

1 **BEFORE THE ARIZONA STATE BOARD OF**
2 **RESPIRATORY CARE EXAMINERS**

3 In the Matter of:) **CASE NO. 2019-RCE-0093**
4 **DAVID HERRERA, RCP**) **CONSENT AGREEMENT AND**
5 Holder of License No. **001149**) **NON-DISCIPLINARY ORDER**
6 For the Practice of Respiratory Care)
In the State of Arizona)

2019 MAY 10 AM 9 54

7 **CONSENT AGREEMENT**

8 **RECITALS**

9 In the interest of a prompt and judicious settlement of the above-captioned matter before
10 the Arizona State Board of Respiratory Care Examiners ("Board"), and in the interest of
11 protecting the people of the State of Arizona, consistent with the statutory requirements and
12 responsibilities of the Board pursuant to A.R.S. § 32-3501, *et seq.* and A.R.S. § 41-1092.07
13 (F)(5), David Herrera, RCP ("Respondent"), holder of license number 001149 to practice
14 respiratory care in the State of Arizona, and the Board enter into the following Consent
15 Agreement for Findings of Fact, Conclusions of Law, and Non-Disciplinary Order for
16 Continuing Education and Civil Penalty ("Consent Agreement") as the final disposition of this
17 matter.

18 1. Respondent has the right to consult with an attorney prior to entering into this
19 Consent Agreement. Respondent has read and understands this Consent Agreement as set forth
20 herein, and has had the opportunity to discuss this Consent Agreement with an attorney or has
21 waived the opportunity. Respondent voluntarily enters into this Consent Agreement for the
22 purpose of avoiding the expense and uncertainty of an administrative hearing.

23 2. Respondent understands that he/she has a right to a public administrative hearing
24 concerning each and every allegation set forth in the above-captioned matter, at which time
25 Respondent could present evidence and cross-examine witnesses. By entering into this Consent
26 Agreement, Respondent freely and voluntarily relinquishes all rights to such an administrative

1 hearing, as well as all rights of rehearing, review, reconsideration, appeal, judicial review, or
2 any other administrative, and/or judicial action concerning the matters set forth herein.
3 Respondent affirmatively agrees that this Consent Agreement shall be irrevocable and any
4 modifications to this original document are ineffective and void unless mutually approved by
5 the parties in writing.

6 3. Respondent agrees that the Board may adopt this Consent Agreement or any part
7 of this agreement under A.R.S. §§ 32-3552 and 32-3553. Respondent understands that the
8 Board may consider this Consent Agreement or any part of it in any future disciplinary action
9 against him.

10 4. Respondent understands that this Consent Agreement does not constitute a
11 dismissal or resolution of other matters currently pending before the Board, *if any*, and does not
12 constitute any waiver, express or implied, of the Board's statutory authority or jurisdiction
13 regarding any other pending or future investigation, action, or proceeding.

14 5. All admissions Respondent makes in this Consent Agreement are made solely
15 for the final disposition of case numbers 2019-RCE-0093, and any related administrative
16 proceedings or civil litigation involving the Board and Respondent. Respondent further
17 understands that acceptance of the Consent Agreement does not preclude any other agency,
18 subdivision, or officer of this state from instituting other civil or criminal proceedings with
19 respect to the conduct that is the subject of this Consent Agreement.

20 6. Respondent acknowledges that it is the Board's position that if this matter
21 proceeded to formal hearing, the Board could likely establish sufficient evidence to support a
22 conclusion that certain of Respondent's conduct constituted unprofessional conduct under
23 A.R.S. § 32-3552 and A.A.C. R4-45-214. Therefore, Respondent has agreed to enter into this
24 Consent Agreement as an economical and practical means of resolving the issues associated
25 with the Board's investigation.

26 7. The Consent Agreement shall be subject to approval by the Board and shall be

1 effective only when signed by the Executive Director and accepted by the Board. In the event
2 that the Board does not approve this Consent Agreement, it is withdrawn and shall be of no
3 evidentiary value and shall not be relied upon nor introduced in any action by any party. The
4 parties agree that if the Board rejects this Consent Agreement and this case proceeds to hearing,
5 Respondent shall assert no claim that the Board was prejudiced by its review and discussion of
6 this document or any other records relating thereto.

7 8. Respondent understands that this Consent Agreement is a public record that may
8 be publicly disseminated as a formal action of the Board.

