

1 EDMUND G. BROWN JR.
Attorney General of California
2 JOSE R. GUERRERO
State Bar No. 97276
3 Supervising Deputy Attorney General
CATHERINE E. SANTILLAN
4 Senior Legal Analyst
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-5579
6 Facsimile: (415) 703-5480
Attorneys for Complainant

7
8 **BEFORE THE**
RESPIRATORY CARE BOARD
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the First Amended Accusation
11 Against:

Case No. 1H 2008 729

12 **MAURICIO CHAVEZ**
13 **2525 Coventry**
Clovis, CA 93611

FIRST AMENDED
A C C U S A T I O N

14
15 **Respiratory Care Practitioner License**
No. 23601

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

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

22 2. On or about May 18, 2004, the Respiratory Care Board issued Respiratory Care
23 Practitioner License Number 23601 to Mauricio Chavez (Respondent). The Respiratory Care
24 Practitioner License was in full force and effect at all times relevant to the charges brought herein
25 and will expire on October 31, 2010, unless renewed.
26
27
28

JURISDICTION

1
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 "(f) Negligence in his or her practice as a respiratory care practitioner.

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

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

22 "(p) A pattern of substandard care."

23 7. Section 3755 of the Code states:

24 "The board may take action against any respiratory care practitioner who is charged with
25 unprofessional conduct in administering, or attempting to administer, direct or indirect respiratory
26 care. Unprofessional conduct includes, but is not limited to, repeated acts of clearly
27 administering directly or indirectly inappropriate or unsafe respiratory care procedures, protocols,
28 therapeutic regimens, or diagnostic testing or monitoring techniques, and violation of any

1 provision of Section 3750. The board may determine unprofessional conduct involving any and
2 all aspects of respiratory care performed by anyone licensed as a respiratory care practitioner."

3 8. California Code of Regulations, title 16, section 1399.370, states:

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

9 "(a) Violating or attempting to violate, directly or indirectly, or assisting or
10 abetting the violation of or conspiring to violate any provision or term of the Act."

11 COST RECOVERY

12 9. Section 3753.5, subdivision (a) of the Code states:

13 "In any order issued in resolution of a disciplinary proceeding before the board, the board or
14 the administrative law judge may direct any practitioner or applicant found to have committed a
15 violation or violations of law or any term and condition of board probation to pay to the board a
16 sum not to exceed the costs of the investigation and prosecution of the case. A certified copy of
17 the actual costs, or a good faith estimate of costs where actual costs are not available, signed by
18 the official custodian of the record of his or her designated representative shall be prima facie
19 evidence of the actual costs of the investigation and prosecution of the case."

20 10. Section 3753.7 of the Code states:

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

24 11. Section 3753.1 of the Code states:

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

28

1 FIRST CAUSE FOR DISCIPLINE

2 (Negligence)

3 12. Respondent is subject to disciplinary action under code section 3750(f) [negligence]
4 in that he demonstrated negligence in the respiratory treatment he provided to Patients D.E. and
5 L.B. in September 2008. The circumstances are as follows:

6 PATIENT D.E.

7 13. From July 2007 through November 2008, Respondent was employed as a respiratory
8 care practitioner at Mercy Medical Center in Merced, California. On or about September 6
9 through September 9, 2008, Respondent was assigned to provide respiratory treatment to Patient
10 D.E., a 73 year old female who had a history of severe obstructive sleep apnea syndrome. She
11 was admitted to the hospital for pulmonary embolism.

12 A. On September 6, 2008, Dr. Patel, M.D. wrote an order for "CPAP at 8 cm via nasal
13 mask while sleeping" for Patient D.E.. On September 6, 2008, Respondent did not provide the
14 ordered treatment to Patient D.E., and did not make an entry in Patient D.E.'s chart that he did not
15 provide the treatment or a reason for failing to provide the ordered treatment.

16 B. On September 7, 2008, Dr. Patel wrote a second order for "CPAP at night while
17 sleeping" for Patient D.E.. On September 7, 2008, Respondent did not provide the ordered
18 treatment to Patient D.E., and did not make an entry in Patient D.E.'s chart that he did not provide
19 the treatment or a reason for failing to provide the ordered treatment.

20 C. On September 8, 2008, R.C., Patient D.E.'s registered nurse, wrote a chart note that
21 she had contacted Respondent regarding the outstanding order for CPAP, and that Respondent
22 stated to her, "The patient is not going to have CPAP and Dr. Patel is aware."

23 D. On September 9, 2008, Dr. Patel learned that Respondent had not provided CPAP
24 therapy to Patient D.E. on September 6, 7, and 8, 2008. Dr. Patel directed Patient D.E.'s nurse to
25 file an incident report regarding Respondent's failure to follow doctor's orders. When questioned
26 about this incident, Respondent stated that the patient had refused CPAP but he did not chart that
27 the patient had refused in the medical records for September 6, 7 and 8, 2008.

28

PATIENT L.B.

1
2 14. On or about September 8, 2008, Patient L.B., an 88 year old male, arrived at Mercy
3 Medical Center Emergency Department via ambulance. L.B. complained of extreme shortness of
4 breath, and had a history of chronic obstructive pulmonary disorder (COPD). Prior to the
5 emergency visit, L.B. used oxygen at home on an as-needed basis, and he used BIPAP at night for
6 obstructive sleep apnea. He had arrived in the emergency room in severe respiratory distress.
7 Other respiratory therapists provided respiratory treatment to L.B. after which he was reported to
8 breathe easier.

9 15. On September 8, 2008, at 9:30 p.m., Respondent provided a respiratory treatment to
10 L.B., however, Respondent's chart note was incomplete in that he omitted important assessment
11 information by failing to record breath sounds and failing to comment on the patient's condition.

12 16. On September 8, 2008 at about 11:30 p.m., L.B. was admitted to the hospital and Dr.
13 Patel ordered "BIPAP at a setting of 12/6." The monitor tech placed the order and called
14 Respondent three times. Respondent placed the equipment in the patient's room but did not
15 initiate the therapy on the patient. According to the nurse's notes, Respondent was informed
16 several times that the patient needed BIPAP but he failed to provide the treatment.

17 17. On September 9, 2008 at 3:50 a.m., Respondent drew an arterial blood gas (ABG) test
18 on L.B. The results showed critical values which indicated impending respiratory failure. On
19 September 9, 2008 at 6:50 a.m., J.C., L.B.'s nurse, charted that she paged Dr. Patel and informed
20 him of the ABG results. Dr. Patel asked if the patient was on BIPAP, and the nurse informed Dr.
21 Patel that she had informed Respondent three times to start BIPAP, but he had not initiated the
22 therapy. The nurse charted that Dr. Patel directed her to file an incident report based on
23 Respondent's failure to follow doctor's orders.

24 18. Due to Respondent's failure to follow doctor's orders and provide the BIPAP-ordered
25 therapy and respondent's failure to closely monitor the patient, L.B. was transferred to the critical
26 care unit. After a few hours in intensive care, L.B.'s condition stabilized.

27 19. Respondent's failure to accurately and completely chart the respiratory treatment he
28 provided to Patient L.B. at 3:30 a.m. on September 9, 2008 and failure to follow doctor's orders

1 by not providing CPAP treatment to Patient A. constitutes negligence in violation of code section
2 3750(f).

3 SECOND CAUSE FOR DISCIPLINE

4 (Dishonesty)

5 20. Paragraphs 13 through 18 are incorporated herein.

6 21. Respondent's statement to Nurse R.C. on September 8, 2008 that Dr. Patel was aware
7 that Patient D.E. had refused CPAP treatment when in fact, Respondent had not informed Dr.
8 Patel of the patient's refusal, is a dishonest statement in violation of code section 3750(j) and
9 CCR 1399.370(a).

10 THIRD CAUSE FOR DISCIPLINE

11 (Negligence; Pattern of substandard care)

12 MEDICATION ADMINISTRATION RECORDS (MAR)

13 22. On September 8, 2008, Respondent was assigned to provide respiratory treatments to
14 fifteen patients. Respondent failed to sign and complete the Medication Administration Records
15 (MARs) for ten patients, which would document the medications he administered to the patients.

16 23. Respondent's failure to sign and complete the MARs for ten patients is negligence in
17 violation of code section 3750(f), and a pattern of substandard care in violation of code section
18 3750(p).

19 FOURTH CAUSE FOR DISCIPLINE

20 (Unprofessional conduct)

21 24. Paragraphs 13 through 22 are incorporated herein.

22 25. Respondent's acts as described hereinabove constitute unprofessional conduct in
23 violation of code section 3755.

24 PRAYER

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

27 1. Revoking or suspending Respiratory Care Practitioner License Number 23601, issued
28 to Mauricio Chavez;

1 2. Ordering Mauricio Chavez to pay to the Respiratory Care Board the costs of the
2 investigation and enforcement of this case, and if placed on probation, the costs of probation
3 monitoring;

4 3. Taking such other and further action as deemed necessary and proper.
5

6 DATED: 7/20/11

Stephanie Nunez for
STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
Department of Consumer Affairs
State of California
Complainant

11 SF2010202067
12 20342239.doc