frasier submitted a license application on October 8, 2003. On her application, she disclosed information and provided documentation as required. She was issued a temporary license and temporary license extension valid through October 10, 2004.

The results of the FBI criminal background check revealed no further derogatory information.

Ms. Frasier passed the entry level exam on August 31, 2004, but did not complete her application until September 14, 2004.

Ms. Frasier signed a Declaration on September 14, 2004, stating she “did not work” after her temporary license extension expired.

She was advised in person and by letter that the Board would conduct an interview at the October meeting.

Ms. Frasier addressed the Board.

After discussion, John O’Donnell moved that the Board approve Ms. Frasier’s application. James Love seconded. **The Motion passed unanimously.**

B. Donald King Case No. 06530-05-1978

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

Donald A. King completed an application for a license to practice respiratory care.

A license application is a legal document. Donald A. King certified upon penalty of perjury under the laws of the State of Arizona, that all the information he provided on the application form was true and correct.

On October 21, 2004, the Board held its regular monthly public meeting, in part to consider Mr. King’s application for licensure. Mr. King was present. The Board reviewed all of the information in his application file, as follows:

Mr. King began the license application process on March 9, 2004. On the application form, he answered “yes” to the following:

- #16, “*Has any professional license or certificate of any kind been issued to you by a governmental authority, whether in this state or elsewhere? YES If yes, has that license or certificate ever been the subject of discipline, censure, probation, practice restriction, suspension, revocation or cancellation?* He attached a default and decision order from the state of California documenting that his respiratory care license was revoked November 14, 2003. However, he did not provide full documentation of the California order revoking his license. **Note:** His affirmative answer to Question 16 constitutes an admission of unprofessional conduct in A.R.S. §32-3501(10)(a) and (h) in conjunction with A.R.S. §32-3556.
- #19, “*Omitting minor traffic violations (infractions), have you ever been convicted of, or pled no contest (nolo contendere) to, entered into any agreement concerning arrest or charge (even if the agreement resulted in dismissal or expungement), or have an outstanding arrest or charge for any violation of any law of any state of the United States, or a foreign country?” He attached a written explanation and documentation of sentence for a reckless driving conviction dated February 4, 2004. No documentation of progress with his completion of the sentence was received. **Note:** His affirmative answer to Question 16 constitutes an admission of unprofessional conduct in A.R.S. §32-3501(10)(a) and (i) in conjunction with A.R.S. §32-3556.*

The results of Mr. King's FBI criminal background check were received on March 25, 2004, and revealed information not disclosed by Mr. King on his license application.

Mr. King was advised of this information in a letter of application deficiency on May 25, 2004. He was informed that his application would not be complete until he provided the following:

1. Copy of the complete order of revocation issued by the California Respiratory Care Board.
2. Court documentation for the matters he had failed to disclose, as well as a full, written explanation. Including documentation showing final disposition of the information on his criminal background check.

On July 12, 2004, Mr. King submitted a written explanation and court minute entries for a court matter on April 19, 2002, when he was arrested and charged with 2 counts of DUI involving alcohol or drugs and one count of driving with a suspended license. The records indicate his next scheduled court date is November 5, 2004, at which time he is to pay his restitution file of \$1088 and show proof of completion of 36 NA sessions. **Note:** 1) This conviction and sentencing are **not** related to the information disclosed on his application. 2) This conviction raises questions about Mr. King's possible violation of A.R.S. § 32-3501(10)(b), *Habitual intemperance in the use of alcohol*.

On October 7, 2004, Mr. King submitted documentation for a matter on May 22, 1999: Norwalk CA, arrested and charged for driver license suspension and failure to appear. No final outcome is noted. The records document a conviction.

Mr. King was advised in person and in writing that the Board would conduct an application interview at the October meeting. Board staff informed Mr. King that it would be in his best interest to provide evidence that he is in the process of completing the court requirements.

The Board reviewed all of the information in Mr. King's application and interviewed Mr. King.

After discussion, Robert Leitz moved that the Board deny Mr. King's application based on the following conclusions:

Donald A. King failed to satisfy the following requirements for the granting of a license to practice respiratory care due to the following:

A. A.R.S. § 32-3552(A)(1), *making a material misrepresentation on a license application*.
B. A.R.S. § 32-3552(A)(3), *committing an act of unprofessional conduct, in conjunction with A.R.S. § 32-3501(10) (h), Refusal, revocation or suspension of a license by any other state, territory, district or country, unless it can be shown that this was not caused by reasons which relate to the person's ability to safely and skillfully practice respiratory therapy or to an act of unprofessional conduct in this paragraph*.

C. Under A.R.S. § 32-3501(i), the Board had grounds to deny Mr. King's license due to a violation of Board Rule A.A.C. R4-45-214(2), *procuring or attempting by fraud or misrepresentation to procure a license to practice respiratory care*.

E. Under A.R.S. § 32-3523, titled "Qualifications," subsection (A)4, the Board had grounds to deny Mr. King's license due to its finding that he had: *committed acts or crimes which constitute grounds for denial of license or disciplinary action pursuant to A.R.S. § 32-3523*.

James Love seconded. **The Motion passed unanimously.**

C. Reapplication for Licensure

1. Recommended for approval by the Executive Director

Michelle L. Burch

Jessica U. Heath

Kayla R. Hoskinson

Toni Rodriguez moved that the Board approve the license reapplication listed on the Agenda as recommended for approval by the Executive Director. Robert Leitz seconded. **The Motion passed unanimously.**

2. Reapplication Interview

1. James Paul Craig Case No. 06754-05-1979

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

Initial License Application

Mr. Craig submitted his initial application on April 13, 1995. He was issued license number 03569 on May 25, 1995.

His license expired on December 5, 1999. His file was administratively closed on December 20, 2001.

Current License Reapplication

Mr. Craig submitted a license reapplication on August 12, 2004.

The results of the FBI criminal background check received on September 2, 2004, revealed information not disclosed by Mr. Craig on his initial application and current reapplication.

Mr. Craig telephoned the Board office regarding the status of his license reapplication. He was informed by staff that there were some issues regarding his FBI criminal background check.

Mr. Craig provided complete documentation and a full written explanation regarding the issues on his background check.

Mr. Craig was advised in writing that the Board would consider his reapplication at the October meeting.

Mr. Craig was present and participated in the interview.

After discussion, Catherine Lindstrom moved to approve Mr. Craig's license reapplication. James Love seconded. **The Motion passed unanimously.**

2. Lisa M. Lumby Case No. 06756-05-1983

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

Initial License Application

Ms. Lumby submitted her initial license application on April 24, 1998. She was issued license number 04711 on January 21, 1999. Her license expired on July 23, 2001. Her file was closed in August 2003.

Current License Reapplication

Ms. Lumby's current license reapplication was completed on October 13, 2004. On her application she provided a full written explanation and documentation as required.

The results of the FBI criminal background check received on September 27, 2004, revealed no further derogatory information.

License verifications from the states of Wisconsin and Minnesota indicate Ms. Lumby's license to be in good standing.

Staff spoke with Ms. Lumby on October 14th. Ms. Lumby informed staff that she would be unable to attend the scheduled interview since she still resides in Minnesota. She indicated to staff that she understood that the Board may not consider her application if she is not present for the interview.

After reviewing all of the information, Catherine Lindstrom moved that the Board approve Ms. Lumby's license reapplication. John O'Donnell seconded. **The Motion passed unanimously.**

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

Jessica Allison	Anita Awanesian	Jessica Barak
Carrie Beadman	Misty Black	Jessie Bowman
Debbie Bravo	Tia Cadieux	LaChelle Enlow
Michael Frace	Nathaniel Fuerhoff	Stephanie Haas
Erika Harris	Viridianna Hernandez	Rachel Herndon
Rebecca Ingram	Dana Janacek-Hayes	Ida Jimenez
Jacqueline Maas	Amber Martinez	Brandy McKay
Stephanie Nixon	Gwendolyn O'Neil	Amy Punke
Steven Rainge	Jessica Reichheld	Trent Schafer
Randy Shelly	Cynthia Simpson	Sarah Simpson
Heather Smith	Elizabeth Smolen	Michael Sporrer
Michelle Stanneart	Marvin Stevens	Bruno Tassone
Lisa Teruya	Kenneth Trudeall	Robert Vanderwerf
Suzanna Villareal		

Catherine Lindstrom moved that the Board ratify the temporary licenses listed on the Agenda. John O'Donnell seconded. **The Motion passed unanimously.**

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

Debra Murray
Tonya B. Vogel

Stacey M. Quintana

Randy L. Steffen

Catherine Lindstrom moved that the Board ratify the temporary license extensions listed on the Agenda. John O'Donnell seconded. **The Motion passed unanimously.**

F. Request for Extension of Temporary License

Robert C. Ferrante, Case No. 06604-04-1941

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

Mr. Ferrante submitted an application to the Board on June 7, 2004. In his application, Mr. Ferrante answered yes to Questions Number 14, 16, 19 and 20.

- Regarding his positive answer to Question Number 14, he stated that on November 25, 2003, the Respiratory Care Board of the State of California issued an order revoking his license, and staying the revocation. He provided a copy of the California Order, documenting that the Order took effect on December 5, 2003, and that while the revocation of his license is stayed he is on probation with the following terms: He cannot work in management or a supervisory position; he must have his employer submit quarterly reports on his job performance; he must pay \$200 per month for probation monitoring costs; he is required to be employed as a respiratory therapist for two-thirds of his probationary period or complete an additional 30 continuing education units, these units are in addition to the units required for renewal of his California license; he must notify his employer of his probation, and changes in employment or address; he has to obey all laws and pay the California Board \$5,500 in cost recovery its investigation. In the copy of the California Board Order, many instances of negligence in his practice as a respiratory care practitioner are cited. The California Board found that Mr. Ferrante actions included: the commission of fraudulent, dishonest or corrupt acts which substantially relate to his qualifications, functions or duties as a respiratory care practitioner; his falsifying or making grossly incorrect, grossly inconsistent, or unintelligible entries in patient or hospital records; incompetence in his practice; and a pattern of substandard care. The action taken against Mr. Ferrante by the California Board is defined his commission of an act or acts of Unprofessional Conduct, under Arizona law at A.R.S. § 32-3501(h), and is grounds for the denial of Mr. Ferrante's license application.
- Regarding his positive answer to Question 16, he stated the information regarding Question 14 applies to this as well. Similarly, the action taken against Mr. Ferrante by the California Board is defined as his commission of an act or acts of Unprofessional Conduct, under Arizona law at A.R.S. § 32-3501(h), and is grounds for the denial of Mr. Ferrante's license application.
- Regarding his positive answer to Question Number 19, he disclosed several misdemeanor, and two felony convictions. He stated that his convictions include an arrest in 1970 for marijuana

possession for which Mr. Ferrante received six months of probation, but for which no documentation exists. He stated that he has been convicted of misdemeanor DUI on three occasions, 1989, 1990 and 1991. And that he has a DUI charge, from December 2003, for which the case is still pending. He provided statements and court documentation regarding two felony convictions. The first one for burglary in 1981, for which he was sentenced to five years in prison. The sentence was deferred for 24 months and he was placed on probation. The second felony resulted from writing bad checks in June 1982, while he was on probation for the earlier conviction, and resulted in his suspended sentence being revoked and him spending two and a half years in Montana State Prison. He states he was released on parole which he completed. However, Mr. Ferrante did not provide documentary evidence that his two felony convictions had been set aside or reduced to misdemeanors and that his civil rights have been restored. His convictions for multiple DUI's is defined in Arizona law as Unprofessional Conduct under A.R.S. § 32-3501(b), which constitutes ground for denial of his license. His felony convictions are defined as unprofessional conduct in A.R.S. §32-3501(10)(a) in conjunction with A.R.S. §32-3523, and constitute grounds for the denial of his license.

Mr. Ferrante telephoned and spoke with Board staff following receipt of his application. He was informed that due to information provided by him, his application would need to be put before the Board for consideration of issuance of a temporary probationary license. In addition, he was informed that he would be required to be present for an interview at the time his application was reviewed.

Mr. Ferrante informed staff that he would not be able to appear for the June meeting but would make arrangements to be present for the July meeting.

Mr. Ferrante was notified in writing that the Board would consider his application at the July meeting.

Mr. Ferrante presented himself for the July meeting which had to be postponed due to a power outage. Staff spoke with Mr. Ferrante who had flown in from California for the meeting.

When the date was set for the rescheduled meeting staff telephoned Mr. Ferrante in California. He indicated to staff that he would make arrangements to return to Phoenix for the meeting now scheduled for August 23, 2004.

Mr. Ferrante was notified in writing of the date, time and location of the rescheduled meeting.

Mr. Ferrante appeared at the August meeting and addressed the Board. He provided documentation from the state of Montana that his civil rights had been restored.

The Board expressed 2 concerns to Mr. Ferrante. #1, the underlying cause of the action taken by the California was directly related to quality of care. #2, there are questions regarding the 2003 DUI and his failure for having provided any documentation of the official status of the case, only his personal opinion.

Due to these concerns, the Board voted unanimously to table consideration of the application to allow time for staff to provide copies of the California accusation and stipulated order to the members.

Mr. Ferrante provided letters of reference along with voluminous materials regarding the California investigation that resulted in his stipulated order with the California Board.

Mr. Ferrante was notified in writing that the Board would continue consideration of his application at the October meeting.

Mr. Ferrante appeared and participated in the interview. Board members were concerned that the underlying cause for the disciplinary by the California Respiratory Care Board was patient care related but did note that the accusation involved multiple events occurring during one shift. Mr. Ferrante provided a letter from his attorney which outlined the conclusion of the 2003 DUI charge. According to the letter Mr. Ferrante pled guilty, the sentence included three years informal probation and payment of a fine.

After discussion, Robert Leitz moved that the Board issue Mr. Ferrante a temporary probation license which would include random drug screens, monitoring the his criminal and respiratory probation in the state of California. Catherine Lindstrom seconded. **The Motion passed by a vote of 4 ayes and 1 nay.** Board member James Love voted against the Motion.

IV DISCUSSION/ACTION ON ADMINISTRATIVE CLOSING OF APPLICATION FILES

Recommended for closing of application files.

1. Temporary License

Forest Aleman	Melinda Jahn	Daniel Quinn
Kelley Schneider		

2. Temporary License Extension

Ro-An Steiger Kelly	Michelle Litzin
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John O'Donnell moved that the administratively close the application files listed on the Agenda. Catherine Lindstrom seconded. **The Motion passed unanimously.**

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

Recommended for closing of inactive files.

Mark Ballinger	Arlesia Bigbee	Sandra Buechner
Yvonne Campbell-Ehrlin	Jonathan Falk	Julie Fields
Marlene Gaughan	LaVette Gayton	Shannon Genzer
Danny Harnden	Michael Jernigan	Ann Magnus
Ghaleb Okla	Dianna Pace	Denise Moore
Donald Stipancic	David Trimbur	Sheila White

Patricia Wilford

Sharon Zelinski

Deceased

Karen Unruh-Wahrer

Martha Carter

Revoked

Candace Cronbaugh

Sharo Lopez

Allen Witkowski

Robert Leitz moved that the Board close the inactive files listed on the Agenda. Catherine Lindstrom seconded. **The Motion passed unanimously.**

VI DISCUSSION/ACTION ON NOTICES OF LICENSE EXPIRATIONS

A. Notice of License Expirations to the following individuals:

Jill Balok	Dorothy Beers	Martha Carter
Reginold Clark	Lisa Cox	Michael Crisp
Linda Gentry	Theda Hale	Robert Harvey
Afton Johnston	Echo Konecki	Christi LeBorne
Denise Macleod	Joe Madrid	Mitzi Martin-Ramsey
Sally Mastrucci	Joseph Miller	Terrie Newton
Ralph Perrin	Dorsie Robinson	Gail Schummer
Mark Seager	Joseph Silva	Cynthia Smith
Edythe Turner	Tim Voteary	
Nancie Webster-Johnson	Michael Weith	Robert Wiechman
Joseph Wilson		

John O'Donnell moved that the Board issue notice of license expiration 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.

Frank Acosta	Kelly Anderson	David Beerman
Emilio Cabanas	Louise Chartrand	Frank Frassetto III
Virgina Hurley	John Jones	Patricia Judge
Jennifer Mennega	David NiCastro	Lou Ann Wade
Ty Williams		

John O'Donnell moved to ratify these reinstated licenses. Robert Leitz seconded. **The Motion**

passed unanimously.

VIII CONSIDERATION AND ACTION ON INVESTIGATIONS OF UNPROFESSIONAL CONDUCT

A. Clay T. Messacar Case No. 05349-05-1980

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

Mr. Messacar filed a license application on February 22, 2000. He was issued license number 05349 on May 18, 2000. His license is currently valid through July 31, 2004.

An informal interview was held on September 16, 2004, considering an allegation of unprofessional conduct regarding John Holcomb III. According to the information received from Healthsouth in response to a Board subpoena, Mr. Holcomb was terminated after refusing to submit to a for cause drug screen.

On his last renewal, Mr. Holcomb had listed Mr. Messacar as his supervisor at Healthsouth.

Board members were very concerned that Mr. Holcomb's termination and the underlying cause were never reported to the Board by either Mr. Messacar or administration for Healthsouth and requested an investigation on Mr. Messacar be opened.

On October 7, 2004, Mr. Messacar was advised of the allegation in writing.

Mr. Messacar was notified in writing that the Board would consider this matter at the October meeting.

In his written response received on October 13, 2004, Mr. Holcomb confirms that he "was" Mr. Holcomb's supervisor. He did not realize that failing to report unprofessional conduct could reflect on his license. According to Mr. Messacar, he was out sick at the time of the incident. He states, "The incident was reported to the Director of Nursing - Ernie Taveira who is ultimately responsible for reporting to the various Boards as she is the Director of those Departments."

Mr. Messacar appeared and addressed the Board.

After discussion, Robert Leitz moved that the Board issue Mr. Messacar a Letter of Concern for failing to report the termination of Mr. Holcomb. Toni Rodriguez seconded. **The Motion passed unanimously.** Board members requested that staff report Healthsouth to the Arizona Department of Health Services for failing to report the termination.

B. Thomas Saul Case No. 06655-05-1981

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

Mr. Saul submitted a license application on July 27, 2004. On his application he disclosed that in 1975 he was convicted of reckless driving and sentenced to a term of probation and ordered to complete

a drug and alcohol driving school course. He provided a certified document from the Superior Court of California, County of Los Angeles attesting that no records exist. He was issued a temporary license valid through March 28, 2004.

Upon receipt of the FBI criminal background check, which contained no derogatory information, received on July 12, 2004, Mr. Saul's application was complete.

Mr. Saul was issued license number 06655 on August 23, 2004.

On September 20, 2004, Mr. Saul notified the Board that he tested positive for marijuana on a pre-employment drug screen for Banner Desert. He attached a copy of a drug screen that was collected on September 10, 2004, that documents a positive test for marijuana metabolite, the results are confirmed by GC/MS.

According to Mr. Saul he attended a party on Sunday, September 12, 2004. At that party he states that people "sitting next to me" were using marijuana. He denies smoking any marijuana. He continues that on Monday September 13 he reported for drug screening. He then states, "On September 15 I was notified that I had failed the test for marijuana."

On September 24, 2004, the Board received notification from Human Resources at Banner Desert that an offer of employment to Mr. Saul was rescinded after he failed his health assessment.

Mr. Saul was notified of the allegation that an offer of employment was rescinded in writing on October 6, 2004.

On October 12, 2004, the Board received written confirmation from Mr. Saul that Banner Desert had rescinded the offer of employment due to the positive drug screen.

Mr. Saul appeared and addressed the Board.

After discussion, Robert Leitz moved that the Board invite Mr. Saul to an informal interview. John O'Donnell seconded. **The Motion passed unanimously.**

C. Franklin Miller Case No. 00706-05-1982

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

Mr. Miller filed a license application on December 23, 1991. He was issued license number 00706 on December 11, 1992. Mr. Miller filed a complete late license renewal on August 24, 2004. His license is currently valid through August 6, 2006.

In the course of the Board meeting held on September 16, 2004, Board members noted that Mr. Miller's license had been reinstated which means that he filed a late license renewal. Included with his late renewal was a Consent Order on which he stated the following, "I did not work in patient care at any time during this period." This statement was verified by Mr. Miller's supervisor, Cheri Schuler. Board members were concerned that considering Mr. Miller's position as a supervisor, he may have practiced respiratory care in a manner not directly relating to respiratory care but indirectly such as counseling employees on patient care related issues or in education. One of the Board members stated that they were confident that Mr. Miller's job description required him to maintain a current license.

Mr. Miller was advised in writing of the Board concern that he may have practiced respiratory care without a license. In his written response, Mr. Miller denied performing any duties related to patient care.

Mr. Miller was advised in writing that the Board would consider this matter at the October meeting. Mr. Miller appeared and addressed the Board. Mr. Miller stated that his job description requires that he maintain a valid license. He admitted that his actions were not in the spirit of the respiratory care act and that he had placed himself in a position where he may have practiced without a license.

After discussion, Catherine Lindstrom moved that the Board issue a Letter of Concern. Robert Leitz seconded. **The Motion passed unanimously.**

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

A. Karen Ploense Case No. 01451-05-1958

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

Karen L. Ploense, RCP, is the holder of License No. 01451 to practice respiratory care in the State of Arizona; originally issued on December 31, 1992. Her license is currently valid through February 4, 2006.

On August 2, 2004, the Board received written notification from Russell Wagner, director of respiratory care for Springdale West Rehabilitation Center, that Ms. Ploense had been terminated for job abandonment. Mr. Wagner made the following statement:

“On July 29, 2004 Ms. Ploense was assigned to a 12 hour night shift in our ventilator unit. The shift started at 1800. Ms. Ploense was present for report at 1800. (At) approximately 1930 the supervisor in charge was unable to locate Ms. Ploense. (At) approximately 2030 the supervisor located her clipboard with a note stating in summary she had left the facility and would not be finishing her shift. Ms. Ploense never spoke with any member of the staff in regards to leaving her assigned shift and/or not returning. Ms. Ploense has been notified via telephone and letter of her termination.”

He attached a copy of the following:

1. A hand written letter stating,
“I thought I could handle this but I guess I can’t. I’m a basket case, I can’t sleep & I dream about my brother I come in here & its hard to see these pts! Sorry Karen”
2. A letter advising Ms. Ploense of her termination “due to actions of patient abandonment on July 29, 2004.”

A subpoena was issued on August 30, 2004 for documentation. The return mail receipt indicates delivery on September 1, 2004.

On August 30, 2004, Ms. Ploense was notified in writing of the allegation that she had abandoned patients in the ventilator unit at Springdale. No response was received.

Ms. Ploense was notified in writing that the Board would consider this matter at the September meeting. The letter was returned by the postal service marked, “no forward order on file, unable to

forward, return to sender.”

On September 10, 2004, the following information was received from Springdale West in response to the Board subpoena:

1. Letter from Russell Wagner advising the Board of Ms. Ploense’s termination.
2. Letter of termination addressed to Ms. Ploense.
3. Note from Ms. Ploense stating, “I thought I could handle this but I guess I can’t. I’m a basket case, I can’t sleep & I dream about my brother I come in here & its hard to see these pts! Sorry Karen”
4. Confidential Data Sheet-Employee form showing a hire date of April 15, 2004.
5. Employment Application
6. Employee Drug and Alcohol-Free Workplace Agreement
7. Sunrise Mesa Personnel Change Form noting termination effective July 29, 2004. Reason for termination, patient abandonment.

Ms. Ploense did not appear for the September meeting. After reviewing all of the documentation, the Board voted unanimously to invite Ms. Ploense to an informal interview.

Ms. Ploense was notified in writing, via certified mail, to the address on her employment application with Springdale of the date, time and location of the informal interview. In addition, she was informed that she could request copies of the documents that the Board would use in its determination by requesting those documents in writing within 14 days of the informal interview. She was advised that use of those documents for matters not related to the Board business is considered unprofessional behavior. The certified mail envelope was returned by the U.S. Postal service marked: “Unclaimed.”

Ms. Ploense did not appear for the informal interview. The Board reviewed and discussed all of the information.

After discussion, Catherine Lindstrom moved that the Board issue a formal complaint and hold a hearing. John O’Donnell seconded. **The Motion passed unanimously.**

B. Emy S. Foster Case No. 04153-05-1960

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

Emy S. Foster, RCP, is the holder of License No. 04153 to practice respiratory care in the State of Arizona; originally issued on March 20, 1997; currently valid through December 9, 2005.

On July 6, 2004, the Board received written notice from Susan Pauley, cardiopulmonary clinical coordinator at Banner Baywood that Ms. Foster had been terminated for cause. According to Ms. Pauley, the reasons for the termination are:

1. Excessive absenteeism
2. Sleeping on the job while working in a critical area.

Ms. Foster was advised of the allegation in writing on August 31, 2004. No response was received prior to the Board meeting.

On August 31, 2004, a subpoena was issued to Banner Baywood for documentation. The return mail receipt indicates delivery on September 2, 2004.

On September 10, 2004, information was received in response to the Board subpoena. Including a statement by a nurse verifying the information in the original allegation about Ms. Foster sleeping on the job is true and accurate.

Ms. Foster was advised, in writing, that the Board would consider the allegation at the September Board meeting.

The Board held a public meeting on September 16, 2004, in part to consider the allegation. Ms. Foster did not attend the meeting. The Board reviewed all of the documentation and voted to invite Ms. Foster to an informal interview.

The Board received a written response from Ms. Foster on September 27, 2004. In it, she that she took a nap for her lunch break. She denies missing any therapy or being unavailable at any time since she was napping in the break room on the unit.

Ms. Foster was notified in writing via certified mail of the date, time and location of the informal interview. In addition, she was informed that she could request copies of the documents that the Board would use in its determination by requesting those documents in writing within 14 days of the informal interview. She was advised that use of those documents for matters not related to the Board business is considered unprofessional behavior.

Ms. Foster did not appear for the informal interview. The Board reviewed all the information in the allegation. Board members expressed concerns about a licensee sleeping on the job in a critical care work area, and the serious potential for patient harm.

After discussion, Toni Rodriguez moved the Board issue a formal complaint and hold a formal hearing. James Love seconded. **The Motion passed unanimously.**

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

1. Jonathan T. Gorman Case No. 00711-05-1974

Mr. Gorman was present. The case was presented on behalf of the State by Marc Harris, Assistant Attorney General. The hearing was recorded on audio tape.

Jonathan T. Gorman is the holder of License Number 00711 for the practice of respiratory care in the State of Arizona.

On May 28, 2002, Mr. Gorman was issued a decree of Censure and placed on a term of probation after it was found that he had failed to disclose DUI arrests on 2 license renewal applications, had 2 felony convictions that had not been set aside by the court and a habitual intemperance in the use of alcohol. For a complete description of the situation, and listing of the terms of probation, please see the Board Order in Case Number 00711-02-1691.

At the public meeting of the Board held on August 23, 2004, a probationary *compliance* review was conducted as follows:

“5. Jonathan T. Gorman, RCP, shall participate in a 12-step recovery program appropriate for substance abuse. Mr. Gorman shall attend a minimum of three (3) meetings per week while on probation, keeping a written record of his attendance. On a quarterly basis Mr. Gorman shall forward his written record to the Board, said record shall include the following information:

- | | |
|--|---|
| * Name of 12-Step Group | * Date and time of meeting |
| * Name or initials of another individual in attendance at each meeting | * Name and phone number of organizing/administering person” |
| * Location and address of meeting place | |

Compliance: Mr. Gorman failed to comply after March 22, 2003. That is the time period for which the last 12 step log was received.

“7. Jonathan T. Gorman, RCP, shall comply immediately (i.e., within 2 hours) with requests from the Board, or its agents or designees, to submit to witnessed random biological fluid collection and/or breathalyser tests; and, he shall authorize any person or organization conducting tests on these collected samples to provide testing results to the Board.”

Compliance: Staff attempted to reach Mr. Gorman by telephone on July 12, 2004, to request that he submit to a random drug screen, the phone number rang and rang. There was no answer or ability to leave a voice message.

“9. Jonathan T. Gorman, RCP, shall file the necessary legal papers with the Superior Court of Maricopa County, Arizona, (hereinafter, “the court”) to petition the court to set aside his felony convictions and re-instate his civil rights.

10. Jonathan T. Gorman, RCP, shall provide a copy of any legal papers he files with the court to the Board.

11. Jonathan T. Gorman, RCP, shall communicate to the Board any decision of the court by providing the Board with the original court document granting or, in the event the alternative occurs, denying his petition.”

Compliance: No records or documents were received.

“14. Jonathan T. Gorman, RCP, shall appear in person before the Board for interviews upon request, at various intervals and with reasonable notice (i.e., a minimum of five days). He shall **immediately** advise the Board **in writing or via facsimile transmission** of any change in his place of employment or home address and of any plans he makes to be away from his place of employment or home for more than five (5) continuous days.”

Compliance: Mr. Gorman complied with the request to appear on August 23, 2004.

Mr. Gorman was notified in writing that the Board would conduct an interview at the July meeting. The July meeting had to be postponed due to a power outage. Mr. Gorman was notified in writing of the rescheduled meeting.

During the course of the Board's informal interview on August 23, 2004, Mr. Gorman reviewed his compliance with his current order with the Board members. He admitted he had stopped attending AA meetings in June of 2003, but said he had remained sober. He stated he has never had a sponsor. Mr. Gorman told the Board he was discharged from his court-ordered probation on March 1, 2004, did not pursue having his civil rights restored.

After discussion, the Board voted unanimously to invite Mr. Gorman to an informal interview in September to allow him the opportunity to show the Board that he could start complying with his order.

Mr. Gorman was advised of the date, time and location of the informal interview. The return mail receipt indicated delivery on August 26, 2004.

On September 16, 2004, the Board met to conduct the informal interview regarding the allegation Mr. Gorman was not in compliance with his probationary order. Mr. Gorman attended. He provided the Board with a current 12-Step Log for the time period since the August 23, 2004, Board meeting, demonstrating he attended three meetings per week as required. He provided partial documentation regarding his court-ordered probation, stating he was in the process of filing to have his civil rights restored. After discussion, the Board voted unanimously to issue a formal complaint and hold a formal hearing, giving Mr. Gorman another month to demonstrate compliance with his order before deciding what to do about his non-compliance from March 2003 through August 2004.

The Board's Complaint, setting forth all the information above, was issued on September 21, 2004.

Mr. Gorman filed a response to the Board's Complaint, received on October 1, 2004. In it, he admits his non-compliance with his probationary order, expresses his intention to remain in compliance. Mr. Gorman provided copies of documents he filed with the court regarding his efforts to have his civil rights restored. In closing, Mr. Gorman expressed his desire to work with the Board to demonstrate his ability to continue to "assist in saving lives," and to "help people," by practicing respiratory care.

The Board heard testimony from the Executive Director and Mr. Gorman. Evidence was presented, and Mr. Gorman admitted, that he had not complied with the terms of his order of probation.

After discussion, Catherine Lindstrom moved that the Board accept the findings of fact and conclusions of law as set forth in the complaint and notice of hearing. John O'Donnell seconded. **The Motion passed unanimously.** After further discussion, Robert Leitz moved that the Board suspend Mr. Gorman's license to practice respiratory care in Arizona since he had violated the terms of his order. However, since Mr. Gorman had recently made a good faith effort to get in compliance with his order, the suspension is stayed as long as Mr. Gorman remains compliant with the terms of Case No. 00711-05-1974. Catherine Lindstrom seconded. **The Motion passed unanimously.**

2. John M. Woodward Case No. 04303-05-1962

Mr. Woodward was not present. The case was presented on behalf of the state by Marc Harris, Assistant Attorney General. The hearing was recorded on audio tape.

John M. Woodward is the holder of License No. 04303 to practice respiratory care in the State of Arizona. It is currently valid through September 17, 2005.

On July 7, 2004, the Board received the following written, signed complaint from Ron A. Evans, Clinical Director for Praxair Healthcare Services.

“John Woodward was in our employ and a home care therapist from March 16th to March 25th (2004). During that time we had several patients call to say no one had shown up to set up their equipment (Oxygen, CPAP, BIPAP, SVN). John always had a story of why he could not get there (patient not home, couldn’t find address, etc.). Often we could not reach John after 4:30 as he would turn his phone and pager off. When counseled about this he stated that the battery must of died or he was out of range. On the 25th John came into work and handed me his notice (effective immediately) and said he had been preparing for another job interview and could not keep working for us. He handed me about 12-15 patients ranging from Oxygen to BIPAP and SVN that he had not set up and had not notified anyone of this. When asked why he did not set them up or notified anyone he replied “I have been preparing for this job interview in the afternoons and it took up a lot of my time and I did not have time to set up the patients.” Some of the patients had never received equipment ordered by the physician; a few the doctors had sent the order to a different company after us not providing care and at least one patient had to be admitted to the hospital due to hypoxia and extreme shortness of breath.”

Mr. Woodward was advised of the allegation in writing on August 31, 2004. No response was received.

On August 31, 2004, a subpoena was issued to Praxair for documentation.

Mr. Woodward was notified in writing that the Board would consider this matter at the September meeting.

On September 13, 2004, the Board received information in response to its subpoena to Praxair. The documentation included:

1. A more detailed cover letter from Mr. Evans. The letter documents counseling provided to Mr. Woodward about not providing respiratory care to patients in a timely manner, and states: “Mr. Woodward gave me no notice and walked out 20 minutes after handing me the attached letter and abandoned the 7 patients we had already assigned to him that day. He made it clear he was leaving whether or not I accepted his notice. His statement to me that can be verified from others in the branch was that “The reason he could not get to the patients was that he had been preparing for a job interview that was on March 26th. And that he had known about it before he accepted a position with Praxair”. Unfortunately, it was then when the full scope of the number of patients he abandoned sunk in. We then had to find out who else had been neglected and to try reschedule them. Attached you will find a small sample of patients that Mr. Woodward was negligent in setting up..... These included O2, CPAP, BIPAP, and SVN patients.”; and

2. Copies of 12 patient “Tickets” indicating the need for respiratory care to patients. Each of the patient care tickets had hand-written notes on them, written by Mr. Evans, to state Mr. Woodward failed to provide the treatments ordered by patients’ physicians. Comments include:

- “CPAP scheduled for 3-15 never set up. Patient called to check on 3-18 & was rescheduled with

another RT.

- John told patient he would mail and never did.
- 3-18 CPAP scheduled, never called patient or notified office.
- 2-22-04 patient had equipment set up but no education provided for patient. We sent another RT out 3-25 to re-set up.
- 3-23 O₂ set up never done. Patient called on 3/25 to find out why we never came.
- 3-23 Assigned to John. Never showed. Pt called back & was rescheduled for 3-25 (Day John walked out)
- 3-24 given to John with instructions "DO NOT reschedule" John never showed. Pt called back 3/25 and was done by another RT
- 3-24 CPAP set up. Instructed John to call patient with ETA (never did, never showed, never set up. Pt was rescheduled for 3-25 (Day John walked out)

On September 16, 2004, the Board met to consider the allegation of unprofessional conduct against Mr. Woodward. He had been notified of the time, place and location of the Board meeting, but did not attend. Board members were concerned about the serious nature of the allegations. Particularly about Praxair Healthcare's information regarding the number of patients who were abandoned when Mr. Woodward resigned his position without adequate notice. After discussion, the Board voted unanimously to issue a formal complaint and hold a formal hearing based on the following:

1. Possible violation of A.A.C. R4-45-214(1), *Engaging in the practice of respiratory care in a manner that harms or may harm a patient or that the Board determines falls below community standard.*
2. Possible violation of A.A.C. R4-45-214(9), *Acting in a manner that the Board determines, based on community standards, constitutes incompetence, gross negligence, repeated negligence or negligence that results in harm or death of a patient.*

On September 20, 2004, the Board received a written response to the letter of allegation. In his written response, Mr. Woodward denied the allegation.

The complaint and notice of hearing were issued by certified mail on September 21, 2004. The return mail receipt indicates delivery on September 22, 2004.

No response to the complaint and notice of hearing was received.

Mr. Woodward did not appear. The Board heard testimony from the Executive Director and reviewed all of the evidence.

After discussion, John O'Donnell moved that the Board accept the findings of fact and conclusions of law as set forth in the complaint and notice of hearing. Catherine Lindstrom seconded. **The Motion passed unanimously.** After further discussion, Toni Rodriguez moved that the Board revoke Mr. Woodward's license to practice respiratory care in Arizona. John O'Donnell seconded. **The Motion passed unanimously.**

3. Bradley Budd Case No. 00390-05-1972

Bradley M. Budd is the holder of License Number 00390 for the practice of respiratory care in the State of Arizona. His license is currently valid through August 7, 2006.

BACKGROUND – CASE NO. 00390-03-1755

On October 11, 2002, as a follow up to an earlier telephone conversation from him to the Board office, Mr. Budd provided written notification that he had enrolled in an intensive outpatient chemical dependency program for addiction to prescription pain medication. He stated that he is employed by Mesa Lutheran Hospital and was returning to work through that facility's re-entry program. He stated that he had completed detox., was enrolled in the intensive outpatient program, and attending at least 1 NA meeting per day.

Board staff was also contacted by Mr. Budd's supervisor, via telephone. The supervisor verified the information Mr. Budd had provided.

On October 29, 2002, a letter was sent to Mr. Budd requesting a copy of his re-entry agreement and any drug screens that may have been performed. The letter also explained that the matter, because it was an allegation of unprofessional conduct, could result in disciplinary action. No response was received.

On November 8, 2002, Mr. Budd was informed, in writing, that the Board would be considering this matter at its November 21, 2002 meeting.

On November 14, 2002, the Board received, via facsimile, a copy of Mr. Budd's re-entry program from Kathy at Mesa Lutheran Medical Center, Banner Health System Arizona.

Based upon the foregoing, on November 21, 2002, the Board held a meeting to consider the allegation against the Licensee. Mr. Budd attended the meeting. After discussion and reviewing all of the information, the Board voted to offer Mr. Budd a non-disciplinary Stipulation and Consent Order for rehabilitation. Mr. Budd verbally agreed to enter into a Stipulated Order with the Board.

On December 2, 2002, a draft stipulated order of rehabilitation was sent to Mr. Budd's address of record, via US certified mail return receipt. A cover letter instructed Mr. Budd to sign the order and return it to the Board within 5 days of receipt. It further advised Mr. Budd that if he failed to sign and return the order he would be invited to an informal interview. The return mail receipt was not returned. Mr. Budd never signed or returned the order nor did he try to contact Board staff regarding the order.

Mr. Budd was advised, in writing, that due to his failure to sign and return the order, he was being invited to an informal interview.

On January 16, 2003, the Board held its regular, monthly, public meeting in part to conduct an informal interview with its Licensee. Mr. Budd attended and participated. The Board members expressed disappointment that he had not begun to comply with the requirements set out by the Board so that his rehabilitation efforts can be monitored, and the Board can be assured that he is able to continue to safely and skillfully practice respiratory care. After discussion, the Board voted unanimously to issue a non-disciplinary order of probation/rehabilitation to Mr. Budd.

COMPLIANCE REVIEW: SEPTEMBER 16, 2004

Mr. Budd was notified in writing that the Board would conduct a probation compliance inter at the meeting scheduled for September 16, 2004. He attended the meeting and reviewed his compliance with his order with the Board as follows:

“1. Bradley M. Budd, RCP, hereby commences his compliance with terms and conditions which will allow the Board to have continuous oversight of his recovery from his addiction to prescription pain medication for five (5) years.

2. Bradley M. Budd, RCP, shall instruct the personnel at Banner Health Arizona Occupational Health Services to release to the Board, upon its request, any and all records relating to his compliance with his re-entry agreement.

3. Bradley M. Budd, RCP, shall inform his current (any future) employer of the Board’s Order by providing his employer(s) with a copy of this Order.”

Compliance: Mr. Budd stated he has not changed employers and is therefore compliant.

“4. In the event Bradley M. Budd fails to satisfactorily comply with the each and every provision of his re-entry program with Banner Health Arizona Occupational Health Services and this Order, he shall be subject to disciplinary action and possible revocation of license by the Board.

5. Bradley M. Budd, RCP, shall participate in a 12-step recovery program appropriate for substance abuse, and attend a minimum of three meetings per week. On a quarterly basis Mr. Budd shall forward his written record to the Board, said record shall include the following information:

- | | |
|---|--|
| * Name of 12-Step Group | * Date and time of meeting |
| * Name or initials of another individual
in attendance at each meeting | * Name and phone number of
organizing/administering person” |
| * Location and address of meeting place | |

Compliance: Mr. Budd failed to provide any of the required 12-Step logs.

“6. Bradley M. Budd, RCP, shall abstain completely from the consumption of alcoholic beverages.

7. Bradley M. Budd, RCP, shall take no drugs or medications whatever (except for plain aspirin and/or plain acetaminophen), whether controlled substances, prescription-only drugs or over-the-counter preparations, unless such drug or medication was prescribed for him by his treating physician and Banner Health Arizona Occupational Health Services.

8. Bradley M. Budd, RCP, shall comply immediately (i.e., within two (2) hours) with requests from the Board, or its designee, to submit to witnessed random biological fluid collection; and, he shall authorize any person or organization conducting tests on these collected samples to provide testing results to the Board.

9. Bradley M. Budd, RCP, shall pay all charges from the Board of Respiratory Care Examiners, or its designee, for conducting biological fluid testing.

10. Bradley M. Budd, RCP, shall obey all federal state and local laws, and all rules governing the practice of respiratory care in the State of Arizona.

11. Bradley M. Budd, RCP, shall **immediately** inform the Board of any change in the telephone number(s) where he can be reached at all times.

12. Bradley M. Budd, RCP, shall appear in person before the Board for interviews upon request, at various intervals and with reasonable notice (i.e., a minimum of five days). He shall **immediately** advise the Board, via facsimile, of any change in his place of employment or home address and of any plans he makes to be away from his place of employment or home for more than five (5) continuous days.”

