


1 **BEFORE THE BOARD OF MEDICAL EXAMINERS**
2 **OF THE STATE OF NEVADA**

3 * * * * *

4 In The Matter of Charges and)	Case No. 10-23453-1
5 Complaint Against)	
6 ANTHONY CRUZ, C.R.T.,)	FILED
7 Respondent.)	MAR 14 2011
)	NEVADA STATE BOARD OF
)	MEDICAL EXAMINERS
)	By: 

9
10 **SETTLEMENT, WAIVER AND CONSENT AGREEMENT**

11 **THIS AGREEMENT** is entered into by and between the Investigative Committee (IC) of
12 the Nevada State Board of Medical Examiners (the Board) composed of
13 Charles N. Held, M.D, Theodore B. Berndt, M.D. and Ms. Valerie Clark, BSN, RHU, LUTCF, by
14 and through counsel, Lyn E. Beggs, Esq., and Anthony Cruz, C.R.T. (Respondent), as follows:

15 **WHEREAS**, on August 19, 2010, the Board's IC an Order of Summary Suspension,
16 suspending Respondent's license to practice respiratory therapy in Nevada and on
17 August 26, 2010 filed a Complaint and subsequently filed a First Amended Complaint on
18 January 11, 2011 in the above referenced matter charging Respondent with engaging in conduct
19 that is grounds for discipline pursuant to the Medical Practice Act (NRS Chapter 630 and
20 NAC Chapter 630) to wit: one count of rendering respiratory care to a patient while under the
21 influence of alcohol or any controlled substance, as more fully set forth in Count I of the First
22 Amended Complaint, one count inability to practice to respiratory care with reasonable skill and
23 safety because of use of narcotics, as more fully set forth in First Amended Count II of the
24 Complaint and one count of willfully and intentionally making a false or fraudulent statement
25 when applying or renewing a license as more fully set forth in Count III of First Amended
26 Complaint;

27 **WHEREAS**, Respondent has received and reviewed a copy of the First Amended
28 Complaint, understands the nature and significance of the First Amended Complaint and is fully

1 advised concerning his rights and defenses to the First Amended Complaint as well as the possible
2 sanctions that may be imposed if the Board finds and concludes that he has engaged in conduct
3 that is grounds for discipline pursuant to the Medical Practice Act and after due consideration
4 concedes that he engaged in the conduct set forth in counts I, II and III of the Complaint; and

5 **WHEREAS**, Respondent understands and agrees that this Agreement is entered into by
6 and between himself and the Board's Investigative Committee, and not with the Board, but that the
7 Investigative Committee will present this Agreement to the Board for consideration in open
8 session at a Board meeting, appropriately noticed, and that the Investigative Committee shall
9 advocate approval of this Agreement by the Board, but that the Board has the right to decide in its
10 own discretion whether or not to approve this Agreement; and

11 **WHEREAS**, Respondent and the Investigative Committee each understand and agree that
12 if the Board approves the terms, covenants and conditions of this Agreement, then the terms,
13 covenants and conditions enumerated below shall be binding and enforceable upon Respondent
14 and the Board's Investigative Committee; and

15 **NOW THEREFORE**, in order to resolve the above-captioned case and charges brought
16 against Respondent by the Board's Investigative Committee in said matter, Respondent and the
17 Investigative Committee hereby agree to the following terms, covenants and conditions:

18 1. **Consent to Entry of Order.** In order to resolve the matter of these disciplinary
19 proceedings pending against him without any further costs and expense of providing a defense to
20 the First Amended Complaint or to any other amended complaints, Respondent hereby agrees that
21 an order may be entered herein by the Board finding that Respondent engaged in conduct that is
22 grounds for discipline pursuant to the Medical Practice Act to wit: one count of rendering
23 respiratory care to a patient while under the influence of alcohol or narcotics, one count of inability
24 to practice respiratory care with reasonable skill and safety because of the use of narcotics, and one
25 count of willfully and intentionally making a false or fraudulent statement when applying for or
26 renewing a license as set forth in counts I, II and III of the First Amended Complaint; and ordering
27 that Respondent's license to practice respiratory care be revoked. Said revocation to be stayed and

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1 Respondent to be placed on probation for a period of sixty (60) months with the following terms
2 and conditions:

3 1) Respondent's license shall be suspended for a period of six months, said suspension
4 running from the date of the summary suspension of Respondent's license on August 19, 2010.
5 Said summary suspension shall be lifted and Respondent's license to practice reinstated to the
6 appropriate licensing status;

7 2) Respondent shall be issued a public reprimand;

8 3) Respondent shall complete his contract with the PRN-PRN program through Monte
9 Vista Hospital and shall comply with all terms of his contract;

10 4) Respondent shall sign all necessary releases with the PRN-PRN program for the Board
11 to access his records from the PRN-PRN program and any other releases necessary to monitor
12 Respondent's treatment;

13 5) Respondent shall submit to any additional random hair or urine screens as required by
14 the Board and shall be responsible for any costs associated with the required tests;

15 6) Respondent shall provide the Compliance Officer of the Nevada State Board of Medical
16 Examiners with the best and most expeditious manner of contacting him;

17 7) Respondent shall notify any employer of the terms of his probation;

18 8) Respondent shall notify the Compliance Officer of where he will be practicing
19 respiratory care at least forty-eight (48) hours prior to starting to practice;

20 9) Respondent shall notify the Compliance Officer of any change of his address within
21 forty-eight (48) hours;

22 10) Respondent shall pay any costs associated with monitoring of his compliance with
23 these terms of probation. Respondent shall remit to the Nevada State Board of Medical Examiners
24 such costs within thirty (30) days of being presented with an invoice for said compliance costs;

25 11) Respondent shall reimburse the Board the reasonable costs and expenses incurred in
26 the investigation and prosecution of this case, the current amount being \$2395.21. These costs
27 shall be paid to the Nevada State Board of Medical Examiners within twelve months of the
28 acceptance of this Agreement by the Board;

1 12) Any violation of the terms of his contract with the PRN-PRN program or a positive
2 drug screen for any controlled substance or dangerous drug that Respondent does not hold a
3 valid prescription for shall result in the immediate suspension of his license pending proceedings
4 to determine whether or not to impose the stayed revocation of licensure.

5 13) Should Respondent relocate to another state, he shall notify the Compliance
6 Officer at least forty-eight (48) hours prior to leaving Nevada.

7 14) If Respondent relocates to another state prior to his release from the PRN-PRN
8 program, he shall enter and complete a treatment program within his new state and sign any
9 necessary releases for the Board to monitor his treatment. Said program to be approved by the
10 Chairman of the Investigative Committee.

11 15) Respondent shall sign any necessary releases to allow the Board to communicate
12 with any other state agency which licenses him to practice respiratory care regarding the terms of
13 his probation and his compliance with those terms.

14 2. **Jurisdiction.** Respondent was at all times mentioned in the Complaint filed in the
15 above-captioned matter was, a respiratory therapist licensed to practice respiratory care in the state
16 of Nevada subject to the jurisdiction of the Board to hear and adjudicate charges of violations of
17 the Medical Practice Act (NRS 630), and to impose sanctions as provided by the Act.

18 3. **Representation by Counsel.** Respondent acknowledges that he is not represented
19 by counsel and wishes to proceed towards resolution of this matter as set forth in this Agreement
20 without counsel. Respondent understands and acknowledges that he may retain and consult
21 counsel prior to entering into this Agreement and agrees that if counsel is retained for
22 representation in this matter prior to entering into this Agreement, that counsel for the Investigative
23 Committee will be informed of such prior to Respondent executing this Agreement.

24 4. **Waiver of Rights.** Respondent covenants and agrees that he enters into this
25 Agreement knowingly, willingly, and intelligently with knowledge that he may consult with
26 counsel prior to entering into this Agreement. In connection with this Agreement, and the terms,
27 covenants and conditions contained herein, Respondent knowingly, willingly and intelligently,
28 waives all rights arising under or pursuant to the United States Constitution, the Constitution of the

1 state of Nevada, NRS Chapter 630 and NRS Chapter 233B that may be available to Respondent or
2 that may apply to Respondent in connection with the proceeding regarding the Complaint filed
3 herein, the defense of said Complaint and the adjudication of the charges in said Complaint, and
4 Respondent further agrees that the matter of the disciplinary action commenced by the filing of the
5 complaint herein may be settled and resolved in accordance with this Agreement without a hearing
6 or any further proceeding, and without the right to judicial review. In the event this Agreement is
7 not approved by the Board, this Agreement shall have no force and effect and Respondent shall
8 have all rights arising under or pursuant to the United States Constitution, the Constitution of the
9 State of Nevada, NRS Chapter 630 and NRS Chapter 233B that may be available to Respondent or
10 that may apply to Respondent in connection with the proceeding on the complaint filed herein.

11 5. **Acknowledgement of Reasonable Basis to Proceed.** Respondent covenants and
12 agrees that the Board's Investigative Committee has a reasonable basis to believe that Respondent
13 violated one or more provisions of the Medical Practice Act.

14 6. **Procedure for Adoption of Agreement.** It is expressly understood that this
15 Agreement will only become effective if the Board approves the recommendation of the
16 Investigative Committee for acceptance. The Investigative Committee and counsel for the
17 Investigative Committee shall recommend approval of the terms, covenants and conditions
18 contained herein by the Board in resolution of the disciplinary proceedings pending herein
19 against Respondent pursuant to the Complaint. In the course of seeking Board approval of this
20 Agreement, counsel for the Investigative Committee may communicate directly with the Board
21 staff and members of the panel of the Board who would adjudicate this case if it were to go to
22 hearing. Respondent covenants and agrees that such contacts and communication may be made
23 or conducted ex parte, without notice or opportunity to be heard on his part or on the part of his
24 counsel, if any, until the public Board meeting where this Agreement is discussed, and that such
25 contacts and communications may include, but not be limited to, matters concerning this
26 Agreement, the Complaint and the allegations therein, any and all evidence that may exist in
27 support of the Complaint, and any and all information of every nature whatsoever related to the
28 complaint against Respondent. The Investigative Committee and its counsel agree that

1 Respondent and his counsel, if any, may appear at the Board meeting where this Agreement is
2 discussed in order to respond to any and all questions that may be addressed to the Investigative
3 Committee or its counsel at such meeting.

