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

12 In the Matter of the Accusation Against:

Case No. 700-2014-000000

13 David Joseph Bermudo, R.C.P.
3017 South Beverly Drive
Los Angeles, California 90034
Respiratory Care Practitioner License 28495

A C C U S A T I O N

14 Respondent.

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17 Complainant alleges:

18 PARTIES

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

22 2. On or about February 26, 2009, the Respiratory Care Board issued RCP License
23 number 28495 to David Joseph Bermudo, R.C.P. (Respondent). The RCP License was in full
24 force and effect at all times relevant to the charges brought in this Accusation and will expire on
25 June 30, 2014, unless renewed.

26 JURISDICTION

27 3. This Accusation is brought before the Respiratory Care Board (Board), under the
28 authority of the following laws. All section references are to the Business and Professions Code

1 unless otherwise indicated.

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

5 5. Section 3718 of the Code states:

6 "The board shall issue, deny, suspend, and revoke licenses to practice respiratory care
7 as provided in this chapter."

8 6. Section 3750 of the Code states:

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

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

16 7. Section 3750.5 of the Code states:

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

20 "(a) Obtained, possessed, used, or administered to himself or herself in
21 violation of law, or furnished or administered to another, any controlled substances as
22 defined in Division 10 (commencing with Section 11000) of the Health and Safety
23 Code, or any dangerous drug as defined in Article 2 (commencing with section 4015)
24 of Chapter 9 of this code, except as directed by a licensed physician and surgeon,
25 dentist, podiatrist, or other authorized health care provider, or illegally possessed any
26 associated paraphernalia.

27 "(b) Used any controlled substance as defined in Division 10 (commencing
28 with Section 11000) of the Health and Safety Code, or any dangerous drug as defined

1 in Article 2 (commencing with section 4015) of Chapter 9 of this code, to the extent
2 or in a manner dangerous or injurious to himself or herself, or to others, or that
3 impaired his or her ability to conduct with safety the practice authorized by his or her
4 license."

5 COST RECOVERY

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

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

14 9. Section 3753.7 of the Code provides that for purposes of the Respiratory Care
15 Practice Act, costs of prosecution shall include attorney general or other prosecuting attorney
16 fees, expert witness fees, and other administrative, filing, and service fees.

17 10. Section 3753.1 of the Code states:

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

21 CAUSE FOR DISCIPLINE

22 (Possession and Use of a Controlled Substance)

23 11. Respondent's license is subject to disciplinary action under sections 3750,
24 subdivision (g) and 3750.5, subdivisions (a) and (b), in that he smoked marijuana and possessed
25 marijuana paraphernalia. The circumstances are as follows:

26 A. Respondent has been licensed as a respiratory care practitioner since 2008.
27 He is currently employed at Marina Del Rey Hospital, and has been employed there
28 for several years. An anonymous complaint came to the Board alleging Respondent

1 was using drugs at work, and selling marijuana to students at a local college. After a
2 review of the complaint, the hospital took no action.

3 B. Based on this complaint, however, the Board performed its own
4 investigation and also learned the allegations that Respondent was selling drugs could
5 not be substantiated. When the Board investigator interviewed Respondent, and he
6 was asked about smoking marijuana, initially he denied it. When Respondent was
7 confronted with a photo of himself using a bong (an instrument used to smoke
8 marijuana), Respondent admitted that to relieve stress he does smoke pot once in
9 awhile. However, he explained that he never comes to work under the influence. He
10 also admitted that he was convicted of a crime involving marijuana in 2000.

11 C. During an interview, Respondent was shown a photo taken on November
12 13, 2013. It was from a video on Instagram (an application used on the internet to
13 share photos). It depicts Respondent using a bong.

14 D. Respondent admitted to using marijuana “whenever it is around me,” and
15 relied on it as a “crutch.” He also admitted to smoking marijuana during times of
16 stress, for instance during his divorce. However, Respondent realized he was being
17 irresponsible and vowed to stop using it.

18 DISCIPLINARY CONSIDERATIONS

19 12. To determine the degree of discipline, if any, to be imposed on Respondent,
20 Complainant alleges that on or about December 19, 2000, in a prior criminal proceeding entitled
21 *United States of America v. David J. Bermudo*, Case Number W00-523M, Respondent was
22 convicted of possession of marijuana, was ordered to pay a fine, was incarcerated for one month,
23 had to submit to drug testing and was required to abstain from alcohol. The record of the criminal
24 proceeding is incorporated here as if fully set forth.

25 PRAYER

26 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
27 and that following the hearing, the Respiratory Care Board issue a decision:
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1. Revoking or suspending Respiratory Care Practitioner License No. 28495, issued to David Joseph Bermudo, R.C.P.

2. Ordering David Joseph Bermudo to pay the Respiratory Care Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring; and,

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

DATED: November 13, 2014

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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