

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

In the Matter of the Accusation Against:

Case No. 7002015000520

IVAN ALVARADO
20344 Silktassel Road
Riverside, CA 92508

Respiratory Care Practitioner License No. 32953

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Respiratory Care Board of California, Department of Consumer Affairs, as its Decision in the above entitled matter.

This Decision shall become effective on November 6, 2015.

It is so ORDERED October 27, 2015.

Original signed by:

ALAN ROTH, MS, MBA, RRT-NPS, FAARC
PRESIDENT, RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

1 KAMALA D. HARRIS
Attorney General of California
2 THOMAS S. LAZAR
Supervising Deputy Attorney General
3 LEANNA E. SHIELDS
Deputy Attorney General
4 State Bar No. 239872
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2995
7 Facsimile: (619) 645-2061

8 *Attorneys for Complainant*

9
10 **BEFORE THE**
RESPIRATORY CARE BOARD
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA
12

13 **In the Matter of the Accusation Against:**

Case No. 7002015000520

14 **IVAN ALVARADO, R.C.P.**
15 **20344 Silktassel Road**
Riverside, CA 92508

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

16 **Respiratory Care Practitioner License**
17 **No. 32953,**

Respondent.

18
19
20 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
21 entitled proceedings that the following matters are true:

22 **PARTIES**

23 1. Stephanie Nunez (Complainant) is the Executive Officer of the Respiratory Care
24 Board of California. She has brought this action solely in her official capacity and is represented
25 in this matter by Kamala D. Harris, Attorney General of the State of California, by LeAnna E.
26 Shields, Deputy Attorney General.

27 ///

28 ///

1 **CULPABILITY**

2 8. Respondent admits the truth of each and every charge and allegation in Accusation
3 No. 7002015000520, agrees that his Respiratory Care Practitioner License No. 32953 is subject to
4 discipline, and agrees to be bound by the Board's probationary terms as set forth in the
5 Disciplinary Order below.

6 **CONTINGENCY**

7 9. The parties agree that this Stipulated Settlement and Disciplinary Order shall be
8 submitted to the Board for its consideration in the above-entitled matter and, further, that the
9 Board shall have a reasonable period of time in which to consider and act on this Stipulated
10 Settlement and Disciplinary Order after receiving it. By signing this stipulation, respondent fully
11 understands and agrees that he may not withdraw his agreement or seek to rescind this stipulation
12 prior to the time that the Board considers and acts upon it.

13 10. The parties agree that this Stipulated Settlement and Disciplinary Order shall be null
14 and void and not binding upon the parties unless approved and adopted by the Board, except for
15 this paragraph, which shall remain in full force and effect. Respondent fully understands and
16 agrees that in deciding whether or not to approve and adopt this Stipulated Settlement and
17 Disciplinary Order, the Board may receive oral and written communications from its staff and/or
18 the Attorney General's office. Communications pursuant to this paragraph shall not disqualify
19 the Board, any member thereof, and/or any other person from future participation in this or any
20 other matter affecting or involving respondent. In the event that the Board, in its discretion, does
21 not approve and adopt this Stipulated Settlement and Disciplinary Order, with the exception of
22 this paragraph, it shall not become effective, shall be of no evidentiary value whatsoever, and
23 shall not be relied upon or introduced in any disciplinary action by either party hereto.
24 Respondent further agrees that should the Board reject this Stipulated Settlement and Disciplinary
25 Order for any reason, respondent will assert no claim that the Board, or any member thereof, was
26 prejudiced by its/his/her review, discussion and/or consideration of this Stipulated Settlement and
27 Disciplinary Order or of any matter or matters related hereto.

28 ///

1 **ADDITIONAL PROVISIONS**

2 11. This Stipulated Settlement and Disciplinary Order is intended by the parties herein to
3 be an integrated writing representing the complete, final and exclusive embodiment of the
4 agreements of the parties in the above-entitled matter.

