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

12 In the Matter of the Second Amended
Accusation Against:

Case No. 1H-2009-721

SECOND AMENDED ACCUSATION

13 **MELISSA A. ADAMS, R.C.P.**
14 **P.O. Box 878**
Highland, CA 92346

15 **Respiratory Care Practitioner License No.**
16 **24691**

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

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

24 2. On or about September 26, 2005, the Respiratory Care Board issued
25 Respiratory Care Practitioner License Number 24691 to MELISSA A. ADAMS, R.C.P.
26 (hereinafter "Respondent"). The Respiratory Care Practitioner License was in full force and
27 effect at all times relevant to the charges brought herein and will expire on November 30, 2012,
28 unless renewed.

JURISDICTION

1
2 3. This Second Amended Accusation is brought before the Respiratory Care
3 Board (Board), Department of Consumer Affairs, under the authority of the following laws. All
4 section references are to the Business and Professions Code (Code) unless otherwise indicated.

5 4. Section 3710 of the Code states, in pertinent part:

6 “The Respiratory Care Board of California, hereafter referred to as the board,
7 shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care
8 Practice Act].”

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

11 6. Section 3750.5 of the Code states:

12 “In addition to any other grounds specified in this chapter, the board may
13 deny, suspend, or revoke the license of any applicant or license holder who has
14 done any of the following:

15 “(a) Obtained, possessed, used, or administered to himself or herself in violation of
16 law, or furnished or administered to another, any controlled substances as defined in
17 Division 10 (commencing with Section 11000) of the Health and Safety Code, or any
18 dangerous drug as defined in Article 2 (commencing with Section 4015) of Chapter 9,
19 except as directed by a licensed physician and surgeon, dentist, podiatrist, or other
20 authorized health care provider.

21 “(b) Used any controlled substance as defined in Division 10 (commencing with
22 Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Article
23 2 (commencing with Section 4015) of Chapter 9 of this code, or alcoholic beverages, to an
24 extent or in a manner dangerous or injurious to himself or herself, or to others, or that
25 impaired his or her ability to conduct with safety the practice authorized by his or her
26 license.

27 “...”

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1 7. California Code of Regulations (CCR), title 16, section 1399.370, states, in
2 pertinent part:

3 “For the purposes of denial, suspension, or revocation of a license, a crime or
4 act shall be considered to be substantially related to the qualifications, functions or
5 duties of a respiratory care practitioner, if it evidences present or potential
6 unfitness of a licensee to perform the functions authorized by his or her license or
7 in a manner inconsistent with the public health, safety, or welfare. Such crimes or
8 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 “...

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

14 “...”

15 8. Section 3750 of the Code states:

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

19 “...

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

23 “...

24 “(f) Negligence in his or her practice as a respiratory care practitioner.

25 “(g) Conviction of a violation of any of the provisions of this chapter or of
26 any provision of Division 2 (commencing with Section 500), or violating, or attempting to
27 violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to

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1 violate any provision or term of this chapter or of any provision of Division 2
2 (commencing with Section 500).

3 “...
4

“(p) A pattern of substandard care.”

5 **COST RECOVERY**

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

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

16 10. Section 3753.7 of the Code states:

17 “For purposes of the Respiratory Care Practice Act, costs of prosecution shall
18 include attorney general or other prosecuting attorney fees, expert witness fees,
19 and other administrative, filing, and service fees.

20 11. Section 3753.1 of the Code states, in pertinent part:

21 “(a) An administrative disciplinary decision imposing terms of probation may
22 include, among other things, a requirement that the licensee-probationer pay the
23 monetary costs associated with monitoring the probation.”

24 **FIRST CAUSE FOR DISCIPLINE**

25 (Possession and Use of a Controlled Substance)

26 12. Respondent is subject to disciplinary action under section 3750.5, subdivision
27 (a), and CCR, title 16, section 1399.370, subdivision (a), in that respondent possessed and used a
28 controlled substance, to wit, cocaine. The circumstances are as follows:

1 A. On or about November 22, 2009, Officer M.F. responded to a call at the BS Inn
2 on Balboa Blvd. in Newport Beach, California regarding a loud party in room No. 100. The
3 Inn’s manager informed Officer M.F. that there were approximately 10 people in the room
4 and that they were yelling and screaming. Officer M.F., while approaching the room, heard
5 loud screaming from approximately 25 yards away.

6 B. Officer M.F. knocked on the door several times and announced himself as a
7 police officer but there was no response from the occupants. After approximately ten more
8 seconds of knocking, the door was opened and Officer M.F. observed three individuals in
9 the front room. When Officer M.F. asked where everyone else was, he was told that there
10 was no one else in the room but that he could come in and look around if he wanted to.
11 Officer J.D. also arrived on the scene.

12 C. Upon entering the room, Officer M.F. observed a “line” of what he recognized
13 to be cocaine, a rolled dollar bill, and respondent’s California driver license on top of the
14 end table next to the couch. Officer M.F. and Officer J.D. walked to the rear bedroom and
15 discovered five additional individuals, including respondent who was hiding in the closet.
16 Respondent and the others were asked to join the rest of the group in the front room. When
17 questioned, respondent denied that the substance on the table which field tested positive for
18 cocaine belonged to her. Respondent also denied knowing why her driver license was on
19 the table and stated that she did not even have a purse.

20 D. Officer B.S., who had also arrived on the scene, discovered a purple purse
21 directly beneath the end table which the cocaine was on. Respondent looked at the purse
22 and admitted that it belonged to her, and gave the officers permission to search it. Upon
23 opening it, Officer B.S. discovered a “MAC” make-up compact which contained a small
24 zip-loc baggie with a white solid substance that field tested positive for cocaine. A credit
25 card with respondent’s name on it was also found inside the purse. When asked,
26 respondent admitted that the make-up compact belonged to her. Respondent, however,
27 denied that the cocaine found in her purse belonged to her but would not tell the officers
28 who it belonged to. Respondent also stated she believed someone may have taken her

1 driver license out of her purse.

2 E. When Officer M.F. asked respondent the last time she used cocaine, she
3 indicated that she had used cocaine “a week ago,” and that she had snorted approximately
4 two lines of cocaine this particular night before going out for the evening. Respondent was
5 transported to the Newport Beach Police Department where she was booked.

6 F. On or about December 14, 2009, felony complaint, Case No. 09HF2139, was
7 filed against respondent. On or about February 25, 2010, criminal Case No. 09HF2139
8 against respondent was dismissed.

9 **SECOND CAUSE FOR DISCIPLINE**

10 (Use of a Controlled Substance to the Extent or in a Manner Dangerous or Injurious to Herself or
11 Others, or that Impairs Her Ability to Safely Practice as a Respiratory Care Practitioner)

12 13. Respondent has further subjected her Respiratory Care Practitioner License No.
13 24691 to disciplinary action under sections 3750.5, subdivisions (b), of the Code, and CCR, title
14 16, section 1399.370(a), in that she used a controlled substance, to wit, cocaine, to the extent or in
15 a manner dangerous or injurious to herself or others, or that impairs her ability to safely practice
16 as a Respiratory Care Practitioner, as more particularly described in paragraph 12, above, which
17 is incorporated by reference as if fully set forth herein.

18 **THIRD CAUSE FOR DISCIPLINE**

19 (Conviction of a Crime that Substantially Relates to the Qualifications, Functions,
20 or Duties of a Respiratory Care Practitioner)

21 14. Respondent has further subjected her Respiratory Care Practitioner License No.
22 24691 to disciplinary action under section 3750, as defined by section 3750, subdivision (d), and
23 CCR, title 16, section 1399.370(c), in that she has been convicted of crimes substantially related
24 to the qualifications, functions or duties of a respiratory care practitioner, as more particularly
25 alleged hereinafter:

26 15. On or about September 19, 2011, Respondent was arrested for violations of:

27 A. Vehicle code section 23152, subdivision (a), driving under the influence of
28 alcohol; and

1 B. Vehicle code section 23152, subdivision (b), driving under the influence with
2 0.08% or higher blood alcohol.

3 16. On or about November 17, 2011, in the San Bernardino Superior Court case
4 entitled, *The People of the State of California vs. Melissa Alene Adams*, Case No. TSB1103086,
5 Respondent was charged with:

6 A. Count 1: Vehicle code section 23152, subdivision (a), driving under the
7 influence of alcohol; and

8 B. Count 2: Vehicle code section 23152, subdivision (b), driving under the
9 influence with 0.08% or higher blood alcohol.

10 17. On or about January 3, 2012, Respondent pled *nolo contendere* to Count 1 and
11 Count 2 was dismissed.

12 18. On or about January 3, 2012, Respondent was convicted of Count 1, driving
13 under the influence of alcohol, in violation of Vehicle code section 23152, subdivision (a).
14 Respondent was sentenced to three years probation, and one day of custody in county jail, fines
15 and restitution, among other terms.

16 **FOURTH CAUSE FOR DISCIPLINE**

17 (Negligence)

18 19. Respondent has further subjected her Respiratory Care Practitioner License No.
19 24691 to disciplinary action under section 3750, as defined by section 3750, subdivision (f), of
20 the Code, in that respondent was negligent in her care and treatment of multiple patients. The
21 circumstances are as follows:

22 A. In or about July, 2009, respondent began her employment at RC Hospital as a
23 respiratory therapist.

24 B. During the night shift¹ on or about March 3-4, 2010, respondent was assigned
25 to patients J.M., R.L., S.M., D.B., E.P., D.D., and B.L. These patients required breathing

26 _____
27 ¹ 12-hour shift from 6:00 p.m. to 6:30 a.m.
28

1 treatments during the night shift. Patients J.M. and D.D. were on BIPAP (Bi-level Positive
2 Airway Pressure)² therapy. Patients R.L., S.M., and D.B. were on Albuterol Sulfate³ every four
3 hours, and patient B.L. was on Albuterol Sulfate and Ipratropium Bromide (Atrovent).⁴ Patient
4 E.P. was on Levalbuterol (Xopenex)⁵ every four hours.

5 C. During the night shift on or about March 4-5, 2010, respondent was assigned to
6 patient B.L. who required breathing treatments and was on Fluticasone/Salmeterol 250/50
7 (Advair Diskus)⁶ every 12 hours.

8 D. During the evening shift⁷ on or about March 5, 2010, respondent was assigned
9 to patients G.P. and B.B. These patients required breathing treatments during the evening shift.
10 Patient G.P. was on a ventilator which required a ventilator check every two hours, and patient
11 B.B. was on hand held nebulizer (HHN) treatments and was scheduled to receive chest physical
12 therapy (CPT)⁸ via a vest⁹ three times a day.

13 E. During the night shift on or about March 11-12, 2010, respondent was assigned
14 to patients I.K., L.R., A.B., C.C., G.D., J.C., and E.S. These patients required breathing
15 treatments during the night shift. Patient I.K. was on Fluticasone/Salmeterol 500/50 (Advair)

16 ² BIPAP provides two levels of pressure: inspiratory positive airway pressure and a lower
17 expiratory positive airway pressure for easier exhalation.

18 ³ Albuterol Sulfate is a bronchodilator.

19 ⁴ Ipratropium Bromide (Atrovent) is used to prevent bronchospasm, or narrowing airways
in the lungs, in patients with bronchitis, emphysema, or chronic obstructive pulmonary disease.

20 ⁵ Levalbuterol (Xopenex) is a bronchodilator. It works by relaxing muscles in the airways
21 to improve breathing.

22 ⁶ Advair Diskus is a long-acting corticosteroid and bronchodilator combination in powder
23 form. It works by reducing inflammation and widening the airways in the lungs to help one
breathe more easily.

24 ⁷ Respondent worked a partial shift from 6:00 p.m. to 10:30 p.m.

25 ⁸ Chest physical therapy (CPT) is the term for a group of treatments designed to improve
26 respiratory efficiency, promote expansion of the lungs, strengthen respiratory muscles, and
eliminate secretions from the respiratory system.

