

1 EDMUND G. BROWN JR., Attorney General  
of the State of California  
2 PAUL C. AMENT, State Bar No. 60427  
Supervising Deputy Attorney General  
3 ELAINE GYURKO  
Senior Legal Analyst  
4 California Department of Justice  
300 So. Spring Street, Suite 1702  
5 Los Angeles, California 90013  
Telephone: (213) 897-4944  
6 Facsimile: (213) 897-9395

7 Attorneys for Complainant

8  
9 **BEFORE THE**  
**RESPIRATORY CARE BOARD**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**  
11

12 In the Matter of the Accusation Against:  
13 HECTOR E. ARCE  
1671 East G Street #165  
14 Ontario, California 91764  
15 Respiratory Care Practitioner License No. 22505  
16 Respondent.

Case No. R-2067

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

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18 Complainant alleges:

19 PARTIES

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

23 2. On or about August 15, 2002, the Board issued Respiratory Care  
24 Practitioner License Number 22505 to Hector E. Arce (Respondent). This license was in full  
25 force and effect at all times relevant to the charges brought herein and will expire on July 31,  
26 2007, unless renewed.

27 JURISDICTION

28 3. This Accusation is brought before the Board under the authority of the

1 following laws. All section references are to the Business and Professions Code (Code) unless  
2 otherwise indicated.

3           4.       Section 3710 of the Code states: “The Respiratory Care Board of  
4 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter  
5 8.3, the Respiratory Care Practice Act].”

6           5.       Section 3718 of the Code states: “The board shall issue, deny, suspend,  
7 and revoke licenses to practice respiratory care as provided in this chapter.”

8           6.       Section 3750 of the Code states:

9           “The board may order the denial, suspension or revocation of, or the imposition of  
10 probationary conditions upon, a license issued under this chapter, for any of the following  
11 causes:

12           “... ”

13           “(d) Conviction of a crime that substantially relates to the qualifications,  
14 functions, or duties of a respiratory care practitioner. The record of conviction or a  
15 certified copy thereof shall be conclusive evidence of the conviction.

16           “... ”

17           “(j) The commission of any fraudulent, dishonest, or corrupt act which is  
18 substantially related to the qualifications, functions, or duties of a respiratory care  
19 practitioner.

20           “... ”

21           7.       Section 3752 of the Code states:

22           “A plea or verdict of guilty or a conviction following a plea of nolo contendere  
23 made to a charge of any offense which substantially relates to the qualifications,  
24 functions, or duties of a respiratory care practitioner is deemed to be a conviction within  
25 the meaning of this article. The board shall order the license suspended or revoked, or  
26 may decline to issue a license, when the time for appeal has elapsed, or the judgment of  
27 conviction has been affirmed on appeal or when an order granting probation is made  
28 suspending the imposition of sentence, irrespective of a subsequent order under Section

1 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to  
2 enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the  
3 accusation, information, or indictment.”

4 8. Section 490 of the Code states:

5 “A board may suspend or revoke a license on the ground that the licensee has  
6 been convicted of a crime, if the crime is substantially related to the qualifications,  
7 functions, or duties of the business or profession for which the license was issued. A  
8 conviction within the meaning of this section means a plea or verdict of guilty or a  
9 conviction following a plea of nolo contendere. Any action which a board is permitted to  
10 take following the establishment of a conviction may be taken when the time for appeal  
11 has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order  
12 granting probation is made suspending the imposition of sentence, irrespective of a  
13 subsequent order under the provisions of Section 1203.4 of the Penal Code.”

14 9. California Code of Regulations, Title 16, section 1399.370, states:

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

21 “ . . .

22 “(c) Conviction of a crime involving driving under the influence or reckless  
23 driving while under the influence.

24 “ . . . .”

25 COST RECOVERY

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

27 “In any order issued in resolution of a disciplinary proceeding before the board,  
28 the board or the administrative law judge may direct any practitioner or applicant found to

1 have committed a violation or violations of law to pay to the board a sum not to exceed  
2 the 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  
5 include attorney general or other prosecuting attorney fees, expert witness fees, and other  
6 administrative, filing, and service fees.”

7 12. Section 3753.1, subdivision (a) of the Code states:

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

#### 11 FIRST CAUSE FOR DISCIPLINE

##### 12 (Conviction of a Crime)

13 13. Respondent is subject to disciplinary action under sections 3750,  
14 subdivision (d), 3752 and 490 of the Code, and California Code of Regulations, Title 16, section  
15 1399.370, subdivision (c), in that he was convicted of a crime substantially related to the  
16 qualifications, functions or duties of a respiratory care practitioner. The circumstances are as  
17 follows:

18 A. On or about July 18, 2005, in Los Angeles County Superior Court  
19 Complaint No. 5JM05460, Respondent was charged with violating Vehicle Code section  
20 23152, subdivisions (a), driving under the influence of alcohol, a misdemeanor (Count 1),  
21 and subdivision (b), driving with .08% or higher blood alcohol level, a misdemeanor  
22 (Count 2), following the issuance of a Notice to Appear by the California Highway Patrol  
23 on or about June 13, 2005.

24 B. On or about August 4, 2005, Respondent was convicted upon his plea of  
25 guilty to driving with .08% or higher blood alcohol level (Count 2). He was placed on  
26 probation for three years on a number of terms and conditions. The court ordered him to  
27 pay fines and assessments in the total amount of \$1,616.00. Respondent was ordered to  
28 complete a three month first offender alcohol program, and his driving privilege was

1 restricted for 90 days. He was also ordered to complete a youthful offender hospital and  
2 morgue program. Count 1 of the complaint was dismissed.

3 SECOND CAUSE FOR DISCIPLINE

4 (Commission of a Fraudulent, Dishonest, or Corrupt Act)

5 14. Respondent is subject to disciplinary action under Business and  
6 Professions Code section 3750, subdivision (j), in that he committed a fraudulent, dishonest or  
7 corrupt act substantially related to the qualifications, functions, or duties of a respiratory care  
8 practitioner. The circumstances are as follows:

9 A. On or about September 29, 2005, the Board received Respondent's  
10 respiratory care practitioner license renewal application. Respondent answered "No" to  
11 the question regarding whether since he last renewed his license, he had been convicted  
12 of, diverted for, or pled guilty or nolo contendere/no contest to any violation of any law.  
13 On or about September 26, 2005, Respondent signed the license renewal application  
14 declaring under penalty of perjury that the information on the application was true and  
15 correct. He thereafter submitted the license renewal application to the Board. As  
16 Respondent was well aware at the time he signed this license renewal application, his  
17 answer was false by virtue of his conviction for driving with .08% or more blood alcohol  
18 level as set forth in Paragraph 13 above.

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PRAYER

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

1. Revoking or suspending Respiratory Care Practitioner License Number 22505 issued to Hector E. Arce;
2. Ordering Hector E. Arce to pay the Respiratory Care Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring; and
3. Taking such other and further action as deemed necessary and proper.

DATED: March 28, 2007

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