

1 KAMALA D. HARRIS
Attorney General of California
2 JOSE R. GUERRERO
Supervising Deputy Attorney General
3 State Bar No. 97276
4 455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5585
5 Facsimile: (415) 703-5480
Attorneys for Complainant

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.**

**DEFAULT DECISION
AND ORDER**

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

[Gov. Code §11520]

13
14 **Respiratory Care Practitioner License No.**
19246

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16 Respondent

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18 FINDINGS OF FACT

19 1. On or about August 10, 2015, Complainant Stephanie Nunez, in her official capacity
20 as the Executive Officer of the Respiratory Care Board (Board) of California, Department of
21 Consumer Affairs, filed Petition to Revoke Probation No. 7002015000817 against Amado Acosta
22 Almazan, Jr. (Respondent) before the Board.

23 2. On or about January 10, 1997, the Board issued Respiratory Care Practitioner License
24 No. 19246 to Respondent. The Respiratory Care Practitioner License expired on April 30, 2014,
25 and has not been renewed. A certified copy of Respondent's Certificate of Licensure is attached
26 as **Exhibit 1**¹ in the separate accompanying Default Decision Evidence Packet.

27 ¹ The Exhibits referred to herein, which are true and correct copies of the originals, are
28 contained in the separate accompanying "Default Decision Evidence Packet."

1 3. On or about August 10, 2015, an employee of the Board served by regular and
2 certified mail, a copy of the Petition to Revoke Probation (Petition) No. 7002015000817,
3 Statement to Respondent, Request for Discovery, Notice of Defense (two copies), and
4 Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record
5 with the Board, which was and is 211 Pennsylvania Drive, Salinas, CA 93906. A copy of the
6 Petition to Revoke Probation, the related documents, and Declaration of Service are attached as
7 **Exhibit 2** in the separate accompanying Default Decision Evidence Packet.

8 4. Service of the Petition was effective as a matter of law under the provisions of
9 Government Code section 11505, subdivision (c).

10 5. On or about August 13, 2015, the Petition served by certified mail was delivered to
11 Respondent's address of record. A copy of the U.S. Postal Service tracking printout is attached as
12 **Exhibit 3** in the separate accompanying Default Decision Evidence Packet. The Petition served
13 by regular mail to Respondent's address of record was not returned to the Board.

14 6. Business and Professions Code section 118 states, in pertinent part:

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

22 7. Government Code section 11506 states, in pertinent part:

23 "(c) The respondent shall be entitled to a hearing on the merits if the respondent files a
24 notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation
25 not expressly admitted. Failure to file a notice of defense shall constitute a waiver of
26 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

27 8. The Statement to Respondent informed him that he was required to file a Notice of
28 Defense within 15 days after receipt of the Petition; ie. August 25, 2015. Attached as **Exhibit 4**

1 in the separate accompanying Default Decision Evidence Packet is the Declaration of Supervising
2 Deputy Attorney General Jose R. Guerrero stating that the Office of the Attorney General has not
3 received Respondent's Notice of Defense to date.

4 9. California Government Code section 11520 states, in pertinent part:

5 "(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the
6 agency may take action based upon the respondent's express admissions or upon other evidence
7 and affidavits may be used as evidence without any notice to respondent."

8 10. Pursuant to its authority under Government Code section 11520, the Board finds
9 Respondent is in default. The Board will take action without further hearing and, based on
10 Respondent's express admissions by way of default and the evidence before it, contained in
11 Exhibits 1, 2, 3, 4, 5, 6 and 7, finds that the allegations in Petition to Revoke Probation No.
12 7002015000817 are true.

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

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

18 13. Section 3753.5, subdivision (a) of the Code states:

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

26 14. Section 3753.7 of the Code states:
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1 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall include
2 attorney general or other prosecuting attorney fees, expert witness fees, and other administrative,
3 filing, and service fees."

4 15. Section 3753.1 of the Code states:

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

8 16. In a disciplinary action entitled "In the Matter of Accusation Against Amado Acosta
9 Almazan, Jr.," Case No. 1H 2012 024, a hearing was held on September 17, 2012, before
10 Administrative Law Judge (ALJ) Steven C. Owyang. On October 1, 2012, ALJ Owyang
11 submitted a Decision to the Board which revoked Respondent's license, stayed the revocation and
12 placed his license on probation for three years under terms and conditions. A true and correct
13 copy of the Decision and Order in Case No. 1H 2012 024 is attached as **Exhibit 5** in the separate
14 accompanying Default Decision Evidence Packet.

15 17. Effective January 4, 2013, the Board adopted the Decision. Paragraph 11 of the
16 Board's Decision and Order states:

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

24 18. On or about April 24, 2015, the Board issued a Cease Practice Order to Respondent
25 pursuant to California Code of Regulations section 1399.375 based on his failure to comply with
26 probation conditions.

27 19. The Declaration of Board Probation Monitor V. Craig Martinez, attached as **Exhibit**
28 **6** in the separate accompanying Default Decision Evidence Packet, establishes that Respondent

1 has violated the following probation conditions imposed by the Decision and Order in Case No.
2 1H 2012 024:

3 A. Respondent failed to submit quarterly reports of compliance as required by Probation
4 Condition 2 (Quarterly Reports of Compliance) and has failed to respond to the Board's requests
5 for the quarterly reports for the following reporting periods:

- 6 • January 1, 2014 through March 31, 2014
- 7 • April 1, 2014 through June 30, 2014
- 8 • July 1, 2014 through September 30, 2014
- 9 • October 1, 2014 through December 31, 2014
- 10 • January 1, 2015 through March 31, 2015

11 B. Respondent failed to comply with Probation Condition 4 (Monthly Probation Costs)
12 in that Respondent was informed that \$100.00 monthly probation costs were due on the 4th of
13 each month. He has failed to make monthly probation payments since April 4, 2013.
14 Respondent's probation monitoring costs are currently in arrears \$2,300.00.

15 C. Respondent failed to comply with Probation Condition 10 (Valid License Status) in
16 that Respondent's respiratory care practitioner license expired on April 30, 2014, and he has
17 failed to renew the license to date.

18 20. Respondent's failure to comply with Probation Conditions 2, 4, 10 and 11 is in
19 violation of the Decision and Order in Case No. 1H 2012 024 and constitutes cause to revoke
20 probation.

21 21. Attached as **Exhibit 7** in the separate accompanying Default Decision Evidence
22 Packet is the Declaration of Investigation and Prosecution Costs incurred in this case.

23 DETERMINATION OF ISSUES

24 1. Based on the foregoing findings of fact, Respondent Amado Acosta Almazan, Jr. has
25 subjected his Respiratory Care Practitioner License No. 19246 to discipline.

26 2. A copy of Petition to Revoke Probation No. 7002015000817 and the related
27 documents and Declaration of Service are attached as **Exhibit 2** in the separate accompanying
28 Default Decision Evidence Packet.

1 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
2 written motion requesting that the Decision be vacated and stating the grounds relied on within
3 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
4 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

5 This Decision shall become effective on February 4, 2016.

6 It is so ORDERED January 5, 2016.

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Original signed by:
ALAN ROTH, MS, MBA, RRT-NPS, FAARC
PRESIDENT, RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA