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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 140

11 **VALERIE ANN CADWALLADER**
12 **6624 Woodward Drive**
13 **Magalia, CA 95954**

A C C U S A T I O N

14 **Respiratory Care Practitioner License No.**
15 **22537**

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 August 28, 2002, the Board issued Respiratory Care Practitioner License
23 Number 22537 to Valerie Ann Cadwallader (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 November 30, 2013, unless renewed.

JURISDICTION

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2 3. This Accusation is brought before the Respiratory Care Board (Board), Department of
3 Consumer Affairs, under the authority of the following laws. All section references are to the
4 Business and Professions Code unless otherwise indicated.

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

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

10 6. Section 3750 of the Code states:
11 "The board may order the denial, suspension or revocation of, or the imposition of
12 probationary conditions upon, a license issued under this chapter, for any of the following causes:

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 "(g) Conviction of a violation of any of the provisions of this chapter or of any
17 provision of Division 2 (commencing with Section 500), or violating, or attempting to
18 violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to
19 violate any provision or term of this chapter or of any provision of Division 2 (commencing
20 with Section 500)."

21 7. Section 3750.5 of the Code states:
22 "In addition to any other grounds specified in this chapter, the board may deny, suspend,
23 place on probation, or revoke the license of any applicant or licenseholder who has done any of
24 the following:

25 "(b) Used any controlled substance as defined in Division 10 (commencing with Section
26 11000) of the Health and Safety Code, or any dangerous drug as defined in Article 2
27 (commencing with Section 4015) of Chapter 9 of this code, or alcoholic beverages, to an extent or
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1 in a manner dangerous or injurious to himself or herself, or to others, or that impaired his or her
2 ability to conduct with safety the practice authorized by his or her license.

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

7 8. Section 3752 of the Code states:

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

17 9. California Code of Regulations (CCR), title 16, section 1399.370, states:

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

23 "(c) Commission of an act or conviction of a crime involving driving under the
24 influence or reckless driving while under the influence."

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, the board or
28 the administrative law judge may direct any practitioner or applicant found to have committed a

1 violation or violations of law or any term and condition of board probation to pay to the board a
2 sum not to exceed the costs of the investigation and prosecution of the case. A certified copy of
3 the actual costs, or a good faith estimate of costs where actual costs are not available, signed by
4 the official custodian of the record or his or her designated representative shall be prima facie
5 evidence of the actual costs of the investigation and prosecution of the case."

6 11. Section 3753.7 of the Code states:

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

10 12. Section 3753.1 of the Code states:

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

14 CAUSE FOR DISCIPLINE

15 (Substantially Related Convictions)

16 13. Respondent's license is subject to disciplinary action under code sections 3750(d),
17 3750(g), 3750.5(b), 3750.5(d), 3752, and CCR 1399.370(c) [substantially related conviction] in
18 that she has three substantially-related convictions. The circumstances are as follows:

19 July 27, 2013 Conviction

20 14. On or about July 26, 2013 at approximately 3:30 a.m., Respondent's sister and friend
21 telephoned 911 because they were unable to wake Respondent, and they were concerned for
22 Respondent's ten month old baby in the residence. Fire Department personnel and paramedics
23 responded, and requested assistance from the Butte County Sheriff's Office to address the child
24 welfare issue.

25 Deputy W. Brewton arrived and observed Respondent sitting on a sofa in the residence. He
26 smelled a strong odor of alcohol throughout the residence, and the odor was stronger near
27 Respondent. He talked to Respondent and observed that her speech was slurred, she was
28 unsteady in a seated position and even more so when she stood, and her eyes were red and glassy.

1 Respondent was very agitated, belligerent and was uncooperative during the interview.

2 Respondent informed Deputy Brewton that her mother-in-law had given her a Remington shotgun
3 for protection, that she had recently been placed on probation for driving under the influence of
4 alcohol, and that her probation officer told her that she could not have the gun. Deputy Brewton
5 retrieved the gun and a box of Winchester 3 inch Magnum 12 gauge shotgun shells, and secured it
6 in his patrol vehicle.

