

BEFORE THE  
RESPIRATORY CARE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Petition for )  
Reconsideration of: ) Case No. 1H 2012 100  
)  
SAAD K. ALJOHER )  
3055 Brunnet Lane )  
Sacramento, CA 95833 )  
)  
Respiratory Care Practitioner )  
License No. RCP 22828 )  
)  
Respondent. )

**ORDER DENYING RECONSIDERATION**

Respondent's petition for reconsideration of the decision dated October 22, 2013, having been fully considered by the Respiratory Care Board, is denied.

The stay order previously issued is dissolved. The new effective date of the attached decision shall be November 1, 2013.

IT IS SO ORDERED this 1<sup>st</sup> day of November, 2013.

By: Original Signed by:  
CHARLES B. SPEARMAN, MSED, RCP, RRT  
PRESIDENT  
RESPIRATORY CARE BOARD

BEFORE THE  
RESPIRATORY CARE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

SAAD K. ALJOHER

Respiratory Care Practitioner License  
No. 22828,

Respondent.

Case No. 1H-2012-100

OAH No. 2013010200

**PROPOSED DECISION**

Administrative Law Judge Diane Schneider, State of California, Office of Administrative Hearings, heard this matter on July 29, 2013, in Oakland, California.

Complainant Stephanie Nunez, Executive Officer of the Respiratory Care Board of California, was represented by Senior Legal Analyst Catherine Santillan.

Respondent Saad K. Aljoher was present and was represented by Edgardo Gonzalez, Attorney at Law.

The record was left open for the parties to submit letter briefs. Complainant's letter brief was timely received and marked for identification as Exhibit 10. Respondent's letter brief was timely received and marked for identification as Exhibit H.

The record closed and the matter was submitted for decision on August 9, 2013.

**FACTUAL FINDINGS**

*Criminal Conviction*

1. Complainant Stephanie Nunez filed the Accusation in her official capacity as Executive Officer, Respiratory Care Board of California (board), Department of Consumer Affairs.

2. On February 10, 2003, the board issued Respiratory Care Practitioner License number 22828 to respondent Saad K. Aljoher. Respondent's license was current at all times relevant to this proceeding, and, unless renewed, will expire on May 13, 2014.

3. On February 7, 2012, a criminal complaint was filed against respondent in the Superior Court of California, County of Yolo. The complaint charged respondent with a violation of Penal Code sections 236 and 237, subdivision (a) (false imprisonment with force and violence), and Penal Code section 243.4, subdivision (e) (sexual battery).

4. On August 1, 2012, pursuant to a negotiated agreement, respondent entered a plea of no contest and was found guilty of violating Penal Code section 242 (battery), and the remaining charges were dismissed. The court placed respondent on court probation for three years, on terms and conditions that included an order that he stay away from the victim and pay fines in the amount of \$1,130. The court also imposed a firearm "Restriction/Prohibition" for 10 years.

5. The facts and circumstances surrounding respondent's conviction are as follows: According to the police report, on the morning of January 30, 2012, an adult female, A.,<sup>1</sup> sought help from court security personnel at the Yolo County Courthouse. A. was put in touch with Yolo County Sheriff's Deputy Olson, who noted that A. was crying<sup>2</sup> when she reported the following: While A. was walking through an alley on her way to the main courthouse, a man she later identified as respondent grabbed her by the shoulder. A. reported that respondent said "you're so pretty I want your number," to which A. replied, "no, I'm married." A. told Deputy Olson that respondent said that he "just want[ed] to have an affair with her. A. further reported to Deputy Olson that she tried to break away from respondent, but respondent restrained her with a "bear-like hug" and then proceeded to grab her right breast and buttock. According to the police report, A. contacted Deputy Olson one day later and reported that she had nightmares about what had occurred and wished that she would have defended herself "better."

On February 3, Deputy Olson met respondent at Vacaville Hospital. Officer Olson told respondent that he was investigating a sexual battery that had occurred near the courthouse on Monday, January 30, 2012. Respondent told Deputy Olson that "he was working and that this was a mistake." Several hours later, after respondent was arrested, he was interviewed by Deputy Nyland. Although respondent initially stated: "I don't know why I'm here now," he gradually discussed the incident with Deputy Nyland.

Respondent initially denied having any physical contact with A., but later admitted that he "may have touched her arm." Although he "sw[ore] to god that's all that happened" respondent later admitted to Deputy Nyland that he had touched A.'s "breast" and "butt." In

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<sup>1</sup> Initials are used to protect the privacy of the victim.

<sup>2</sup> Yolo County Sheriff's Deputy Galvan also observed that A. was upset and crying when she sought assistance.

explaining his conduct, respondent told Deputy Nyland that “the animal side of him came out [and that] he was crazy stupid.”

### *Respondent’s Evidence*

#### *-The Offense*

6. Respondent denies touching A.’s breast or buttock. Respondent testified that shortly before the incident, he was waiting with his teenage son for the traffic court clerk’s window to open, and he began talking with A. He claims that A. was playing Sudhoku on his son’s phone, and she showed respondent and his son games on her phone. During this time he claims that the three of them were “laughing.” (In her statement to police A. stated that although she saw respondent at the traffic court clerk’s office, she did not talk to respondent while they were waiting for the clerk’s window to open.)

7. After respondent and his son finished their business at traffic court, they walked back to respondent’s car. Respondent left his son in the car and told him that he would return in a few minutes. Respondent went back looking for A., and after he spotted her, he testified that he said to A., “I admire you, can I have your phone number.” He further testified that A. replied, “you make me feel good but I can’t.” Respondent testified that after he put his hand on her shoulder and realized she was uncomfortable, he “stopped right away” and apologized.

8. Respondent testified that during his interaction with A, he gave her a friendly hug and nothing more, and for this he apologizes. He further maintains that if he touched A.’s breast or buttocks such contact occurred in the context of the hug.

At hearing respondent recanted his admissions to Deputy Nyland that he had touched A.’s “breast” and “butt.” Respondent testified that he was intimidated by Deputy Nyland because of his experience with brutal law enforcement personnel in Iraq. Respondent testified his fear of police personnel led him to falsely confess to touching A.’s breast and buttock.

9. Respondent’s testimony at hearing regarding the facts and circumstances surrounding his offense lacked credibility and candor.

#### *-Psychological Evaluation by Martin H. Williams, Ph.D.*

10. Martin H. Williams, Ph.D., has practiced in the field of psychology for 27 years. His work includes performing fitness for duty evaluations as well as sanity and competency assessments of criminal defendants. Respondent’s attorney retained Dr. Williams to evaluate respondent’s fitness to practice respiratory care. Dr. Williams met with respondent for two hours and reviewed a variety of documents, including those generated in connection with respondent’s criminal offense.

11. In respondent's discussions with Dr. Williams about his behavior towards A., he denied grabbing A.'s breast or buttock. He recounted to Dr. Williams that when he lived in Iraq, police officers acted out violently towards Iraqi citizens. Respondent told Dr. Williams that he falsely admitted to Deputy Nyland that he touched A.'s breast and buttock because he was afraid of police officers and wanted to put an end to the interrogation. Dr. Williams found respondent's explanation of the facts and circumstances surrounding his offense "highly credible."

12. Dr. Williams concluded that respondent was fit to practice as a respiratory therapist and that he posed no threat to the public. In his report Dr. Williams states:

I have concluded that Mr. Aljoher is in complete control of his emotions, thoughts and behaviors and is interpersonally unimpaired. Thus, he possesses the requisite mental and emotional capacity to serve as a Respiratory Care Practitioner, even with patients who are impaired or unconscious and who would be unable to defend themselves.

Dr. Williams' conclusion is unpersuasive in light of the prior finding that respondent's testimony at hearing lacked credibility and candor. (Factual Finding 9.)

*-Respondent's Background, Work and Family*

13. Respondent is 49 years old. He was born and raised in Iraq and came to the United States about 13 years ago. Prior to immigrating to the United States, he worked in the Iraqi army as a medical doctor.

14. Respondent has worked steadily as a respiratory therapist for over 10 years. Respondent has been a member of the National Board for Respiratory Care since 2003, and he hopes to obtain a master's degree in respiratory care in the future. Respondent takes great pride in his work, which involves intubating adults and infants. Earlier this year he received a "bronze" certificate from his employer, North Bay Healthcare, thanking him for assisting hospital staff with providing respiratory care to an infant. His supervisor, Rebecca A. Prenton, submitted a letter in support of respondent. Prenton describes respondent as a "professional, reliable and trustworthy" practitioner. She also states that she has never received any complaints regarding respondent's work from medical or nursing staff.

Respondent submitted three annual evaluations from his supervisors at North Bay Health Care. The evaluations, which are dated December 2010, 2011, and 2012, consistently find that respondent has met performance standards. Respondent's 2011 evaluation states that he "can be counted on to perform well in emergency situations [and] he assists co-workers who show signs of uncertainty." The evaluator commented that respondent is a "great source of information as it pertains to not only Respiratory Care but also pathophysiology."

15. Respondent is married and has three children. He apologized to his wife for his behavior, and she forgave him.

*Other Disciplinary Considerations*

16. On October 6, 2008, the board issued Citation Number C-08-0384 to respondent and ordered him to pay an administrative penalty in the amount of \$250. The Citation was based upon respondent's conviction of violating Vehicle Code section 23013.5 (reckless driving involving alcohol). According to the police report filed in connection with respondent's offense, which was initially charged as drunk driving, respondent was stopped around 2:00 a.m. after a police officer observed the car driven by respondent swerve over the painted lines on the right and left side of respondent's lane. The police officer also observed an illuminated cellular telephone light coming from the driver's side of the vehicle.

After respondent was stopped by the police officer, he denied that he had been drinking alcohol that evening. The officer, however, smelled an odor of alcohol coming from respondent. Respondent also denied that he had been talking on his cellular phone while he was driving. (Respondent later stated to the police officer that he had consumed one beer about eight hours prior to the time that he was stopped.)

Respondent told the police officer that he was driving to the Jackson Rancheria Casino. During his interview with Dr. Williams, however, respondent told the doctor that he had driven after consuming alcohol because his nephew was very ill, and he had to drive his brother home. Respondent's statements to the police after he was stopped for DUI and his explanation to Dr. Williams regarding this offense raise concerns regarding respondent's credibility and candor.

*Cost Recovery*

17. Complainant has incurred \$3,330 in Attorney General costs in its investigation and prosecution of this matter. In the absence of evidence to the contrary, these costs are found to be reasonable.

18. Respondent takes home about \$5,500 to \$6,000 per month from his work as a respiratory therapist. He supports his family, which consists of his wife and three children. Respondent's monthly expenses are over \$6,000.

LEGAL CONCLUSIONS

1. Business and Professions Code section 3750, subdivision (d), provides that a license to practice respiratory care may be disciplined if the licensee has been convicted of a crime substantially related to the qualifications, functions or duties of a respiratory care practitioner. A crime is substantially related to the qualifications, functions or duties of a respiratory care practitioner if it evidences a present or potential unfitness of a licensee to

safely perform licensed activities. (Cal. Code Regs., tit. 16, § 1399.370.) The crime of battery, defined as “any willful and unlawful use of force or violence upon the person of another,”<sup>3</sup> evidences a potential unfitness on the part of respondent to safely perform licensed activities and is substantially related to the qualifications, functions or duties of a respiratory care practitioner. As such, cause for discipline exists pursuant to Business and Professions Code section 3750, subdivision (d).

2. Complainant also contends that cause for discipline exists under Business and Professions Code section 3752.6, which provides, in pertinent part, that “a crime involving sexual misconduct or attempted sexual misconduct . . . shall be considered a crime substantially related to the qualifications, functions or duties of a respiratory care therapist.” The crime to which respondent pled no contest was simple battery, and not sexual battery. Insofar as the elements of simple battery do not involve sexual misconduct, cause for discipline under Business and Professions Code section 3752.5 does not exist.

### *Disciplinary Determination*

3. In determining the appropriate penalty, public safety is the board’s highest priority. It is respondent’s burden to prove that he is rehabilitated from his misconduct to the extent that he can be trusted to perform licensed activities in a manner consistent with public safety. Public safety concerns are particularly of concern in the instant case in that respondent’s work requires him to have physical contact with vulnerable patients. At the outset, it is noted that respondent must make a strong showing that he is safe to practice because his offense occurred recently and he remains on criminal probation for two more years.

Had respondent been open and honest regarding the facts and circumstances surrounding his offense, he would have been a good candidate for probation. Such is not the case here. Respondent’s lack of candor at hearing regarding the facts and circumstances surrounding his battery conviction raises serious questions about his ability to safely perform licensed activities. Because respondent’s testimony at hearing was not credible, his assurances that he will not engage in unwanted physical contact with his patients is not reliable. Against this background it is difficult, if not impossible, to find that respondent can be trusted to discharge his duties as a respiratory therapist in a manner consistent with public safety. Respondent’s lack of candor regarding the facts and circumstances surrounding his DUI conviction is also taken into account in making this disciplinary determination.

### *Cost Recovery*

4. Business and Professions Code section 3753.5 provides that a practitioner found to have committed a violation of law may be ordered to reimburse the board an amount not to exceed the costs of investigation and prosecution of the matter. By reason of

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<sup>3</sup> Penal Code section 242.

the matters set forth in Legal Conclusion 1, cause exists to require respondent to pay cost recovery.

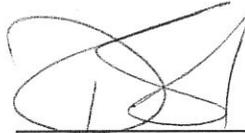
5. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the Supreme Court enumerated several factors that a licensing board must consider in assessing costs. The board must not assess the full costs of investigation and enforcement when to do so would unfairly penalize a respondent who has committed some misconduct, but who has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty; the board must consider a respondent's subjective good faith belief in the merits of his or her position and whether the respondent has raised a colorable challenge; and the board must consider a respondent's ability to pay.

In the instant case, a reduction of costs is warranted because respondent presented evidence that he has limited financial resources to pay the board's costs. Accordingly, it is determined that cause exists to reduce the board's cost recovery to the sum of \$2,200. This represents a reduction of \$1,100 from the amount requested by complainant.

ORDER

1. Respiratory Care Practitioner License number 22828 issued to respondent Saad K. Aljoher is revoked.
2. Respondent is ordered to reimburse the board the sum of \$2,200 for its investigative and prosecutorial costs.

DATED: September 9, 2013



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DIANE SCHNEIDER  
Administrative Law Judge  
Office of Administrative Hearings