

1 EDMUND G. BROWN JR.
Attorney General of California
2 THOMAS S. LAZAR
Supervising Deputy Attorney General
3 MATTHEW M. DAVIS
Deputy Attorney General
4 State Bar No. 202766
110 West "A" Street, Suite 1100.
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2093
7 Facsimile: (619) 645-2061

8 *Attorneys for Complainant*

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

12 In the Matter of the Statement of Issues Against:

Case No. 1H-2009-070

13 JOSEPH HORACE BILLINGSLEY, II
3405 Nash Street
14 Riverside, CA 92501

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

15 Respondent.

16
17 **FINDINGS OF FACT**

18 1. On or about February 9, 2009, the Respiratory Care Board of California
19 (Board) received an application for a Respiratory Care Practitioner License from Joseph Horace
20 Billingsley, II (Respondent). On or about January 13, 2009, Respondent certified under penalty
21 of perjury to the truthfulness of all statements, answers, and representations in the application.
22 The Board denied the application on or about July 2, 2009. A true and correct copy of
23 Respondent's application and the Board's denial are attached as Exhibits "2" and "13,"
24 respectively, to the separate accompanying "Default Decision Evidence Packet" and incorporated
25 by reference as if fully set forth herein.

26 2. On or about July 27, 2009, Respondent filed a request for hearing on the
27 denial of his application. A true and correct copy of Respondent's request for hearing is attached
28

1 as Exhibit "14" to the separate accompanying "Default Decision Evidence Packet" and
2 incorporated by reference as if fully set forth herein.

3 3. On September 28, 2009, Statement of Issues No. 1H-2009-070 was filed
4 against Respondent before the Respiratory Care Board of California. A true and correct copy of
5 the Statement of Issues No. 1H-2009-070 is attached as Exhibit "1" to the separate accompanying
6 "Default Decision Evidence Packet" and incorporated by reference as if fully set forth herein.

7 4. On or about September 28, 2009, respondent was served by certified mail
8 (7008 0150 0003 8023 8616) with a true and correct copy of Statement of Issues No. 1H-2009-
9 070, together with copies of all other statutorily required documents, at his address of record on
10 file with the Board, which is: 3405 Nash Street, Riverside, CA 92501. A true and correct copy of
11 the documents that were served along with the Statement of Issues, and Declaration of Service are
12 attached as Exhibit "1" to the separate accompanying "Default Decision Evidence Packet" and
13 incorporated by reference as if fully set forth herein. Service of Statement of Issues No. 1H-
14 2009-070 was effective as a matter of law under the provisions of Government Code section
15 11505, subdivision (c).

16 5. On or about March 30, 2010, a Notice of Hearing noticing a hearing date of
17 August 5, 2010, was served on Respondent at his address of record and on Respondent's then
18 attorney of record, Coker and Associates. A true and correct copy of the Notice of Hearing is
19 attached as Exhibit "1" to the separate accompanying "Default Decision Evidence Packet" and
20 incorporated by reference as if fully set forth herein.

21 6. On or about May 14, 2010, an Amended Notice of Hearing noticing a
22 hearing date of August 5, 2010, was served on Respondent at his address of record and on
23 Respondent's then attorney of record, Coker and Associates. A true and correct copy of the
24 Amended Notice of Hearing is attached as Exhibit "1" to the separate accompanying "Default
25 Decision Evidence Packet" and incorporated by reference as if fully set forth herein.

26 7. On August 5, 2010, a hearing was convened at the San Diego Office of
27 Administrative Hearings in the matter of the Statement of Issues Against Joseph Horace
28 Billingsley II, Case No. 1H-2009-070. Administrative Law Judge, Mary Agnes Matyzewski

1 made findings that Respondent was properly served with the Notice of Hearing and Amended
2 Notice of Hearing. Administrative Law Judge, Mary Agnes Matyzewski remanded the case to
3 the Board.