5 12. The parties agree that copies of this Stipulated Settlement and Disciplinary Order,
6 including copies of the signatures of the parties, may be used in lieu of original documents and
7 signatures and, further, that such copies shall have the same force and effect as originals.

8 13. In consideration of the foregoing admissions and stipulations, the parties agree the
9 Board may, without further notice to or opportunity to be heard by respondent, issue and enter the
10 following Disciplinary Order:

11 **DISCIPLINARY ORDER**

12 IT IS HEREBY ORDERED that Respiratory Care Practitioner License No. 32953 issued to
13 respondent Ivan Alvarado, R.C.P., is revoked. However, the revocation is stayed and respondent
14 is placed on probation for three (3) years from the effective date of this decision on the following
15 terms and conditions:

16 1. **SUSPENSION** As part of probation, respondent shall be suspended from the
17 practice of respiratory care for a period of twelve (12) days, beginning the effective date of this
18 decision. Respondent shall ensure that each employer informs the Board, in writing, that it is
19 aware of the dates of suspension.

20 2. **WORK SCHEDULES** Respondent shall be required to submit to the probation
21 monitor work schedules on a weekly/monthly basis for the length of probation for each and every
22 place of employment. Respondent shall ensure the Board has a copy of his current work schedule
23 at all times for each place of employment.

24 3. **BIOLOGICAL FLUID TESTING** Respondent, at his expense, shall participate in
25 random testing, including but not limited to biological fluid testing (i.e. urine, blood, saliva),
26 breathalyzer, hair follicle testing, and/or any drug screening program approved by the Board.

27 Respondent shall be required to make daily contact, to determine if he is required to submit
28 a specimen for testing, each day, including weekends, holidays, and vacations in or outside of

1 California, at a lab approved by the Board. Board representatives may also appear unannounced,
2 at any time to collect a specimen. All collections will be observed.

3 At all times, respondent shall fully cooperate with the Board or any of its representatives,
4 and shall, when directed, appear for testing as requested and submit to such tests and samples for
5 the detection of alcohol, narcotics, hypnotic, dangerous drugs or other controlled substances. All
6 alternative testing sites, due to vacation or travel outside of California must be approved by the
7 Board, 30 days prior to the vacation or travel.

8 If respondent is unable to provide a specimen in a reasonable amount of time from the
9 request, while at the work site, respondent understands that any Board representative may request
10 from the supervisor, manager or director on duty to observe respondent in a manner that does not
11 interrupt or jeopardize patient care in any manner until such time respondent provides a specimen
12 acceptable to the Board.

13 If respondent tests positive for a banned substance (including testing positive for ETG), the
14 Board will contact the respondent and his employers, human resources personnel, directors,
15 managers, supervisors, and/or contractors and notify them of the positive test, including the
16 substance(s) and levels detected. Thereafter, the Board may contact the specimen collector,
17 laboratory, respondent, treating physician, treatment provider and/or support group facilitators to
18 determine whether the positive test is evidence of prohibited use. If the Board determines the
19 positive test is not evidence of prohibited use, the Board shall inform the respondent and others
20 previously contacted, that the positive test was not a violation of his probationary order.

21 4. **ABSTENTION FROM USE OF MOOD ALTERING SUBSTANCES** For
22 purposes of these terms and conditions, a banned substance includes alcohol, marijuana,
23 controlled substances and any and all other mood altering drugs and substances. Respondent
24 shall completely abstain from the possession or use of all banned substances and their associated
25 paraphernalia. Respondent may take other medication when lawfully prescribed by a licensed
26 practitioner as part of a documented medical treatment. Respondent shall provide the Board a
27 copy of a prescription within five (5) days of the date the prescription was filled.

28 ///

1 Respondent shall execute a release authorizing the release of pharmacy and prescribing
2 records as well as physical and mental health medical records. Respondent shall also provide
3 information of treating physicians, counselors or any other treating professional as requested by
4 the Board.

5 Respondent shall ensure that he is not in the presence of or in the same physical location as
6 individuals who are using illegal substances, even if respondent is not personally ingesting the
7 drug(s). Respondent shall also ensure he is not ingesting or using any product that contains trace
8 amounts of alcohol or any other banned substances (including but not limited to: cold/flu
9 medications, cough syrups, diet pills/products, mouth wash, skin care or hygiene products,
10 perfumes, poppy seeds, dessert or any foods, etc...).

11 Any positive result that registers over the established laboratory cutoff level for a banned
12 substance, shall be reported to each of respondent's employers.

13 5. **RESTRICTION OF PRACTICE** Respondent may not be employed or function as
14 a member of respiratory care management or supervisory staff during the entire length of
15 probation. This includes lead functions. Respondent is prohibited from working as part of a
16 transport team. Respondent is also prohibited from providing instruction or supervision to
17 respiratory care students or applicants whether in a clinical or classroom setting.

18 6. **OBEY ALL LAWS** Respondent shall obey all laws, whether federal, state, or local.
19 Respondent shall also obey all regulations governing the practice of respiratory care in California.
20 Respondent shall notify the Board in writing within three (3) days of any incident resulting in his
21 arrest, or charges filed against, or a citation issued against, respondent.

22 7. **QUARTERLY REPORTS** Respondent shall file quarterly reports of compliance
23 under penalty of perjury, on forms to be provided, to the probation monitor assigned by the
24 Board. Omission or falsification in any manner of any information on these reports shall
25 constitute a violation of probation and shall result in the filing of an accusation and/or a petition
26 to revoke probation against respondent's respiratory care practitioner license.

27 Quarterly report forms will be provided by the Board. Respondent is responsible for
28 contacting the Board to obtain additional forms if needed. Quarterly reports are due for each year

1 of probation and the entire length of probation as follows:

- 2 • For the period covering January 1st through March 31st, reports are to be
3 completed and submitted between April 1st and April 7th.
- 4 • For the period covering April 1st through June 30th, reports are to be completed
5 and submitted between July 1st and July 7th.
- 6 • For the period covering July 1st through September 30th, reports are to be
7 completed and submitted between October 1st and October 7th.
- 8 • For the period covering October 1st through December 31st, reports are to be
9 completed and submitted between January 1st and January 7th.

10 8. **PROBATION MONITORING PROGRAM** Respondent shall comply with
11 requirements of the Board appointed probation monitoring program, and shall, upon reasonable
12 request, report to or appear to a local venue as directed.

13 Respondent shall claim all certified mail issued by the Board, respond to all notices of
14 reasonable requests timely, appear as requested by the Board, and submit Annual Reports,
15 Identification Update Reports or other reports similar in nature, as requested and directed by the
16 Board or its representative.

17 Respondent shall provide to the Board the names, physical work addresses, work mailing
18 addresses, telephone numbers, and e-mail addresses of all employers, human resources personnel,
19 directors, managers, supervisors, and contractors, and any person providing direct supervision,
20 and shall give specific, written consent that the respondent authorizes the Board and its
21 representatives and the employers, human resources personnel, directors, managers, supervisors,
22 and contractors, and any person providing direct supervision, to communicate regarding the
23 respondent's work status, performance, and monitoring. Monitoring includes, but is not limited
24 to, any violation or potential violation of any probationary term and condition.

25 Respondent is encouraged to contact the Board's Probation Program at any time he has a
26 question or concern regarding his terms and conditions of probation.

27 9. **PROBATION MONITORING COSTS** All costs incurred for probation
28 monitoring during the entire probation shall be paid by the respondent. The monthly cost may be

1 adjusted as expenses are reduced or increased. Respondent's failure to comply with all terms and
2 conditions may also cause this amount to be increased. Probation monitoring costs will not be
3 tolled.

