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

10 In the Matter of the Statement of Issues
11 Against:

Case No. 7002016000062

12 **KENDRA LEE ATKINS**
13 **5622 Chestnut Common**
14 **Fremont, CA 94538**

STATEMENT OF ISSUES

15 Respondent.

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17 Complainant alleges:

18 PARTIES

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

22 2. On or about July 13, 2015, the Respiratory Care Board of California, Department of
23 Consumer Affairs received an application for a Respiratory Care Practitioner License from
24 Kendra Lee Atkins (“Respondent”). On or about June 21, 2015, Kendra Lee Atkins certified
25 under penalty of perjury to the truthfulness of all statements, answers, and representations in the
26 application. The Board denied the application on September 8, 2015.

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JURISDICTION

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

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

8 5. Section 3718 of the Code states: "The board shall issue, deny, suspend, and revoke
9 licenses to practice respiratory care as provided in this chapter."

10 6. Section 3732 of the Code states:

11 "(a) The board shall investigate an applicant for a license, before a license is issued, in
12 order to determine whether or not the applicant has the qualifications required by this chapter.

13 "(b) The board may deny an application, or may order the issuance of a license with terms
14 and conditions, for any of the causes specified in this chapter for suspension or revocation of a
15 license, including, but not limited to, those causes specified in Sections 3750, 3750.5, 3752.5,
16 3752.6, 3755, 3757, 3760, and 3761."

17 7. Section 3750 of the Code states:

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

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

23 ". . . (j) The commission of any fraudulent, dishonest, or corrupt act which is
24 substantially related to the qualifications, functions, or duties of a respiratory care
25 practitioner."

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1 8. Section 3750.5 of the Code states:

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

5 ". . . (b) Used any controlled substance as defined in Division 10 (commencing with Section
6 11000) of the Health and Safety Code, or any dangerous drug as defined in Article 2
7 (commencing with Section 4015) of Chapter 9 of this code, or alcoholic beverages, to an extent or
8 in a manner dangerous or injurious to himself or herself, or to others, or that impaired his or her
9 ability to conduct with safety the practice authorized by his or her license.

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

14 9. Section 3752 of the Code states:

15 "A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a
16 charge of any offense which substantially relates to the qualifications, functions, or duties of a
17 respiratory care practitioner is deemed to be a conviction within the meaning of this article. The
18 board shall order the license suspended or revoked, or may decline to issue a license, when the
19 time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when
20 an order granting probation is made suspending the imposition of sentence, irrespective of a
21 subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or
22 her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
23 dismissing the accusation, information, or indictment."

24 10. California Code of Regulations, title 16, section 1399.370, states:

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

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

5 "(b) Commission of an act or conviction of a crime involving fraud, fiscal dishonesty, theft
6 or larceny.

7 "(c) Commission of an act or conviction of a crime involving driving under the influence or
8 reckless driving while under the influence."

9 COST RECOVERY

10 11. Section 3753.1 of the Code states:

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

14 FACTS

15 March 20, 2014 Conviction

16 12. On or about September 15, 2013, Respondent was involved in a traffic accident on
17 northbound I-880 in Alameda County, California, at approximately 3:00 a.m. A preliminary
18 breath test at the scene recorded a blood alcohol content ("BAC") of 0.21 % at 4:40 a.m. and
19 0.20% at 4:48 a.m. Respondent was arrested for violating Vehicle Code sections 23152(a)
20 [driving a vehicle while under the influence of alcohol], 23152(b) [driving under the influence
21 while have 0.08% and more, by weight, of alcohol in the blood], and 23758 [excessive blood
22 alcohol content of 0.15% or greater].

