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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 2012 266

11 **CARL CACCONIE**  
12 **8667 Mariners Drive, #25**  
13 **Stockton, CA 95219**

**A C C U S A T I O N**

14 **Respiratory Care Practitioner License No.**  
15 **21206**

16 Respondent.

17  
18 Complainant alleges:

19 PARTIES

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

23 2. On or about January 6, 2000, the Respiratory Care Board issued Respiratory Care  
24 Practitioner License Number 21206 to Carl Cacconie (Respondent). The Respiratory Care  
25 Practitioner License was in full force and effect at all times relevant to the charges brought herein  
26 and will expire on March 31, 2013, unless renewed.





1 the official custodian of the record or his or her designated representative shall be prima facie  
2 evidence of the actual costs of the investigation and prosecution of the case."

3 11. Section 3753.7 of the Code states:

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

7 12. Section 3753.1 of the Code states:

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

11 CAUSE FOR DISCIPLINE

12 (Substantially-Related Conviction)

13 13. Respondent's license is subject to disciplinary action under under code sections  
14 3750(d), 3750.5(d), 3750.5(b) [use of alcohol in a manner dangerous to self or others], 3752, and  
15 CCR 1399.370(c) [substantially related conviction] in that he was convicted of driving under the  
16 influence of alcohol. The circumstances are as follows:

17 2012 DUI Conviction

18 14. On or about April 7, 2012, at about 12:53 a.m., Stanislaus County Sheriff Patrick  
19 Kimes was working a Modesto Police Department DUI checkpoint. While working the line on  
20 the checkpoint, he contacted the driver of a vehicle, identified as Respondent by his driver's  
21 license. While speaking with Respondent, Sheriff Kimes noticed the odor of alcohol on his  
22 breath and body. He asked if Respondent had been drinking alcohol, and he answered, "I've had  
23 a few." Sheriff Kimes then asked Respondent to step out of the vehicle, so that he could perform  
24 field sobriety tests (FSTs). Sheriff Kimes asked Respondent what he had been drinking, and  
25 Respondent admitted that he had "two to three rum and Cokes, and two to three beers, regular  
26 size."

27 15. Sheriff Kimes observed that Respondent's eyes were watery and somewhat droopy  
28 and his speech was mildly slurred. Sheriff Kimes conducted field sobriety tests on Respondent.

1 He was unable to complete the tests in a satisfactory manner, and based on his poor performance,  
2 Sheriff Kimes concluded that Respondent was too intoxicated to drive safely due to alcohol.

3 16. Respondent completed a breath test. The test results were positive for alcohol in the  
4 amount of .13% /.14%. Respondent chose not to go to the hospital for a blood draw to be  
5 maintained as evidence. He was arrested for violating Vehicle Code section 23152(a) [driving  
6 under the influence of alcohol and/or drug] and Vehicle Code section 23152(b) [driving under the  
7 influence of alcohol with a .08% blood alcohol content or higher.]

8 17. On or about June 5, 2012, a criminal complaint titled *People of the State of California*  
9 *vs. Carl W. D. Cacconie*, case no. 1445511 was filed in Stanislaus County Superior Court. Count  
10 1 charged a misdemeanor violation of Vehicle Code section 23152(a) [driving under the influence  
11 of an alcoholic beverage and/or drug.] Count 2 charged a misdemeanor violation of Vehicle  
12 Code section 23152(b) [driving under the influence of alcohol with a .08% blood alcohol content  
13 or higher.]

14 18. On July 27, 2012, Respondent was convicted upon his plea of nolo contendere to  
15 violating Vehicle Code section 23152(b) [driving with a blood alcohol content of .08% or higher.]  
16 The remaining counts were dismissed. He was sentenced to thirty six months informal probation  
17 under the following terms and conditions: he was ordered to serve 2 days in jail with credit for 1  
18 day served, pay fines; enroll and complete a Level 1 Drinking Driver Program, not to drive a  
19 vehicle with a measurable amount of alcohol in his blood, not to drive unless licensed and  
20 insured, and submit to chemical testing upon request of any peace officer.

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

24 MATTER IN AGGRAVATION

25 20. On or about January 10, 2005, the Board filed Accusation R-1966 against Respondent  
26 based on his October 8, 2004 conviction on his plea of no contest to two counts of Penal Code  
27 section 272(b)(1) [persuade or lure a minor 12 years of age or younger.] In a stipulated decision,  
28

1 Respondent's license was placed on probation for two years with terms and conditions effective  
2 December 18, 2006. On December 18, 2008, Respondent completed probation.

3 PRAYER

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

6 1. Revoking or suspending Respiratory Care Practitioner License Number 21206, issued  
7 to Carl Cacconie;

8 2. Ordering Carl Cacconie to pay the Respiratory Care Board the costs of the  
9 investigation and enforcement of this case, and if placed on probation, the costs of probation  
10 monitoring; and

11 3. Taking such other and further action as deemed necessary and proper.

12  
13 DATED: January 22, 2013

Original signed by Liane Freels for:

14 STEPHANIE NUNEZ  
15 Executive Officer  
16 Respiratory Care Board of California  
17 Department of Consumer Affairs  
18 State of California  
19 *Complainant*

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