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8 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
9 **FOR THE SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY BOARD**
STATE OF CALIFORNIA
10

11 In the Matter of the Accusation Against:

Case No. 11 2008 48

12 **RICHARD VERNON WEBSTER**
15038 Wedgeworth Dr.
13 Hacienda Heights, California 91745

ACCUSATION AND
PETITION TO REVOKE
PROBATION

14 **Speech-Language Pathology**
15 **License No. SP 496**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Annemarie Del Mugnaio (Complainant) brings this Accusation and Petition to
20 Revoke Probation (hereinafter, "Accusation") solely in her official capacity as the Executive
21 Officer of the Speech-Language Pathology and Audiology Board, Department of Consumer
22 Affairs (Board).

23 2. On or about July 1, 1974, the Speech-Language Pathology and Audiology Board
24 issued Speech-Language Pathology License Number SP 496 to Richard Vernon Webster
25 (Respondent). The Speech-Language Pathology License was in full force and effect at all times
26 relevant to the charges brought herein and will expire on March 31, 2010, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Speech-Language Pathology and Audiology Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2531.5 of the Code provides that the board shall issue, suspend, and revoke licenses and approvals to practice speech-language pathology and audiology as authorized by this chapter.

5. Section 2533 of the Code states:

“The board may refuse to issue, or issue subject to terms and conditions, a license on the grounds specified in Section 480, or may suspend, revoke, or impose terms and conditions upon the license of any licensee if he or she has been guilty of unprofessional conduct. Unprofessional conduct shall include, but shall not be limited to, the following:

“ . . .

“(f) Incompetence or gross negligence in the practice of speech-language pathology or audiology.

“(g) Other acts that have endangered or are likely to endanger the health, welfare, and safety of the public.”

6. California Code of Regulations, title 16, section 1399.156, states:

“Unprofessional conduct as set forth in Section 2533 of the code includes, but is not limited to the following:

“(a) Violating or conspiring to violate or aiding or abetting any person to violate the provisions of the Act or these regulations.

“(b) Committing any corrupt act, or any abusive act against a patient, which is substantially related to the qualifications, functions or duties of a speech-language pathologist or audiologist.

“(c) Incompetence or negligence in the practice of speech-language pathology or audiology which has endangered or is likely to endanger the health, welfare, or safety of the public.”

7. Section 125.3 of the Code states, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case.

3 FIRST CAUSE FOR DISCIPLINE

4 (Unprofessional Conduct; Dangerous Acts)

5 8. Respondent is subject to disciplinary action under section 2533, subdivision (g), of
6 the Code, and Title 16, section 1399.156, subdivision (c), of the California Code of Regulations,
7 in that Respondent has committed acts that have endangered or are likely to endanger the health,
8 welfare, and safety of the public. The circumstances are as follows:

9 9. On or about December 10, 2007, a speech-language pathologist (SLP) conducted a
10 bedside swallow evaluation on R.F.,¹ an adult male, 63 yrs of age, who was a patient at Rancho
11 Specialty Hospital (RSH), with a treatment diagnosis as dysphagia. The patient was administered
12 pureed, nectar-thick and honey-thick liquid consistencies and thin liquids during this evaluation.
13 The evaluation revealed evidence of oral pharyngeal dysphagia characterized by oral weakness, a
14 delay in the swallow response, and overt signs of aspiration. R.F. was also noted to cough before,
15 during, and after having liquids. The recommendations following this examination were to begin
16 a pureed diet with honey thick liquids and to follow up with a video-fluoroscopic assessment of
17 the swallow to objectively evaluate for dysphagia and aspiration.

18 10. Several notes by the SLP followed. On or about December 10, 2007, the SLP
19 observed R.F. during lunch having pureed and honey-thick liquid consistencies (as recommended
20 following the initial examination). The SLP noted aspiration and recommended NPO status and a
21 video-fluoroscopy. An SLP note dated December 11, 2007 indicated that an NGT (nasogastric
22 tube) had been placed for nutrition, and that the patient was more fatigued and was refusing
23 treatment beyond oral care. An SLP note dated December 12, 2007 indicated that R.F. was
24 coughing and choking on saliva. The SLP again recommended continued NPO status, NGT
25 feeding, continuation of treatment, and a video-fluoroscopic evaluation of his swallow.