9 9. Respondent understands that any violation of this Consent Agreement could be
10 grounds for further disciplinary action by the Board pursuant to A.A.C. R4-45-214(3).

11
12 DATED: 5-2-19 SIGNED: David R. Herrera
13 RCP David Herrera, Respondent
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15 **FINDINGS OF FACT**

16 1. The Arizona State Board of Respiratory Care Examiners is the duly constituted
17 agency for licensing and regulating of the practice of respiratory care in the State of Arizona and
18 has jurisdiction over Respondent as a licensee of the Board and the subject matter pursuant to
19 A.R.S. § 32-3501, *et seq.*

20 2. David Herrera, RCP, is the holder of License Number 001149, which enables
21 him/her to practice respiratory care in the State of Arizona.

22 3. Respondent was selected for a Continuing Education Audit pursuant to A.A.C.
23 R4-45-208. Respondent did not comply with the Board's request for the random Continuing
24 Education Audit on or before the date specified in the audit notice and submitted twenty (20)
25 hours of approved Continuing Education Units to the Board. Respondent was unable to produce
26 documentation showing they had obtained five (5) live hours of approved continuing education

1 as required by law and has failed to demonstrate compliance with the continuing education
2 requirement mandated for Respondent's last renewal period.

3 **CONCLUSIONS OF LAW**

4 1. The conduct described in the Findings of Fact constitute grounds for disciplinary
5 action pursuant to A.R.S. §§ 32-3552(A)(1) and (3) and violate the provisions of A.R.S. § 32-
6 3501(9)(i) which states, "Any conduct or practice which is contrary to recognized standards of
7 ethics of the respiratory therapy profession or any conduct or practice which does or might
8 constitute a danger to the health, welfare or safety of the patient or the public."

9 2. The conduct described in the Findings of Fact constitute grounds for disciplinary
10 action pursuant to A.R.S. §§ 32-3552(A)(1) and (3) and violate the provisions of A.R.S. § 32-
11 3501(9)(k), which states, "Violating or attempting to violate, directly or indirectly, or assisting in
12 or abetting the violation of or conspiring to violate a provision of this chapter."

13 3. The conduct described in the Findings of Fact constitute grounds for disciplinary
14 action pursuant to A.R.S. §§ 32-3552(A)(1) and (3) and violate the provisions of A.A.C. R4-45-
15 214 (2) which states, "Procuring or attempting to procure by fraud or misrepresentation a license
16 or renewal of a license to practice respiratory care."

17 **ORDER**

18 **IT IS HEREBY ORDERED THAT** David Herrera, RCP, holder of License No. 001149
19 shall be subject to the following:

20 1. Respondent shall pay a non-disciplinary **CIVIL PENALTY** for \$25.00 per
21 missing continuing education hour in the total amount of **ONE HUNDRED TWENTY FIVE**
22 **AND 00/100 DOLLARS (\$125.00)** for failing to complete five (5) live continuing education
23 hours within the required renewal period. This Civil Penalty shall be paid to the Arizona State
24 Board of Respiratory Care Examiners by no later than **NINETY (90) DAYS** from the effective
25 date of this Order. If Respondent is experiencing a financial hardship that requires payment of
26 the Civil Penalty in increments or an extension of the Civil Penalty due date, please contact the

1 Board offices at (602) 542-5995 to make alternative arrangements NO LATER THAN THIRTY
2 (30) DAYS from the effective date of this Order.

3 2. Respondent shall submit **FIVE (5) HOURS** of approved continuing education no
4 later than **NINETY (90) DAYS** from the effective date of this Order. All costs associated with
5 complying with the terms of this Order are to be paid by Respondent. These continuing
6 education units shall be in addition to the normal continuing education units required for the
7 current license renewal period



ARIZONA STATE BOARD OF RESPIRATORY CARE

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Jack Confer, Executive Director

DATED THIS 10th DAY OF MAY, 2019.

Original Consent Agreement for Findings
of Fact, Conclusions of Law and Non-
Disciplinary Order filed this
10th day of MAY, 2019 with the:

Arizona Board of Respiratory Examiners
1740 West Adams Street, Suite 3406
Phoenix, AZ 85007

Copy of the foregoing sent by electronic
and regular mail this 10th day
of MAY, 2019 to:

David Herrera, RCP
Address on Record

