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

12 In the Matter of the Accusation Against:

Case No. 1H 2006 536

13 ROBERT CHARLES BERG, R.C.P.
1215 S. Beach Blvd., Apt. 434
14 Anaheim, CA 92804
Respiratory Care Practitioner License No. 3492

A C C U S A T I O N

15 Respondent.

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17 Complainant alleges:

18 **PARTIES**

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

22 2. On or about May 31, 1985, the Respiratory Care Board issued Respiratory
23 Care Practitioner License No. 3492 to ROBERT CHARLES BERG, R.C.P. (Respondent). The
24 Respiratory Care Practitioner License expired on October 31, 2006, and has not been renewed.

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1 **JURISDICTION**

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 references
4 are to the Business and Professions Code unless otherwise indicated.

5 4. Section 118 of the Code states:

6 “. . . .

7 “(b) The suspension, expiration, or forfeiture by operation of law of a
8 license issued by a board in the department, or its suspension, forfeiture, or
9 cancellation by order of the board or by order of a court of law, or its surrender
10 without the written consent of the board, shall not, during any period in which it may
11 be renewed, restored, reissued, or reinstated, deprive the board of its authority to
12 institute or continue a disciplinary proceeding against the licensee upon any ground
13 provided by law or to enter an order suspending or revoking the license or otherwise
14 taking disciplinary action against the licensee on any such ground.”

15 “. . . .”

16 5. Section 3710 of the Code states: “The Respiratory Care Board of California,
17 hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the
18 Respiratory Care Practice Act].”

19 6. Section 3718 of the Code states: “The board shall issue, deny, suspend, and
20 revoke licenses to practice respiratory care as provided in this chapter.”

21 7. Section 3750 of the Code states:

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

25 “. . . .

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

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“(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).

“”

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. Section 3752.5 of the Code states:

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

10. California Code of Regulations, title 16, section 1399.370, states, in pertinent part:

“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

1 incident in which he shot another man in the chest. In a subsequent search of respondent's
2 apartment, the police discovered several weapons and ammunition.

3 (b) On or about September 19, 2006, a felony complaint was filed against
4 respondent which alleged various criminal charges associated with the road rage
5 shooting incident and the possession of various weapons and ammunition.

6 (c) On or about April 12, 2007, in the case entitled *The People of the*
7 *State of California v. Robert Charles Berg* for the County of Orange, West Justice
8 Center, Case No. 06HF1851, respondent was found guilty of the following criminal
9 counts after a jury trial:

10 Count 1: Attempted Murder, a violation of Penal Code sections 664, subdivision (a),
11 and 187, subdivision (a);

12 Count 2: Assault with a Semiautomatic Firearm, a violation of Penal Code section
13 245, subdivision (b);

14 Count 3: Possession of a Firearm by a Felon (9 Millimeter Pistol), a violation of
15 Penal Code section 12021, subdivision (a)(1);

16 Count 4: Possession of an Assault Weapon (AK 47 Rifle), a violation of Penal Code
17 section 12280, subdivision (b);

18 Count 5: Possession of an Assault Weapon (MAC-11 Machine Pistol), a violation of
19 Penal Code section 12280, subdivision (b);

20 Count 6: Possession of a Deadly Weapon (Nunchakus), a violation of Penal Code
21 section 12020, subdivision (a)(1);

22 Count 7: Possession of a Firearm by a Felon (45 Caliber Pistol), a violation of Penal
23 Code section 12021, subdivision (a);

24 Count 8: Possession of a Firearm by a Felon (Shotgun), a violation of Penal Code
25 section 12021, subdivision (a);

26 Count 9: Possession of a Firearm by a Felon (Shotgun), a violation of Penal Code
27 section 12021, subdivision (a);

28 Count 10: Possession of a Firearm by a Felon (AK-47 Rifle), a violation of Penal

1 Code section 12021, subdivision (a);

2 Count 11: Possession of a Firearm by a Felon (9 Millimeter Machine Pistol), a
3 violation of Penal Code section 12021, subdivision (a); and

4 Count 12: Possession of Ammunition by a Prohibited Person, a violation of Penal
5 Code section 12316, subdivision (b)(1).

6 (d) On or about August 17, 2007, respondent was sentenced to a prison
7 sentence of thirteen (13) years and four (4) months for the convictions on Counts 1
8 through 12 (determinate) with a consecutive and separate indeterminate sentence of
9 25 years to life on the enhancement for Personal Discharge of a Firearm during the
10 course of a felony, as set forth in Penal Code section 12022.53, subdivision (d).

11 (e) On or about October 29, 2007, respondent filed an appeal of the
12 criminal case with the Fourth District Court of Appeal, Division 3 (hereinafter “Court
13 of Appeal”), Case No. G039210.

14 (f) On or about June 21, 2008, the Court of Appeal issued its decision
15 which affirmed the judgment in the criminal case with minor modifications.
16 Specifically, the Court of Appeal modified the judgment by directing the trial court
17 to stay Counts 10 and 11 concerning possession of firearm by a felon. The Court of
18 Appeal also directed the trial court to modify the judgment to reflect the court stayed
19 the Penal Code 12022.7, subdivision (a), enhancement and imposed the 25 years to
20 life enhancement under subdivision (c) of section 12022.53, rather than subdivision
21 (d).

22 **FACTORS IN AGGRAVATION**

23 15. To determine the degree of discipline, if any, to be imposed on respondent,
24 Complainant alleges that on or about June 7, 2004, in a previous disciplinary action entitled “In the
25 Matter of the Accusation Against ROBERT CHARLES BERG,” Case No. R-1835, the Board issued
26 a decision and order in which respondent’s Respiratory Care Practitioner License Number 3492 was
27 subject to a formal public reprimand for negligence and unprofessional conduct.

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1 **PRAYER**

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

4 1. Revoking or suspending Respiratory Care Practitioner License No. 3492,
5 issued to respondent ROBERT CHARLES BERG, R.C.P.;

6 2. Ordering respondent Robert Charles Berg, R.C.P. to pay the Respiratory Care
7 Board the costs of the investigation and enforcement of this case, and if placed on probation, the
8 costs of probation monitoring; and

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

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11 DATED: January 22, 2009

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13 Original signed by Liane Zimmerman for:
14 STEPHANIE NUNEZ
15 Executive Officer
16 Respiratory Care Board of California
17 Department of Consumer Affairs
18 State of California
19 Complainant

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