4 8. California Government Code section 11520 states, in pertinent part:

5 "(a) If the respondent either fails to file a notice of defense or to appear at
6 the hearing, the agency may take action based upon the respondent's express admissions
7 or upon other evidence and affidavits may be used as evidence without any notice to
8 respondent."

9 "..."

10 9. Pursuant to its authority under Government Code section 11520, the Board
11 finds Respondent is in default. The Board will take action without further hearing and, based on
12 respondent's express admissions by way of default and the evidence before it as contained in
13 the separate accompanying "Default Decision Evidence Packet," finds that the charges and
14 allegations in Statement of Issues No. 1H-2009-070, and each of them, separately and severably,
15 are true and correct.

16 "..."

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

19 11. Section 3750 of the Code states:

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

23 "..."

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

27 "..."

28 "(g) Conviction of a violation of any of the provisions of this chapter or of any

1 provision of Division 2 (commencing with Section 500), or violating, or
2 attempting to violate, directly or indirectly, or assisting in or abetting the violation
3 of, or conspiring to violate any provision or term of this chapter or of any
4 provision of Division 2 (commencing with Section 500).

5 “...”

6 12. Section 3732 of the Code states:

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

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

15 13. Section 3752 of the Code states,

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

26 14. Section 3752.5 of the Code states:

27 “For purposes of Division 1.5 (commencing with Section 475), and
28 this chapter [the Respiratory Care Practice Act], a crime involving bodily injury or

1 attempted bodily injury shall be considered a crime substantially related to the
2 qualifications, functions, or duties of a respiratory care practitioner.”

3 15. Section 3754 of the Code states: “The board may deny an application for,
4 or issue with terms and conditions, or suspend or revoke, or impose probationary
5 conditions upon, a license in any decision made after a hearing, as provided in Section
6 3753.”

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

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

15 “(a) Violating or attempting to violate, directly or indirectly, or assisting or
16 abetting the violation of or conspiring to violate any provision or term of the Act.

17 “...

18 “(c) Conviction of a crime involving driving under the influence or
19 reckless driving while under the influence.

20 “...”

21 COST RECOVERY

22 17. Section 3753.5, subdivision (a) of the Code states:

23 “In any order issued in resolution of a disciplinary proceeding
24 before the board, the board or the administrative law judge may direct any practitioner or
25 applicant found to have committed a violation or violations of law to pay to the board a
26 sum not to exceed the costs of the investigation and prosecution of the case.”

27 18. Section 3753.7 of the Code states:

28 “For purposes of the Respiratory Care Practice Act, costs of

1 prosecution shall include attorney general or other prosecuting attorney fees, expert
2 witness fees, and other administrative, filing, and service fees.”

3 19. Section 3753.1 of the Code states:

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

7 20. Respondent’s application for a Respiratory Care Practitioner License is
8 subject to denial by reason of the following:

9 (a) On or about December 8, 1989, Respondent was arrested in the State of
10 Michigan for violations of Michigan Vehicle Code section M1020 [operator under the
11 influence of liquor with a blood alcohol content of .10%] and Michigan Vehicle Code
12 section M1110 [operator under the influence of liquor & controlled substances]. A true
13 and correct copy of the Certified Copy of East Lansing, Michigan Police Department
14 arrest Report dated 12/8/1989 is attached as Exhibit “4” to the separate accompanying
15 “Default Decision Evidence Packet” and incorporated by reference as if fully set forth
16 herein.

17 (b) On or about December 20, 1989, respondent was charged in the case
18 entitled *City of East Lansing v. Joseph Horace Billingsley*, State of Michigan Judicial
19 District Case No. 89-3117, with the following criminal counts:

20 Count 1: Operator under the influence of liquor with a blood alcohol
21 content of .10% in violation of Michigan Vehicle Code section M1020;
22 and,

23 Count 2: Operator under the influence of liquor & controlled substances in
24 violation of Michigan Vehicle Code section M1110. A true and correct
25 copy of the Certified Michigan Judicial District Court Records Case No.
26 89-3117 is attached as Exhibit “5” to the separate accompanying “Default
27 Decision Evidence Packet” and incorporated by reference as if fully set
28 forth herein.

1 (c) On or about July 6, 1990, Respondent pled guilty to the following charge
2 in Case 89-3117:

3 Count 1: Operator under the influence of liquor & controlled substances in
4 violation of Michigan Vehicle Code section M1110.

5 (d) On or about July 6, 1990, Respondent was sentenced in Case
6 89-3117 to pay a fine in the amount of \$185.00. A true and correct copy of the Certified
7 Michigan Judicial District Court Records Case No. 89-3117 is attached as Exhibit "5" to
8 the separate accompanying "Default Decision Evidence Packet" and incorporated by
9 reference as if fully set forth herein.

10 (e) On or about October 20, 2004, Respondent was arrested for resisting or
11 deterring an officer with force or violence in violation of California Penal Code section
12 69, a felony and obstructing, resisting or deterring a public officer in the lawful exercise of
13 his duties in violation of California Penal Code section 148(a)(1), a misdemeanor. A true
14 and correct copy of the Certified Copy of San Bernardino Sheriff Department Arrest
15 Report dated October 20, 2004, is attached as Exhibit "6" to the separate accompanying
16 "Default Decision Evidence Packet" and incorporated by reference as if fully set forth
17 herein.

18 (f) On or about October 22, 2004, Respondent was charged in the case entitled
19 *People of the State of California v. Joseph Horace Billingsley II*, San Bernardino Superior
20 Court Case MSB079673, with the following criminal counts:

21 Count 1: Obstructing, resisting or deterring a public officer in the lawful
22 exercise of his duties in violation of California Penal Code section
23 148(a)(1), a misdemeanor; and,

24 Count 2: Disorderly conduct, person under the influence of alcohol/drugs
25 in violation of California Penal Code section 647(f). A true and correct
26 copy of the Certified San Bernardino County Superior Court Records Case
27 No. MSB079673, is attached as Exhibit "7" to the separate accompanying
28 "Default Decision Evidence Packet" and incorporated by reference as if

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

fully set forth herein.

(g) On or about November 1, 2004, Respondent was convicted in Case MSB079673 to an amended third count of disturbing the peace by loud/unreasonable noise in violation of California Penal Code section 415(2). A true and correct copy of the Certified San Bernardino County Superior Court Records Case No. MSB079673, is attached as Exhibit "7" to the separate accompanying "Default Decision Evidence Packet" and incorporated by reference as if fully set forth herein.

(h) On or about November 1, 2004, Respondent was sentenced in Case MSB079673 to pay a fine in the amount of \$340.00. A true and correct copy of the Certified San Bernardino County Superior Court Records Case No. MSB079673, is attached as Exhibit "7" to the separate accompanying "Default Decision Evidence Packet" and incorporated by reference as if fully set forth herein.

(i) On or about March 21, 2007, Respondent was arrested for inflicting corporal punishment on a spouse in violation of California Penal Code section 273.5(a), a misdemeanor. A true and correct copy of the Certified Copy of Riverside Police Department Arrest Report dated March 21, 2007, is attached as Exhibit "8" to the separate accompanying "Default Decision Evidence Packet" and incorporated by reference as if fully set forth herein.

(j) On or about March 23, 2007, Respondent was charged in the case entitled *People of the State of California v. Joseph Horace Billingsley II*, Riverside Superior Court Case RIM495758, with the following criminal counts:

- Count 1: Inflicting corporal punishment on a spouse in violation of California Penal Code section 273.5(a), a misdemeanor; and,
- Count 2: Battery on a spouse or cohabitating partner in violation of California Penal Code section 243(E)(1), a misdemeanor. A true and correct copy of the Certified Riverside County Superior Court Records Case No. RIM495758, is attached as Exhibit "9" to the separate accompanying "Default Decision Evidence Packet" and incorporated by

1 reference as if fully set forth herein.