Compliance: Mr. Budd complied with the Board’s request to appear for the September 16, 2004 interview.

“13. This Order shall remain effective for five (5) years, at the end of one year, Licensee may apply to the Board by letter seeking modification of this Order upon showing satisfactory compliance with the Order. Unless violation of the Board’s Order is established in a hearing before the Board, pursuant to A.R.S. 32-3553, the Order shall automatically terminate in five (5) years.”

After discussion, the Board members raised concerns about Mr. Budd’s failure to provide any 12-Step logs to demonstrate his continuation of his rehabilitation program, and voted unanimously to issue a formal complaint and hold a formal hearing.

The Board’s Complaint, setting forth all the information above, was issued on September 21, 2004.

Mr. Budd submitted a written response to the Complaint, received on October 9, 2004. In it, he admitted he was in non-compliance with his probationary order. He stated his failure was due to “embarrassment” of having a 12-step log form filled out at meetings he attended, and apologized to the Board. He provided, via facsimile, current 12-step logs (beginning on September 24, 2004), copies of drug screen results (from the time period he was involved in his employer’s re-entry program), and a recent job performance evaluation giving him high marks.

Mr. Budd appeared for the hearing. The Board heard testimony from the Executive Director and Mr. Budd. The evidence established, and Mr. Budd admitted, he had been non-compliant with his order.

After discussion, Robert Leitz moved that the Board accept the findings of fact and conclusions of law as set forth in the complaint and notice of hearing. Toni Rodriguez seconded. **The Motion passed unanimously.** After further discussion, Catherine Lindstrom moved that the Board suspend Mr. Budd’s license to practice respiratory care in Arizona since he violated the terms of his order. However, since Mr. Budd had recently made a good faith effort to get in compliance with order the suspension is stayed as long as Mr. Budd remains compliant with the terms of Case No. 00390-03-1755. James Love seconded. **The Motion passed unanimously.**

4. John Saunders Case No. 02044-05-1973

Mr. Saunders was present. The case was presented on behalf of the State by Marc Harris, Assistant Attorney General. The hearing was recorded on audio tape.

John R. Saunders is the holder of License Number 02044 for the practice of respiratory care in

the State of Arizona; issued valid through May 30, 2006.

BACKGROUND: ESTABLISHMENT OF PROBATION IN CASE NO. 02044-02-1671;

On April 18, 2002, the Board determined that Mr. Saunders is habitually intemperate in the use of alcohol. The Board voted to fix a term and period of probation best adapted to protect the public health and to rehabilitate or educate its licensee. The Board's order of probation issued on April 23, 2002. For a complete listing of the terms and conditions, please see Order in Case Number 02044-02-1671.

In early March 2003, Mr. Saunders' file was reviewed for probationary compliance by Board staff.

Mr. Saunders was advised in writing that the Board would conduct a compliance interview at its March 2003 meeting.

On March 20, 2003, the Board met for the purpose of conducting the informal interview hearing with Mr. Saunders. He attended and participated in the informal interview hearing. The Board found that Mr. Saunders was in material violation of his order. Based on that finding, the Board voted unanimously to issue a Decree of Censure.

PROBATIONARY COMPLIANCE REVIEW: SEPTEMBER 16, 2004

On September 7, 2004, the Board received anonymous information via facsimile that Mr. Saunders was arrested and charged on or about December 14, 2003, with driving on a suspended license and blood alcohol level 0.08 2 hours after being pulled over. There is a list of court minute entries. The writer also states that Mr. Saunders manufactures his 12 step logs (the last received on January 8, 2004) and continues to drink alcohol in spite of his statements to the contrary to the Board.

Board staff conducted a search on the web site for Maricopa County Superior Court and found the same minute entries provided by the complainant but no documentation of the actual charge.

Mr. Saunders was advised of this information in writing and that the Board would conduct a probation compliance interview at the meeting scheduled for September 16, 2004. He did not respond.

On September 16, 2004, the Board met to conduct the informal interview regarding the allegation Mr. Saunders is in violation of his probation. Respondent was notified of the time, place and location of the Board meeting. Respondent was specifically invited to attend the informal interview, but did not attend. The Board reviewed his order, specifically the following terms:

“3. John R. Saunders, RCP, shall participate in a 12-step recovery program appropriate for alcohol abuse, and attend a minimum of three meetings per week while on probation, keeping a written record of times, locations and attendance. On a quarterly basis John R. Saunders, RCP, shall forward his written record to the Board, said record shall include the following information:

- | | |
|---|--|
| * Name of 12-Step Group | * Date and time of meeting |
| * Name or initials of another individual
in attendance at each meeting | * Name and phone number of
organizing/administering person” |
| * Location and address of meeting place | |

Compliance: The Board received an allegation that Mr. Saunders files 12-Step logs he creates himself. The allegation has not been refuted.

“4. John R. Saunders, RCP, shall abstain completely from the consumption of alcoholic beverages and from the ingestion of any substance containing or prepared with alcohol.”

Compliance: The Board received an allegation Mr. Saunders continues to drink alcohol. The allegation has not been refuted.

“7. John R. Saunders, RCP, shall obey all federal state and local laws, and all rules governing the practice of respiratory care in the State of Arizona.”

Compliance: The Board has documentary evidence, from the Maricopa County Superior Court, that Mr. Saunders was arrested and charged on or about December 14, 2003, while on probation.

“9. John R. Saunders, RCP, shall appear in person before the Board for interviews upon request, at various intervals and with reasonable notice (i.e., a minimum of five days). He shall **immediately** advise the Board, via facsimile, of any change in his place of employment or home address and of any plans he makes to be away from his place of employment or home for more than five (5) continuous days.”

Compliance: Mr. Saunders violated this provision by failing to appear for the interview on September 16, 2004.

After reviewing the situation, the Board discussed the matter. Board members were very concerned about Mr. Saunders failure to comply with the terms of his order, especially considering he has already been issued a Decree of Censure for previous failure to comply. The Board voted unanimously to issue a formal complaint and hold a formal hearing.

The Board’s Complaint, setting forth all the information above, was issued on September 24, 2004.

Mr. Saunders filed a written response to the Complaint, which was received on October 7, 2004. In it, he stated that the information on the Maricopa County Superior Court web site related to an arrest during the time he has been on probation with the Board, and subsequent issues with the court related to that arrest – including a bench warrant being issued for his arrest – does not pertain to him. Stating: “That isn’t me.” And going on to state he had the breathalyser device on his car “removed” per instructions from the court.

Mr. Saunders appeared for the hearing. The Board received testimony from its Executive Director and Mr. Saunders. The evidence presented by the Board’s Executive Director, (court records, a copy of Mr. Saunder’s original license application, and a copy of his most recent license renewal application), established that the individual named in Case Number CR2004-014924 in the Superior Court of Arizona, Maricopa County, is, in fact, Mr. Saunders. And, therefore, Mr. Saunders is in multiple violation of his probationary order in Case Number 02044-02-1671, as set forth in Board’s Complaint. Mr. Saunders verbally rebutted the Executive Director’s testimony, but offered no documentation to support his statements.

After discussion, Robert Leitz moved that the Board accept the findings of fact and conclusions of law as set forth in the complaint and notice of hearing. Toni Rodriguez seconded. **The Motion passed unanimously.** After further discussion, Robert Leitz moved that the Board revoke Mr. Saunders' respiratory care license in Arizona but stay the revocation and suspend his license for 120 days to allow him an a opportunity to support his statements. If, after the 120 days, he is unable to provide documentation that the court matter involves a different person, the stay will be lifted and his license will be revoked. James Love seconded. **The Motion passed unanimously.**

5. James K. Konen Case No. 03799-05-1971

Mr. Konen was present. The case was presented on behalf of the State by Marc Harris, Assistant Attorney General. The hearing was recorded on audio tape.

James K. Konen is the holder of License Number 03799 for the practice of respiratory care in the State of Arizona. It is currently valid through November 22, 2005. Mr. Konen has been under an order of probation with the Board since May 1, 2001, after admitting that he was habitually intemperate in the use of alcohol and that while on duty as a respiratory therapist at Tempe St. Lukes on February 10, 2001, the care he provided his patients was not up to the standard that licensed respiratory therapists should be held to.

April 2002 Compliance

Mr. Konen's original order of probation was issued in 2001. On April 5, 2002, Mr. Konen was advised in writing that the Board would conduct an informal interview regarding probation compliance at the April 2002 meeting.

At the April 2002 meeting, Mr. Konen reviewed his current compliance with the Board. It appeared that Mr. Konen was in violation of a number of the provisions of his order including documentation of 12 step attendance and reporting for random drug screens.

ADMINISTRATIVE HEARING JUNE 20, 2002

On June 20, 2002, the Board held its regular monthly public meeting, in part to consider suspending or revoking Mr. Konen's license to practice respiratory care. Mr. Konen attended. The Board took testimony from its Executive Director and Mr. Konen. The Board found that Mr. Konen was in violation of his probationary order as set forth in the Board's Complaint. In addition, Mr. Konen admitted having consumed alcohol in early April, 2002, which was another violation. However, Mr. Konen provided a 12 step log for the time since his appearance at the April Board meeting, and a letter from a counselor that stated that Mr. Konen seemed committed to maintaining his sobriety. After discussion, the Board voted to suspend Mr. Konen's license to practice respiratory care in Arizona for a indefinite period of time and to fix a new period and terms of probation so that, when and if he demonstrated that he has been compliant for 90 consecutive days, he could appear before the Board for the lifting of the suspension and the issuance of a new probationary order.

Request to lift license suspension: October 17, 2002

On October 17, 2002, the Board held its regular, monthly, public meeting, in part to consider a timely written request from Mr. Konen to lift his license suspension. Mr. Konen appeared. The Board

determined that he had complied with each and every term set forth in his Order of Suspension, and voted unanimously to grant Mr. Konen's request. This action of the Board resulted in the re-establishment of the terms of probation in place at the time of license suspension.

February 2003 Compliance

Mr. Konen was notified in writing that the Board would conduct a compliance interview at its February 2003 meeting.

Mr. Konen appeared and participated in the interview. It appeared that Mr. Konen was in compliance with his current order of probation. No action was taken.

December 2003 Compliance

On May 21, 2003, Mr. Konen advised the Board in writing that he was "considering" a position with Western Medical. He stated that he had submitted to a urine drug screen for that company and that staff could call Western Medical for the results.

On May 21, 2003, Mr. Konen submitted 12 step logs for the period of February 8, 2003, through May 3, 2003. No further logs were received.

