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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**

DEFAULT DECISION
AND ORDER

[Gov. Code §11520]

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

16 Respondent

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18 FINDINGS OF FACT

19 1. On or about May 22, 2013, Complainant Stephanie Nunez, in her official capacity as
20 the Executive Officer of the Respiratory Care Board (Board) of California, Department of
21 Consumer Affairs, filed Accusation No. 1H 2013 129 against Michael Lee Coleman
22 (Respondent) before the Respiratory Care Board.

23 2. On or about March 17, 1998, the Board issued Respiratory Care Practitioner License
24 No. 19978 to Respondent. The Respiratory Care Practitioner License was in full force and effect
25 at all times relevant to the charges brought herein and will expire on October 31, 2013, unless
26 renewed.

27 3. On or about May 22, 2013, an employee of the Complainant Agency, served by
28 Certified and First Class Mail a copy of the Accusation No. 1H 2013 129, Statement to

1 Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5,
2 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is 32960
3 Park View Drive, Fort Bragg, CA 95437. A copy of the Accusation, the related documents, and
4 Declaration of Service are attached as Exhibit A, and are incorporated herein by reference.

5 4. The Accusation served by certified mail was delivered on June 21, 2013. A copy of
6 the U.S. Postal Service Track and Confirm results is attached as Exhibit B, and incorporated
7 herein by reference. Service of the Accusation was effective as a matter of law under the
8 provisions of Government Code section 11505, subdivision (c).

9 5. Government Code section 11506 states, in pertinent part:

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

14 Respondent failed to file a Notice of Defense within 15 days after service upon him of the
15 Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 1H-2013-
16 129.

17 6. California Government Code section 11520 states, in pertinent part:

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

21 7. True and correct certified copies of the Clerk's Docket and Minutes, and Order of
22 Summary Probation in the case entitled *The People of the State of California vs. Michael Lee*
23 *Coleman*, Mendocino County Superior Court Case No. MCTMCRTR1223091 is attached as
24 Exhibit C and the State of California Department of Parks and Recreation Public Safety Report
25 number 212114144 is attached as Exhibit D and alleges the following:

26 (a) On or about July 4, 2012, Respondent was arrested for violating Vehicle Code section
27 23152(a) [driving under the influence of an alcoholic beverage and/or drug] and 23152(b)
28 [driving under the influence of alcohol with a .08% blood alcohol content or higher.]

1 (b) On or about January 22, 2013, Respondent was convicted upon his plea of nolo
2 contendere to violating Vehicle Code section 23152(b) [driving with a blood alcohol content of
3 .08% or higher] and he admitted the special allegation of violating Vehicle Code section 23540
4 [prior DUI conviction.]

5 (c) On or about January 22, 2013, Respondent was placed on sixty months summary
6 probation with terms and conditions.

7 8. The Declaration of Julia Smith, R.N. is attached as Exhibit E and alleges the following:
8 Respondent submitted a time card to his employer for July 4, 2012, stating that he worked from
9 July 4, 2012 from 4:00 p.m. until 7:00 a.m. on July 5, 2012 on an “on call” basis. In fact, during
10 that time, Respondent was investigated and arrested for violating Vehicle Code section 23152(a)
11 [driving under the influence of an alcoholic beverage and/or drug] and 23152(b) [driving under
12 the influence of alcohol with a .08% blood alcohol content or higher] and was not available to
13 work during his scheduled on-call hours.

14 9. Pursuant to its authority under Government Code section 11520, the Board finds
15 Respondent is in default. The Board will take action without further hearing and, based on
16 Respondent’s express admissions by way of default and the evidence before it, contained in
17 Exhibits A through E, finds that the allegations in Accusation No. 1H-2013-129 are true.

18 DETERMINATION OF ISSUES

19 1. Based on the foregoing findings of fact, Respondent has subjected his Respiratory
20 Care Practitioner License No. 19978 to discipline.

21 2. Pursuant to its authority under California Government Code section 11520, and
22 based on the evidence before it, the Board hereby finds that the charges and allegations contained
23 in Accusation No. 1H 2013 129, and the Findings of Fact contained in paragraphs 1 through 9,
24 above, and each of them, separately and severally, are true and correct. A true and correct copy
25 of Accusation No. 1H 2013 129 and the related documents and declaration are attached.

26 3. The agency has jurisdiction to adjudicate this case by default.

27 4. The Board is authorized to revoke Respondent’s Respiratory Care Practitioner
28 License based upon the following violations alleged in the Accusation:

1 (a) Code sections 3750(d), 3750.5(d), 3752, 3750.5(b) and CCR 1399.370(c) in that
2 Respondent has been convicted of a crime substantially related to the qualifications, functions or
3 duties of a respiratory care practitioner, as more particularly alleged in Accusation No. 1H 2013
4 129, which is attached hereto and incorporated by reference and realleged as if fully set forth
5 herein; and

6 (b) Code section 3750(j) [dishonest act], in that he has submitted a time card and was paid
7 for on call hours, when in fact he was aware that he was not available to work during on call
8 hours because he drank alcohol and was arrested for driving under the influence of alcohol, as
9 alleged in Accusation No. 1H 2013 129, which is attached hereto and incorporated by reference
10 and realleged as if fully set forth herein.

11 5. Respondent is hereby ordered to reimburse the Board costs of investigation and
12 enforcement of this case in the amount of \$2,490.00, based on the Certification of Costs
13 contained in Exhibit F.

14 ORDER

15 IT IS SO ORDERED that Respiratory Care Practitioner License No. 19978, heretofore
16 issued to Respondent Michael Lee Coleman, is revoked.

17 If Respondent ever files an application for relicensure or reinstatement in the State of
18 California, the Board shall treat it as a petition for reinstatement. Respondent must comply with
19 all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time
20 the petition is filed.

21 Respondent is ordered to reimburse the Respiratory Care Board the amount of \$2,490.00
22 for its investigative and enforcement costs. The filing of bankruptcy by Respondent shall not
23 relieve Respondent of his responsibility to reimburse the Board for its costs. Respondent's
24 Respiratory Care Practitioner License may not be renewed or reinstated unless all costs ordered
25 under Business and Professions Code section 3753.5 have been paid.

26 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
27 written motion requesting that the Decision be vacated and stating the grounds relied on within
28

1 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
2 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

3 This Decision shall become effective on October 30, 2013.

4 It is so ORDERED September 30, 2013.

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Original Signed by:
CHARLES B. SPEARMAN, MEd, RCP, RRT
PRESIDENT, RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS