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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. 7002014000478

13 Allen Vito Clemente, R.C.P.  
18319 Hart Street, Unit 14  
Reseda, California 91335

**A C C U S A T I O N**

14 Respiratory Care Practitioner License  
15 No. 32213,

16 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 ("Board").

22 2. On or about December 6, 2011, the Respiratory Care Board issued Respiratory Care  
23 Practitioner License Number 32213 to Allen Vito Clemente, R.C.P. ("Respondent"). That license  
24 expired on February 28, 2013, and has not been renewed.

25 **JURISDICTION**

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

1           4.     Section 3710 of the Code states:

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

4           5.     Section 3718 of the Code states:

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

7           6.     Section 3750 of the Code states:

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

10          "...

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

14          "...

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

20          "..."

21          7.     Section 3752 of the Code states:

22          "A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a  
23 charge of any offense which substantially relates to the qualifications, functions, or duties of a  
24 respiratory care practitioner is deemed to be a conviction within the meaning of this article. The  
25 board shall order the license suspended or revoked, or may decline to issue a license, when the  
26 time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when  
27 an order granting probation is made suspending the imposition of sentence, irrespective of a  
28 subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or

1 her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or  
2 dismissing the accusation, information, or indictment."

3 8. Section 3752.5 of the Code states:

4 "For purposes of Division 1.5 (commencing with Section 475), and this chapter [the  
5 Respiratory Care Practice Act], a crime involving bodily injury or attempted bodily injury shall  
6 be considered a crime substantially related to the qualifications, functions, or duties of a  
7 respiratory care practitioner."

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

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

14 "(a) Violating or attempting to violate, directly or indirectly, or assisting or abetting the  
15 violation of or conspiring to violate any provision or term of the Business and Professions Code.

16 "...

17 "(h) Failure to comply with a court order.

18 "(i) Commission of an act or conviction of a crime, involving verbally abusive conduct or  
19 unlawful possession of a firearm or weapon."

20 10. Section 118, subdivision (b) of the Code states:

21 "The suspension, expiration, or forfeiture by operation of law of a license issued by a board  
22 in the department, or by order of a court of law, or its surrender without the written consent of the  
23 board, shall not during any period in which it may be renewed, restored, reissued, or reinstated,  
24 deprive the board of its authority to institute or continue a disciplinary proceeding against the  
25 licensee upon any ground provided by law or to enter an order suspending or revoking the license  
26 or otherwise taking disciplinary action against the licensee on any such ground."

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1 **PENAL CODE SECTIONS**

2 11. Penal Code section 245, subdivision (a)(4) states:

3 "Any person who commits an assault upon the person of another by any means of force  
4 likely to produce great bodily injury shall be punished by imprisonment in the state prison for  
5 two, three, or four years, or in a county jail for not exceeding one year, or by a fine not exceeding  
6 ten thousand dollars (\$10,000), or by both the fine and imprisonment."

7 12. Penal Code section 273.6 states:

8 "(a) Any intentional and knowing violation of a protective order, as defined in Section 6218  
9 of the Family Code, or of an order issued pursuant to Section 527.6, 527.8, or 527.85 of the Code  
10 of Civil Procedure, or Section 15657.03 of the Welfare and Institutions Code, is a misdemeanor  
11 punishable by a fine of not more than one thousand dollars (\$1,000), or by imprisonment in a  
12 county jail for not more than one year, or by both that fine and imprisonment.

13 "..."

14 **COST RECOVERY**

15 13. Section 3753.5, subdivision (a) of the Code states:

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

23 14. Section 3753.7 of the Code states:

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

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1 H. Not own, use or possess any dangerous or deadly weapons, including any  
2 firearms, knives or other concealable weapons;

3 I. Not associate with and stay away from Respondent's mother;

4 J. Not use or threaten to use force or violence on any person;

5 K. Not annoy, harass or molest any person or witness involved in his criminal  
6 case;

7 L. Obey the protective order issued in his criminal case or any other case.

8 M. Provide buccal swab samples, a right thumb print, a full palm print impression  
9 of each hand, any blood specimens or other biological samples as required for law enforcement  
10 identification pursuant to Penal Code section 296;

11 N. Not use or possess any narcotics, dangerous or restricted drugs or associated  
12 paraphernalia, except with a valid prescription and stay away from places where users or sellers  
13 congregate;

14 O. Not associate with drug users or sellers unless attending a drug treatment  
15 program;

16 P. If leaving the country, not re-enter the United States illegally and report to his  
17 probation officer within three days of return and present documentation which provides that he is  
18 in the United States legally; and,

19 Q. Not use medical marijuana.

20 18. On July 7, 2014, as to Count 2, Respondent received a suspended sentence and was  
21 placed on three years summary probation under the condition that he obey all laws and orders of  
22 the court.

23 19. The circumstances leading to Respondent's conviction are as follows:

24 A. Respondent's mother had a domestic violence restraining order against  
25 Respondent, which had been in place since August 10, 2012.

26 B. On April 24, 2014, at approximately 7:20 p.m., Los Angeles Police Officers  
27 responded to a radio call for a battery investigation at the residence of Respondent's mother.

28 ///

1 C. Respondent's mother reported to the officers that Respondent was high on  
2 something and upset about the recent death of the family cat. Respondent turned violent. He  
3 punched the walls, told his mother he was going to beat her, grabbed her by the hair and banged  
4 her head against the door frame. He then threw her against a TV stand, grabbed an aerosol can of  
5 Axe Body Spray and sprayed it in her face while yelling "I am going to beat your ass".  
6 Respondent held his mother close and told her that she was not going to call the police. Being  
7 fearful for her life, Respondent's mother waited for about ten minutes for Respondent to calm  
8 down and told him that she was going to walk her dogs. She exited the house and immediately  
9 called the police.