On November 21, 2003, Mr. Konen submitted his biennial license renewal application. In answer to question 4 ("*Since your initial application or last renewal, has any disciplinary action, consent order or settlement been imposed or is any action pending on your license in any state or jurisdiction?*") Mr. Konen answered "no" and wrote "Not sure of how to answer. See Kristin for details."

On his renewal he stated that he is self-employed with computers.

On December 6, 2003, Board staff left a detailed voice message for Mr. Konen requesting that he report for a urine drug screen according to the guidelines of his order of probation.

On December 8, 2003, the Board received a facsimile from Mr. Konen stating that he attempted to have a drug screen done on the weekend of December 8, 2003, but was unable to find an open laboratory. He provided a note from a Sonora Quest Labs employee stating that he appeared twice on 12-8-03 "for a chain of custody UA, we don't do them at this Sonora." It is signed Cindi.

Mr. Konen was advised in writing that the Board would conduct a compliance interview at the December meeting.

On December 18, 2003, the Board met to conduct the informal interview regarding the allegation of unprofessional conduct. Mr. Konen attended. Board members expressed concern that in response to a request for a drug screen in December 2003, Mr. Konen had not complied in the time frame required in his probationary order, and he had failed to submit the required 12-step logs since the beginning of May of 2003. The Board reviewed his order in Case No. 03799-02-1717, and believed he was in violation of the following terms:

"4. James K. Konen, RCP, shall participate in a 12-step recovery program appropriate for substance abuse, and attend a minimum of three meetings per week while on probation, keeping a written record of times, locations and attendance. On a quarterly basis, James K. Konen, RCP, shall forward his written 12-step record to the Board, said record shall include the following information:

- | | |
|--|----------------------------|
| * Name of 12-Step Group | * Date and time of meeting |
| * Name or initials of another individual | * Name and phone number of |

The Board reviewed the situation, noting:

1. This was, at the least, the ninth time Mr. Konen has appeared before the Board since initially going on probation in April 2001.
2. Mr. Konen's license has been suspended twice for violation of probation.
3. Mr. Konen has repeatedly made false statements to the Board, which he has admitted only after being questioned.
4. Mr. Konen made false statements to the Board as recently as June 2004 when he stated that he was paying for the sessions with Dr. Mirise, which he added were very expensive. Dr. Mirise told Board staff that Mr. Konen's Mother had sought out her help for James and is paying for all of the sessions.

Board members noted that Mr. Konen has been disciplined for violation of his probation a number of times, but it appears he cannot be rehabilitated. After discussion, the Board voted to issue a Complaint and Notice of Hearing.

The complaint and notice of hearing were issued via certified mail.

Mr. Konen appeared and participated in the formal hearing. The Board's Complaint had directed Mr. Konen to respond to the allegation in writing. Mr. Konen did not file a written response. Mr. Harris presented evidence through the State's witness, the Board's Executive Director, to establish that all of the information in the Board's Complaint was true and accurate, and established that, after many attempts, since 2001, the Board attempted to rehabilitate its licensee, Mr. Konen. However, at this time, the case presented by the State called for the revocation of Mr. Konen's license. After a year, it will be up to Mr. Konen to decide whether or not to apply to reinstate his license. If he does, the burden of proof will be on Mr. Konen to prove to the Board that he is once again able to safely and skillfully practice respiratory care.

After discussion, Catherine Lindstrom moved that the Board accept the finding of fact and conclusions of law as set forth in the complaint and notice of hearing. John O'Donnell seconded. **The Motion passed unanimously.** After further discussion Catherine Lindstrom moved that the Board revoke Mr. Konen's license to practice respiratory care in Arizona. Toni Rodriguez seconded. **The Motion passed unanimously.**

XI CONSIDERATION AND ACTION ON PREVIOUS BOARD ACTION

1. Review of Board Decision To Summarily Suspend License

John Holcomb III Case No. 00593-04-1949

John Holcomb, III, RCP, is the holder of License No. 00593 to practice respiratory care in the State of Arizona; originally issued on December 21, 1992. His license was due to be renewed on before September 3, 2004. He was advised, in a letter sent to his address of record on June 3, 2004, that the Board had opened an investigation into possible unprofessional conduct against him. Pursuant to A.R.S. § 32-3202, the license of a health professional who does not renew his license as prescribed by statute, and who has been advised in writing that an investigation is pending at the time his license is due to expire, does

not expire until the investigation is resolved. Therefore, on September 4, 2004, his license was administratively suspended.

On January 29, 2004, the Board received an anonymous allegation via facsimile from Heartland Home Health Care & Hospice. According to the hand written allegation,

“This resp therapist has an addiction to illegal street drugs, mainly crystal methamphetamines. I can make this statement because I have participated in using this drug with John.”

1. The writer continues:

“This man must admit his addiction and seek treatment so that he can continue his part to society and the Healthcare profession. He smoked ‘Meth’ approximately every other day on average. This has unfolded over a 3 year period. Three years that I know of. He uses this drug before work and during. Crystal Meth is highly addictive and once an individual is ‘hooked’ they can perform daily activities without any visibly noticeable transformation.”

The writer reports that Mr. Holcomb’s employer, Healthsouth has been notified of this anonymous complaint as well.

On June 3, 2004, Mr. Holcomb was notified in writing of the allegation. No written response was received.

Mr. Holcomb was advised in writing that the Board would consider this matter at the July meeting.

To the best of staff’s knowledge, Mr. Holcomb did not appear for the July meeting which had to be postponed due to a power outage.

Mr. Holcomb was notified in writing of the date, time and location of the rescheduled meeting.

The Board met to consider the allegation at its public meeting held on August 23, 2004. Mr. Holcomb did not appear. The Board discussed the allegation and voted to invite Mr. Holcomb to an informal interview.

On August 25, 2004, Mr. Holcomb was advised in writing of the date, time and location of the informal interview, via certified mail, to his address of record.

On August 27, 2004, the Board issued a subpoena to Healthsouth for any disciplinary actions or drug screens regarding Mr. Holcomb. That information, received on September 1, 2004, included the following:

1. An Applicant Consent Form signed and dated by Mr. Holcomb attesting that he had read and understood the Healthsouth drug and alcohol policy.
2. A “documented verbal notice” signed and dated by Mr. Holcomb. The performance issue involved speaking to a regulatory representative without notifying supervisor or administration.
3. A “documented verbal notice” signed and dated by Mr. Holcomb. The performance issue involved “punching in late.”
4. A “documented verbal notice” signed and dated by Mr. Holcomb. The performance issue involved not completing mock codes.
5. A “written notice” signed and dated by Mr. Holcomb. The performance issue involved timeliness

- of patient charges and poor quality reports.
6. A “written notice” signed and dated by Mr. Holcomb. The performance issue involved inadequate documentation.
 7. A “written notice” signed and dated by Mr. Holcomb. The performance issue involved not being available (left the building without properly advising staff) on three separate occasions.
 8. A “written notice” signed and dated by Mr. Holcomb. The performance issue involved charges and productivity reports, not documenting Sa02 appropriately, tardiness and time management.
 9. Hand written unsigned notes dated 1/14/03
 10. A email describing how a staff member allegedly saw Mr. Holcomb in his truck snorting something. According the email, Mr. Holcomb was asked to submit to a drug screen and refused. He was immediately placed on administrative leave. Termination resulted.
 11. Witnessed Employee Consent Form for a for-cause blood test which Mr. Holcomb refused.
 12. Follow-up termination paperwork.

On September 16, 2004, the Board met to conduct the informal interview regarding the allegation of unprofessional conduct against Mr. Holcomb. He was notified of the time, place and location of the Board meeting, but did not attend. The Board reviewed all the information and felt the allegation was so serious, i.e, a licensed therapist witnessed snorting something in his private vehicle, while on duty in a health care facility, and then refusing a drug screen, that if it had been reported in a timely manner by Healthsouth would have been grounds for immediate action to protect the public health. As the situation stood, the Board had a very serious allegation. Board members felt that, if found to be true at a formal hearing, it would be grounds to suspend or revoke Mr. Holcomb’s license. The Board reviewed A.R.S. § 32-3553(G), which is the law that provides that if the Board believes an individual has engaged in an act of unprofessional conduct, and if the individual refuses a Board request to appear for an informal interview, the Board shall issue a complaint and notice of hearing for a formal hearing. After discussion, Board members felt that, even with the delay in receiving the information from Healthsouth, grounds existed for suspending Mr. Holcomb’s license. The Board voted unanimously to suspend Mr. Holcomb’s license on an interim basis, and issue a formal complaint and hold a formal hearing pursuant to A.R.S. §32-3553.

Due to the fact that Mr. Holcomb failed to renew his license when he was scheduled to, on September 3, 2004, his license was administratively suspended at the time it was due to expire. Since his license was already administratively suspended the Board decision to summarily suspend was an unnecessary action.

After discussion, Robert Leitz moved that the Board reaffirm its decision to move forward with an administrative hearing. James Love seconded. **The Motion passed unanimously.**

2. Informal Interview Regarding Probation Compliance

1. Lyudmila V. Smith Case No. 06238-03-1819

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

Lyudmila V. Smith is the holder of License No. 06238 to practice respiratory care in the State of Arizona. Her license was issued on June 23, 2003; in conjunction with an order placing her license probation; it is currently valid through December 17, 2004. Under Arizona law, A.R.S. § 32-3202, if she does not renew her license on or before the expiration date, her license will be administratively suspended pending the outcome of this matter.

Ms. Smith submitted a license application on April 21, 2003. On her application she answered "yes" to question 19 which asks, "*Omitting minor traffic violations (infractions), have you ever been convicted of, or pled no contest (nolo contendere) to, entered into any agreement concerning arrest or charge (even if the agreement resulted in dismissal or expungement), or have an outstanding arrest or charge for any violation of any law of any state of the United States, or a foreign country?*" She attached a written statement and court documents showing that she was found guilty of shoplifting in both 1997 and 2002. She stated she is serving 12 months of probation with the court.

A review of her probationary compliance file was conducted in October 2004. For a complete listing of the terms of her Board-ordered probation, please see the Board order in Case Number 06238-03-1819. A partial list of the provisions are listed below along with her *compliance*.

"2. Lyudmila V. Smith is hereby placed on PROBATION for five (3) years.

4. In the event Lyudmila V. Smith fails to satisfactorily complete her court ordered probation and/or she fails to comply with each and every term of this order, her license shall be subject to disciplinary action, up to and including revocation of her license."

Compliance: The Board has no documentation of her progress with probation.

"5. Lyudmila V. Smith shall comply with all of the requirements placed on her in the Court case M-1041-CR-0002118256, i.e., State of Arizona v. Smith Lyudmila V."

Compliance: The Board has no documentation of her progress with probation.