4 All payments for costs are to be sent directly to the Respiratory Care Board and must be
5 received by the date(s) specified. (Periods of tolling will not toll the probation monitoring costs
6 incurred.)

7 If respondent is unable to submit costs for any month, he shall be required, instead to
8 submit an explanation of why he is unable to submit the costs, and the date(s) he will be able to
9 submit the costs including payment amount(s). Supporting documentation and evidence of why
10 the respondent is unable to make such payment(s) must accompany this submission.

11 Respondent understands that failure to submit costs timely is a violation of probation and
12 submission of evidence demonstrating financial hardship does not preclude the Board from
13 pursuing further disciplinary action. However, respondent understands that by providing
14 evidence and supporting documentation of financial hardship it may delay further disciplinary
15 action.

16 In addition to any other disciplinary action taken by the Board, an unrestricted license will
17 not be issued at the end of the probationary period and the respiratory care practitioner license
18 will not be renewed, until such time all probation monitoring costs have been paid.

19 The filing of bankruptcy by the respondent shall not relieve respondent of his responsibility
20 to reimburse the Board for costs incurred.

21 10. **EMPLOYMENT REQUIREMENT** Respondent shall be employed a minimum of
22 24 hours per week as a respiratory care practitioner for a minimum of 2/3 of his probation period.

23 Respondent may substitute successful completion of a minimum of 30 additional
24 continuing education hours, beyond that which is required for license renewal, for each eight (8)
25 months of employment required. Respondent shall submit proof to the Board of successful
26 completion of all continuing education requirements. Respondent is responsible for paying all
27 costs associated with fulfilling this term and condition of probation.

28 ///

1 11. **NOTICE TO EMPLOYER** Respondent shall be required to inform all current and
2 subsequent employers, directors, managers, supervisors, and contractors during the probation
3 period, of the discipline imposed by this decision by providing his current and subsequent human
4 resources personnel, directors, managers, supervisors, and contractors with a complete copy of
5 the decision and order, and the Accusation in this matter prior to the beginning of or returning to
6 employment or within three (3) days from each change in a supervisor or director.

7 If respondent is employed by or through a registry, respondent shall also make each
8 hospital or establishment to which he is sent aware of the discipline imposed by this decision by
9 providing his human resources personnel, manager, and supervisor for each shift, at each hospital
10 or establishment with a copy of this decision, and the Accusation in this matter prior to the
11 beginning of employment. This must be done each time there is a change in supervisors or
12 administrators.

13 The employer will then inform the Board, in writing, that he/she is aware of the discipline,
14 on forms to be provided to the respondent. Respondent is responsible for contacting the Board to
15 obtain additional forms if needed. All reports completed by the employer must be submitted from
16 the employer directly to the Board.

17 In addition, any employer, director, manager, supervisor or contractor, shall report to the
18 Board immediately, within 24 hours, if he/she suspects respondent is under the influence of
19 alcohol or any substance or has had any occurrence of substance abuse.

20 12. **SUPERVISOR QUARTERLY REPORTS** Supervisor Quarterly Reports of
21 Performance are due for each year of probation and the entire length of probation from each
22 employer, as follows:

- 23 • For the period covering January 1st through March 31st, reports are to be
24 completed and submitted between April 1st and April 7th.
- 25 • For the period covering April 1st through June 30th, reports are to be completed
26 and submitted between July 1st and July 7th.
- 27 • For the period covering July 1st through September 30th, reports are to be
28 completed and submitted between October 1st and October 7th.

- For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

Respondent is ultimately responsible for ensuring his employer(s) submits complete and timely reports.

13. **CHANGES OF EMPLOYMENT OR RESIDENCE** Respondent shall notify the Board, and appointed probation monitor, in writing, of any and all changes of employment, location, and address within three (3) days of such change. This includes but is not limited to applying for employment, termination or resignation from employment, change in employment status, change in supervisors, administrators or directors.

