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

10 In the Matter of the Accusation Against:

Case No. 1H 2013 129

11 **MICHAEL LEE COLEMAN**
12 **32960 Park View Drive**
13 **Fort Bragg, CA 95437**

A C C U S A T I O N

14 **Respiratory Care Practitioner's License No.**
15 **19978**

16 Respondent.

17 Complainant alleges:

18 PARTIES

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

22 2. On or about March 17, 1998, the Board issued Respiratory Care Practitioner License
23 Number 19978 to Michael Lee Coleman (Respondent). The Respiratory Care Practitioner
24 License was in full force and effect at all times relevant to the charges brought herein and will
25 expire on October 31, 2013, unless renewed.

1 (commencing with Section 4015) of Chapter 9 of this code, or alcoholic beverages, to an extent or
2 in a manner dangerous or injurious to himself or herself, or to others, or that impaired his or her
3 ability to conduct with safety the practice authorized by his or her license.

4 "(d) Been convicted of a criminal offense involving the consumption or self-administration
5 of any of the substances described in subdivisions (a) and (b), or the possession of, or falsification
6 of a record pertaining to, the substances described in subdivision (a), in which event the record of
7 the conviction is conclusive evidence thereof."

8 8. Section 3752 of the Code states:

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

18 9. California Code of Regulations, title 16, section 1399.370, states:

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

24 "(a) Violating or attempting to violate, directly or indirectly, or assisting or
25 abetting the violation of or conspiring to violate any provision or term of the Act.

26 "(c) Conviction of a crime involving driving under the influence or reckless
27 driving while under the influence."
28

1 COST RECOVERY

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

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

10 11. Section 3753.7 of the Code states:

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

14 12. Section 3753.1 of the Code states:

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

18 FIRST CAUSE FOR DISCIPLINE

19 (Substantially-Related Conviction)

20 13. Respondent's license is subject to disciplinary action under under code sections
21 3750(d), 3750.5(b), 3750.5(d) [use of alcohol in a manner dangerous to self or others], 3752, and
22 CCR 1399.370(c) [substantially related conviction] in that he was convicted of driving under the
23 influence of alcohol. The circumstances are as follows:

24 14. On or about July, 2012, Respondent was employed as a respiratory care practitioner
25 at Mendocino Coast District Hospital (MCDH). MCDH policy stated that "on-call" meant that if
26 an additional respiratory care practitioner was needed at the hospital, Respondent would report to
27 work within thirty minutes from the time he received a telephone call. On July 4, 2012, he
28 worked from 8:00 a.m. until 4:00 p.m., and was on call from 4:00 p.m. until 7:00 a.m. on July 5,

1 2012. Respondent submitted a timecard for July 4 and 5, 2012 stating that he had worked these
2 hours, and he was paid for the time he submitted.

3 15. On or about July 4, 2012 at approximately 7:55 p.m., California State Park Ranger
4 C.D. Glenn was on vehicle patrol in Mackerricher State Park on Mill Creek Drive in Mendocino.
5 He observed a vehicle driven by a male (later identified as Respondent.) Officer Glenn observed
6 that the driver was not wearing a seatbelt. Officer Glenn then observed Respondent make a left
7 turn without signalling, and the officer activated the patrol car's lights to signal Respondent to
8 stop. Respondent parked his vehicle, got out of it and began walking towards Officer Glenn,
9 stating, "I have to go. I am on call right now. I am getting paged right now." Respondent was
10 wearing a pink shirt with "MCDH" for Mendocino District Coast Hospital." He handed the
11 officer a hospital employee identification card and pager which was beeping as he talked.

12 16. As Respondent spoke, Officer Glenn smelled alcohol on his breath. Respondent's
13 eyes were watery, bloodshot and red. Respondent's tone of voice was loud and he continually
14 interrupted the officer. Officer Glenn asked Respondent if he had been drinking alcohol, and at
15 first, Respondent denied it. He then admitted that he drank "a beer before he took a nap."
16 Respondent continued to tell the officer that he was needed at the hospital immediately.