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27 ¹ The patient is referred to herein by his initials to protect his privacy. The full name of
28 the patient will be disclosed to Respondent upon a timely request for discovery.

1 11. On or about December 13, 2007 R.F. was seen for oral motor, dysphagia and
2 dysarthria exercises with recommendations similar to those indicated on December 12, 2007,
3 including NPO.

4 12. On or about December 14, 2007, a cine/video esophogram was completed on R.F.
5 The radiologist indicated that the cine/video esophogram was performed by oral administration of
6 thick and thin barium. The evaluation revealed aspiration of both consistencies, and residual
7 contrast material in both the valleculae and the piriform sinus. The SLP saw R.F. in conjunction
8 with the radiology study and made observations which indicated that R.F. was presented with
9 pureed and honey thick liquids. The oral phase was positive for: delay in transit of the bolus
10 through the oral cavity, spillage of material into the pharynx, and residue in the oral cavity. The
11 pharyngeal phase was marked by a delay in the swallow response with spillage of the material
12 into the laryngeal vestibule and the pyriform sinus prior to the initiation of the swallow response.
13 The SLP also noted that R.F.'s pharyngeal and laryngeal weakness, with laryngeal penetration
14 and subsequent aspiration on all consistencies before, during and after the swallow. Notably, the
15 aspiration was silent and R.F. did not clear the material from the airway with a cued cough. The
16 SLP's impressions were of severe oropharyngeal dysphagia characterized by decreased
17 (generalized) sensation, significant weakness, posts swallow severe residue, and silent aspiration.
18 The SLP recommended NPO with non-oral means of nutrition; treatment 3-5 times per week to
19 address the oral/pharyngeal weakness; and oral hygiene.

20 13. Thereafter, R.F. appeared to receive additional treatment from the SLP between
21 December 14, 2007 and December 26, 2007. On or about December 18, 2007 visits, R.F.
22 received a gastronomy tube. The SLP's plan for that day included continuing the NPO status.

23 14. On or about December 27, 2007, patient R.F., was transferred and admitted to the
24 Upland Rehabilitation and Care Center (URCC). According to Upland admission reports from
25 that date, R.F. entered the care facility with diagnoses of aspiration pneumonia and dysphagia
26 (difficulty swallowing). R.F. had a gastrostomy tube in place and the recommendation was for
27
28

1 him to remain NPO², relying on the gastrostomy tube for nutrition. The transferring physician's
2 note indicated "severe aspiration" and "gastric tube placed."

3 15. On or about December 28, 2007, a screening note by the first SLP who saw R.F. at
4 URCC indicated that R.F. refused to cooperate for speech therapy. The SLP's recommendation at
5 that time was for the patient to remain on tube feeding and NPO.

6 16. On or about January 22, 2008, the attending physician, Dr. Takhar, ordered a
7 "swallow evaluation to evaluate PO status" for R.F.

8 17. On or about January 23, 2008, Respondent evaluated R.F., and his SLP notes on this
9 day indicates that R.F.'s chart was reviewed and that "PO trials" [oral eating trials] with "MS"
10 (mechanically soft) foods was undertaken. According to the SLP's entry, the "resident did an
11 adequate job with ham sandwich." Reportedly, no evidence of aspiration was observed. The SLP
12 report then states "upon reviewing further - he [R.F.] had had a video swallow study which
13 indicated silent aspiration - [despite] the silent aspiration, it was decided that he could have PO
14 trials for [oral gratification] with SLP to assist. This will be the plan until the regular SLP returns-
15 on Monday and she can-reevaluate-his-abilities."

