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10 **BEFORE THE**
11 **RESPIRATORY CARE BOARD**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

13 In the Matter of the Accusation and Petition to
14 Revoke Probation Against:

Case No. 7002017000034

15 **GABY J. OH, R.C.P.**
16 **9402 Imperial Avenue**
Garden Grove, CA 92844

**ACCUSATION AND PETITION TO
REVOKE PROBATION**

17 **Respiratory Care Practitioner License**
No. 35194,

18 Respondent.

19
20 Complainant alleges:

21 **PARTIES**

22 1. Stephanie Nunez (complainant) brings this Accusation and Petition to Revoke
23 Probation solely in her official capacity as the Executive Officer of the Respiratory Care Board of
24 California, Department of Consumer Affairs.

25 2. On or about December 20, 2013, the Respiratory Care Board (Board) issued
26 Respiratory Care Practitioner License No. 35194 to Gaby J. Oh, R.C.P. (Respondent).
27 Respiratory Care Practitioner License No. 35194 expired on September 30, 2015, and has not

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1 been renewed. Said license was suspended on June 2, 2016, when the Board issued a Cease
2 Practice Order, pursuant to California Code of Regulations section 1399.375.

3 **DISCIPLINARY HISTORY**

4 3. In a disciplinary action entitled "*In the Matter of Statement of Issues Against Gaby J.*
5 *Oh,*" Case No. 1H-2012-825, the Respiratory Care Board issued a Decision and Order, effective
6 December 20, 2013, in which Respiratory Care Practitioner License No. 35194 was revoked.
7 However, the revocation was stayed and Respondent's Respiratory Care Practitioner License No.
8 35194 was placed on probation for a period of three (3) years subject to various terms and
9 conditions. A true and correct copy of that Decision and Order is attached hereto as Exhibit A
10 and is incorporated by reference.

11 **JURISDICTION**

12 4. This Accusation and Petition to Revoke Probation is brought before the Board, under
13 the authority of the following laws, and the Board's Decision and Order in the case entitled, "*In*
14 *the Matter of Statement of Issues Against Gaby J. Oh,*" Case No. 1H-2012-825. All section
15 references are to the Business and Professions Code (Code) unless otherwise indicated.

16 5. Section 3710 of the Code states, in pertinent part:

17 "(a) The Respiratory Care Board of California, hereafter referred to as the
18 board, shall enforce and administer this chapter.

19 "..."

20 6. Section 3718 of the Code states:

21 "The board shall issue, deny, suspend, and revoke licenses to practice
22 respiratory care as provided in this chapter."

23 7. Section 3750.5 of the Code states, in pertinent part:

24 "In addition to any other grounds specified in this chapter, the board may deny,
25 suspend, place on probation, or revoke the license of any applicant or license-holder
26 who has done any of the following:

27 "(a) Obtained, possessed, used, or administered to himself or herself in
28 violation of law, or furnished or administered to another, any controlled substances as

1 defined in Division 10 (commencing with Section 11000) of the Health and Safety
2 Code, or any dangerous drug as defined in Article 2 (commencing with Section 4015)
3 of Chapter 9, except as directed by a licensed physician and surgeon, dentist,
4 podiatrist, or other authorized health care provider, or illegally possessed any
5 associated paraphernalia.

6 “...”

7 8. Section 3754 of the Code states:

8 “The Board may deny an application for, or issue with terms and conditions, or
9 suspend or revoke, or impose probationary conditions upon, a license in any
10 decision made after a hearing, as provided in Section 3753.”

11 9. Section 118 of the Code states, in pertinent part:

12 “...

13 “(b) The suspension, expiration, or forfeiture by operation of law of a license
14 issued by a board in the department, or its suspension, forfeiture, or cancellation by
15 order of the board or by order of a court of law, or its surrender without the written
16 consent of the board, shall not, during any period in which it may be renewed,
17 restored, reissued, or reinstated, deprive the board of its authority to institute or
18 continue a disciplinary proceeding against the licensee upon any ground provided by
19 law or to enter an order suspending or revoking the license or otherwise taking
20 disciplinary action against the licensee on any such ground.