4 7. **Effect of Acceptance of Agreement by Board.** In the event the Board approves
5 the terms, covenants and conditions set out in this Agreement, counsel for the Investigative
6 Committee will cause to be entered herein the Board's Order approving this Settlement, Waiver
7 and Consent Agreement, ordering full compliance with the terms herein and ordering that this
8 case be closed, subject to the provisions in Paragraph 1.

9 8. **Effect of Rejection of Agreement by Board.** In the event the Board does not
10 approve the terms, covenants and conditions set out in this Agreement, this Agreement shall be
11 null, void, and of no further force and effect except as to the following covenant and agreement
12 regarding disqualification of adjudicating Board panel members. Respondent agrees that,
13 notwithstanding rejection of this Agreement by the Board, nothing contained herein and nothing
14 that occurs pursuant to efforts of the Investigative Committee or its counsel to seek acceptance
15 and adoption of this Agreement by the Board shall disqualify any member of the adjudicating
16 panel of the Board from considering the charges against Respondent and participating in the
17 disciplinary proceedings in any role, including adjudication of the case, and Respondent further
18 agrees that he shall not seek to disqualify any such member absent evidence of bad faith.

19 9. **Release From Liability.** In execution of this Agreement, the Respondent, for
20 himself, his executors, successors and assigns, hereby releases and forever discharges the state
21 of Nevada, the Board, the Nevada Attorney General, and each of their members, agents and
22 employees in their representative capacities, and in their individual capacities absent evidence of
23 bad faith, from any and all manner of actions, causes of action, suits, debts, judgments,
24 executions, claims and demands whatsoever, known and unknown, in law or equity, that
25 Respondent ever had, now has, may have or claim to have, against any or all of the persons or
26 entities named in this paragraph arising out of or by reason of this investigation, this disciplinary
27 action, this settlement or its administration, in connection with the complaint. The Investigative

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1 Committee hereby agrees to accept this Agreement in full settlement of all claims related to the
2 complaint, with the understanding that the final decision rests with the Board.

3 10. **Binding Effect.** Respondent covenants and agrees that this Agreement is a
4 binding and enforceable contract upon Respondent and the Board's Investigative Committee,
5 which contract may be enforced in a court or tribunal having jurisdiction.

6 11. **Forum Selection Clause.** Respondent covenants and agrees that in the event
7 either party is required to seek enforcement of this Agreement in the district court, he consents
8 to such jurisdiction, and covenants and agrees that exclusive jurisdiction shall be in the Second
9 Judicial District Court of the State of Nevada in and for the County of Washoe.

10 12. **Attorneys' Fees and Costs.** Respondent covenants and agrees that in the event
11 an action is commenced in the district court to enforce any provision of this Agreement, the
12 prevailing party shall be entitled to recover reasonable costs and attorneys' fees.

13 13. **Failure to comply with terms.** In the event the Board enters its Order approving
14 this Agreement, upon receipt of credible information that Respondent has failed to comply with
15 any term or condition of this Order, the Board may seek to impose the stayed revocation of
16 Respondent's license to practice respiratory care. Failure to comply with the terms recited herein
17 may result in additional disciplinary action being initiated against Respondent for a violation of
18 an Order of the Board in accordance with NRS 630.3065(2)(a). Furthermore, any failure to pay
19 any fine, fee, or cost ordered herein will also result in such legal action as determined to be
20 necessary to collect the unpaid fine, fee, or cost.

21 Dated this 14th day of January of 2011.

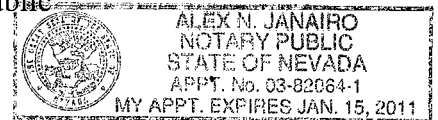
22 By: [Signature]
23 Lyn E. Beggs, Esq.
24 Attorney for the Investigative Committee

Dated this 13 day of JANUARY 2011.

25 By: [Signature]
26 Anthony Cruz, C.R.T.
27 Respondent

28 Subscribed and sworn to before me
This 13th day of January 2011.

[Signature]
Notary Public



1 IT IS HEREBY ORDERED that the foregoing Settlement, Waiver and Consent Agreement is
2 approved and accepted by the Nevada State Board of Medical Examiners on the 11th day of
3 March 2011, with the final total amount of costs due of \$2,395.21.



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5 Benjamin J. Rodriguez, M.D., Vice President
6 NEVADA STATE BOARD OF MEDICAL EXAMINERS

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