27 ⁹ The vest is a device that utilizes an air-pulse generator and an inflatable vest to create
28 high-frequency chest wall oscillation which has been found to loosen and mobilize pulmonary
secretions.

1 MDI.¹⁰ Patients L.R., A.B., G.D., J.C., and E.S. were on Levalbuterol (Xopenex). Patient G.D.
2 was also on 400 mg. Mucomyst¹¹ every six hours, and patient J.C. was on chest physical therapy
3 every six hours. Patient C.C. was on a prescribed breathing treatment.

4 20. Respondent committed negligence in her care and treatment of patients J.M.,
5 R.L., S.M., D.B., E.P., D.D., B.L., G.P., B.B., I.K., L.R., A.B., C.C., G.D., J.C., and E.S., which
6 included, but was not limited to, the following:

7 (a) During the night shift on or about March 3-4, 2010, respondent failed to assess
8 and document every 2-4 hours patient J.M.'s BIPAP therapy.

9 (b) During the night shift on or about March 3-4, 2010, respondent failed to
10 document that she gave patient R.L. the 03:00 a.m. treatment of 2.5 mg Albuterol Sulfate
11 which was ordered to be given every 4 hours.

12 (c) During the night shift on or about March 3-4, 2010, respondent failed to
13 document that she gave patient S.M. the 03:00 a.m. treatment of 2.5 mg Albuterol Sulfate
14 which was ordered to be given every 4 hours.

15 (d) During the night shift on or about March 3-4, 2010, respondent failed to
16 document that she gave patient D.B. the 03:00 a.m. treatment of 2.5 mg Albuterol Sulfate.

17 (e) During the night shift on or about March 3-4, 2010, respondent failed to
18 document that she started a new order for 0.63 mg. Levalbuterol (Xopenex) which was
19 ordered to be given every 4 hours to patient E.P.

20 (f) During the night shift on or about March 3-4, 2010, respondent failed to assess
21 and document every 2-4 hours patient D.D.'s BIPAP therapy.

22 (g) During the night shift on or about March 3-4, 2010, respondent failed to
23 administer the 03:00 a.m. breathing treatment of 2.5 mg Albuterol Sulfate and 0.5 mg/2.5
24 mg. Ipratropium Bromide to patient B.L.

25 _____
26 ¹⁰ Fluticasone/Salmeterol (Advair) MDI is a corticosteroid and bronchodilator
27 combination used to treat and prevent or decrease the symptoms of asthma and chronic lung
28 disease.

¹¹ Acetylcysteine (Mucomyst) is a medicine that destroys or dissolves mucus.

1 (h) During the night shift on or about March 4-5, 2010, respondent administered to
2 patient B.L. the prescribed breathing treatment of Fluticasone/Salmeterol 250/50 (Advair
3 Diskus) one and one-half hour before the medication was due.

4 (i) During the evening shift on or about March 5, 2010, respondent failed to
5 document that she checked patient G.P.'s ventilator every two hours as ordered.

6 (j) During the evening shift on or about March 5, 2010, respondent failed to
7 administer a CPT treatment to patient B.B. which was due shortly after, or during the time
8 the hand-held nebulizer (HHN) was administered.

9 (k) During the night shift on or about March 11-12, 2010, respondent failed to
10 administer the 2100 p.m. breathing treatment of Fluticasone/Salmeterol 250/50 MDI (Advair)
11 to patient I.K.

12 (l) During the night shift on or about March 11-12, 2010, respondent failed to
13 administer the 23:00 p.m. breathing treatment of 0.31 mg. Levalbuterol HCl to patient L.R.

14 (m) During the night shift on or about March 11-12, 2010, respondent failed to
15 administer the 03:00 a.m. breathing treatment of 1.25 mg. Levalbuterol HCl (Xopenex) to
16 patient A.B.

17 (n) During the night shift on or about March 11-12, 2010, respondent failed to
18 timely administer a breathing treatment to patient C.C. when she administered the breathing
19 treatment at 23:22 p.m. that was due at 19:00 p.m.