7 15. Based on the circumstances and statements by Respondent's sister and friend, Deputy
8 Brewton arrested Respondent for violating Penal Code section 273a(a) [willful cruelty to a child
9 likely to cause great bodily harm]. He contacted a social worker to take custody of the child per
10 Welfare and Institutions Code section 300.

11 16. Deputy Cole responded to the scene, transported Respondent to the County Jail and
12 booked her. He later advised Deputy Brewton that Respondent's blood alcohol content at 6:24
13 a.m. was 0.13%. In Deputy Brewton's training and experience, Respondent's blood alcohol
14 content at the time he responded three hours earlier would have been approximately 0.18%.

15 17. On or about July 29, 2013, a criminal complaint titled *People of the State of*
16 *California vs. Valerie Ann Cadwallader*, case no. CM039318 was filed in Butte County Superior
17 Court. Count 1 charged Respondent with a felony violation of Penal Code section 273a(a) [child
18 endangerment]. Count 2 charged Respondent with a felony violation of Penal Code section
19 29800(a)(1) [possession of a firearm], and Count 3 charged Respondent with a felony violation of
20 Penal Code section 30305(a)(1) [possession of ammunition]. On or about August 27, 2013,
21 Respondent was convicted on her plea of guilty to Count 1, a felony violation of Penal Code
22 section 273a(a) [child endangerment], and she admitted the enhancement charge of violating
23 Vehicle Code section 12022.1.

24 January 11, 2012 Arrest

25 18. On or about January 11, 2012 at approximately 6:40 p.m., Chico Police Officer M.
26 Rodden responded to the scene of a vehicle collision. He saw a vehicle with major damage
27 resting on a guide wire to a power pole on the corner of the intersection. The driver was
28 identified as Respondent. Officer Rodden looked inside the vehicle and observed a bottle of

1 white wine on the center console. The bottle appeared to be nearly empty. Both the driver's side
2 airbag and the passenger side airbag had been deployed.

3 19. Officer Rodden saw medical personnel attending to Respondent, who was lying on
4 the sidewalk about ten feet from the driver's side door. As he stood near her, he smelled a strong
5 odor of alcohol. Respondent repeatedly told medical personnel that she was fine and did not want
6 any help, and he observed that her speech was slurred as she spoke. As she stood, he observed
7 that she could hardly maintain her balance without help. She had no visible injuries.

8 20. Respondent informed the officer that she was driving the vehicle during the collision.
9 She stated that she had not eaten anything that day, and she admitted that she drank three tall Bud
10 Light beers and two whiskey and coke drinks at a bar. She stated that she began drinking at 2:00
11 p.m. that day and continued drinking until she drove to a friend's house, but she could not recall
12 her friend's address. Respondent asked several times for her current location.

13 21. Officer Rodden and Respondent were standing under a streetlight and the sidewalk
14 was flat and dry. Officer Rodden requested that Respondent perform field sobriety tests (FSTs),
15 and asked if she had any injuries. Respondent stated that she was not injured, and the officer
16 asked her to stand with her feet together with her hands at her sides. Respondent did so, but
17 nearly fell. The officer checked Respondent's eyes, and saw that they were bloodshot, red and
18 watery. He explained the FSTs to her but she was unable to perform them satisfactorily. The
19 officer did not perform further testing as he believed Respondent's balance was getting worse as
20 she nearly fell a few times.

21 22. Based on the collision, Respondent's statements, her objective signs of intoxication
22 and her poor performance on the FSTs, Officer Rodden arrested Respondent for violating Vehicle
23 Code section 23152(a) [driving under the influence of alcohol] and Vehicle Code section
24 23152(b) [driving with a blood alcohol content of .08% or higher].

25 23. At the police station, Respondent submitted to breathalyzer testing. Her breath test
26 results at 7:15 p.m. and 7:16 p.m. indicated an alcohol content of .28%/.27% , respectively.

27 24. On or about February 15, 2012, a criminal complaint titled *People of the State of*
28 *California vs. Valerie Ann Cadwallader*, case no. SCR87272 was filed in Butte County Superior

1 Court. Count 1 charged Respondent with a misdemeanor violation of Vehicle Code section
2 23152(a) [driving under the influence of alcohol] and Count 2 charged Respondent with a
3 misdemeanor violation of Vehicle Code section 23152(b) [driving with a blood alcohol content of
4 .08% or higher].

5 February 15, 2012 Arrest

6 25. On or about February 15, 2012, a witness reported that a female (later identified as
7 Respondent) drove her car into the side of a 7/11 store. The witness reported that the woman
8 staggered into the store and she saw the woman leave the store with a twelve pack of beer and
9 that a male passenger drove them away. The witness called the police, then followed the vehicle
10 to a residential address. The witness provided a description of the female driver and the vehicle.
11 When Officer Deshler arrived, Respondent had left the scene.

12 26. Approximately 15 minutes later, Officers Rogers and Tupper saw Respondent driving
13 the reported vehicle out of the same 7/11 store, and conducted a traffic stop based on the
14 witness's description. Respondent drove her vehicle up the curb and onto the sidewalk prior to
15 stopping. The officers observed what appeared to be recent damage to the left rear quarter panel
16 of the vehicle. Officer Tupper spoke to Respondent, and observed that her eyelids were droopy
17 and her eyes were bloodshot. She stated that the boy in the back seat was her son and that she
18 had just picked him up from school. Officer Tupper smelled a strong odor of alcohol on her
19 breath and observed that Respondent's speech was very slurred as she spoke. He asked
20 Respondent to step out of the vehicle.

21 27. Officer Deshler arrived and spoke to Respondent. He observed that Respondent was
22 unable to stand without swaying, and her eyes were bloodshot and watery. Respondent admitted
23 that she had driven to a 7/11 store about an hour earlier and bought beer but did not recall hitting
24 the building. She stated that she was at 7/11 twice that day; the first time for beer without her
25 son, and the second time for cigarettes with her son in the car. Respondent further stated that she
26 had just picked up her son at school and was returning home. Respondent admitted that she drank
27 three beers about two hours prior to the enforcement stop, and stated that she knew she should not
28 be driving, but her boyfriend would not pick up her son from school.

1 2013, in case number SCR87272, Respondent was convicted on her plea of no contest to violating
2 Vehicle Code section 23152(a).

3 32. On July 23, 2013, Respondent was sentenced to four years formal probation under the
4 following terms and conditions: she was ordered to serve 120 days in jail with credit for 2 days,
5 attend and complete a Child Abuse Treatment class and a Multiple Offender Drinking Driver
6 Program (SB-38), install an interlock ignition device for 3 years, her Department of Motor
7 Vehicles driver's license was restricted for 10 months, and she was ordered to pay fines and not
8 to operate a vehicle unless properly licensed and insured.

9 33. Therefore, Respondent's license is subject to discipline based on her substantially
10 related convictions which are in violation of code sections 3750(d), 3750(g), 3752, 3750.5(b),
11 3750.5(d), and CCR 1399.370(c).

12 MATTER IN AGGRAVATION

13 34. To determine the degree of discipline, if any, to be imposed on Respondent,
14 Complainant alleges that on or about May 23, 2002, the Board issued a strong warning letter to
15 Respondent based on her March 27, 1997 conviction on her plea of guilty to violating Penal Code
16 section 148(a) [resisting arrest].

17 PRAYER

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

20 1. Revoking or suspending Respiratory Care Practitioner License Number 22537, issued
21 to Valerie Ann Cadwallader;

22 2. Ordering Valerie Ann Cadwallader to pay the Respiratory Care Board the costs of the
23 investigation and enforcement of this case, and if placed on probation, the costs of probation
24 monitoring;

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

DATED: September 23, 2013

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

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