16 18. In another note by Respondent dated January 23, 2008, on a form designated as
17 "Physician's Telephone Orders," provides that "Clarification of ST [speech therapy] orders:
18 Resident to have M/S foods for oral grat [gratification] & Honey thick liquids 2x/wk for 1 wk."
19 Respondent also recommended in this note additional evaluation of R.F. on January 28, 2008.

20 19. A nursing note dated January 23, 2008, indicated that R.F. was to "continue on GT
21 [gastrostomy tube] feeding - resident is NPO --- resident is noncompliant to [order]. Continues to
22 try to drink. No incident of choking noted at this time. Will continue to monitor for COPD."

23 20. On or about January 26, 2008, a nursing report indicates the Respondent fed R.F. fine
24 chopped diet PO and thin liquids. The note further stated that no new physician orders have been

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26 ² Nil per os (NPO) is Latin for a medical instruction meaning to withhold oral food and
27 fluids from a patient (verbatim it translates: "nothing through the mouth" or "not through the
28 mouth"). Cf. Per os (P.O.) which is an adverbial phrase meaning literally from Latin "by mouth"
or "by way of the mouth." The expression is used in medicine to describe a treatment that is taken orally.

1 received discontinuing the patient's NPO status. R.F. was continued on GT feeding, and
2 monitoring for COPD was also continued.

3 21. On or about January 27, 2008, Respondent's wrote, on a form designated as
4 "Physician's Telephone Orders," that "Res [resident] may have H2O and b/s coffee upon request,
5 thickener needed."

6 22. A further note dated January 27, 2008 by Respondent indicated that R.F. had PO
7 lunch trials with mechanically soft textures. R.F. reportedly ate 50% of the meal and drank most
8 of his liquid, and at times, had to be reminded to tuck his chin during swallowing. Respondent
9 also recommended that R.F. continue with PO intake 3 meals a day with RNA to assist or
10 observe.

11 23. Nursing notes from January 27, 2008 and January 28, 2008 indicate the patient is
12 continued on GT feeding and NPO status.

13 24. On or about January 28, 2008, the regular SLP returned to work. Her note from that
14 day indicates she recommended discontinuing Respondent's PO instructions for R.F. and
15 returning him to NPO status secondary to his history of aspiration. She also recommended a
16 repeat video-fluoroscopic swallow study (e.g., Modified Barium Swallow (MBS)).

17 25. This study was subsequently ordered by Dr. Takhar and performed at San Antonio
18 Community Hospital. The results of that evaluation note that R.F. was given different
19 consistencies of barium and aspirated with each of them. Pooling of residue at the base of tongue
20 was also observed.

21 26. For all relevant time periods hereunder, URCC had policies and procedures for
22 patient orders and changes to therapy orders, including without limitation that all orders must be
23 obtained from and clarified with physicians. Respondent failed to comply with URCC's policies
24 and procedures in connection with his provision of services to R.F.

25 27. The patient died on February 7, 2008.

26 28. On or about January 23, 2008, and thereafter, Respondent committed negligence and
27 acts that have endangered or are likely to endanger the health, welfare, and safety of the public
28 when given the patient's past medical history and findings, including without limitation,

1 aspiration, Respondent began his assessment of R.F.'s oral eating skills and started the trial with
2 mechanically soft foods and then gave the patient a ham sandwich.

3 29. On or about January 23, 2008, and thereafter, Respondent committed negligence and
4 acts that have endangered or are likely to endanger the health, welfare, and safety of the public
5 when he changed R.F.'s diet order stating that the patient can have mechanically soft foods and
6 honey thick liquids.

7 30. On or about January 23, 2008, and thereafter, Respondent committed negligence and
8 acts that have endangered or are likely to endanger the health, welfare, and safety of the public
9 when he changed R.F.'s P.O. diet order without consulting the attending doctor.

10 SECOND CAUSE FOR DISCIPLINE

11 (Unprofessional Conduct; Incompetence)

12 31. Respondent is subject to disciplinary action under section 2533, subdivision (f), of the
13 Code, and Title 16, section 1399.156, subdivision (c), of the California Code of Regulations, in
14 that Respondent exhibited incompetence. The circumstances are as follows:

15 32. The circumstances of the acts are described in paragraphs 9 through 30 above, which
16 are incorporated by reference as if fully set forth herein. In addition, Respondent exhibited
17 incompetence when he failed to understand the implications of orally feeding and changing the
18 diet of a patient such as R.F., who had among other issues, aspiration of all consistencies.