Respondent shall also notify his probation monitor AND the Board IN WRITING of any changes of residence or mailing address within three (3) days. P.O. Boxes are accepted for mailing purposes, however, respondent must also provide his physical residence address as well.

14. **COST RECOVERY** Respondent shall pay to the Board a sum not to exceed the costs of the investigation and prosecution of this case. That sum shall be \$2,230.00 and shall be paid in full directly to the Board, in equal quarterly payments, within 12 months from the effective date of this decision. Cost recovery will not be tolled.

If respondent is unable to submit costs timely, he shall be required, instead to submit an explanation of why he is unable to submit these costs in part or in entirety, and the date(s) he will be able to submit the costs including payment amount(s). Supporting documentation and evidence of why respondent is unable to make such payment(s) must accompany this submission.

Respondent understands that failure to submit costs timely is a violation of probation and submission of evidence demonstrating financial hardship does not preclude the Board from pursuing further disciplinary action. However, respondent understands that by providing evidence and supporting documentation of financial hardship may delay further disciplinary action.

Consideration to financial hardship will not be given should respondent violate this term and condition, unless an unexpected AND unavoidable hardship is established from the date of this order to the date payment(s) is due.

1 The filing of bankruptcy by the respondent shall not relieve the respondent of his
2 responsibility to reimburse the Board for these costs.

3 15. **TOLLING FOR OUT-OF-STATE RESIDENCE OR PRACTICE** Periods of
4 residency or practice outside California, whether the periods of residency or practice are
5 temporary or permanent, will toll the probation period but will not toll the obey all laws, quarterly
6 reports, probation monitoring program, probation monitoring costs, or cost recovery
7 requirements. Travel out of California for more than 30 days must be reported to the Board in
8 writing prior to departure. Respondent shall notify the Board, in writing, within three (3) days,
9 upon his return to California and prior to the commencement of any employment where
10 representation as a respiratory care practitioner is/was provided.

11 16. **VALID LICENSE STATUS** Respondent shall maintain a current, active and valid
12 license for the length of the probation period. Failure to pay all fees and meet CE requirements
13 prior to his license expiration date shall constitute a violation of probation.

14 17. **VIOLATION OF PROBATION** If respondent commits a "Major Violation," as
15 identified in the Disciplinary Guidelines, incorporated by reference pursuant to section 1399.374,
16 he shall receive a notice to cease the practice of respiratory care, as directed by the Board. The
17 Board shall attempt to contact respondent by electronic and/or telephonic means to advise him of
18 the notice to cease practice and shall deliver such notice by certified and regular mail. The Board
19 shall update its licensing database to reflect the status of the license.

20 If respondent is ordered to cease practice, he may file a written appeal, within ten (10) days
21 of the date of the notice to cease practice, to provide additional evidence disputing the finding of
22 the violation(s) that was cause for the notice to cease practice. The Executive Officer will review
23 the appeal and make a determination in the matter, within ten (10) days from the date the written
24 appeal and all supporting evidence or documentation is received. Respondent shall be notified of
25 the outcome by certified mail.

26 Respondent shall not resume the practice of respiratory care until a final decision on an
27 accusation and/or petition to revoke probation is made or until such time as the Board delivers
28 written notification that the notice to cease practice has been dissolved. The cessation of practice

1 shall not apply to the reduction of the probationary time period.

2 The Board will contact respondent and his employers, human resources personnel,
3 directors, managers, supervisors, and contractors and notify them that respondent has been issued
4 a notice to cease practice.

5 In addition, if respondent violates any term of the probation in any respect, the Board, after
6 giving respondent notice and the opportunity to be heard, may revoke probation and carry out the
7 disciplinary order that was stayed.

8 If a petition to revoke probation is filed against respondent during probation, the Board
9 shall have continuing jurisdiction and the period of probation shall be extended until the matter is
10 final. No petition for modification of penalty shall be considered while there is an accusation or
11 petition to revoke probation or other penalty pending against respondent.

