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

In the Matter of the Accusation Against: **PAUL V. BROCK, R.C.P.** **15868 Dianthus Street** **Fontana, CA 92335** **Respiratory Care Practitioner License No. 25769** Respondent.	Case No. 1H-2011-409 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about August 29, 2011, Complainant Stephanie Nunez, in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs, filed Accusation No. 1H-2011-409 against Paul V. Brock, R.C.P. (Respondent), before the Respiratory Care Board.

2. On or about November 8, 2006, the Respiratory Care Board (Board) issued Respiratory Care Practitioner License No. 25769 to Respondent. Respiratory Care Practitioner License No. 25769 was in full force and effect at all times relevant to the charges brought herein, except that on or about July 18, 2011, in a prior disciplinary action entitled *In the Matter of the Accusation Against Paul Brock, R.C.P.*, before the Board, in Case No. 1H 2010 535. Respondent's license was revoked with revocation stayed and five years probation imposed with

various terms and conditions. The prior discipline resulted from Respondent's unlawful use of controlled substances. Respiratory Board Practitioner's License No. 25769 will expire on October 31, 2011, unless renewed. Respondent's license history is set forth in Exhibit 1 to the separate accompanying "Default Decision Evidence Packet",[1] which, in its entirety, is hereby incorporated by reference as if fully set forth herein.

3. On or about August 29, 2011, Stephanie M. Aguirre, an employee of the Board, served by certified mail a true and correct copy of the Accusation No. 1H-2011-409, Statement to Respondent, Notice of Defense (two copies), Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is 15868 Dianthus Street, Fontana, CA 92335. A true and correct copy of the Accusation, the related documents, and Declaration of Service are attached as Exhibit 2.

4. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c).

5. Government Code section 11506 states, in pertinent part:

> "(c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

6. Respondent failed to file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 1H-2011-409.

7. California Government Code section 11520 states, in pertinent part:

> "(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express

[1] The Exhibits referred to herein, which are true and correct copies of the originals, are contained in the separate accompanying "Default Decision Evidence Packet" and are identified as "Exhibit" followed by the specific exhibit number. The Default Decision Evidence Packet is hereby incorporated by reference as if fully set forth herein.

admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent."

8. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on Respondent's express admissions by way of default and the evidence before it, contained in Exhibits 2 through 6, finds that the allegations in Accusation No. 1H-2011-409 are true.

9. The Respiratory Care Board further finds that pursuant to Business and Professions Code section 3753.5, the costs of investigation and enforcement of the case prayed for in the Accusation total $1,487.50, based on the Declaration of Costs contained in Exhibit 3.

10. Section 3750 of the Code states:

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

"..."

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

"..."

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

"..."

11. Section 3750.5 of the Code states:

"In addition to any other grounds specified in this chapter, the board may deny, suspend, place on probation, or revoke the license of any applicant or licenseholder who has done any of the following:

"..."

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

"..."

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

"..."

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

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

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

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"..."

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

"..."

13. Respondent is subject to disciplinary action under section 3750.5, subdivision (b), of the Code, in that he used controlled substances and dangerous drugs in a manner dangerous to himself or others as set forth in Exhibit 4.

14. Respondent is further subject to disciplinary action under section 3750, subdivision (d) and section 3750.5, subdivision (d) of the Code, in that he was convicted of violating Vehicle Code section 23153(a), a crime related to the qualifications, function or duties of a respiratory care practitioner, related to the use, consumption or self-administration of controlled substances or alcohol, and related to driving under the influence of drugs or alcohol, as set forth in Exhibits 4, 5 and 6.

16. Respondent is further subject to disciplinary action under section 3750, subdivision (g), of the Code, and California Code of Regulations, title 16, section 1399.370, subdivision (a), in that he committed violations of the Respiratory Care Practice Act, as set forth in Exhibits 4, 5 and 6.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Paul V. Brock, R.C.P., has subjected his Respiratory Care Practitioner License No. 25769 to discipline.

2. The Board has jurisdiction to adjudicate this case by default.

3. Pursuant to its authority under California Government Code section 11520, and based on the evidence before it, the Board hereby finds that the charges and allegations contained in Accusation 1H-2011-409, and the findings of fact contained in paragraphs 1 through 16 above, and each of them, separately and severally, are true and correct.

4. Pursuant to its authority under California Government Code section 11520, and by reason of the Findings of Fact contained in paragraphs 1 through 16 above, and Determination of Issues 1 through 3, above, the Board hereby finds that Respondent Paul V. Brock, R.C.P., has

subjected his Respiratory Care Practitioner License No. 25769 to disciplinary action under Code sections 3750, subdivisions (d) and (g); 3750.5, subdivisions (b) and (d); and, California Code of Regulations, title 16, section 1399.370, subdivision (a), in that he used controlled substances and dangerous drugs in a manner dangerous to himself or others; he was convicted of violating Vehicle Code section 23153(a), a crime related to the qualifications, function and duties of a respiratory care practitioner, related to the use of consumption or self-administration of controlled substances or alcohol, and related to driving under the influence of drugs or alcohol; and, he committed violations of the Respiratory Care Practice Act.

5. The Board is authorized to revoke Respondent's Respiratory Care Practitioner License based upon Findings of Fact 1 through 16 and Determination of Issues 1 through 4. .

6. Revocation is the appropriate discipline based on Determination of Issues 1 through 5.

7. Respondent is liable to the Board for costs of investigation and prosecution in the amount of $1,487.50. (Exhibit 3.)

ORDER

IT IS SO ORDERED that Respiratory Care Practitioner License No. 25769, heretofore issued to Respondent Paul V. Brock, R.C.P., is revoked for each of the violations, separately and severally, of the Code, found in paragraph 3 of the Determination of Issues, above.

Respondent shall reimburse the Respiratory Care Board the amount of $1,487.50 for its investigative and enforcement costs. The filing of bankruptcy by Respondent shall not relieve Respondent of his responsibility to reimburse the Board for its costs. Respondent's Respiratory Care Practitioner License may not be renewed or reinstated unless all costs ordered under Business and Professions Code section 3753.5 have been paid.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within

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seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on December 17, 2011.

It is so ORDERED November 17, 2011

LARRY L. RENNER, BS, RRT, RCP, RPFT
PRESIDENT, RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA