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

11 In the Matter of the Accusation Against:

Case No. 1H-2010-563

12 **RICK ALAN CAPRANICA, R.C.P.**
13 **1931 S. 174th Lane**
14 **Goodyear, Arizona 85338**

A C C U S A T I O N

15 **Respiratory Care Practitioner**
16 **License No. 26701**

Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about September 12, 2007, the Respiratory Care Board issued
24 Respiratory Care Practitioner License Number 26701 to Rick Alan Capranica, R.C.P.
25 (Respondent). The Respiratory Care Practitioner License was in full force and effect at all times
26 relevant to the charges brought herein and will expire on February 29, 2012, unless renewed.

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JURISDICTION

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

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

8 5. Section 3718 of the Code states: "The board shall issue, deny, suspend, and
9 revoke 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
12 of probationary conditions upon, a license issued under this chapter, for any of the
13 following causes:

14 "...
15 "(d) Conviction of a crime that substantially relates to the qualifications,
16 functions, or duties of a respiratory care practitioner. The record of conviction or a
17 certified copy thereof shall be conclusive evidence of the conviction.

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

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

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"(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 beverage, 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.

"(c) Applied for employment or worked in any health care profession or environment while under the influence of alcohol.

"(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. "

8. Section 3752 of the Code states:

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

9. 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

1 duties of a respiratory care practitioner, if it evidences present or potential unfitness
2 of a licensee to perform the functions authorized by his or her license or in a manner
3 inconsistent with the public health, safety, or welfare. Such crimes or acts shall
4 include but not be limited to those involving the following:

5 "...

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

8 "..."

9 10. Section 3755 of the Code states:

10 "The board may take action against any respiratory care practitioner who is
11 charged with unprofessional conduct in administering, or attempting to administer,
12 direct or indirect respiratory care. Unprofessional conduct includes, but is not limited
13 to, repeated acts of clearly administering directly or indirectly inappropriate or unsafe
14 respiratory care procedures, protocols, therapeutic regimens, or diagnostic testing or
15 monitoring techniques, and violation of any provision of Section 3750. The board
16 may determine unprofessional conduct involving any and all aspects of respiratory
17 care performed by anyone licensed as a respiratory care practitioner."

18 **COST RECOVERY**

19 11. Section 3753.5, subdivision (a) of the Code states:

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

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1 to 3 hours earlier. Respondent failed to perform field sobriety tests as explained and
2 demonstrated. Respondent's preliminary alcohol screening (PAS) results were .174% at 0321
3 hours and .180% at 0323 hours. Respondent's blood alcohol level test results were .22% at 0332
4 hours and .21% at 0335 hours.

5 On or about August 31, 2010, the District Attorney for the County of Riverside filed a
6 Misdemeanor Complaint charging respondent with one count of driving under the influence of an
7 alcoholic beverage in violation of Vehicle Code section 23152, subdivision (a) [Count 1], and one
8 count of driving a vehicle while having 0.08 percent and more, by weight, of alcohol in his blood
9 and 0.08 grams and more of alcohol per 210 liters of his breath in violation of Vehicle Code
10 section 23152, subdivision (b) [Count 2]. The complaint also contained an enhancement
11 allegation pursuant to Vehicle Code section 23578 in that, respondent's blood alcohol
12 concentration was more than 0.15%.

13 Pursuant to the plea agreement, Count 1 of the Criminal Complaint was dismissed
14 and the enhancement allegation was stricken.

15 C. At 10:35 a.m. on August 1, 2010, approximately seven (7) hours after
16 respondent's blood alcohol test results were recorded at .22% (at 0332 hours) and .21% (at 0335
17 hours), respondent checked in and commenced work as a respiratory care practitioner at the Palo
18 Verde Hospital.

19 **SECOND CAUSE FOR DISCIPLINE**

20 (Conviction of a Crime Involving Driving Under the Influence)

21 15. Respondent is further subject to disciplinary action under section 3750.5, as
22 defined by 3750.5, subdivision (d) and 3752 of the Code, and Title 16 of the California Code of
23 Regulations section 1399.370, subdivision (c), in that he was convicted of a crime involving
24 driving under the influence of alcohol, as more particularly described in paragraph 14, above,
25 which is incorporated by reference and realleged as if fully set forth herein.

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THIRD CAUSE FOR DISCIPLINE

(Used Alcoholic Beverages in a Manner Dangerous or Injurious to Himself)

16. Respondent is further subject to disciplinary action under section 3750.5, as defined by 3750.5, subdivision (b), in that respondent used an alcoholic beverage in a manner dangerous or injurious to himself, as more particularly described in paragraphs 14 and 15, above, which are incorporated by reference and realleged as if fully set forth herein.

FOURTH CAUSE FOR DISCIPLINE

(Worked While Under the Influence of Alcohol)

17. Respondent is further subject to disciplinary action under section 3750.5, as defined by 3750.5, subdivision (c), in that respondent worked as a respiratory care practitioner while under the influence of alcohol in that, at 10:35 a.m. on August 1, 2010, approximately seven (7) hours after his blood alcohol levels were recorded at .22% and .21%, respondent checked in and commenced work as a respiratory care practitioner at the Palo Verde Hospital, as more particularly described in paragraphs 14 through 16, above, which are incorporated by reference and realleged as if fully set forth herein.

FIFTH CAUSE FOR DISCIPLINE

(Violation of any Provision)

18. Respondent is further subject to disciplinary action under section 3750, as defined by 3750, subdivision (g) of the Code in that he violated a provision of the chapter, in that he was convicted of a crime substantially related to the qualifications, functions or duties of a respiratory care practitioner, as more particularly described in paragraphs 14 through 17, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

SIXTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

19. Respondent is further subject to disciplinary action under section 3755 of the Code in that he engaged in conduct that breaches the rules or ethical code of the medical profession or conduct which is unbecoming to a member in good standing of the practice of respiratory care, and which demonstrates an unfitness to practice respiratory care, as more

1 particularly described in paragraphs 14 through 18, above, which are hereby incorporated by
2 reference and realleged as if fully set forth herein.

3 **AGGRAVATING CIRCUMSTANCES**

4 20. On or about August 10, 2007, the Board sent respondent a warning letter
5 regarding his arrest and conviction for driving under the influence in the State of Pennsylvania.
6 The Board reviewed all the documentation related to that conviction and closed its investigation.

7 The circumstances of the warning letter are as follows: In or about August 2004,
8 respondent was convicted of driving under the influence (with a blood alcohol content of 0.16+)
9 in violation of Pennsylvania's Vehicle Code section A3802C-ARD [rehabilitation program]. He
10 was placed under supervision for six months. He successfully completed his probation and the
11 record was expunged.

12 **PRAYER**

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

- 15 1. Revoking or suspending Respiratory Care Practitioner License Number 26701,
16 issued to Rick Alan Capranica, R.C.P.
- 17 2. Ordering Rick Alan Capranica, R.C.P. to pay the Respiratory Care Board the
18 costs of the investigation and enforcement of this case, and if placed on probation, the costs
19 of probation monitoring;
- 20 3. Taking such other and further action as deemed necessary and proper.

21 DATED: May 26, 2011

22 Original Signed by Liane Freels for:

23 STEPHANIE NUNEZ
24 Executive Officer
25 Respiratory Care Board of California
26 Department of Consumer Affairs
27 State of California
28 *Complainant*

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