

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

In the Matter of the Accusation Against:

AMADO ACOSTA ALMAZAN JR.
211 Pennsylvania Drive
Salinas, CA 93906

Case No.: 1H 2012 024

OAH No.: 2012070715

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 4, 2013.

It is so ORDERED December 28, 2012.

Original signed by:

MURRAY L. OLSON, RCP, RRT-NPS, RPFT
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 Against:

AMADO ACOSTA ALMAZAN, JR.,

License No. 19246

Respondent.

Case No. 1H 2012 024

OAH No. 2012070715

PROPOSED DECISION

Administrative Law Judge Steven C. Owyang, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on September 17, 2012.

Catherine E. Santillan, Senior Legal Analyst, represented complainant Stephanie Nunez, Executive Officer, Respiratory Care Board, Department of Consumer Affairs.

Respondent Amado Acosta Almazan, Jr., was present and represented himself.

The matter was submitted on September 17, 2012.

FACTUAL FINDINGS

1. Complainant Stephanie Nunez, Executive Officer, Respiratory Care Board, Department of Consumer Affairs, issued the accusation in her official capacity.

2. The board issued Respiratory Care Practitioner license No. 19246 to respondent Amado Acosta Almazan, Jr., on January 10, 1997. The board has not previously disciplined respondent.

3. On December 1, 2011, in the Superior Court of California, County of Monterey, respondent was convicted, on his plea of guilty, of a misdemeanor violation of Penal Code section 647, subdivision (f) (drunk in public or under the influence in public). Respondent's conviction was pursuant to a plea arrangement. This is a crime substantially related to the qualifications, functions, and duties of a respiratory care practitioner. Imposition of sentence was suspended and respondent placed on 18 months of conditional probation under terms that included payment of fines and serving one day in jail with credit for one day served. Respondent was still on probation at the time of the hearing in this matter.

Respondent was represented by a public defender in the above matter. Respondent agreed to the plea bargain after being told it would not affect his respiratory care practitioner license.

4. Respondent's conviction stemmed from events that occurred on April 6, 2011, in Salinas, California. Respondent was and is a Salinas resident. His truck ran out of fuel and he was able to get a ride from a woman who was "a friend of a friend." On the way to the gas station, the woman stopped at a house on Adams Street to get something. Before going into the house, the woman asked respondent to carry a small leather pouch. Respondent put the pouch in his pocket. As they entered the house, deputies of the Monterey County Sheriff's Office were conducting a search of the premises and several individuals inside the house. Respondent was searched and the deputies found the leather pouch. The pouch contained a pipe of the sort used to smoke methamphetamine. According to a report subsequently filed by Deputy Scott Miller, "[respondent] admitted to it being his and stated that he made a mistake." Respondent denies that he admitted to the pouch being his or saying he had made a mistake. Deputy Miller did not testify at the hearing in this matter.

5. Respondent does not smoke or drink. There was no evidence that respondent engaged in substance abuse, either on April 6, 2011, or at any other time.

6. Respondent has not worked as a respiratory care practitioner since 2009. He was formerly employed part-time at the St. Louise Regional Hospital in Gilroy, California. He was terminated from employment for using too much family leave to care for his son, who was comatose for a year after contracting the West Nile virus.

7. Respondent is dependent on his wife's income to support their family, which includes three children, ages 21, 16, and 9.

8. Complainant incurred Attorney General prosecution costs of \$1,650 in this matter. Those costs are reasonable.

LEGAL CONCLUSIONS

1. Respondent's criminal conviction (Factual Finding 3) provides cause to discipline his respiratory care practitioner license pursuant to Business and Professions Code sections 3750, subdivision (d), and 3752 (substantially related conviction). Respondent's conviction for violation of Penal Code section 647, subdivision (f) (drunk in public or under the influence in public) was the result of a plea bargain. The fact of the conviction, however, is sufficient to impose discipline on respondent's license.

2. Complainant does not seek to have respondent's license revoked. Instead, complainant seeks to impose standard terms of probation on his license. This is a reasonable request under the circumstances.

3. Respondent will be required to pay complainant's costs of prosecution, in the amount of \$1,650.

ORDER

Respiratory care practitioner license number 19246, issued to respondent Amado Acosta Almazan, Jr., is revoked. The revocation, however, is stayed, and respondent is placed on probation for three years under the following terms and conditions:

1. **OBEY ALL LAWS.** Respondent shall obey all laws, whether federal, state, or local. Respondent shall also obey all regulations governing the practice of respiratory care in California.

Respondent shall notify the board in writing within 14 days of any incident resulting in his arrest, or charges filed against him, or a citation issued against him.

2. **QUARTERLY REPORTS.** Respondent shall file quarterly reports of compliance under penalty of perjury, on forms to be provided, to the probation monitor assigned by the board. Omission or falsification in any manner of any information on these reports shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against respondent's respiratory care practitioner license.

Quarterly report forms will be provided by the board. Respondent is responsible for contacting the board to obtain additional forms if needed. Quarterly reports are due for each year of probation and the entire length of probation as follows:

For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.

For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.

For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.

For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

Failure to submit complete and timely reports shall constitute a violation of probation.

3. **PROBATION MONITORING PROGRAM.** Respondent shall comply

with requirements of the board appointed probation monitoring program, and shall, upon reasonable request, report to or appear to a local venue as directed.

Respondent shall claim all certified mail issued by the board, respond to all notices of reasonable requests timely, and submit Annual Reports, Identification Update reports or other reports similar in nature, as requested and directed by the board or its representative.

Respondent is encouraged to contact the board's Probation Program at any time he has a question or concern regarding his terms and conditions of probation.

Failure to appear for any scheduled meeting or examination, or cooperate with the requirements of the program, including timely submission of requested information, shall constitute a violation of probation and will result in the filing of an accusation and/or a petition to revoke probation against respondent's respiratory care practitioner license.

4. PROBATION MONITORING COSTS. All costs incurred for probation monitoring during the entire probation shall be paid by respondent. The monthly cost may be adjusted as expenses are reduced or increased. Respondent's failure to comply with all terms and conditions may also cause this amount to be increased.

All payments for costs are to be sent directly to the Respiratory Care Board and must be received by the date(s) specified. (Periods of tolling will not toll the probation monitoring costs incurred.)

If respondent is unable to submit costs for any month, he shall be required instead to submit an explanation of why he is unable to submit the costs, and the date(s) he will be able to submit the costs including payment amount(s). Supporting documentation and evidence of why respondent is unable to make such payment(s) must accompany this submission.

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 by providing evidence and supporting documentation of financial hardship it may delay further disciplinary action.

In addition to any other disciplinary action taken by the board, an unrestricted license will not be issued at the end of the probationary period and the respiratory care practitioner license will not be renewed, until such time all probation monitoring costs have been paid.

The filing of bankruptcy by the respondent shall not relieve him of his responsibility to reimburse the board for costs incurred.

5. **EMPLOYMENT REQUIREMENT.** Respondent shall be employed a minimum of 24 hours per week as a respiratory care practitioner for a minimum of 2/3 of his probation period. Respondent may substitute successful completion of a minimum of thirty (30) additional continuing education hours, beyond that which is required for license renewal, for each 8 months of employment required. Respondent shall submit proof to the board of successful completion of all continuing education requirements. Respondent is responsible for paying all costs associated with fulfilling this term and condition of probation.

6. **NOTICE TO EMPLOYER.** Respondent shall be required to inform his employer, and each subsequent employer during the probation period, of the discipline imposed by this decision by providing his supervisor and director and all subsequent supervisors and directors with a copy of the decision and order, and the Accusation in this matter prior to the beginning of or returning to employment or within 14 days from each change in a supervisor or director.

If respondent is employed by or through a registry, respondent shall make each hospital or establishment to which he is sent aware of the discipline imposed by this decision by providing his direct supervisor and administrator at each hospital or establishment with a copy of this decision, and the accusation in this matter prior to the beginning of employment. This must be done each time there is a change in supervisors or administrators.

The employer will then inform the board, in writing, that he is aware of the discipline, on forms to be provided to the respondent. Respondent is responsible for contacting the board to obtain additional forms if needed. All reports completed by the employer must be submitted from the employer directly to the board.

Respondent shall execute a release authorizing the board or any of its representatives to review and obtain copies of all employment records and discuss and inquire of the probationary status with any of respondent's supervisors or directors.

7. **CHANGES OF EMPLOYMENT OR RESIDENCE.** Respondent shall notify the board, and appointed probation monitor, in writing, of any and all changes of employment, location, and address within 14 days of such change. This includes but is not limited to applying for employment, termination or resignation from employment, change in employment status, change in supervisors, administrators or directors.

Respondent shall also notify his probation monitor and the board in writing of

any changes of residence or mailing address within 14 days. P.O. Boxes are accepted for mailing purposes, however respondent must also provide his physical residence address as well.

8. **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 \$1,650 and shall be paid in full directly to the board, in equal quarterly 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, he shall be required instead to submit an explanation of why he is unable to submit these costs in part or in entirety, and the date(s) he will be able to submit the costs including payment amount(s). Supporting documentation and evidence of why respondent is unable to make such payment(s) must accompany this submission.

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 by providing evidence and supporting documentation of financial hardship may delay further disciplinary action.

Consideration to financial hardship will not be given should respondent violate this term and condition, unless an unexpected and unavoidable hardship is established from the date of this order to the date payment is due.

The filing of bankruptcy by respondent shall not relieve him of his responsibility to reimburse the board for these costs.

9. **TOLLING FOR OUT-OF-STATE RESIDENCE OR PRACTICE.** Periods of residency or practice outside California, whether the periods of residency or practice are temporary or permanent, will toll the probation period but will not toll the cost recovery requirement, nor the probation monitoring costs incurred. Travel out of California for more than 30 days must be reported to the board in writing prior to departure. Respondent shall notify the board, in writing, within 14 days, upon his return to California and prior to the commencement of any employment where representation as a respiratory care practitioner is provided.

10. **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 continuing education requirements prior to his license expiration date shall constitute a violation of probation.

11. VIOLATION OF PROBATION. If respondent violates any term of the probation in any respect, the board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If a petition to revoke probation is filed against respondent during probation, the board shall have continuing jurisdiction and the period of probation shall be extended until the matter is final. No petition for modification of penalty shall be considered while there is an accusation or petition to revoke probation or other penalty pending against respondent.

12. COMPLETION OF PROBATION. Upon successful completion of probation, respondent's license shall be fully restored.

DATED: October 1, 2012

A handwritten signature in black ink, appearing to read 'S. C. Owyang', written over a horizontal line.

STEVEN C. OWYANG
Administrative Law Judge
Office of Administrative Hearings