12 18. **SURRENDER OF LICENSE** Following the effective date of this decision, if
13 respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the
14 terms and conditions of probation, he may request the voluntary surrender of his license. The
15 Board reserves the right to evaluate respondent's request and to exercise its discretion whether or
16 not to grant the request or to take any other action deemed appropriate and reasonable under the
17 circumstances. Upon formal acceptance of surrender, within 15 calendar days respondent shall
18 deliver his wallet and wall certificate to the Board or its designee and he shall no longer practice
19 respiratory care. Respondent will no longer be subject to the terms and conditions of probation
20 and surrender of respondent's license shall be deemed disciplinary action. If respondent re-
21 applies for a license, the application shall be treated as a petition for reinstatement of a revoked
22 license.

23 19. **COMPLETION OF PROBATION** Upon successful completion of probation,
24 respondent's license shall be fully restored.

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Respiratory Care Practitioner License No. 32953. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Respiratory Care Board.

DATED: October 2, 2015 Original signed by: _____
IVAN ALVARADO, R.C.P.
Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Respiratory Care Board.

Dated: October 12, 2015
Respectfully submitted,
KAMALA D. HARRIS
Attorney General of California
THOMAS S. LAZAR
Supervising Deputy Attorney General

Original signed by:
LEANNA E. SHIELDS
Deputy Attorney General
Attorneys for Complainant

SD2015701018
81124272.doc

Exhibit A

Accusation No. 7002015000520

1 KAMALA D. HARRIS
Attorney General of California
2 ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General
3 LORI JEAN FORCUCCI
Deputy Attorney General
4 State Bar No. 125345
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2080
7 Facsimile: (619) 645-2061

8 *Attorneys for Complainant*

9
10 **BEFORE THE**
RESPIRATORY CARE BOARD
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA
12

13 **In the Matter of the Accusation Against:**

Case No. 7002015000520

14 **IVAN ALVARADO, R.C.P.**
15 **20344 Silktassel Road**
Riverside, CA 92508

ACCUSATION

16 **Respiratory Care Practitioner License**
17 **No. 32953,**

Respondent.

18
19 Complainant alleges:

20 **PARTIES**

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

24 2. On or about July 24, 2012, the Board issued Respiratory Care Board issued
25 Respiratory Care Practitioner License No. 32953 to Ivan Alvarado, R.C.P. (respondent).
26 Respiratory Care Practitioner License No. 32953 was in full force and effect at all times relevant
27 to the charges and allegations brought herein and will expire on December 31, 2015, unless
28 renewed.

JURISDICTION

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

4. Section 3710 of the Code states:

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

5. Section 3718 of the Code states:

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

6. Section 3750 of the Code states, in pertinent part:

“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).

“... ”

///

///

1 7. Section 3750.5 of the Code states, in pertinent part:

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

5 “(a) Obtained, possessed, used, or administered to himself or herself in
6 violation of law, or furnished or administered to another, any controlled substances as
7 defined in Division 10 (commencing with Section 11000) of the Health and Safety
8 Code, or any dangerous drug as defined in Article 2 (commencing with Section 4105)
9 of Chapter 9, except as directed by a licensed physician and surgeon, dentist,
10 podiatrist, or other authorized health care provider, or illegally possessed any
11 associated paraphernalia.

12 “...

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

18 “...”

19 8. Section 3752 of the Code states:

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

28 ///

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

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

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

10 “(a) Violating or attempting to violate, directly or indirectly, or assisting or
11 abetting the violation of or conspiring to violate any provision or term of the Business
12 and Professions Code.

13 “...”

