

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

In the Matter of the Accusation Against:

Case No. 7002014000475

JAMES G. ACOSTA
920 Tupelwood Court
Thousand Oaks, CA 91320

Respiratory Care Practitioner License No. 16828

DECISION AND ORDER

The attached Stipulated Surrender of License and Order 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 July 19, 2015.

It is so ORDERED July 9, 2015.

Original signed by: _____

STEPHANIE NUNEZ
EXECUTIVE OFFICER, RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

1 KAMALA D. HARRIS
Attorney General of California
2 JUDITH T. ALVARADO
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9 **BEFORE THE**
RESPIRATORY CARE BOARD
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 700-2014-000475

12 **JAMES G. ACOSTA**
13 **920 Tupelwood Court**
14 **Thousand Oaks, CA 91320**

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

15 **Respiratory Care Practitioner No. RCP**
16 **16828,**

Respondent.

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19 In the interest of a prompt and speedy settlement of this matter, consistent with the public
20 interest and the responsibility of the Respiratory Care Board of the Department of Consumer
21 Affairs, the parties hereby agree to the following Stipulated Surrender and Disciplinary Order
22 which will be submitted to the Board for approval and adoption as the final disposition of the
23 Accusation.

24 **PARTIES**

25 1. Stephanie Nunez (Complainant) is the Executive Officer of the Respiratory Care
26 Board of California. She brought this action solely in his official capacity and is represented in
27 this matter by Kamala D. Harris, Attorney General of the State of California, by Christina L. Sein,
28 Deputy Attorney General.

1 **CULPABILITY**

2 8. Respondent admits the truth of each and every charge and allegation in Accusation
3 No. 700-2014-000475, agrees that cause exists for discipline and hereby surrenders his
4 Respiratory Care Practitioner License No. 16828 for the Board's formal acceptance.

5 9. Respondent understands that by signing this stipulation he enables the Board to issue
6 an order accepting the surrender of his Respiratory Care Practitioner License No. 16828 without
7 further process.

8 **CONTINGENCY**

9 10. This Stipulated Surrender of License and Order shall be subject to approval of the
10 Executive Officer on behalf of the Board. The parties agree that this Stipulated Surrender of
11 License and Order shall be submitted to the Executive Officer for her consideration in the above-
12 entitled matter and, further, that the Executive Officer shall have a reasonable period of time in
13 which to consider and act on this Stipulated Surrender of License and Order after receiving it. By
14 signing this stipulation, Respondent fully understands and agrees that he may not withdraw his
15 agreement or seek to rescind this stipulation prior to the time the Executive Officer, on behalf of
16 the Board, considers and acts upon it.

17 11. The parties agree that this Stipulated Surrender of License and Order shall be null and
18 void and not binding upon the parties unless approved and adopted by the Executive Officer on
19 behalf of the Board, except for this paragraph, which shall remain in full force and effect.
20 Respondent fully understands and agrees that in deciding whether or not to approve and adopt this
21 Stipulated Surrender of License and Order, the Executive Officer and/or the Board may receive
22 oral and written communications from its staff and/or the Attorney General's Office.
23 Communications pursuant to this paragraph shall not disqualify the Executive Officer, the Board,
24 any member thereof, and/or any other person from future participation in this or any other matter
25 affecting or involving Respondent. In the event that the Executive Officer on behalf of the Board
26 does not, in her discretion, approve and adopt this Stipulated Surrender of License and Order,
27 with the exception of this paragraph, it shall not become effective, shall be of no evidentiary
28 value whatsoever, and shall not be relied upon or introduced in any disciplinary action by either

1 party hereto. Respondent further agrees that should this Stipulated Surrender of License and
2 Order be rejected for any reason by the Executive Officer on behalf of the Board, Respondent will
3 assert no claim that the Executive Officer, the Board, or any member thereof, was prejudiced by
4 its/his/her review, discussion and/or consideration of this Stipulated Surrender of License and
5 Order or of any matter or matters related hereto.

6 **ADDITIONAL PROVISIONS**

7 12. This Stipulated Surrender of License and Order is intended by the parties herein to be
8 an integrated writing representing the complete, final and exclusive embodiment of the
9 agreements of the parties in the above-entitled matter.

10 13. The parties agree that copies of this Stipulated Surrender of License and Order,
11 including copies of the signatures of the parties, may be used in lieu of original documents and
12 signatures and, further, that such copies shall have the same force and effect as originals.

13 14. In consideration of the foregoing admissions and stipulations, the parties agree the
14 Executive Officer may, without further notice to or opportunity to be heard by Respondent, issue
15 and enter the following Order on behalf of the Board:

16 **ORDER**

17 **IT IS HEREBY ORDERED** that Respiratory Care Practitioner License No. 16828, issued
18 to Respondent James G. Acosta, is surrendered and accepted by the Respiratory Care Board.