21 “...”

22 **COST RECOVERY**

23 10. Section 3753.5 of the Code states, in pertinent part:

24 “(a) In any order issued in resolution of a disciplinary proceeding before the
25 board, the board or the administrative law judge may direct any practitioner or
26 applicant found to have committed a violation or violations of law or any term and
27 condition of board probation to pay to the board a sum not to exceed the costs of the
28 investigation and prosecution of the case. A certified copy of the actual costs, or a

1 good faith estimate of costs where actual costs are not available, signed by the official
2 custodian of the record or his or her designated representative shall be prima facie
3 evidence of the actual costs of the investigation and prosecution of the case.

4 “...”

5 11. Section 3753.7 of the Code states:

6 “For purposes of this chapter, costs of prosecution shall include attorney
7 general or other prosecuting attorney fees, expert witness fees, and other
8 administrative, filing, and service fees.”

9 12. Section 3753.1 of the Code states, in pertinent part:

10 “(a) An administrative disciplinary decision imposing terms of probation may
11 include, among other things, a requirement that the licensee-probationer pay the
12 monetary costs associated with monitoring the probation.

13 “...”

14 FIRST CAUSE FOR DISCIPLINE

15 **(Possessing, Using and/or Administering a Controlled Substance to Herself)**

16 13. Respondent has subjected her Respiratory Care Practitioner License No. 35194 to
17 disciplinary action under section 3750.5, as defined by section 3750.5, subdivision (a), of the
18 Code, in that she used a controlled substance, to wit: methylenedioxyamphetamine, as more
19 particularly alleged hereinafter:

20 (a) On or about May 21, 2016, Respondent ingested a white pill containing
21 methylenedioxyamphetamine (MDMA)¹.

22 (b) On or about May 23, 2016, Respondent submitted to a random biological fluid
23 test in Garden Grove, CA, in accordance with her Board ordered probation. The sample
24 Respondent provided was subsequently tested and revealed a positive result of 1894 ng/mL
25 MDMA.

26
27 ¹ MDMA, commonly known as ecstasy, is a psychoactive drug used primarily as a recreational
28 drug, and is a Schedule I controlled substance pursuant to Health and Safety Code section 11054,
subdivision (d).

1 FIRST CAUSE TO REVOKE PROBATION

2 (Failure to Abstain from Use of Any and All Mood Altering Substances)

3 14. At all times after the effective date of Respondent's probation in Case No. 1H-2012-
4 825, Condition 5 stated:

5 "5. ABSTENTION FROM USE OF ANY AND ALL MOOD
6 ALTERING SUBSTANCES For purposes of these terms and conditions, a
7 banned substance includes alcohol, marijuana, controlled substances and any
8 and all other mood altering drugs and substances. Respondent shall completely
9 abstain from the possession or use of all banned substances and their associated
10 paraphernalia. Respondent may take other medication when lawfully
11 prescribed by a licensed practitioner as part of a documented medical treatment.
12 Respondent shall provide the Board a copy of a prescription within five (5)
13 days of the date the prescription was filled.

14 "Respondent shall execute a release authorizing the release of pharmacy
15 and prescribing records as well as physical and mental health records.
16 Respondent shall also provide information of treating physicians, counselors or
17 any other treating professional as requested by the Board.

18 "Respondent shall ensure that she is not in the presence of or in the same
19 physical location as individuals who are using illegal substances, even if
20 Respondent is not personally ingesting the drugs(s). Respondent shall also
21 ensure she is not ingesting or using any product that contains trace amounts of
22 alcohol or any other banned substance (including but not limited to: cold/flu
23 medications, cough syrups, diet pills/products, mouth wash, skin care of
24 hygiene products, perfumes, poppy seeds, dessert or any foods, etc...).

25 "Any positive result that registers over the established laboratory cutoff
26 for a banned substance, shall be reported to each of Respondent's employers."

27 15. Respondent's probation is subject to revocation because she failed to comply with
28 Probation Condition 5, referenced above, in that she failed to abstain from the possession and use

1 of controlled substances and all other mood altering drugs and substances. The facts and
2 circumstances regarding these violations are as follows:

3 (a) On or about May 23, 2016, Respondent tested positive for MDMA 1894
4 ng/mL.

