

# Board of Respiratory Care Examiners Board Meeting Minutes

## Regularly Scheduled Meeting of November 19, 2009

Thursday, November 19, 9:00 a.m.  
Basement Conference Room B-1  
1400 W. Washington, Phoenix, AZ 85007

**Board Members Present:**

Board Chair Toni Rodriguez

Vice Chair Becky Brimhall

Chuck Ramirez

James Love

John O'Donnell

David Sanderson

Bill Cohagen

**Board Members Absent:**

James Love left at 2:15

Becky Brimhall left at 2:30

**Staff Present:**

Mary Hauf Martin

David Geriminsky

Valarie Davis

**Legal Counsel:**

Keely Verstegen

**[WWW.RB.AZ.GOV](http://WWW.RB.AZ.GOV)**

Authored by: David Geriminsky

Recommended by: Mary Hauf Martin

Approved by the Board on December 17, 2009

# Board of Respiratory Care Examiners Board Meeting Minutes

Regularly Scheduled Meeting of November 19, 2009

## CALL TO ORDER

The Meeting was called to order at 9:00 a.m. by Board Chair Toni Rodriguez.

## CONSENT AGENDA

### CONSENT AGENDA:

All items listed with “C” are considered to be routine or have been previously reviewed by the Board of Respiratory Care Examiners, and will be enacted by one motion. There will be no separate discussion of these items unless a Board member so requests; in which event the item will be removed from the Consent Agenda, and placed in the Regular Agenda under Item R-2.

### MOTION ON THE CONSENT:

There being no items requested to be removed, a motion was made by David Sanderson to approve all items on the Consent Agenda. John O'Donnell seconded. The Motion Passed

### C-1 APPROVAL OF MINUTES

Recommended for Approval

October 15, 2009

October 19, 2009

### C-2 ACTION ON APPLICATIONS FOR LICENSURE

#### I. Permanent License Issuance

Recommended for approval by the Executive Director

Mark Baldwin	Alycia Ballentine	Christopher Bero	Larysa Bruno
Christopher Cannizzo	Jeanette Carrillo	Tammy Detwiler	Lisa Drexler
Allison Eisenhart	Teresa Fischer	Julie Galperen	Monica

Galvan

Nicolas Gonzales	Danielle Griffin	Leslie Hiner	Kristie
Janman	Biormayhoor Jo	Christy Ling	Henry Lopez
Monserrat Lopez	Maliwan McIvor	Tiffanee McKaque	Dora Medina
Pete Merayo			
Michelle Mirl	Jessica Molera	Allison Newendorp	Vy Nguyen
Paula Pastor	Nyla Samuel	Sherree Schornack	
Sacha Spencer-Clacke	Mindy Stoehr	Khristina Theobald	
Brittany Washington	Casey Winterrowd	Alyssa Zuniga	

**ii. Re-Application for Permanent Licensure**

**Recommended for approval by the Executive Director**

John Craig                      Esmeralda Reyes

**iii. Ratification of Temporary Licenses Issued Pursuant to A.R.S. § 32-3521**

**Recommended for Ratification by the Executive Director**

Paul Achey	Mark Baldwin	Samandrea Barkely	Jeremy Brady
Lisa Bushnell	Christopher Cannizzo	Daniel Clack	Rosie Dominquez
Bonnie Dzambo	Belinda Ekstrom	Adrian Enache	
Nicole Gillespie			
David Greenwood	Cleotis Henry	Michele Herman	Arlene High
Ebony Holland	Marcus Huff	Brian Koehn	Racheal
Lee			
Georgia Lemunyon	Veolada Lemus	Phily McCormick	Seth McGowan
Theodore Mefford	Cindy Munoz	Brian Murphy	Crystal Neville
Anabel Ornelas	Mark Ottesen	Juan Perez	Samantha
Preihs			
Eric Robinson	Dennis Ryan	Jeanette Sanchez	Natalie Sharka
Travis Simpkins	Shahab Sobhanian	Sacha Spencer-Clarke	
Shannon Staszak	Lynn Stewart	Triscia Stokes	Lynn Teslik
Bobbi Tistle	Leda Turner	Gloria Valderrama	Elaine Weinstein
Camille Zeiger			

**iv. Ratification of Temporary License Extension Issued pursuant to A.R.S. § 32-3521**

**Recommended for Ratification by the Executive Director**

Michael Meadows

**C -3 ACTION ON ADMINISTRATIVE CLOSING OF APPLICATION FILES**

**Recommended for closing of application files**

Jim Boyle\*                      Christine Conner                      Dennis Ira                      Clara Leon

Elena Marshall                      Bill Scheller                      Eric Torres                      Herman  
Tragnirtz  
Joseph Weick                      Denise Wright                      Christine Young

**C- 4 ACTION ON ADMINISTRATIVE CLOSURE OF TWO-YEAR INACTIVE FILES**

**Recommended for closing of inactive files**

David Bromley                      Peter Cordova                      Margaret De Lue                      William Hart  
Daisy Hernandez                      James Jordan                      Corie Mitchell                      Karen Nasco  
Robert Raulerson                      Charles Scott                      Brandy Stence

**C-5 ACTION ON NOTICES OF LICENSE EXPIRATIONS**

**Recommend sending notice of License Expirations to the following individuals:**

Evelyn Benitez                      Megan Cavens                      Shang Chao                      Phillip Dierchksmeier  
Sherry Fernandez                      Karen Gambrel                      Andrew Griffin                      Maria  
Gumulka  
Noel Landas                      Nancy Lewis                      Suzanne Maitre                      Wade Mason  
Clifford McNab                      Heather McNorton                      Sharan Obregon                      Mi Mi  
Saw  
Lindsay Seilinger                      Lisa Shivery                      Kathleen Shurr                      Vaughnie  
Thomas  
Peggy Vazquez

**C -6 ACTION ON RATIFICATION OF RENEWAL OF LAPSED LICENSES**

**Recommended to ratify licenses issued by the Executive Director to individuals who met requirements for renewal**

Casey Carter                      Terrance Mallory                      Patrisha Sears                      Miguel Valdez

**C-7 ACTION ON RATIFICATION OF CONSENT AGREEMENTS AND LETTERS OF WARNING ISSUED**

Items listed here will be proposed documents for the Board’s consideration. The Board may choose not to ratify these documents, remove them from the Consent Agenda, and place them in the Regular Agenda under Item R-2.

Stipulation and Consent Orders, and Letters of Warnings Issued, once ratified by the Board shall constitute public records which may be disseminated as formal actions of the Board.

**A. Decision on Accepting Proposed Consent Agreements**

None

**B. Decision on Accepting Proposed Letters of Warning Issued**

None

**C -8 ESTABLISH DATE AND TIME OF NEXT BOARD MEETING**

**Scheduled date of next Board Meeting**

Thursday, December 17, 2009, at 9:00 a.m.

## **REGULAR AGENDA**

### **R-1 DISCUSSION/ACTION ON EXECUTIVE DIRECTOR'S REPORT**

#### **i. Board Member Appointments Update**

**Welcome New Board Member Chuck Ramirez**

#### **ii. Scope of Practice Issue**

##### **Advisory Opinion Statement on Intubation**

The Arizona State Board of Respiratory Care Examiners, at a public meeting conducted on November 19, 2009, arrived at the following Advisory Opinion Statement.

The Board reviewed the contents of an email received by the Board from Cindy Horton, BAS, RRT, Respiratory Manager Cardiopulmonary Services, Banner Boswell Medical Center. The email addressed the expanded practice issue of intubation.

After reviewing the legislative intent clause which states:

##### **Laws 1990, Chapter 256, § 1. Legislative Intent**

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

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

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

The Board strongly recommends that RCPs who are performing this procedure document both their training and on-going demonstration of competency.

**R-2 DISCUSSION/ACTION ON ITEMS REMOVED FROM THE CONSENT AGENDA**

None

**R-3 DISCUSSION/ACTION ON APPLICATIONS FOR LICENSURE/RENEWAL**

**A. Application for Licensure/Interview**

- 1. Jeffrey Green - Case Number C002522-10-009035
- 2. Jim Boyle - Case Number C002428-09-000000\*
- 3. Cristin Castillo - Case Number C002525-10-008982

- 1. Jeffrey Green - Case Number C002522-10-009035

Mr Green was present. The Executive Director stated that Mr. Green has provided all the documentation to prove that he is eligible for licensure. After discussion **David Sanderson** moved to Grant Mr. Green a License. **Bill Cohagen** Seconded the Motion. **Board Chair Toni Rodriguez and Chuck Ramirez** voted **Nay**. **The Motion Passed.**

- 2. Jim Boyle - Case Number C002428-09-000000\*

This Item was taken in conjunction with Item R-5-1

- 3. Cristin Castillo - Case Number C002525-10-008982

Ms. Castillo was present. The Executive Director stated that Ms. Castillo has provided all the documentation to prove that she is eligible for licensure. After discussion **Becky Brimhall** moved to Grant Ms. Castill a License. **Bill Cohagen** Seconded the Motion. **The Motion Passed.**

**B. Re-Application for Licensure/Interview**

- 1. Laurie Robinson - Case Number C002527-10-009196
- 2. Michael Marks - Case Number C001464-10-009225
- 3. Angela Jacobsen - Case Number C002528-10-009034

- 1. Laurie Robinson - Case Number C002527-10-009196

Ms. Robinson answered “Yes” to questions on the documentation she filed with the Board regarding the following issues:

- Regarding having had a license issued to her previously that was subsequently revoked.
- Having had previously filed an application for respiratory care in Arizona.
- Having had enrolled in or been committed to a substance abuse program.
- Having a criminal history.

- Having a habitual intemperance to drugs or alcohol

Regarding Ms. Robinson's affirmation regarding her criminal history, she disclosed the following: A conviction in 2005 in regards to a Controlled Substance. She provided documentation to establish she met all court requirements to have the conviction reduced to a misdemeanor and her civil rights restored.

Regarding Ms. Robinson's affirmation regarding a previously held license, she disclosed that her license was first placed on probation and then revoked for substance abuse issues. She provided detailed information about her prior drug abuse. She provided information to indicate that she has made several, positive, changes in her life; and is no longer abusing drugs.

Due to the disclosures she made, Ms. Robinson was required to attend an interview with the Board to complete her application.

At a public meeting held on November 19, 2009, Ms. Robinson told the Board that despite her lengthy history of substance abuse, she is now clean and sober. She feels ready to return to the practice of respiratory care. She stated that she is willing to prove to the Board, over time, that she can stay clean and sober. Board members expressed the importance, if her license is granted, of having close oversight, due to her history.

After discussion, **Becky Brimhall** moved to offer a Consent Order to grant the license and establish rehabilitative probation identical to the terms of probation she was placed on previously. If Ms. Robinson does not sign a proposed Consent Order, her license application will be denied. **Bill Cohagen** seconded. **The Motion Passed.**

2. Michael Marks - Case Number C001464-10-009225

Mr. Marks was present. The Board reviewed all available information on this matter. After discussion **Board Chair Toni Rodriguez** moved to table this matter until additional documentation could be found specifically a letter from Mr. Marks prospective employer stating what they would be doing to re-educate Mr. Marks considering his long period of absence from the Health Care profession and copies of all CEU's that Mr. Marks states he has kept up over the past 10 years. **Jim Love** Seconded. **The Motion Passed.**

3. Angela Jacobsen - Case Number C002528-10-009034

Ms. Jacobsen was present. In May 2008, a previously held license of the Applicant was revoked. She was impaired (under the influence of drugs or alcohol) while practicing respiratory therapy, when she was on duty and responsible for caring for patients.



Ms. Jacobsen answered “Yes” to the following questions on her application form:

*18.) Has the applicant enrolled in or been committed to a substance abuse program in the last ten years?*

*20.) Has the applicant ever had any habitual intemperance to drugs or alcohol?*

1. Ms. Jacobsen provided a written statement that she was an addict and entered the Magellan substance abuse program. She stated that she has been clean since November of 2008. On November 03, 2009, the Board received a letter from Centro Esperanza Clinic in Mesa indicating that Ms. Jacobsen has been attending psychiatric services there from November 2007 to present day. The facility states that Ms. Jacobsen is complying with all recommendations and participating in the clinic. The facility also states that Ms. Jacobsen completed wellness and substance abuse groups while at Centro Esperanza.
2. Ms. Jacobsen admitted, in a written statement, that her previously held license was revoked for substance abuse related issues.

Due to her the issues in her past, Ms. Jacobsen was required to attend an interview with the Board to complete her license application.

At a public meeting held on November 19, 2009, Ms. Jacobsen reiterated to the Board that she has made positive changes in her life. She stated that is willing and able to prove that she no longer has substance abuse problems. Board members expressed the importance, if her license is granted, of having close oversight, due to her history.

After discussion, **Board Chair Toni Rodriguez** moved to offer a Consent Order to grant the license and establish rehabilitative probation. If Ms. Jacobsen does not sign a proposed Consent Order, her license application will be denied. **Becky Brimhall** seconded. **The motion passed.**

#### **R-4 CONSIDERATION AND ACTION ON INVESTIGATIONS OF POSSIBLE UNPROFESSIONAL CONDUCT**

1. Martin Rocobado - Case Number C002491-10-003627

Mr. Rocobado was present. After reviewing all available documentation and information **Board Chair Toni Rodriguez** moved to take this matter to the level of an informal interview. **John O'Donnell** Seconded. **The Motion Passed.**

2. Christy Pennington - Case Number C002520-10-009104

Ms. Pennington was present. She failed a random drug screening; the substance was methadone. She admitted using the substance and that she does not have a valid prescription. Licensee stated she took ¼ of a 10mg tablet of methadone the night before she was randomly selected for the drug screen. She stated that she has frequent migraine headaches, and took an old prescription of her fiancé's.

When this matter was brought to the attention of the Board, by Marge Perech of Northwest Medical Center, via the Board's online Complaint system, Ms. Pennington entered into a Temporary Agreement Not to Practice until the Board could meet to discuss it.

At a public meeting held on November 19, 2009, Ms. Pennington told the Board that this was an isolated incident. She stated that she is not a drug abuser and is willing to prove to the Board, over time, that she is clean, sober and able to safely practice respiratory care.

After discussion, **Becky Brimhall** moved to offer Ms. Pennington a Consent Order for Rehabilitation. If Ms. Pennington does not sign a proposed Consent Order, she will be invited to an informal interview with the Board. **Bill Cohagen** seconded. **The motion passed.**

3. Cameo Conley - Case Number C002521-10-007393

Ms. Conley was present. After testimony from Ms. Conley and review of all available documentation the Board found that there was no evidence to support an allegation of unprofessional conduct. **Bill Cohagen** moved to dismiss this allegation. **John O'Donnell** seconded the motion. **The Motion Passed.**

#### **R-5 CONSIDERATION AND ACTION ON INFORMAL INTERVIEWS PURSUANT TO A.R.S. § 32-3553(G)**

- **These Informal Interviews are scheduled for the afternoon session, which begins at 1:00 p.m.**

1. Jim Boyle - Case Number C002428-09-000000

Mr. Boyle was not present. An applicant for a license to practice respiratory care must submit a complete application to the Board, including all necessary documents and fees. Pursuant to A.A.C. R4-45-213, the Board's Executive Director must review said application and determine whether the individual is eligible for a license pursuant to A.R.S. § 32-3523. If an applicant is determined to be eligible, a temporary license is granted. Mr. Boyle received a

Temporary License based upon the information he provided on his Application that later proved to be false. He failed to disclose the fact that he once held a license to practice respiratory care in the State of California; that his California license was revoked; and the conduct for which it was revoked:

- Felony Convictions. The felonies were for willfully and unlawfully accomplishing an act of sexual intercourse with a person under 16 years of age and assault by means of force likely to produce great bodily injury. (*Conviction later dismissed/civil rights restored.*)
- Failure to report his criminal charges on an application to renew his California license.
- Unauthorized practice (working without a license after a temporary license expired); and
- Forging a California Respiratory Care Practitioner's License.

On February 19, 2009, the Board held a public meeting, in part to consider an allegation of unprofessional conduct against Mr. Boyle. He was present. The Board determined the following:

- Mr. Boyle acquired his Temporary License by fraud and misrepresentation.
- Mr. Boyle attempted to acquire a permanent license by fraud and misrepresentation.

After discussion, the Board offered him a stipulated consent order requiring him to resolve the status of his license in California.

Mr. Boyle failed to sign and return this proposed agreement and his license was administratively suspended as it expired while under investigation.

On November 19, 2009, the Board held its regular, monthly, public meeting in part to conduct an informal interview regarding the allegation of unprofessional conduct and to make a determination regarding his permanent license. Mr. Boyle was not present. The Board reviewed a letter he submitted stating: He cannot afford to rectify the status of his California license; and, he has no intention of ever practicing respiratory care in Arizona.

**Becky Brimhall** moved that Mr. Boyle did not meet the requirements set forth in A.R.S. §32-3523 and to deny his license to practice respiratory care. **Bill Cohagen** seconded the Motion. **The Motion Passed.**

2. Laura Waldecker - Case Number C002504-10-001798

Ms. Waldecker was present. Ms. Waldecker was selected for a random drug screening by her employer. Ms. Waldecker reported for the drug screening, but submitted a urine sample that was out of the temperature range as it exceeded 100 degrees in temperature. The drug lab asked Ms. Waldecker for another sample under direct observation but she stated that she was unable to produce one. They told her to drink some water and wait in the lobby. Ms. Waldecker left the building then returned telling them she was going back to work. Ms. Waldecker resigned her position.

This Complaint was received on August 24, 2009, from Lily Longacre of Preferred Homecare. Ms. Waldecker was informed, in writing, of the matter.