2 (k) On or about May 4, 2007, Respondent was convicted in Case RIM495758
3 to an amended third count of disturbing the peace by loud/unreasonable noise in violation
4 of California Penal Code section 415(2). A true and correct copy of the Certified
5 Riverside County Superior Court Records Case No. RIM495758, is attached as Exhibit
6 "9" to the separate accompanying "Default Decision Evidence Packet" and incorporated
7 by reference as if fully set forth herein.

8 (l) On or about May 4, 2007, Respondent was sentenced in Case RIM495758
9 to thirty-six months (36) probation, 30 days in County Jail, 20 hours community service, a
10 52 week domestic violence program, a 4th Amendment Waiver and to pay fines and fees in
11 the amount of \$730.00. A true and correct copy of the Certified Riverside County
12 Superior Court Records Case No. RIM495758, is attached as Exhibit "9" to the separate
13 accompanying "Default Decision Evidence Packet" and incorporated by reference as if
14 fully set forth herein.

15 **DETERMINATION OF ISSUES**

16 1. Based on the foregoing findings of fact, the application of Respondent
17 Joseph Horace Billingsley II, for a Respiratory Care Practitioner License is subject to denial.

18 2. Pursuant to its authority under California Government Code section 11520,
19 and based on the evidence before it, the Board hereby finds that the charges and allegations
20 contained in Statement of Issues No. 1H-2009-070, and the Findings of Fact contained in
21 paragraphs 1 through 20, above, and each of them, separately and severally, are true and correct.

22 3. Pursuant to its authority under California Government Code section 11520,
23 and by reason of the Findings of Fact contained in paragraphs 1 through 20, above, and
24 Determination of Issues 1 and 2, above, the Board hereby finds that the application of Respondent
25 Joseph Horace Billingsley II, for a Respiratory Care Practitioner License is subject to denial
26 under California Business and Professions Code sections 3750, 3752, 3752.5 and California Code
27 of Regulations Title 16, Section 1399.370, subdivision (a) and (c), in that he has:

28 (a) Been convicted of crimes substantially related to the qualifications,

1 functions, or duties of a respiratory care practitioner in violation of California Business
2 and Professions Code section section 3750, subdivision (d), and 3752.5, and Title 16 of
3 the California Code of Regulations, section 1399.370; and

4 (b) Been convicted of a crime involving driving under the influence of alcohol
5 in violation of California Business and Professions Code section 3750, as defined by
6 section 3750, subdivision (d), and 3752, and Title 16 of the California Code of
7 Regulations section 1399.370, subdivision (c).

8 4. Pursuant to Business and Professions Code section 3753.5, Respondent is
9 hereby ordered to reimburse the Board costs of investigation and enforcement in the amount of
10 \$5,950.00.

11 **ORDER**

12 IT IS HEREBY ORDERED that:

13 The application for a Respiratory Care Practitioner License of Joseph Horace
14 Billingsley II, is hereby denied for each of the violations, separately and severally, of California
15 Business and Professions Code found in the Determinations of Issues, above.

16 Pursuant to Government Code section 11520, subdivision (c), Respondent may
17 serve a written motion requesting that the Decision be vacated and stating the grounds relied on
18 within seven (7) days after service of the Decision on Respondent. The agency in its discretion
19 may vacate the Decision and grant a hearing on a showing of good cause, as defined in the
20 statute.

21 This Decision shall become effective on October 28, 2010.

22 It is so ORDERED September 28, 2010

23
24 
25 LARRY L. RENNER, BS, RRT, RCP, RPFT
26 PRESIDENT, RESPIRATORY CARE BOARD
27 DEPARTMENT OF CONSUMER AFFAIRS
28 STATE OF CALIFORNIA

Attachment:

Default Decision Evidence Packet