5 (b) On or about June 3, 2016, the Board received an email from Respondent,
6 wherein Respondent admitted taking MDMA / ecstasy during the weekend of May 21,
7 2016.

8 **SECOND CAUSE TO REVOKE PROBATION**

9 **(Failure to Pay Cost Recovery)**

10 16. At all times after the effective date of Respondent's probation in Case No. IH-2012-
11 825, Condition 14 stated:

12 "14. COST RECOVERY Respondent shall pay to the Board a sum not
13 to exceed the costs of the investigation and prosecution of this case. That sum
14 shall be \$980.00 and shall be paid in full directly to the Board, in equal
15 quarterly payments, within 12 months from the effective date of this decision.
16 Cost recovery will not be tolled.

17 "If Respondent is unable to submit costs timely, she shall be required,
18 instead to submit an explanation of why she is unable to submit the costs in part
19 or in entirety, and the date(s) she will be able to submit the costs including
20 payment amount(s). Supporting documentation and evidence of why the
21 Respondent is unable to make such payment(s) must accompany this
22 submission.

23 "Respondent understands that failure to submit costs timely is a violation
24 of probation and submission of evidence demonstrating financial hardship does
25 not preclude the Board from pursuing further disciplinary action. However,
26 Respondent understands that by providing evidence and supporting
27 documentation of financial hardship may delay further disciplinary action.

28 ///

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

In the Matter of the Accusation and Petition to
Revoke Probation Against:

GABY J. OH

Case No.: 7002017000034

OAH No.: 2016090585

DECISION AND ORDER

The attached proposed Decision of the Administrative Law Judge is hereby adopted by the Respiratory Care Board of California, Department of Consumer Affairs, as its Decision in the above entitled matter.

This Decision shall become effective on January 11, 2017.

It is so ORDERED January 4, 2017.

Original Signed by:

ALAN ROTH, MS, MBA, RRT-NPS, FAARC
PRESIDENT, RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation and Petition to
Revoke Probation Concerning:

GABY J. OH, R.C.P.,

Respiratory Care Practitioner License No.
35194,

Respondent.

Case No. 7002017000034

OAH No. 2016090585

PROPOSED DECISION

Administrative Law Judge Roy W. Hewitt, Office of Administrative Hearings, State of California, heard this matter in San Diego, California, on November 7, 2016.

Deputy Attorney General Karolyn M. Westfall represented complainant, Stephanie Nunez, the Executive Officer of the Respiratory Care Board, Department of Consumer Affairs, State of California.

Respondent, Gaby J. Oh, represented herself.

The matter was submitted on November 7, 2016.

FACTUAL FINDINGS

Jurisdictional Findings

1. On December 20, 2013, as part of a Stipulated Settlement reached in the disciplinary matter outlined below, respondent was issued Respiratory Care Practitioner License No. 35194. Her license was immediately revoked, the revocation was stayed and respondent was placed on probation for three years on terms and conditions designed to protect the public.

2. Respondent allowed her license to expire on September 30, 2015, while still on probation. Additionally, based on the facts set forth below, respondent was issued a Cease Practice Order, her license was suspended, and she was ordered not to resume the practice of respiratory care "until a final decision on an accusation and petition to revoke probation is made."

3. The Accusation and Petition to Revoke Probation was filed on August 24, 2016.

4. Respondent timely filed a Notice of Defense and the instant proceedings ensued.

Respondent's 2013 Stipulated Settlement and Probation

5. On November 7, 2012, respondent submitted to the board an application to be licensed as a Respiratory Care Practitioner.

6. The board denied respondent's application on April 29, 2013. The denial was based on respondent's October 30, 2006, misdemeanor convictions for violating California Health and Safety Code sections 11377, subdivision (a) (possession of a controlled substance) and 11364 (possession of controlled substance paraphernalia). Respondent timely appealed the denial of her application and a Statement of Issues, Case No. 1H-2012-825, was filed against her.

7. On October 25, 2013, respondent resolved the statement of issues by entering into a "Stipulated Settlement and Disciplinary Order" with the board. As part of the settlement agreement, respondent "admits the truth of each and every charge and allegation in Statement of Issues No. 1H-2012-825." Pursuant to the settlement agreement, respondent was issued a license, the license was immediately revoked, the revocation was stayed, and respondent was placed on probation for three years on certain terms and conditions. The board adopted the stipulation and respondent's probation became effective on December 20, 2013.

Relevant Probationary Conditions

8. Condition 5 of respondent's December 20, 2013, probation order stated:

5. ABSTENTION FROM USE OF MOOD ALTERING SUBSTANCES. For purposes of these terms and conditions, a banned substance includes alcohol, marijuana, controlled substances and any and all other mood altering drugs and substances. Respondent shall abstain from the possession or use of all banned substances and their associated paraphernalia.

[¶] . . . [¶]

Respondent shall ensure that she is not in the presence of or in the same location as individuals who are using illegal substances, even if Respondent is not personally ingesting the drug(s). Respondent shall also ensure she is not ingesting or using any product that contains trace amounts of alcohol or any other banned substances (including but not limited to: cold/flu medications, cough syrups, diet pills/products, mouth wash, skin care or hygiene products, perfumes, poppy seeds, dessert, or any foods, etc...) (Exh. 4, AGO-0007.)

9. Probation condition 14 provided:

14. COST RECOVERY. Respondent shall pay to the Board a sum not to exceed the costs of the investigation and prosecution of this case. That sum shall be \$980 and shall be paid in full directly to the Board, in equal monthly payments, within 12 months from the effective date of this decision. Cost recovery will not be tolled.

If Respondent is unable to submit costs timely, she shall be required, instead to submit an explanation of why she is unable to submit these costs in part or in entirety, and the date(s) she will be able to submit the costs including payment amount(s). . . .

Respondent understands that failure to submit costs timely is a violation of probation and submission of evidence demonstrating financial hardship does not preclude the Board from pursuing further disciplinary action. However, Respondent understands that providing evidence and supporting documentation of financial hardship may delay further disciplinary action. . . .

[¶] . . . [¶] (Exh. 4, AGO 0011-0012)

10. Probation condition 16 provided:

16 VALID LICENSE STATUS. Respondent shall maintain a current, active and valid license for the length of the probation period. Failure to pay all fees and meet CE requirements prior to her license expiration date shall constitute a violation of probation. (Exh. 4, AGO 0012)

Violations of Probation

11. Respondent violated condition 5 of her probation. On May 23, 2016, respondent submitted to a random biological fluid test in accordance with her probation order. The sample respondent provided during the test was later analyzed. The analysis revealed the presence of methylenedioxyamphetamine (MDMA)¹. Respondent admitted that on May 21,

¹ MDMA, commonly known as ecstasy, is a psychoactive drug used primarily as a recreational drug, and is a Schedule I controlled substance pursuant to Health and Safety

2016, she took a "white pill" containing ecstasy (MDMA). During cross-examination respondent testified that at the time she took the pill, she knew it was ecstasy (contained MDMA) and she knew that by ingesting the ecstasy she was violating her probation.

12. Respondent violated condition 14 of her probation. Respondent was placed on probation, effective December 20, 2013. Condition 14 of her probation required her to have paid her cost recovery, \$980, within 12 months from the effective date of her probation. To date, respondent has made no payments of the cost recovery, whatsoever.

13. Respondent violated condition 16 of her probation. Condition 16 required respondent to maintain a current, active and valid license for the length of her probation period. Respondent, however, let her license expire on September 30, 2015, while still on probation.

Respondent's Testimony

14. Respondent's testimony is summarized as follows: respondent admitted that she violated three separate conditions of her probation; as concerns the violations of the cost recovery and maintaining a valid license conditions, those violations occurred because she has school loans and could not afford to pay cost recovery or to keep her license active; according to respondent, "the violation [of the abstain from using drugs condition of her probation] should not prevent licensure" because respondent "complied with probation other than making that one mistake"; and, she wants a "second chance."