10 D. The officers observed abrasions on Respondent's mother's face and head. In  
11 the residence, the officers observed the holes in the wall, a room in disarray with a can of Axe  
12 Body Spray next to the displaced TV stand.

13 E. Respondent denied the allegations and stated that he had a simple argument  
14 with his mother. He was placed under arrest for use of a caustic chemical, in violation of Penal  
15 Code section 244; assault with a deadly weapon or force likely to produce great bodily injury, in  
16 violation of subdivision (a)(1) of Penal Code section 245; and, violation of a domestic violence  
17 restraining order, in violation of subdivision (a) of Penal Code section 273.6.

18 **FIRST CAUSE FOR DISCIPLINE**

19 **(Conviction of a Crime)**

20 20. By reason of the facts set forth above in paragraphs 16 through 19, Respondent's  
21 license is subject to disciplinary action under section 3750, subdivision (d), and section 3752.5 of  
22 the Code and California Code of Regulations, title 16, section 1399.370, subdivisions (a) and (i),  
23 in that he has been convicted of a crime substantially related to the qualifications, function, or  
24 duties of a respiratory care practitioner.

25 21. Respondent's acts and/or omissions as set forth in paragraphs 16 through 19 above,  
26 whether proven individually, jointly, or in any combination thereof, constitute a conviction of a  
27 crime substantially related to the qualifications, function, or duties of a respiratory care  
28 practitioner pursuant to section 3750, subdivision (d), and section 3752.5 of the Code and

1 California Code of Regulations, title 16, section 1399.370, subdivisions (a) and (i). Therefore,  
2 cause for discipline exists.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Violation of a Court Order)**

5 22. By reason of the facts set forth above in paragraphs 16 through 19 Respondent's  
6 license is subject to disciplinary action under section 3750, subdivisions (d) and (g) and the Code  
7 and California Code of Regulations, title 16, section 1399.370, subdivisions (a) and (h), in that he  
8 was convicted violating a court order (domestic violence restraining order) in violation of Penal  
9 Code section 273.6, subdivision (a).

10 23. Respondent's acts and/or omissions as set forth in paragraphs 16 through 19 above,  
11 whether proven individually, jointly, or in any combination thereof, constitute violating a court  
12 order pursuant to section 3750, subdivisions (d) and (g) and the Code and California Code of  
13 Regulations, title 16, section 1399.370, subdivisions (a) and (h). Therefore, cause for discipline  
14 exists.

15 **DISCIPLINE CONSIDERATIONS**

16 24. To determine the degree of discipline, if any, to be imposed on Respondent's license,  
17 Complainant alleges that on or about March 4, 2013, in a prior criminal proceeding entitled *The*  
18 *State of California v. Allen Clemente*, case number 3SR00763, in the Los Angeles Superior Court,  
19 Respondent, upon his plea of nolo contendere, was convicted of resisting, delaying or obstructing  
20 a peace officer in violation of Penal Code section 148(a)(1). Respondent was placed on summary  
21 probation for a period of two years under the following terms and conditions:

- 22 A. Serve 3 days in Los Angeles County jail, less credit for 3 days;  
23 B. Pay various fines, fees and assessments;  
24 C. Not own, use or possess any dangerous or deadly weapons, including any  
25 firearms, knives or other concealable weapons;  
26 D. Not use or threaten to use force or violence on any person;  
27 E. Not annoy, harass or molest any person or witness involved in the criminal  
28 case;

1 F. Stay away from 21036 Victory Boulevard, Chatsworth, California;

2 G. Obey all laws and orders of the court; and,

3 H. No further violations of this nature.

4 25. To further determine the degree of discipline, if any, to be imposed on Respondent's  
5 license, Complainant alleges that on or about August 10, 2012, in a prior criminal proceeding  
6 entitled *The State of California v. Allen Vito Clemente*, case number 2PY04405, in the Los  
7 Angeles Superior Court, a domestic violence restraining order was issued against Respondent  
8 ordering him to have no contact with and to stay away from his mother. The restraining order  
9 was to remain in effect until August 10, 2015.

10 26. The circumstances leading to the issuance of the domestic violence restraining order  
11 are as follows:

12 A. On August 8, 2012, Los Angeles Police Officers responded to a family dispute  
13 radio call at the residence of Respondent's mother. Respondent's mother reported that her home  
14 smelled of a chemical order like methamphetamines and that Respondent had a past history of  
15 using narcotics, mainly marijuana and methamphetamines. When Respondent's mother  
16 attempted to turn down his loud radio, Respondent grabbed her wrist and yelled profanities at her.  
17 She fled to her vehicle because she believed that Respondent was under the influence of  
18 methamphetamines and he was both verbally and physically abusive toward her. Respondent  
19 chased his mother and with a closed fist, struck the rear right quarter panel of her vehicle.

20 B. Officers met with Respondent, who denied grabbing his mother and striking her  
21 vehicle. Respondent reported that his mother had him placed on a 72 hour hold in the past  
22 because she does not agree with his lifestyle and rap aspirations. Respondent was arrested for  
23 battery, in violation of Penal Code section 243, and transported to the West Valley Station.

24 27. In addition to the domestic violence restraining order, issued in case number  
25 2PY04405, on October 3, 2012, Respondent plead nolo contendere and was convicted of fighting  
26 in a public place in violation of Penal Code section 415, subdivision (1). Respondent was placed  
27 on summary probation for a period of one year under the following terms and conditions:

28 A. Pay various fines, fees and assessments;