19 1. The surrender of Respondent's Respiratory Care Practitioner License No. 16828 and
20 the acceptance of the surrendered license by the Board shall constitute the imposition of
21 discipline against Respondent. This stipulation constitutes a record of the discipline and shall
22 become a part of Respondent's license history with the Board.

23 2. Respondent shall lose all rights and privileges as a respiratory care practitioner in
24 California as of the effective date of the Board's Decision and Order.

25 3. Respondent shall cause to be delivered to the Board his pocket license and, if one was
26 issued, his wall certificate on or before the effective date of the Decision and Order.

27 4. If Respondent ever files an application for licensure or a petition for reinstatement of
28 his surrendered Respiratory Care Practitioner License No. 16828 in the State of California, the

1 Board shall treat it as a petition for reinstatement of a revoked license. Respondent must comply
2 with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the
3 time the petition is filed, and all of the charges and allegations contained in Accusation No. 700-
4 2014-000475 shall be deemed to be true, correct and admitted by Respondent when the Board
5 determines whether to grant or deny the petition.

6 5. If Respondent should ever apply or reapply for a new license or certification, or
7 petition for reinstatement of a license, by any other health care licensing agency in the State of
8 California, all of the charges and allegations contained in Accusation, No. 700-2014-000475 shall
9 be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of
10 Issues or any other proceeding seeking to deny or restrict licensure.

11 6. Respondent shall pay the Board its costs of investigation and enforcement in the
12 amount of \$2,805.00 prior to issuance of a new or reinstated license.

13 **ACCEPTANCE**

14 I have carefully read the Stipulated Surrender of License and Order. I understand the
15 stipulation and the effect it will have on my Respiratory Care Practitioner License No. 16828. I
16 enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and
17 intelligently, and agree to be bound by the Decision and Order of the Respiratory Care Board.

18
19 DATED: June 18, 2015

Original signed by:
JAMES G. ACOSTA
Respondent

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23 [Endorsement on following page]
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ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Respiratory Care Board of the Department of Consumer Affairs.

Dated: June 25, 2015

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General

Original signed by:

CHRISTINA L. SEIN
Deputy Attorney General
Attorneys for Complainant

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Attorney General of California
2 JUDITH T. ALVARADO
Supervising Deputy Attorney General
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10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 700-2014-000475

12 **JAMES G. ACOSTA, RCP**
13 920 Tupelwood Court
14 Thousand Oaks, CA 91320

A C C U S A T I O N

15 **Respiratory Care Practitioner License**
16 **Number 16828,**

Respondent.

17
18
19 Complainant alleges:

20 **PARTIES**

21 1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity
22 as the Executive Officer of the Respiratory Care Board of California, Department of Consumer
23 Affairs.

24 2. On or about January 11, 1994, the Respiratory Care Board issued Respiratory Care
25 Practitioner License Number 16828 to James G. Acosta (Respondent). The Respiratory Care
26 Practitioner License was in full force and effect at all times relevant to the charges brought herein
27 and will expire on January 31, 2016, unless renewed.

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1 **JURISDICTION**

2 3. This Accusation is brought before the Respiratory Care Board (Board), Department of
3 Consumer Affairs, under the authority of the following laws. All section references are to the
4 Business and Professions Code unless otherwise indicated.

5 4. Section 3710, subdivision (a) of the Code states:

6 “(a) The Respiratory Care Board of California, hereafter referred to as the board, shall
7 enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act].”

8 5. Section 3718 of the Code states:

9 “The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as
10 provided in this chapter.”

11 6. Section 3750 of the Code states in pertinent part:

12 “The board may order the denial, suspension or revocation of, or the imposition of
13 probationary conditions upon, a license issued under this chapter, for any of the following causes:

14 “. . . .

15 “(d) Conviction of a crime that substantially relates to the qualifications, functions, or
16 duties of a respiratory care practitioner. The record of conviction or a certified copy thereof
17 shall be conclusive evidence of the conviction.

18 “. . . .

19 “(g) Conviction of a violation of any of the provisions of this chapter or of any
20 provision of Division 2 (commencing with Section 500), or violating, or attempting to
21 violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to
22 violate any provision or term of this chapter or of any provision of Division 2 (commencing
23 with Section 500).

24 “. . . .”

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

26 “In addition to any other grounds specified in this chapter, the board may deny, suspend,
27 place on probation, or revoke the license of any applicant or licenseholder who has done any of
28 the following:

1 “....

2 “(b) Used any controlled substance as defined in Division 10 (commencing with Section
3 11000) of the Health and Safety Code, or any dangerous drug as defined in Article 2
4 (commencing with Section 4015) of Chapter 9 of this code, or alcoholic beverages, to an extent or
5 in a manner dangerous or injurious to himself or herself, or to others, or that impaired his or her
6 ability to conduct with safety the practice authorized by his or her license.”