14 **COST RECOVERY**

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

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

24 11. Section 3753.7 of the Code states:

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

28 ///

1 12. Section 3753.1 of the Code states, in pertinent part:

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

5 **FIRST CAUSE FOR DISCIPLINE**

6 **(Conviction of a Crime Substantially Related to the Qualifications, Functions,
7 or Duties of a Respiratory Care Practitioner)**

8 13. Respondent has subjected his Respiratory Care Practitioner License No. 32953 to
9 disciplinary action under 3750, as defined by 3750, subdivision (d), 3750.5, subdivision (d), and
10 3752, of the Code, and section 1399.370, subdivision (a), of title 16 of California Code of
11 Regulations, in that he was convicted of a crime substantially related to the qualifications,
12 functions, or duties of a respiratory care practitioner, as more particularly described hereinafter:

13 14. On or about January 22, 2015, Detective S.T. of the San Bernardino Sheriff’s
14 Department conducted a narcotics related search at a residence in Ontario, California pursuant to
15 a warrant, while respondent was sitting in the driver’s seat of his vehicle parked in the driveway
16 at that residence. Respondent’s vehicle was included in the search, and four (4) plastic bags
17 containing one (1) pound of marijuana each, for a total of four (4) pounds of marijuana were
18 located in respondent’s vehicle. After having been read his Miranda Warning Rights, respondent
19 stated that was willing to speak, and admitted that he went to the residence to purchase marijuana.
20 Respondent said he was planning to open a mobile marijuana dispensary. Respondent was
21 arrested for a violation of Health and Safety Code section 11359, possession of a controlled
22 substance for sale, and Penal Code (PC) section 182, subdivision (a), conspiracy.

23 15. On or about January 26, 2015, in the case entitled *The People of the State of*
24 *California v. Ivan Alvarado, et al.*, Case No. FWV1500309, a Felony Complaint was filed,
25 charging respondent with the following¹:

26 ///

27 _____
28 ¹ In the felony complaint, Counts 1 - 5 are alleged against other criminal defendants.

1 (a) Count 6, a felony violation of section 182(a)(1), of the Penal Code (conspiracy to
2 commit a crime); and

3 (b) Count 7, a felony violation of section 11359, of the Health and Safety Code
4 (possession of marijuana for sale).

5 16. On or about March 3, 2015, the Complaint was amended adding a new count against
6 respondent: Count 9, a misdemeanor violation of section 11357, subdivision (c), of the Health
7 and Safety Code (possession of marijuana over one (1) ounce).

8 17. On or about March 3, 2015, respondent was convicted on his plea of guilty to Count
9 9, a misdemeanor violation of section 11357, subdivision (c), of the Health and Safety Code
10 (possession of marijuana over one (1) ounce). Counts 6 and 7 were dismissed. Respondent was
11 sentenced to thirty-six (36) months' probation and was ordered to serve 120 days in a San
12 Bernardino County Jail, and to pay fines and fees among other probationary terms and conditions.

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Obtained, Possessed, Used or Administered a Controlled Substance)**

15 18. Respondent has further subjected his Respiratory Care Practitioner License No.
16 32953 to disciplinary action under section 3750.5, as defined by 3750.5, subdivision (a), of the
17 Code, in that he possessed a controlled substance, as more particularly described in paragraphs 13
18 through 17, above, which are hereby incorporated by reference and realleged as if fully set forth
19 herein.

20 **THIRD CAUSE FOR DISCIPLINE**

21 **(Violation of a Provision or Provisions of the Act)**

22 19. Respondent has further subjected his Respiratory Care Practitioner License No.
23 32953 to disciplinary action under section 3750, as defined by 3750, subdivision (g), in that he
24 violated a provision or provisions of the Respiratory Care Practice Act, as more particularly
25 alleged in paragraphs 13 through 18, above, which are hereby incorporated by reference and
26 realleged as if fully set forth herein.

27 ///

28 ///

PRAYER

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

1. Revoking or suspending Respiratory Care Practitioner License No. 32953, issued to respondent Ivan Alvarado, R.C.P.;

2. Ordering respondent Ivan Alvarado, R.C.P., 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: July 6, 2015

Original signed by Liane Freels for:
STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
Department of Consumer Affairs
State of California
Complainant

SD2015701018