"6. During the term of probation, Lyudmila V. Smith shall inform her employer(s) of the Board's Order of probation by providing her employer(s) with a copy of this Order. Lyudmila V. Smith shall cause her employer(s) to submit reports on her performance as a respiratory care practitioner. These reports must be submitted to the Board on or before the 15th day of March, June, September and December of each year."

Compliance: The Board has received timely favorable reports from Ms. Smith's employer, UMC.

"7. Within one hundred twenty (120) days of the issuance date of this Order, Lyudmila V. Smith shall complete six (6) additional hours of approved continuing education credits [in addition to the twenty (20) hours required to renew her license by December 17, 2004] in the following topic: ethics. The Board recommends that Ms. Smith complete the ethics course offered through the Maricopa County Community College District entitled: HCC 130AE Legal and Ethical Issues in Healthcare. If Ms. Smith wishes to complete any other CEUs to meet this requirement, the ethics course must first: A) be approved by either the American Association for Respiratory Care or the Arizona Society for Respiratory Care; and, B) be approved by Board staff.

8. At such time as Ms. Smith has completed the six (6) additional approved continuing education units, she shall provide documentary evidence of her successful completion of the ethics course to the Board.”

Compliance: On September 12, 2003, Ms. Smith requested in writing that she be allowed additional time to complete the ethics class. No documentation of her completion of the required course has been received.

“12. Lyudmila V. Smith shall appear in person before the Board for interviews upon request, at various intervals and with reasonable notice (i.e., a minimum of five days). She shall **immediately** advise the Board, via facsimile, of any change in her place of employment or home address and of any plans she makes to be away from her place of employment or home for more than five (5) continuous days.”

Compliance: On October 8, 2004, Ms. Smith was invited, in writing to appear for the October 21, 2004, meeting of the Board.

Ms. Smith did not appear for the informal probationary compliance interview.

The Board reviewed her file and found that it appeared Ms. Smith was non-compliant with several terms of her order. Non-compliance with a Board order is grounds for disciplinary action under Arizona law and the Board’s rules, as it constitutes unprofessional conduct.

After discussion, Robert Leitz moved that the Board issue a formal complaint and hold a formal hearing. James Love seconded. **The Motion passed unanimously.**

B. Steven R. Saunders, Case No. 01871-02-1691

BACKGROUND

On his 1998 license renewal application, Mr. Saunders disclosed that he had been terminated from employment by UMC for “unscheduled absences.”

On his 2002 license renewal application, Mr. Saunders disclosed that he was convicted of aggravated DUI on January 18, 2000. He stated that he had paid all fines, completed drug counseling and the MADD course. He stated that he attends 3 12-step meetings per week. He attached a copy of Grand Jury Minutes dated January 18, 2000, showing 2 felony charges. He verbally told Board staff he would provide the relevant documents in a telephone conversation held on February 26, 2002.

The required documents, received from Mr. Saunders on April 10, 2002, included the following:

1. A Minute Entry dated April 13, 2000, showing that Mr. Saunders pled guilty to Endangerment, a class 6 felony and DUI, a class 1 misdemeanor. He was placed on a period of probation; ordered to pay of fee of \$40 per month for probation services; ordered to pay a fine/costs in the amount of \$905; ordered to not consume alcohol; ordered to participate in outpatient treatment, educational program and take antabuse as prescribed and directed; ordered to participate in the aggravated DUI program; ordered not to operate a motor vehicle without approval of the probation officer and a valid driver’s license; and ordered to attend a MADD victim impact panel.
2. A case profile with payment history.
3. An adult probation DUI screening indicating that Mr. Saunders had 2 previous DUIs and is classified as a problem drinker and should participate in alcohol awareness education and outpatient counseling.

4. A certificate documenting proof of completion of DUI education.
5. A certificate documenting proof of completion of the MADD victim impact panel.

The Board considered this information in the course of its monthly held on May 16, 2002. The Board reviewed all of the information in this matter. The Board found that Mr. Saunders had committed the following acts of unprofessional conduct: failure to disclose DUI arrests on 2 license renewal applications; a felony conviction (for which his civil rights have not been restored); and a habitual intemperate in the use of alcohol. After discussion, the Board voted unanimously to offer Mr. Saunders a stipulated disciplinary order that would: issue a decree of censure for failure to disclose required information on 2 license renewal applications; and fix a term and period of probation best adapted to educate or rehabilitate the Board's licensee. Mr. Saunders verbally agreed to enter into a stipulated disciplinary order.

Mr. Saunders entered into the order on May 29, 2004.

Following is a partial list of the provisions of that order along with *compliance*.

5. Steven R. Saunders, RCP, shall participate in a 12-step recovery program appropriate for substance abuse. Mr. Saunders shall attend a minimum of three (3) meetings per week while on probation, keeping a written record of his attendance. On a quarterly basis Mr. Saunders shall forward his written record to the Board, said record shall include the following information:

- | | |
|---|---|
| * Name of 12-Step Group | * Date and time of meeting |
| * Name or initials of another individual
in attendance at each meeting | * Name and phone number of
organizing/administering person |
| * Location and address of meeting place | |

Compliance: Mr. Saunders submits his 12 step logs on a regular basis.

7. Steven R. Saunders, RCP, shall comply immediately (i.e., within 2 hours) with requests from the Board, or its agents or designees, to submit to witnessed random biological fluid collection and/or breathalyser tests; and, he shall authorize any person or organization conducting tests on these collected samples to provide testing results to the Board.

Compliance: Mr. Saunders responds to requests for random drug screens in a timely manner.

The last request was October 15, 2004.

9. Steven R. Saunders, RCP, shall file the necessary legal papers with the Superior Court of Pima County, Arizona, (hereinafter, "the court") to petition the court to set aside his felony conviction and reinstate his civil rights. In the occurrence that his civil rights are automatically restored upon his completion of any court-ordered terms, Mr. Saunders shall provide a copy of an official court document so stating.

10. Steven R. Saunders, RCP, shall provide a copy of any legal papers he files with the court to the Board.

11. Steven R. Saunders, RCP, shall communicate to the Board any decision of the court by providing the Board with the original court document granting or, in the event the alternative occurs, denying his petition.

Compliance: No documentation has been provided.

14. Steven R. Saunders, RCP, shall appear in person before the Board for interviews upon request, at various intervals and with reasonable notice (i.e., a minimum of five days). He shall **immediately** advise the Board **in writing or via facsimile transmission** of any change in his place of employment or home address and of any plans he makes to be away from his place of employment or home for more than five (5) continuous days.

15. This Order shall remain effective for a minimum of three (3) years from the effective date. After his civil rights are restored and he has demonstrated one complete year of compliance with the terms of probation, Respondent may apply to the Board by letter seeking modification of the Order of Probation.

Mr. Saunders was advised in writing that the Board would conduct a compliance interview at the October meeting.

Mr. Saunders appeared and participated in the interview. It was noted that Mr. Saunders appears to be in compliance with his order with the exception of restoration of his civil rights. He stated to the Board that, as of this time, he is not eligible for consideration of restoration of his civil rights.

No action was taken.

C. Howard Holz III Case No. 03028-03-1816

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

BACKGROUND – LICENSE SUSPENSION

On his 2000 license renewal application form, Mr. Holz disclosed that he had pled guilty to DUI. He was ordered to pay a fine with the balance due on June 7, 2000; and complete an alcohol, or other drug screening, education and treatment program by June 7, 2000.

On August 22, 2000, a written request for documentation that he had completed his court ordered obligations was sent to Mr. Holz at his address of record. No response was received.

On December 27, 2000, a second written request for the information was sent. No response was received.

On February 1, 2001, Mr. Holz was advised in writing that the Board would consider this information at its February meeting.

On February 14, 2001, the Board received a written response from Mr. Holz but no documentation that he had completed any of the court ordered obligations.

The Board considered this matter at its February 2001 public meeting. Mr. Holz did not appear. At that time, the Board voted unanimously to invite Mr. Holz to an informal interview.

On March 2, 2001, Mr. Holz was advised in writing of the date, time and location of the informal interview.

On March 15, 2001, the Board met to conduct the informal interview regarding the allegation of unprofessional conduct against the Respondent pursuant to A.R.S. §32-3553(G). Respondent was notified of the time, place and location of the Board meeting. Respondent was urged to attend the informal interview, but did not attend. The Board reviewed the information and felt that Mr. Holz's failure to provide documentary evidence that he has complied with all court-required sanctions for a DUI conviction, might be grounds for disciplinary action. The Board also felt that Mr. Holz's failure to document that he had completed court-ordered alcohol counseling, may indicate that he is still in need of alcohol abuse education and counseling so that he may safely and skillfully practice respiratory care. If, at the conclusion of a formal hearing, the Board found it to be true that Mr. Holz needs alcohol abuse counseling, then the Board could fix a period and terms of probation best adapted to protect the public health and rehabilitate Mr. Holz.

The Board reviewed A.R.S. § 32-3553(G) which provides: *if a licensee refuses a Board request for an informal interview and the results of the Board investigation indicate that disciplinary action might be in order, the Board shall issue a formal complaint and hold a formal hearing.*

After discussion, the Board voted to issue a formal complaint and hold a formal hearing pursuant to A.R.S. §32-3553(I).

The Board's Complaint was issued to Mr. Holz, via certified mail, to his address of record on March 29, 2001. The return receipt indicated delivery on March 30, 2001.

On May 17, 2001, the Board met to conduct the administrative hearing. Mr. Holz did not appear. Assistant Attorney General Nancy J. Beck, appearing on behalf of the State of Arizona, 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, the Board voted by a vote of 5 to 1 to grant a continuance until the June Board meeting.

The formal Notice granting continuance was issued to Mr. Holz on May 29, 2001, by US certified mail/return receipt requested.

On June 21, 2001, the Board held its regular monthly public meeting, in part to consider suspending or revoking Respondent's license to practice respiratory care. Respondent was notified of the time, place and location of the meeting, but did not attend. The case was presented by Assistant Attorney General Nancy J. Beck, appearing on behalf of the State of Arizona. After reviewing all of the information relating to this matter and receiving testimony from its Executive Director, the Board found that Mr. Holz's conduct as set forth in its Complaint constituted grounds for disciplinary action, up to and including the suspension or revocation of his license to practice respiratory care in Arizona, pursuant to A.R.S. § 32-3552(A)(3) in conjunction with:

1. Violation of A.R.S. § 32-3501(10)(i) *any conduct which is contrary to recognized standards of ethics of the respiratory therapy profession*, evidenced by Mr. Holz's failure to provide documentation that he has completed the court-ordered requirements for his DUI conviction; and
2. Violation of A.R.S. § 32-3501(10)(j), *any conduct, practice or condition which does or might impair a person's ability to safely and skillfully practice respiratory therapy*, evidenced by Mr. Holz's failure to provide documentary evidence that he has completed court-ordered alcohol abuse counseling which may indicate that Mr. Holz needs to be placed on probation so that the Board can fix a

term and period of probation best adapted to protect the public health and rehabilitate Mr. Holz.