7 “....

8 “(d) Been convicted of a criminal offense involving the consumption or self-administration
9 of any of the substances described in subdivisions (a) and (b), or the possession of, or falsification
10 of a record pertaining to, the substances described in subdivision (a), in which event the record of
11 the conviction is conclusive evidence thereof.

12 “....”

13 8. Section 3752 of the Code states:

14 “A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a
15 charge of any offense which substantially relates to the qualifications, functions, or duties of a
16 respiratory care practitioner is deemed to be a conviction within the meaning of this article. The
17 board shall order the license suspended or revoked, or may decline to issue a license, when the
18 time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when
19 an order granting probation is made suspending the imposition of sentence, irrespective of a
20 subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or
21 her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
22 dismissing the accusation, information, or indictment.”

23 9. California Code of Regulations, title 16, section 1399.370 states in pertinent part:

24 “For the purposes of denial, suspension, or revocation of a license, a crime or act shall be
25 considered to be substantially related to the qualifications, functions or duties of a respiratory care
26 practitioner, if it evidences present or potential unfitness of a licensee to perform the functions
27 authorized by his or her license or in a manner inconsistent with the public health, safety, or
28 welfare. Such crimes or acts shall include but not be limited to those involving the following:

1 Code of Regulations, title 16, section 1399.370, subdivisions (a) and (c), in that he was convicted
2 of a crime involving driving under the influence, and admitted to the special allegation of Vehicle
3 Code section 23578 [conviction of violation of § 23152 or § 23153; alcohol concentration or
4 refusal to take chemical test as special factor; penalty enhancement or probation], substantially
5 related to the qualifications, functions or duties of a respiratory care practitioner, as more
6 particularly alleged hereinafter:

7 14. Respondent is a respiratory care practitioner licensed to practice in California.

8 15. On or about April 3, 2014, at approximately 11:07 a.m., Ventura County Sheriff's
9 Department Officer Hinahon was dispatched to a call of a non-injury collision. Officer Hinahon
10 reported to the location and observed Respondent on a gurney in the back of an ambulance, a
11 Toyota Sienna with minor left front end damage, and a Chevy Express Van with minor right front
12 end damage.

13 16. Officer Hinahon initially contacted Respondent while he was laying on the gurney.
14 He was unable to answer Officer Hinahon's questions; Officer Hinahon noted that Respondent's
15 eyes were red and extremely watery. At approximately 12:00 p.m., Officer Hinahon contacted
16 Respondent at Los Robles Hospital and could smell an odor of an alcoholic beverage from about
17 two feet away emitting from Respondent's breath. Respondent's responses to the officer's
18 questions were delayed and his speech was slurred. Respondent told Officer Hinahon that he
19 drank half a pint of vodka that morning between the hours of 6:00 a.m. and 8:00 a.m. Respondent
20 also reported that he left his residence and drove to the liquor store to buy more alcohol. He did
21 not recall colliding with another vehicle in the parking lot, and the next thing he remembered, was
22 someone standing outside his driver's window and asking him if he was all right.

23 17. The other party involved in the collision (Cobian) told Officer Hinahon that he was
24 making a delivery at the liquor store. When he got back into his van and was about to back up, he
25 noticed a minivan pulling into the parking stall next to him. The minivan then collided with his
26 van. Cobian went to the passenger side of the minivan and noticed that the minivan was still in
27 drive and that Respondent was trying to manipulate the gears and steering wheel and did not look
28

1 all right. Cobian reached in and put the minivan in park, turned the engine off, and took the keys
2 out of the ignition.

3 18. A witness who works at Ventu Park Liquor was contacted at the scene. Although he
4 did not witness the collision, he recognized Respondent and advised Officer Hinahon that
5 Respondent is a regular customer and normally goes into the liquor store twice a day for the past
6 two years. The witness stated that Respondent would purchase a pint of “Smirnoff” vodka on
7 each visit.

8 19. Officer Hinahon formed the opinion that Respondent caused the collision by violating
9 Vehicle Code section 23152(a) [driving under the influence of alcohol or drugs]. Due to
10 Respondent’s inebriation, he made an unsafe turning movement while maneuvering his Toyota
11 Sienna to park in a stall.

12 20. On or about April 16, 2014, a Misdemeanor Complaint was filed entitled *People v.*
13 *Acosta, James G*, Ventura County Superior Court, Case No. 2014010837 M A, charging
14 Respondent for violating Vehicle Code sections 23152(a) [driving while under the influence of
15 any alcoholic beverage], Count One, and 23152(b) [driving while having .08% or higher blood
16 alcohol], Count Two. Counts One and Two further allege that Respondent had blood alcohol
17 content of .15 percent or higher within the meaning of Vehicle Code section 23578.¹

18 21. On or about May 22, 2014, Respondent pled guilty to Count Two, a crime involving
19 driving under the influence, and admitted to the special allegation of Vehicle Code section 23578.