19 THIRD CAUSE FOR DISCIPLINE

20 (Other Acts that Have Endangered the Health, Welfare and Safety of the Public)

21 33. Respondent is subject to disciplinary action under section 2533, subdivision (g), of
22 the Code, and Title 16, section 1399.156, subdivision (c), of the California Code of Regulations,
23 in that Respondent has committed acts that have endangered or are likely to endanger the health,
24 welfare, and safety of the public. The circumstances of the acts are described in paragraphs 9
25 through 30 above, which are incorporated by reference as if fully set forth herein.

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1 FIRST CAUSE TO REVOKE PROBATION

2 (Failure to Obey Laws)

3 34. At all times after the effective date of Respondent's probation, Condition 2 of the
4 Board's Disciplinary Order in Case Number 11 2001 35, effective December 3, 2005, stated:

5 "Respondent shall obey all federal, state, and local laws, including all statutes and
6 regulations governing the practice of the licensee."

7 35. Respondent's probation is subject to revocation because he failed to comply with
8 Probation Condition 2. While on probation, Respondent violated the Business and Professions
9 Code as alleged above. The facts and circumstances are as follows:

10 36. Allegations of Paragraphs 9 through 33 are incorporated herein by reference.

11 DISCIPLINE CONSIDERATIONS

12 37. To determine the degree of discipline, if any, to be imposed on Respondent,
13 Complainant alleges that:

14 A. On or about September 17, 1990, in a prior disciplinary action entitled In the
15 Matter of the Accusation Against Richard Vernon Webster before the Speech-Language
16 Pathology and Audiology Board, in Case Number 11 1990 1194, Respondent's license was placed
17 on probation for seven years for conviction of a crime substantially related to the practice,
18 namely, lewd and lascivious acts with a child. That decision is now final and is incorporated by
19 reference as if fully set forth. On October 31, 1994, the Respondent's probation was successfully
20 terminated; and

21 B. On or about November 28, 2003, in a prior disciplinary action entitled In the
22 Matter of the Accusation Against Richard Vernon Webster before the Speech-Language
23 Pathology and Audiology Board, in Case Number 11 2001 35, Respondent's license was placed
24 on probation for five years for conviction of a crime substantially related to the practice, namely,
25 failure to update his annual registration as a sex offender. That decision is now final and is
26 incorporated by reference as if fully set forth; and

27 C. On or about September 28, 2004, in a prior disciplinary action entitled In the
28 Matter of the Petition to Revoke Probation Against Richard Vernon Webster before the Speech-

1 Language Pathology and Audiology Board, in Case Number 11 2001 35, Respondent's license
2 was revoked. However, on or about December 3, 2005, Respondent's revocation was stayed and
3 he was placed on probation for seven years for violating the terms of his probation, which
4 included failing to notify his employer about his probation, and failing to pay costs he owed to the
5 Board. That decision is now final and is incorporated by reference as if fully set forth.

6 PRAYER

7 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
8 and that following the hearing, the Speech-Language Pathology and Audiology Board issue a
9 decision:

- 10 1. Revoking or suspending Speech-Language Pathology License Number SP 496, issued
11 to Richard Vernon Webster Richard Vernon Webster;
- 12 2. Ordering Richard Vernon Webster to pay the Speech-Language Pathology and
13 Audiology Board the reasonable costs of the investigation and enforcement of this case, pursuant
14 to Business and Professions Code section 125.3; and
- 15 3. Taking such other and further action as deemed necessary and proper.

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18 DATED: December 28, 2009


ANNEMARIE DEL MUGNAIO
Executive Officer
Speech-Language Pathology and Audiology Board
Department of Consumer Affairs
State of California
Complainant

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