Ms. Waldecker provided a statement, saying she was informed that if she stepped outside of the building it would be considered an automatic refusal to retest. She stated that she stepped outside to make a phone call without thinking and when she returned the lab would not let her retest.

Ms. Waldecker stated that she would not have tested positive for any drug or substance for which she does not have a valid prescription and that the situation, while she made a mistake by leaving the lab, was an unfortunate incident; not an indicator of drug or alcohol abuse. Evidence was presented to the Board to substantiate the information in the allegation. Board Members expressed their concern regarding Ms. Waldecker's failure to satisfactorily complete an employer's random drug screen.

After consideration and discussion, **Toni Rodriguez** moved to place the license of Laura Waldecker on an order of rehabilitation probation. **Bill Cohagen** seconded. **The motion passed.**

#### **R-6 CONSIDERATION AND ACTION ON FORMAL COMPLAINT HEARINGS PURSUANT TO A.R.S. § 32-3553(H)**

1. Ty Williams - Case Number C002507-10-004426 – 10:30 a.m.
2. Jeannette Sweet - Case Number C002493-10-08768 – 10:00 a.m.
3. Kenneth Smith - Case Number C002499-10-005921 – 11:00 a.m.
4. Viridiana Hernandez - Case Number C002496-10-007710 – 11:30 a.m.

1. Ty Williams - Case Number C002507-10-004426

Mr. Williams was not present. The case was presented by Assistant Attorney General Keely Verstegen, on behalf of the State of Arizona. In early September, 2009, a compliance check was conducted on Mr. William's file and it appears that there were one or more areas of non-compliance.

#### **Term 3. "Participation in Counseling Sessions and AA/NA"**

Within seven days of the effective date of this Order, and throughout the term of this Order, Licensee shall participate in a combination of Counseling Sessions and meetings of 12-Step Programs that, cumulatively, are three sessions per week. The sessions/meetings must be on three separate days per week. Licensee shall submit to the Board, in writing on Board-approved forms, **monthly** reports with the following information:

- \* Name of 12-Step Group or Counseling Session
- \* Name or initials of another individual in attendance at each meeting

- \* Date and time of meeting
- \* Location and address of meeting place
  - \* Name and phone number of organizing/administering person
  - \* Name and phone number of sponsor”

Note: Mr. Williams failed to submit information regarding his Participation in Counseling Sessions and AA/NA required on the following due dates.

March 15, 2009                      April 15, 2009                      May 15, 2009

June 15, 2009                      July 15, 2009                      August 15, 2009

Term 5.            “Drug Testing

Licensee 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. This test must be, at a minimum, a 10-Panel. And, he shall authorize any person or organization conducting tests on these collected samples to provide testing results to the Board.”

Note: On September 3, 2009, an attempt was made to call Mr. Williams for a random drug screen at his phone number of record. The number was not valid.

Term : “Abstain from Unauthorized Drug Use/Proof of Prescription

Licensee 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.

Licensee must have a current prescription for any prescription-only drugs or over-the-counter preparations taken, and provide a copy of all mood-altering or controlled substance prescriptions written for the licensee **within 72 hours after the prescription has been filled.**”

Note: Despite a history of health-related concerns that require prescription medication, Mr. Williams failed to provide any prescriptions.

Term 10.            “Change of Employment/Personal Address/Telephone Number

Licensee shall notify the Board, in writing, immediately, via facsimile or email, of any change in employment, personal address or telephone number.”

Note: Mr. Williams failed to provide information regarding: employment; and, a current phone number.

In light of the above, and pursuant to A.R.S. § 32-3553(H), the Board held a public meeting on September 17, 2009, to determine whether there was good cause to believe that Mr. Williams was in violation of his probation. The Board’s Executive Director duly caused the

meeting to be noticed in accordance with the Arizona Open Meeting Law. In addition, Mr. Williams was invited to the meeting and reminded that failure to appear would be a violation of his probation. Mr. Williams did not appear before the Board personally or by legal counsel. This constituted a violation of the following term of his order:

9. “Interview with the Board or its Designee

Licensee shall appear in person or if residing out of state, telephonically for interviews with the Board or its designee upon request and with at least 2 days notice.”