20 22. On or about May 22, 2014, in *People v. Acosta, James G*, Ventura County Superior
21 Court, Case No. 2014010837 M A, the imposition of sentence was suspended, Respondent was
22 ordered to serve ten days, with credit for one day actual timed served, in the Ventura County jail,
23 and placed on 36 months probation, subject to the following terms and conditions: be under the
24 supervision of a probation officer and report as directed; maintain regular employment as

25 ¹ Section 23578 states: “In addition to any other provision of this code, if a person is
26 convicted of a violation of Section 23152 or 23153, the court shall consider a concentration of
27 alcohol in the person's blood of 0.15 percent or more, by weight, or the refusal of the person to
28 take a chemical test, as a special factor that may justify enhancing the penalties in sentencing, in
determining whether to grant probation, and, if probation is granted, in determining additional or
enhanced terms and conditions of probation.”

1 approved by the probation officer; not leave his county of residence for more than 72 hours or
2 change residence without prior approval of the probation officer; not leave California without
3 prior permission from the probation officer; participate in any treatment program designated by
4 the probation officer; obey all laws; not operate a vehicle with any intoxicant in his body; not
5 drink or possess any alcoholic beverages or be where alcohol is the chief item of sale; consent to
6 the search for alcoholic beverages by a probation officer or law enforcement, with or without a
7 search warrant, warrant of arrest, or reasonable cause; submit to and complete tests of breath,
8 blood, urine, or saliva, when requested by a peace officer or probation officer; report immediately
9 to the Driving Under the Influence Program for 9 months; not drive unless properly licensed and
10 insured; and pay fines and fees. The Court ordered the remaining count to be dismissed.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Use of Alcohol in Manner Dangerous or Injurious to Himself or to Others)**

13 23. Respondent's license is further subject to disciplinary action under sections 3750.5,
14 subdivision (b) of the Code, and California Code of Regulations, title 16, section 1399.370,
15 subdivisions (a) and (c), in that he has used alcoholic beverages, to an extent or in a manner
16 dangerous or injurious to himself, or to others, as more particularly alleged in paragraphs 14
17 through 22 above, which is hereby incorporated by reference and realleged as if fully set forth
18 herein.

19 24. On or about January 23, 2014, the Ventura County Sheriff's Department responded to
20 a domestic disturbance call at Respondent's residence. The Ventura County Sheriff's Department
21 has responded to Respondent's residence more than 12 times in the year preceding the date of
22 incident, usually related to domestic incidents. Respondent is noted as being an alcoholic or
23 usually under the influence of alcohol or intoxicated.

24 25. Upon arrival at the scene, Deputy Alcalá contacted the victim who advised that her
25 ex-boyfriend and cohabitant, Respondent, had battered her the previous evening during an
26 argument. The victim had a bruise around her left bicep and a bruise under her chin. Deputy
27 Alcalá spoke with Respondent who was extremely intoxicated and stated that he did not
28 remember an argument with the victim and that the victim received the injuries when she fell

1 down the stairs. Based on the victim's injuries and party statements, Respondent was arrested for
2 violating section 273.5, subdivision (a) of the Penal Code [corporal injury to spouse, cohabitant,
3 or child's parent].

4 **THIRD CAUSE FOR DISCIPLINE**

5 **(Violation of the Respiratory Care Practice Act)**

6 26. Respondent's license is further subject to disciplinary action under sections 3750,
7 subdivision (g) of the Code, and California Code of Regulations, title 16, section 1399.370,
8 subdivisions (a), in that he has violated a provision or provisions of the Respiratory Care Practice
9 Act, as more particularly alleged in paragraphs 14 through 25, above, which are hereby
10 incorporated by reference and realleged as if fully set forth herein.

11 **PRAYER**

12 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
13 and that following the hearing, the Respiratory Care Board issue a decision:

- 14 1. Revoking or suspending Respiratory Care Practitioner License Number 16828, issued
15 to James G. Acosta;
- 16 2. Ordering James G. Acosta to pay the Respiratory Care Board the costs of the
17 investigation and enforcement of this case, and if placed on probation, the costs of probation
18 monitoring; and
- 19 3. Taking such other and further action as deemed necessary and proper.
- 20

21 DATED: October 14, 2014

21 Original signed by Liane Freels for:

22 STEPHANIE NUNEZ
23 Executive Officer
24 Respiratory Care Board of California
25 Department of Consumer Affairs
26 State of California
27 *Complainant*

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