Aggravating Factors

15. Other than respondent's claimed financial difficulties, there were no factors in mitigation. There were, however, the following factors in aggravation:

a. Respondent's testimony revealed that she thought she only made "one mistake" concerning her probation. She did not seem to appreciate the fact that she violated more than one condition of her probation. She made several mistakes, some of which, the failures to make cost recovery payments, were ongoing and lasted for the entire period of her probation. If respondent truly had financial difficulties and could not make the cost recovery payments she should have notified her probation monitor in conformity with probation condition 14, which stated, in pertinent part: "if Respondent is unable to submit costs timely, she shall be required, instead to submit an explanation of why she is unable to submit these costs in part or in entirety, and the date(s) she will be able to submit the costs including payment amount(s). . ." Instead of complying with the notification requirement of condition 14, respondent chose to ignore her violation(s).

Code section 11054, subdivision (d).

b. Respondent has a history of disregarding court orders and terms and conditions of probation, as reflected by her following conduct in connection with her criminal conviction:

(1) On November 29, 2006, she failed to appear for sentencing and an arrest warrant was issued. On December 7, 2006, respondent was arrested on the warrant. On December 8, 2006, deferred entry of judgment was reinstated and she was ordered to re-enroll in a Penal Code section 1000 Drug Diversion Program.

(2) On January 12, 2007, respondent failed to appear for sentencing and another arrest warrant was issued. On January 16, 2007, respondent was sentenced to three years formal probation with terms and conditions, including completion of a Penal Code section 1210 Drug Diversion Program.²

(3) On January 29, 2007, respondent failed to appear for a Monitoring Review Hearing and the Court revoked her probation. On January 30, 2007, at the Probation Violation Arraignment, respondent's probation was reinstated and she was ordered to resume participating in a drug treatment program and provide proof of completion to the Court on February 13, 2007.

(4) On March 14, 2007, a petition to revoke probation was filed against respondent and she was placed in custody. On August 17, 2007, respondent admitted violating probation. She was accepted into a Drug Court Program and her probation was reinstated with the following modification: respondent was ordered to complete the Drug Court Program and she was sentenced to serve 270 days in county jail. Finally, on February 6, 2009, respondent successfully completed the Drug Court Program and probation was terminated.

LEGAL CONCLUSIONS

1. Cause for discipline exists pursuant to Business and Professions Code section 3750.5 because, as set forth in Finding 11, respondent illegally obtained, possessed and used a controlled substance, to wit: MDMA (ecstasy).

2. Cause for revocation of respondent's probation exists because, as set forth in Findings 8 and 11, respondent violated condition 5 of her probation by failing to abstain from using any and all mood altering substances.

3. Cause for revocation of respondent's probation exists because, as set forth in Findings 9 and 12, respondent violated condition 14 of her probation by failing to make any

² Penal Code section 1210 was enacted via Proposition 36 and is also known as a "Prop. 36 Program."

attempt, whatsoever, to pay the cost recovery she promised to pay in her stipulated settlement with the board. Nor did she notify the board of her inability to make payments.

4. Cause for revocation of respondent's probation exists because, as set forth in Findings 10 and 13, respondent violated condition 16 of her probation by failing to maintain a valid license.

Evaluation

5. As set forth in Finding 14, respondent's testimony revealed that she believes she only made "one mistake" by knowingly ingesting MDMA on May 21, 2016, even though she knew that by doing so she was violating her board-ordered probation. She has asked to be given "a second chance." Her history of drug use, criminal court probation violations and board probation violations, revealed that she has been given many chances to rehabilitate herself and failed. She blames her problems on financial difficulties; however, financial difficulties did not cause her to take illegal drugs or to violate her criminal probation on several different occasions. She seemingly has no respect for authority and/or the board's role in protecting the public. Consequently, respondent is not an appropriate candidate for further probation; therefore, her probation shall be revoked and the stayed revocation of her license shall become effective.

ORDER

The order of probation in Case No. 1H-2012-825, is set aside and respondent's Respiratory Care Practitioner License No. 35194 is revoked.

Dated: December 2, 2016

DocuSigned by:
Roy Hewitt
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ROY W. HEWITT
Administrative Law Judge
Office of Administrative Hearings