23 13. On or about October 10, 2013, a criminal complaint titled *People of the State of California*
24 *vs. Kendra Lee Atkins*, Alameda County Superior Court, Case Number 251323-0 was filed.
25 Count 1 charged Respondent with a misdemeanor violation of Vehicle Code section 23152(a)
26 [driving a vehicle under the influence of alcohol]. Count 2 charged Respondent with a
27 misdemeanor violation of Vehicle Code section 23152(b) [driving under the influence while
28 having 0.08% and more, by weight of alcohol in the blood]. Count 2 further alleged that

1 Respondent, had a concentration of alcohol in her blood of 0.15% or more. 14. On or about
2 March 20, 2014, in a criminal proceeding entitled *People v. Kendra Lee Atkins* in Alameda
3 County Superior Court, Case Number 251323-0, Respondent was convicted by plea of *nolo*
4 *contendere* of violating Vehicle Code section 23152(b), a misdemeanor

5 15. On or about March 20, 2014, Respondent was sentenced as follows: three (3) years
6 probation, ten (10) days in jail, fine of \$2,214, and other terms and conditions.

7 May 27, 2008 Conviction

8 16. On or about November 16, 2007, as approximately 2:00 a.m., Respondent was
9 arrested for driving under the influence of alcohol in violation of Vehicle Code section 23152(a).

10 17. On or about May 27, 2008, in a criminal proceeding entitled *People v. Kendra Lee*
11 *Atkins* in Alameda County Superior Court, Case Number 227131, Respondent was convicted of
12 violating Vehicle Code section 23152(b), a misdemeanor.

13 18. On or about May 27, 2008, Respondent was sentenced as follows: three (3) years
14 probation, seven (7) days in jail, fine of \$1,721.

15 January 23, 2007 Conviction

16 19. On or about September 17, 2006, at approximately 1:00 a.m., Respondent was
17 arrested for violation of Penal Code section 496, receiving stolen property, a misdemeanor, after
18 being found impermissibly possessing another individual's lost or stolen identification.

19 20. On or about January 23, 2007, in a criminal proceeding entitled *People v. Kendra Lee*
20 *Atkins* in Alameda County Superior Court, Case Number 220639, Respondent was convicted of
21 violating Penal Code section 415, a misdemeanor.

22 21. On or about January 23, 2007, Respondent was sentenced as follows: three (3) years
23 probation, one (1) day in jail, fine of \$500.

24 FIRST CAUSE FOR DENIAL OF APPLICATION

25 (Conviction)

26 22. Respondent's application is subject to denial under sections 3750(d), 3750.5(d), 3752
27 and California Code of Regulations section 1399.370(c), in that Respondent was convicted of
28 crimes involving driving under the influence of alcohol, as more particularly alleged in

1 paragraphs 12 through 21, above, which are hereby incorporated by reference and realleged as if
2 fully set forth herein.

3 SECOND CAUSE FOR DENIAL OF APPLICATION

4 (Use of Alcohol in a Manner Dangerous to Herself or Others)

5 23. Respondent's application is subject to denial under sections 3750.5(b) in that she used
6 alcohol in a manner dangerous to herself and/or others, as more particularly alleged in paragraphs
7 12 through 18, above, which are hereby incorporated by reference and realleged as if fully set
8 forth herein.

9 THIRD CAUSE FOR DENIAL OF APPLICATION

10 (Fraud, Dishonest, or Corrupt Act)

11 24. Respondent's application is subject to denial under sections 3750(j) of the Code, and
12 section 1399.370(b), of title 16 of the California Code of Regulations in that she was arrested
13 after being found impermissibly possessing another individual's lost or stolen identification, as
14 more particularly alleged in paragraphs 19 through 21, above, which are hereby incorporated by
15 reference and realleged as if fully set forth herein.

16 FOURTH CAUSE FOR DENIAL OF APPLICATION

17 (Violation of a Provision or Provisions of the Respiratory Care Practice Act)

18 25. Respondent's application is subject to denial under section 3750(g) of the Code, and
19 section 1399.370(a), of title 16 of the California Code of Regulations, in that she has violated a
20 provision or provisions of the Respiratory Care Practice Act, as more particularly alleged in
21 paragraphs 12 through 24, above, which are hereby incorporated by reference and realleged as if
22 fully set forth herein.

23 PRAYER

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

26 1. Denying the application of Kendra Lee Atkins for a Respiratory Care Practitioner
27 License;

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2. Directing Kendra Lee Atkins to pay the Respiratory Care Board of California, if placed on probation, the costs of probation monitoring;

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

DATED: February 12, 2016

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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