After discussion, the Board voted unanimously to suspend Respondent's license for an indefinite period of time. According to the Board order, the term of suspension shall continue, at a minimum, until Mr. Holz filed a petition with the Board for an administrative hearing, and another formal order is issued based upon the evidence presented to the Board at the aforementioned hearing.

BACKGROUND – ALLEGATION OF PRACTICING RESPIRATORY
CARE AFTER LICENSE SUSPENSION

On July 13, 2001, the Board received a letter from Glenn E. Davis, Administrative Director, Respiratory Care Services, Good Samaritan Medical Center, that Mr. Holz performed respiratory care after the suspension of his license, "having worked eleven, 12 hour shifts at this facility. Dates worked were 6/23, 6/24, 6/25, 6/27, 6/28, 6/30, 7/2, 7/3, 7/4, 7/7, and 7/8/2001. Mr. Holz indicated by telephone that he was unaware that his license had been suspended or he would not have worked. Howard Holz' employment with Good Samaritan has been involuntarily terminated, effective July 9, 2001." Mr. Davis added that the facility was unaware of the license suspension until, on July 9, 2001, he reviewed the minutes of the Board meeting.

PETITION FOR ADMINISTRATIVE HEARING

Mr. Holz completed all of the requirements to petition the Board for an administrative hearing on May 2, 2003. On May 5, 2003, he waived the 30 day requirement for a hearing so that the Board could consider the matter at its May 15, 2003, meeting.

On May 15, 2003, the Board met to consider all of these matters. Mr. Holz was present. The Board reviewed his application to renew his license; the documents filed by Mr. Holz to establish that he has completed all court ordered requirements related to his DUI convictions; and, the information regarding Mr. Holz' practicing respiratory care for 11 shifts after his license was suspended.

The Board voted to renew his license, and found that his Mr. Holz' conduct constitutes grounds for disciplinary action, pursuant to A.R.S. § 32-3552(A)(3), in conjunction with:

1. Violation of A.R.S. § 32-3501(10)(j). Any conduct, practice or condition which does or might impair the person's ability to safely and skillfully practice respiratory therapy.
2. Violation of A.R.S. § 32-3501(10)(k). Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate a provision of this chapter.

After discussion, the Board voted to renew the license, lift the suspension, and fix a term and conditions of probation best adapted to protect the public and educate, or rehabilitate, its licensee.

Following is a partial list of the provisions of that order along with *compliance*.

5. During the term of probation, Howard W. Holz, III, shall inform his employer of the Board's Order of probation by immediately providing his current employer(s) with a copy of this Order and any prospective employer with a copy at the time he makes application.

Compliance: The Board has no knowledge of where Mr. Holz is employed.

6. Howard W. Holz, III, shall cause his employer(s) to submit reports on his performance as a respiratory care practitioner. These reports are to be submitted to the Board on or before the 15th day of March, June, September and December of each year.

Compliance: No employer reports have ever been received for Mr. Holz.

7. Howard W. Holz, III, shall **pay a fee** for violating A.R.S. § 32-3556 in the amount of \$500. Mr. Holz shall make a payment to the Board in the amount of \$500, via certified check or money order, within 45 days of the effective date of this Order.

Compliance:

On September 18, 2003, Howard W. Holz, III, RCP, ("Licensee"), appeared for an Administrative Hearing before the Arizona State Board of Respiratory Care Examiners ("Board"), pursuant to the Board's Interview authority under A.R.S. § 32-3553, to review his compliance with the Board Order in Case No. 03028003-1816. He was present. The Board determined that he had failed to comply with terms number 7 and 11 of his Order. Following the Hearing, and discussion of the information and evidence presented, the Board voted to issue a decree of censure, and to grant a 60 day extension to the deadline established for his completion of term number 7 of his order. The new deadline for Licensee to complete term number 7 of his order is: **November 18, 2003.**

Mr. Holz paid the \$500 administrative penalty but not until February 2004, well past the deadline.

11. Howard W. Holz, III, shall appear in person before the Board for interviews upon request, at various intervals and with reasonable notice (i.e., a minimum of five days). He shall **immediately** advise the Board, via facsimile, of any change in his place of employment or home address.

12. This Order shall remain effective for three (3) years from the effective date; and, after one (1) year, Respondent may apply to the Board by letter seeking modification of the Order of Probation upon showing satisfactory compliance with the Order during the period of probation. Unless violation of the Board's Order is established in a hearing before the Board, pursuant to A.R.S. 32-3553(G) or (I), the Order shall automatically terminate in three (3) years.

Mr. Holz was notified in writing that the Board would conduct a compliance interview at the October meeting.

Mr. Holz did not appear. The Board reviewed all of the information.

After discussion, James Love moved that the Board issue a formal complaint and hold a hearing since it appeared that Mr. Holz was in violation of his current order. Catherine Lindstrom seconded. **The Motion passed unanimously.**

D. Clifford Hamrick, Case No. 06276-03-1817

BACKGROUND INFORMATION

Initial License Application

Mr. Hamrick submitted his initial license application on January 7, 1992. On the application he answered "no" to the question which asked, "*Omitting minor traffic violations, have you ever been arrested or charged or convicted of or pled no contest to any violation of any law of any state, the United States or a foreign country?*" (The original license application had somewhat different wording than our current #19.) He was issued license number 01990 on August 30, 1992.

Mr. Hamrick renewed his license in a timely manner in 1994, 1996 and 1998 never disclosing any arrests or convictions.

Case No. 01990-00-1367

Stipulated Order of Probation

On August 31, 1999, Mr. Hamrick entered into a stipulated order of probation after Mr. Hamrick admitted that he had smoked Marijuana and tested positive for that substance on a random drug for his employer, Air Evac. As a result of the positive drug screen, Mr. Hamrick was terminated from employment by Air Evac.

On December 31, 2000, Mr. Hamrick's license expired while on probation.

Current License Application

Allegation of misrepresenting or omitting information on license application

Mr. Hamrick filed a license re-application on or about April 8, 2003. On the form, he answered "yes" to question 16 which asks, "*Has any professional license of any kind been issued to you by a governmental authority, whether in this state or elsewhere? If yes, has that license or certificate ever been the subject of discipline, censure, probation, practice restriction, suspension, revocation or cancellation?*" He attached a copy of his stipulated order of a probation and the following statement: "On Aug. 1999 I was put on probation and worked till the end of 2000 at which time I had went to New Zealand when my license expired."

In addition, he answered "yes" to question 19 which asks, "*Omitting minor traffic violations (infractions), have you ever been convicted of, or pled no contest (nolo contendere) to, entered into any agreement concerning arrest or charge (even if the agreement resulted in dismissal or expungement), or have an outstanding arrest or charge for any violation of any law of any state of the United States, or a foreign country?*" He attached a note stating that he was convicted of DUI in 1971 and 1992. He included court documents.

The results of the FBI background check revealed information not disclosed by Mr. Hamrick on his license re-application.

On May 21, 2003, Mr. Hamrick was advised of this information in writing.

In his response received on June 2, 2003, he stated that he did not recall a 1983 conviction and provided a document from the Glendale Police Department which stated that the records have been purged. Regarding a 1988 conviction, he provided his written recollection and the police and arrest report.

On June 3, 2003, Mr. Hamrick was advised in writing that the Board would consider his re-application and the allegation that he may have misrepresented or omitted information on his license application.

Mr. Hamrick appeared for the June 19, 2003, Board meeting and participated in a discussion with the Board. Board members were concerned that it appeared that Mr. Hamrick had left the country to avoid his

child support obligation. Mr. Hamrick told the Board that at the time he left for New Zealand, he was current with child support payments. In addition, the Board members were concerned that Mr. Hamrick had practiced without a license as evidenced by his admission that he had taught respiratory care during the period that his license was expired. After discussion, the Board voted unanimously to table consider of the re-application and the allegation of unprofessional conduct until Mr. Hamrick supplied documentation that he has set up some type of plan to deal with the child support arrearage.

In early August 2003, Mr. Hamrick provided the Board with documentation that he and his former wife had come to an agreement through the court to deal with the child support issues.

Mr. Hamrick was notified in writing that the Board would consider his re-application at the September meeting.

On September 18, 2003, the Board met for the purpose of considering Mr. Hamrick's license application. Mr. Hamrick attended and participated. Based upon the information received, the Board found that disciplinary action was in order because Mr. Hamrick failed to disclose required information on his license application. After discussion, the Board decided to grant Mr. Hamrick's license on a conditional basis. The condition is that he complete 6 hours of approved continuing education units in the following area: ethics.

October 2004 Compliance Review

In early October 2004, Board staff conducted a review of Mr. Hamrick's order and noted that he had not complete the required ethics course in the time frame established in his order of probation.

Mr. Hamrick was advised in writing that the Board would conduct an informal interview regarding probation compliance at the October meeting.

Mr. Hamrick did not appear. The Board reviewed the information.

After discussion, James Love moved that the Board issue a formal complaint and hold a hearing since it appeared Mr. Hamrick was not in compliance with his current order. John O'Donnell seconded. **The Motion passed unanimously.**

XII. REQUEST SCOPE OF PRACTICE OF A RESPIRATORY THERAPIST TO VERIFY TIP PLACEMENT VIA X-RAY OF PERIPHERALLY INSERTED CENTRAL CATHETER (PICC).

Franklin T, Miller

Mr. Miller is a supervisor at the Mayo Clinic Hospital. Mr. Miller asked to appear before the Board to discuss whether it was within the scope of practice for a Arizona licensed respiratory care practitioner to verify via chest x-ray tip placement of a peripherally inserted central catheter, PICC.

Mr. Miller provided the Board with a proposed policy for this procedure to review.

The Executive Director advised the Board members that in the past when the Board has been to render an opinion regarding an issue they answered the request by recommending that the facility's legal counsel review the statutes and determine if a license of some type is needed to perform the procedure. If no other health regulatory license is required, then, 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 this procedure.

XIII. CALL TO THE PUBLIC

There was no public comment

XVI. 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).

XVII. ESTABLISH DATE AND TIME OF NEXT BOARD MEETING

Thursday, November 18, 2004, at 9:00 a.m.

XVIII. ADJOURNMENT

The meeting was adjourned at 3:25 p.m. without objection

DATED this ___ day of December 2004.

MARY HAUF MARTIN, Executive Director