20 (o) During the night shift on or about March 11-12, 2010, respondent failed to
21 document the reason why she did not administer the breathing treatment of 1.25 mg
22 Levalbuterol and 400 mg. Mucomyst to patient G.D.

23 (p) During the night shift on or about March 11-12, 2010, respondent failed to
24 timely administer a breathing treatment of 1.25 mg Levalbuterol and 400 mg. Mucomyst to
25 patient G.D. when she administered the breathing treatment at 23:30 p.m. that was due at
26 19:00 p.m.

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1 (q) During the night shift on or about March 11-12, 2010, respondent failed to
2 administer the 05:30 a.m. breathing treatment of 1.25 mg Levalbuterol and 400 mg.
3 Mucomyst to patient G.D.

4 (r) During the night shift on or about March 11-12, 2010, respondent administered
5 a breathing treatment to patient J.C. at 19:35 p.m. but noted in the billing record that the
6 treatment was given at 23:15 p.m.

7 (s) During the night shift on or about March 11-12, 2010, respondent failed to
8 administer the 05:00 a.m. breathing treatment of 0.63 mg. Levalbuterol and CPT treatment
9 to patient J.C.

10 (t) During the night shift on or about March 11-12, 2010, respondent failed to
11 document the breathing treatment she administered at 23:03 p.m. to patient E.S. but billed
12 for the treatment.

13 (u) During the night shift on or about March 11-12, 2010, respondent failed to
14 administer the 05:00 a.m. breathing treatment of 1.25 mg. Levalbuterol to patient E.S.

15 **FIFTH CAUSE FOR DISCIPLINE**

16 (A Pattern of Substandard Care)

17 21. Respondent has further subjected her Respiratory Care Practitioner License No.
18 24691 to disciplinary action under section 3750, as defined by section 3750, subdivision (p), of
19 the Code, in that respondent engaged in a pattern of substandard care, as more particularly
20 described in paragraphs 19 and 20, above, which are incorporated by reference as if fully set forth
21 herein.

22 **SIXTH CAUSE FOR DISCIPLINE**

23 (Violation of a Provision or Provisions of the Respiratory Care Practice Act)

24 22. Respondent has further subjected her Respiratory Care Practitioner License No.
25 24691 to disciplinary action under section 3750, as defined by section 3750, subdivision (g), of
26 the Code, in that respondent violated a provision or provisions of the Respiratory Care Practice
27 Act, as more particularly described in paragraphs 12 through 21, above, which are incorporated
28 by reference as if fully set forth herein.

1 **DISCIPLINE CONSIDERATIONS**

2 23. To determine the degree of discipline, if any, to be imposed on respondent,
3 Complainant alleges that when respondent submitted her application for licensure as a respiratory
4 care practitioner on or about June 5, 2005, she revealed that on or about August 25, 2000, she was
5 convicted of violating Vehicle Code section 10851(a), unlawful driving or taking a vehicle.

6 24. On or about July 29, 2005, the Board sent respondent a warning letter
7 informing her that should future violations of the Respiratory Care Practice Act occur, the Board
8 will use the information obtained regarding the prior conviction as aggravating evidence in any
9 future disciplinary proceedings, including penalty actions. Respondent did not contest the
10 warning letter, and on or about September 26, 2005, the Board issued Respiratory Care
11 Practitioner License Number 24691 to respondent. A true and correct copy of the warning letter
12 dated July 29, 2005, is attached hereto as Exhibit A and incorporated by reference as if fully set
13 forth herein.

14 **PRAYER**

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

- 17 1. Revoking or suspending Respiratory Care Practitioner License Number 24691,
18 heretofore issued to MELISSA A. ADAMS, R.C.P.;
- 19 2. Ordering respondent MELISSA A. ADAMS, R.C.P., to pay the Respiratory Care
20 Board the costs of the investigation and enforcement of this case, and if placed on probation, the
21 costs of probation monitoring; and
- 22 3. Taking such other and further action as deemed necessary and proper.

23
24 DATED: January 20, 2012

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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