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6
7 **BEFORE THE**
RESPIRATORY CARE BOARD
8 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

9
10 In the Matter of the Petition to Revoke
Probation Against,

Case No. 7002015000817

11 **AMADO ACOSTA ALMAZAN, JR.**

PETITION TO REVOKE PROBATION

12 **211 Pennsylvania Drive**
13 **Salinas, CA 93906**

14 **Respiratory Care Practitioner License No.**
15 **19246**

16 Respondent.

17 Complainant alleges:

18 PARTIES

19 1. Stephanie Nunez (Complainant) brings this Petition to Revoke Probation solely in her
20 official capacity as the Executive Officer of the Respiratory Care Board (Board) of California,
21 Department of Consumer Affairs.

22 2. On or about January 10, 1997, the Board issued Respiratory Care Practitioner License
23 Number 19246 to Amado Acosta Almazan, Jr. (Respondent). The Respiratory Care Practitioner
24 License expired on April 30, 2014, and has not been renewed.

25 DISCIPLINARY HISTORY

26 3. In a disciplinary action entitled "In the Matter of Accusation Against Amado Acosta
27 Almazan, Jr.," Case No. 1H 2012 024, the Board issued a decision effective January 4, 2013, in
28 which Respondent's Respiratory Care Practitioner License was revoked. However, the

1 revocation was stayed and Respondent's Respiratory Care Practitioner License was placed on
2 probation for a period of three (3) years with certain terms and conditions. A copy of that
3 decision is attached as Exhibit A and is incorporated by reference.

4 4. On or about April 24, 2015, the Board issued a Cease Practice Order to Respondent
5 pursuant to California Code of Regulations section 1399.375.

6 JURISDICTION

7 5. This Petition to Revoke Probation is brought before the Board, Department of
8 Consumer Affairs, under the authority of the following laws. All section references are to the
9 Business and Professions Code unless otherwise indicated.

10 6. Section 118(b) of the Code states:

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

18 7. Section 3710 of the Code states: "The Respiratory Care Board of California, hereafter
19 referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory
20 Care Practice Act]."

21 8. Section 3718 of the Code states: "The board shall issue, deny, suspend, and revoke
22 licenses to practice respiratory care as provided in this chapter."

23 9. Section 3754 of the Code states, in pertinent part:

24 "The board may deny an application for, or issue with terms and conditions, or suspend or
25 revoke, or impose probationary conditions upon, a licensee in any decision made after a hearing,
26 as provided in Section 3753."

27 COST RECOVERY

28 10. Section 3753.5, subdivision (a) of the Code states:

1 "In any order issued in resolution of a disciplinary proceeding before the board, the board or
2 the administrative law judge may direct any practitioner or applicant found to have committed a
3 violation or violations of law or any term and condition of board probation to pay to the board a
4 sum not to exceed the costs of the investigation and prosecution of the case. A certified copy of
5 the actual costs, or a good faith estimate of costs where actual costs are not available, signed by
6 the official custodian of the record or his or her designated representative shall be prima facie
7 evidence of the actual costs of the investigation and prosecution of the case."

8 11. Section 3753.7 of the Code states:

9 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall include
10 attorney general or other prosecuting attorney fees, expert witness fees, and other administrative,
11 filing, and service fees."

12 12. Section 3753.1 of the Code states:

13 "(a) An administrative disciplinary decision imposing terms of probation may include,
14 among other things, a requirement that the licensee probationer pay the monetary costs associated
15 with monitoring the probation. "

16 FIRST CAUSE TO REVOKE PROBATION

17 (Quarterly Reports of Compliance)

18 13. Probation Condition 2, titled "Quarterly Reports," in the Decision and Order in Case
19 No. 1H 2012 024, provides in part as follows:

20 "Respondent shall file quarterly reports of compliance under penalty of
21 perjury, on forms to be provided, to the probation monitor assigned by the Board.
22 Omission or falsification in any manner of any information on these reports shall
23 constitute a violation of probation and shall result in the filing of an accusation
24 and/or a petition to revoke probation against respondent's respiratory care
25 practitioner license.

26 Quarterly report forms will be provided by the board. Respondent is
27 responsible for contacting the board to obtain additional forms if needed. Quarterly
28

1 reports are due for each year of probation and the entire length of probation as
2 follows:

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

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

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

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

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

13 14. Respondent’s probation is subject to revocation because he failed to comply with
14 Probation Condition 2 in that he failed to submit a quarterly report of compliance for the
15 following reporting periods:

16 January 1, 2014 through March 31, 2014

17 April 1, 2014 through June 30, 2014

18 July 1, 2014 through September 30, 2014

19 October 1, 2014 through December 31, 2014

20 January 1, 2015 through March 31, 2015

21 15. On August 8, 2014 and January 15, 2015, the Board Probation Monitor mailed letters
22 to Respondent’s address of record, advising him of his past due quarterly reports and requested
23 that Respondent complete all past due reports and return them to the Board. Respondent has not
24 responded to the letters, nor has he complied with Probation Condition 2 to date.

25 SECOND CAUSE TO REVOKE PROBATION

26 (Failure to Pay Probation Monitoring Costs)

27 16. Probation Condition 4, titled “Probation Monitoring Costs” in the Decision and Order
28 in Case No. 1H 2012 024 provides in part as follows:

1 “All costs incurred for probation monitoring during the entire probation shall
2 be paid by the Respondent.”

3 17. Respondent was informed that \$100.00 monthly probation costs were due on the 4th
4 of each month. He has failed to make monthly probation payments since April 4, 2013.
5 Respondent’s probation monitoring costs are currently in arrears \$2,300.00.

6 THIRD CAUSE TO REVOKE PROBATION

7 (Maintain a Valid License)

8 18. Probation Condition 10, titled “Valid License Status” in the Decision and Order in
9 Case No. 1H 2012 024 provides in part as follows:

10 “Respondent shall maintain a current, active, and valid license for the length
11 of the probation term.”

12 19. Respondent’s respiratory care practitioner license expired on April 30, 2014, and he
13 has failed to renew the license.

14 PRAYER

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

17 1. Revoking the probation that was granted by the Respiratory Care Board of California
18 in Case No. 1H 2012 024 and imposing the disciplinary order that was stayed, thereby revoking
19 Respiratory Care Practitioner License No. 19246 issued to Amado Acosta Almazan, Jr.;

20 2. Revoking or suspending Respiratory Care Practitioner License No. 19246, issued to
21 Amado Acosta Almazan, Jr. ;

22 3. Ordering Amado Acosta Almazan, Jr. to pay any outstanding balance owed to the
23 Board for the cost of the probation monitoring ordered in Case No. 1H 2012 024;

24 4. Ordering Amado Acosta Almazan, Jr. to pay the Respiratory Care Board the costs of
25 the investigation and enforcement of this case, and if probation is continued or extended, the costs
26 of probation monitoring;

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5. Taking such other and further action as deemed necessary and proper.

DATED: August 10, 2015

Original signed by Christine Molina for:
STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
Department of Consumer Affairs
State of California
Complainant

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