Evidence was presented to the Board that Mr. Williams was in violation of the following terms of his order: Terms Number 3, 5, 7, 9 and 10. Evidence was presented to establish that Mr. Williams was placed on probation for necessary oversight, and he cannot be regulated at this time. Furthermore, the evidence established that Mr. Williams’s behavior, as it relates to his violation of each and every important aspect of his probationary order, establishes an immediate threat to the public health and safety. Board Vice Chair Becky Brimhall moved to issue an interim order of summary suspension of Ty Williams’ license to practice respiratory care in Arizona. Board Member Bill Cohagen seconded. The motion passed unanimously by a roll call vote. The Board also voted to issue a Formal Complaint and Notice of Hearing.

On November 19, 2009, the Board held its monthly meeting to consider suspending or revoking Mr. Williams's license to practice respiratory care. Mr. Williams was served by U.S. certified mail with the Board’s Complaint and Notice of Hearing which gave Mr. Williams notice of the time, place and location of the meeting. The Board’s Complaint directed Mr. Williams to respond to the allegation in writing. He did not respond. Assistant Attorney General Verstegen presented evidence, on behalf of the State of Arizona, to establish that Mr. Williams violated his probation. The Board found that the evidence supported the State’s case.

After discussion, **Bill Cohagen** moved to adopt Findings of Fact and Conclusions of Law as set forth in the Board’s Complaint and Notice of Hearing. **Becky Brimhall** seconded. The motion passed. After further discussion, **Bill Cohagen** moved to revoke Mr. Williams’s license to practice respiratory care in Arizona. **John O’Donnell** seconded the Motion. **The Motion Passed.**

2. Jeannette Sweet - Case Number C002493-10-08768

Ms. Sweet was present. The case was presented by Assistant Attorney General Keely Verstegen, on behalf of the State of Arizona. The Board held a meeting on September 08, 2009 in part to consider Ms. Sweets case. Evidence was presented to the Board that, contrary to the requirements of a probationary order designed to protect the public health, welfare and safety, Ms. Sweet tested positive for the Cocaine Metabolite, and Propoxyphene; both confirmed by GC/MS. Ms. Sweet was screened at 300 ng/ml of Cocaine with a cut off of 150 and 300 ng/ml of Propoxyphene with a cutoff of 100. Ms. Sweet does not have on file prescriptions for either of these narcotic, habit-forming drugs.

The written statement provided by Ms. Sweet was written articulately and expressed regret for what she termed her “inappropriate behavior.” She admitted to having relapsed in the use of



alcohol, which constituted another violation of her probationary order, because Term Number 5 states:

“Abstain from Alcohol Use

Licensee shall completely abstain from the use of alcohol.”

Ms. Sweet did not deny having used cocaine. She provided information related to her 12-Step Sponsor and stated “I must beg for your graces in my recent mishap and can only hope for new terms and a suspension where I can prove my devotion and commitment to being a sober member of AA, a professional RRT, and a contributing member to my family and community.”

Board Members expressed great concern that Ms. Sweet had failed to live up to the trust that had been placed in her, by granting her license and allowing her to practice while on a probationary order. After reviewing all of the evidence, the Board found that Jeannette Sweet’s behavior establishes an immediate threat to the public health and safety. Therefore, the Board voted to issue an interim order of summary suspension of Jeannette Sweet’s license to practice respiratory care in Arizona. The Board also voted to issue a Formal Complaint and Notice of Hearing.

On October 14, 2009, the Board received drug screen results collected on October 08, 2009 which Board staff had requested. The Results of that drug screen were Positive for Opiates; specifically Morphine. Ms. Sweet provided no prescriptions for the opiate. She provided no explanation for this positive drug screen.

On November 19, 2009, the Board held its monthly meeting to consider suspending or revoking Ms. Sweet's license to practice respiratory care. Ms. Sweet was present. She did not dispute the information in the Board’s Complaint, as presented by Assistant Attorney General Keely Verstegen. Ms. Sweet did not provide proof of having prescriptions that would explain her drug screen results. She could not explain why her recount of the dates when she had been prescribed medications did not match up with the dates of and results for her drug screens. As she had in a letter provided at an earlier date, she admitted she had a relapse. She did state that she and her family have been going through emotionally devastating times. Board members expressed their opinions that, at this time Ms. Sweet is not able to safely and skillfully practice respiratory care. Board members encouraged Ms. Sweet to attend to her physical and emotional health at this point in time. Board Vice Chair Becky Brimhall moved to adopt Findings of Fact and Conclusions of Law as set forth in the Board’s Complaint and Notice of Hearing. Board Member Bill Cohagen seconded. The motion passed unanimously. After further discussion, Bill Cohagen moved to revoke Ms. Sweet’s license to practice respiratory care in Arizona. Board member John O’Donnell seconded. The motion passed unanimously via a roll call vote.

3. Kenneth Smith - Case Number C002499-10-005921

Mr. Smith was not present. The case was presented by Assistant Attorney General Keely Versteegen, on behalf of the State of Arizona. Mr. Smith was arrested for a DUI on September 27, 2008. Under Arizona law, he had ten days to report his arrest to the Board. He failed to do so.

Mr. Smith provided a statement to the Board that that he was convicted of these charges on July 21, 2009. However, when speaking with Gilbert Municipal Court, Board staff was told that Mr. Smith was convicted on May 21, 2009.

Mr. Smith stated that he pled not guilty while awaiting an evidentiary hearing. The police officer involved did not show up to the hearing, and at that time his council advised him to take the D.A.'s Plea Agreement. Mr. Smith provided the following information: He is required to complete 5 years of probation, serve 10 days in jail, complete a MADD program, complete counseling, pay \$1659.00 in fines, and not possess or consume alcohol/drugs.

#### BACKGROUND OF SUBSTANCE ABUSE

Mr. Smith has a history of substance abuse and related criminal charges, as follows:

Mr. Smith filed a license application on March 12, 2002. In his application, Mr. Smith answered yes to Questions Number 18 and 19. This statement includes a written explanation and documentation of the following:

- On January 13, 2000, Mr. Smith committed a felony offense: Aggravated Driving Under the Influence; a class 4 felony. At the time of the offense, Mr. Smith was driving on a license restricted to "to and from work and school" from a previous DUI. Mr. Smith's sentence included the following: 4 months (with credit for 32 days served); probation for a period of 3 years upon his release from the Department of Corrections; requirements related to his ability to reinstate his driver's license; payment of fines; and, the performance of 100 hours of community service beginning on April 1, 2002.
- On October 16, 1999, Mr. Smith committed a misdemeanor offense: DUI. This offense required the suspension of his driving privileges, then a restriction on his license to driving "to and from work and school." He also received a sentence of 10 days in jail and counseling.
- On October 27, 1997, Mr. Smith went to court in Tempe, Arizona, for traffic charges and found guilty of failure to yield to the right of way. He provided proof of insurance and paid a fine.
- On August 20, 1997, while in jail, Mr. Smith missed a court date for a traffic ticket (failure to yield and no proof of insurance), and thus received another failure to appear charge. He was released on his own recognizance and a new court date was set.
- On August 16, 1997, Mr. Smith was stopped for speeding and learned that a bench warrant had been issued for failure to appear. He had been cited previously for not having his license plate mounted. He was also cited for possession of spiritous liquor by a minor. Mr. Smith states that he was nineteen and "taking beer to a party." Mr. Smith was found guilty and paid a fine.



- On December 7, 1996, Mr. Smith was arrested for criminal trespass in Mesa, Arizona. He pled guilty, was placed on one year of unsupervised probation, paid a fine, and was ordered not to return to the building where he had been arrested.
- On June 16, 1996, Mr. Smith was arrested on a felony motorcycle theft charge in Gilbert, Arizona. The case was dismissed without prejudice.

His license application was reviewed by the Board's Executive Director and, per Board policy, a stipulation and consent order of probation for a temporary license was offered to Mr. Smith. Mr. Smith entered into this order with the Board on March 13, 2002. His temporary license was issued valid through November 13, 2002.

On March 21, 2002, the Board held its regular, monthly, public meeting in part to consider the ratification of Mr. Smith's probationary Temporary License. Mr. Smith was present. Board members felt that the probationary terms should be amended to include additional requirements, including: attendance at 3 12-Step meetings per week; and random biological fluid screens. Mr. Smith verbally agreed to enter into an amended stipulated order of probation.

Mr. Smith entered into the amended stipulated order with the Board on April 8, 2002 and was released from Board-ordered probation in 2004.

On November 19, 2009, the Board held its monthly meeting to consider suspending or revoking Mr. Smith's license to practice respiratory care. Mr. Smith was served by U.S. certified mail with the Board's Complaint and Notice of Hearing which gave Mr. Smith notice of the time, place and location of the meeting. The Board's Complaint directed Mr. Smith to respond to the allegation in writing. He did not respond. Assistant Attorney General Verstegen presented the case, on behalf of the State of Arizona, that Mr. Smith violated the laws and rules governing the practice of respiratory care. The Board found that the evidence supported the State's case.

After discussion, **Bill Cohagen** moved to adopt Findings of Fact and Conclusions of Law as set forth in the Board's Complaint and Notice of Hearing. **Becky Brimhall** seconded. The motion passed. After further discussion, **Bill Cohagen** moved to revoke Mr. Smith's license to practice respiratory care in Arizona. **John O'Donnell** seconded. **The motion passed.**

4. Viridiana Hernandez - Case Number C002496-10-007710

Ms. Hernandez was present. The case was presented by Assistant Attorney General Keely Verstegen, on behalf of the State of Arizona. Ms. Hernandez was arrested in 2007, and charged along with eight other individuals with nineteen offenses related to narcotics. Of these original nineteen charges, Ms. Hernandez was formally charged with three counts as follows: Two charges of Narcotic Drug Violation; and one charge of Illegal Control of Enterprise.

Under Arizona law, Ms. Hernandez was required to notify the Board of her arrest within ten days. She failed to do so.

On September 08, 2009, a letter from Ms. Hernandez was received. She explained that she did not believe she had to report these issues because she has not yet been convicted. Ms. Hernandez did not address her underlying conduct, which resulted in the criminal charges, in her letter.

On September 17, 2009, the Board met to consider this matter as an allegation of unprofessional conduct against the Ms. Hernandez pursuant to A.R.S. § 32-3553. Ms. Hernandez was notified of the time, place and location of the Board meeting. She did not appear. After reviewing all of the information, and discussion, the Board voted unanimously to issue a formal complaint and hold a formal hearing pursuant to A.R.S. § 32-3553(I).

Ms. Hernandez came into the Board office on November 06, 2009, and supplied court documents showing that she plead guilty to Solicitation to Commit Possession of Narcotic Drugs for Sale, a Class 4 Felony. Documents show that she has no right to appeal, and no ability to have her civil rights restored. The court ordered her to pay a \$10,000 fine with no additional penalties, including jail time.

On November 19, 2009, the Board held its monthly meeting to consider suspending or revoking Ms. Hernandez's license to practice respiratory care. Ms. Hernandez was present. She stated that her involvement in the criminal activity that led to her conviction was something she deeply regrets. Assistant Attorney General Verstegen presented the case, on behalf of the State of Arizona, that Ms. Hernandez violated the laws and rules governing the practice of respiratory care. The Board found that the evidence supported the State's case. Board Members expressed regret that Ms. Hernandez's actions placed them in a situation where they had no choice but to take the most severe action possible under the law.

After discussion, **Becky Brimhall** moved to adopt Findings of Fact and Conclusions of Law consistent with the Board's Complaint and Notice of Hearing. **Bill Cohagen** seconded. The motion passed. After further discussion, Bill Cohagen moved to revoke Ms. Hernandez's license to practice respiratory care in Arizona. **Becky Brimhall** seconded. **The motion passed** by a vote of 5 ayes and 0 nays, with **David Sanderson** and **John O'Donnell abstaining**.

## **R-7 CONSIDERATION AND ACTION ON PREVIOUS BOARD ACTION**

### **Informal Interview Regarding Probation Compliance**

- **These Informal Interviews are scheduled to begin at 1:30 p.m.**

1. Kevin Burke - Case Number C002295-09-008444

Mr. Burke was present. The Executive director provided documentation showing that Mr. Burke has complied with his probationary order. Mr. Burke requested that his probation be lifted.

After discussion, **Becky Brimhall** moved to lift Mr. Burke's probationary order. **David Sanderson** seconded. **The Motion Passed.**

### **A. ACTION ON RATIFICATION OF CONSENT AGREEMENTS AND LETTERS OF WARNING ISSUED**

## Modification of Decision on Accepting Proposed Letters of Warning Issued

Dawn Coleman  
Iralee Beck

Case No. C002512-10-004202  
Case. No. C002512-10-005218

The Board took no action at this time on these matters.

### R-8 CALL TO THE PUBLIC

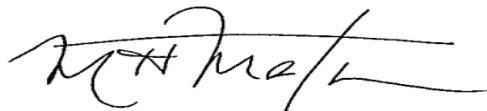
Those wishing to address the Board do not need to request permission in advance. Each person wishing to address the Board will be given five (5) minutes to do so. The Board can only take action on matters listed on the agenda. Persons who wish to raise issues or concerns not on the noticed agenda should be aware that the only procedural action that can be taken is directing staff to study the matter or to schedule the matter for further discussion at a later date.

There was no public presentation to the Board.

### R-9 ADJOURNMENT

Board Chair Toni Rodriguez adjourned the meeting at 2:05 p.m., without objection

DATED this 11th day of December, 2009



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MARY HAUF MARTIN

Executive Director