17 17. Respondent voluntarily submitted to a preliminary alcohol screening (P.A.S.) test.
18 The results indicated that Respondent's breath alcohol content was .104%/.104% at 8:04 p.m. and
19 8:24 p.m.. Officer Glenn administered field sobriety tests (FSTs) to Respondent. As he
20 explained the tests to Respondent, Respondent walked in circles and could not keep still. Officer
21 Glenn advised Respondent to stop moving and focus, but Respondent was unable to stand still
22 and listen.

23 18. Based on Respondent's poor performance on the FSTs, his objective symptoms and
24 the positive P.A.S. test results, Officer Glenn arrested Respondent for violating Vehicle Code
25 section 23152(a) [driving under the influence of an alcoholic beverage and/or drug] and 23152(b)
26 [driving under the influence of alcohol with a .08% blood alcohol content or higher.] During an
27 inventory of Respondent's car, Officer Glenn found an open 22 ounce bottle of beer which was
28 three quarters full inside the vehicle.

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2 19. On July 4, 2012, at approximately 8:28 p.m and 8:32 p.m., Respondent submitted to a
3 breathalyzer test. The test results were positive for alcohol in the amount of .09%/.09%.

4 20. On January 22, 2013, Respondent was convicted upon his plea of nolo contendere to
5 violating Vehicle Code section 23152(b) [driving with a blood alcohol content of .08% or higher]
6 and he admitted the special allegation of violating Vehicle Code section 23540 [prior DUI
7 conviction.] Count 1 was dismissed. He was sentenced to sixty months summary probation
8 under the following terms and conditions: he was ordered to serve 10 days in jail with work
9 release/work furlough authorized, pay fines; attend a Multiple Offender Program and enroll
10 within 21 days, not to drive a vehicle with a measurable amount of alcohol in his blood, not to
11 drive unless licensed and insured, and submit to drug and alcohol testing as required by law.

12 21. Therefore, Respondent's license is subject to discipline based on his substantially
13 related conviction, which is in violation of code sections 3750(d), 3750.5(d), 3752, 3750.5(b) and
14 CCR 1399.370(c).

15 SECOND CAUSE FOR DISCIPLINE

16 (Dishonest Act)

17 22. Paragraphs 14 through 20 are incorporated herein.

18 23. Respondent submitted a time card to his employer for July 4, 2012, stating that he
19 worked from July 4, 2012 from 4:00 p.m. until 7:00 a.m. on July 5, 2012 on an "on call" basis. In
20 fact, during that time, Respondent was investigated and arrested for violating Vehicle Code
21 section 23152(a) [driving under the influence of an alcoholic beverage and/or drug] and 23152(b)
22 [driving under the influence of alcohol with a .08% blood alcohol content or higher] and was not
23 available to work during his scheduled on-call hours.

24 24. Respondent's license is subject to disciplinary action under in that he submitted a
25 time card and was paid for on call hours, when in fact he was aware that he was not available to
26 work during on call hours because he drank alcohol and was arrested for driving under the
27 influence of alcohol. His submission of the timecard was a dishonest act in violation of code
28 section 3750(j).

1 MATTER IN AGGRAVATION

2 25. On or about June 18, 2009, the Board issued Citation and Fine No. C-09-0042 against
3 Respondent based on his March 3, 2009 conviction on his plea of nolo contendere to violating
4 Vehicle Code section 23103/23103.5, wet reckless driving. Respondent's breath alcohol content
5 at the time of arrest was .08%/.09%.

6 PRAYER

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

- 9 1. Revoking or suspending Respiratory Care Practitioner's License Number 19978,
10 issued to Michael Lee Coleman;
- 11 2. Ordering Michael Lee Coleman to pay the Respiratory Care Board the costs of the
12 investigation and enforcement of this case, and if placed on probation, the costs of probation
13 monitoring;
- 14 3. Taking such other and further action as deemed necessary and proper.

15
16 DATED: May 22, 2013

17 Original Signed by Liane Freels for:
18 STEPHANIE NUNEZ
19 Executive Officer
20 Respiratory Care Board of California
21 Department of Consumer Affairs
22 State of California
23 *Complainant*

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