EDMUND G. BROWN JR.
Attorney General of California
JOSE R. GUERRERO
State Bar No. 97276
Supervising Deputy Attorney General
CATHERINE E. SANTILLAN
Senior Legal Analyst
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5579
Facsimile: (415) 703-5480
Attorneys for Complainant

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

In the Matter of the Statement of Issues Against**:** **ADRIAN BROWN** **3079 Iroquis Ave.** **Long Beach, CA 90808** Applicant/Respondent.	Case No. 1H 2009 047 **STATEMENT OF ISSUES**

Complainant alleges:

PARTIES

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

2. On or about January 20, 2009, the Respiratory Care Board of California, Department of Consumer Affairs received an application for a Respiratory Care Practitioner License from Adrian Brown (Respondent). On or about December 30, 2008, Adrian Brown certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on August 3, 2009.

JURISDICTION

3. This Statement of Issues 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 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 3732 of the Code states:

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

7. Section 3750 of the Code states:

"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.
>
> "(m) Denial, suspension, or revocation of any license to practice by another agency, state, or territory of the United States for any act or omission that would constitute grounds for the denial, suspension, or revocation of a license in this state."

8. Section 3750.5 of the Code states:

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

> "(b) Used any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Article 2

(commencing with section 4015) of Chapter 9 of this code, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, or to others, or that impaired his or her ability to conduct with safety the practice authorized by his or her license."

9. 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."

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

"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 unfitness of a licensee to perform the functions authorized by his or her license or in a manner inconsistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

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

COST RECOVERY

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

"In any order issued in resolution of a disciplinary proceeding before the board, the board or the administrative law judge may direct any practitioner or applicant found to have committed a violation or violations of law or any term and condition of board probation to pay to the board a sum not to exceed the costs of the investigation and prosecution of the case. A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by

the official custodian of the record of his or her designated representative shall be prima facie evidence of the actual costs of the investigation and prosecution of the case."

12. Section 3753.7 of the Code states:

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

13. Section 3753.1 of the Code states:

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

FIRST CAUSE FOR DENIAL OF APPLICATION

(Substantially-related Convictions)

14. Respondent's application is subject to denial under code sections 3750(d), 3750.5(b) 3752, CCR 1399.370(c) [substantially related convictions] in that he has substantially-related convictions. The circumstances are as follows:

2010 DUI conviction

15. On or about August 3, 2009 at approximately 1:16 a.m., Long Beach Police Officers Murray, Chang and Berkenkamp were dispatched to assist with a traffic stop. Sergeant Berkenkamp advised them that Respondent was walking away from him. Sergeant Berkenkamp warned Respondent that he would use a Taser, and Respondent answered, “You don’t have to taze me” in a slurred voice. Respondent struggled and hit his head, causing a one inch abrasion. He was placed into the back of a police vehicle. Officer Chang noticed that Respondent had red, watery eyes, poor coordination, and a very strong odor of alcohol on his breath. Officer Chang did not remove the handcuffs on Respondent because he was uncooperative, and he believed that Respondent would try to walk away again. Respondent was arrested for driving under the influence of alcohol in violation of Vehicle Code section 23152(a) [driving under the influence of alcohol or drugs], Vehicle Code section 14601.2(A) [driving when privilege suspended or revoked for driving under the influence], and Penal Code section 148(a)(1) [resisting, delay or

obstruct a peace officer.] Respondent was transported to Long Beach Police Department for booking, where he tried to persuade the officers that his father was a police officer and Respondent should be allowed to go home. Respondent was uncooperative, and insisted that he did not understand the chemical test admonition form. He said he did not understand when asked to take a preliminary alcohol screening test. He refused to take a breath or blood alcohol test, and refused to answer any booking questions.

16. On or about August 4, 2009, a misdemeanor complaint titled *People of the State of California vs. Adrian R.D. Brown*, case no. 9LT01334 was filed in Los Angeles County Superior Court. Count 1 charged Respondent with a violation of Vehicle Code section 23152(a) [driving under the influence of alcohol], Count 2 charged a violation of Penal Code section 148(a)(1) [resisting, delay or obstruct a peace officer] and Count 3 charged a violation of Vehicle Code section 14601.2(A) [driving when privilege suspended or revoked for driving under the influence.]

17. On or about September 29, 2009, Count 4 was added, a violation of Vehicle Code section 23222(A) [possession of open container of alcohol in vehicle]. On or about May 24, 2010, Respondent was convicted on his plea of nolo contendere to all four counts.

18. On June 8, 2010, Respondent was ordered not to drive in lieu of installing an ignition interlock device. If Respondent successfully completes a V.A. program and has no further violations of law, he will be allowed to withdraw his plea and the case will be dismissed after 24 months (on or about May 24, 2012.)

<u>November 6, 2006 Arizona disorderly conduct, a felony conviction</u>

19. On or about July 31, 2006, while in the State of Arizona, Respondent was arrested for violating Arizona State Statutes (ARS) 13-1204.A.2 [aggravated assault with a deadly weapon], ARS 13-1202.A.1 [threatening and intimidating] and ARS 13-1602.A.1 [criminal damage.] The circumstances are as follows:

20. On July 31, 2006 at 12:18 a.m., two City of Gilbert, Arizona police officers investigated a report of a male individual with a knife threatening motorists. Three witnesses reported that Respondent had been recklessly driving a white Mercedes. W.P. was driving a

truck, with E.P., his wife, in the front passenger side of the truck. W.P. changed lanes in front of Respondent, and Respondent pulled up next to his vehicle and began shouting. Respondent then exited his vehicle and began yelling, "I'll kill you" to W.P., as Respondent pulled out a knife. As E.P. began writing down Respondent's license plate number and phoned the police, Respondent ran to the passenger side of the vehicle. E.P. rolled the window up before he began stabbing at the window. Respondent continued yelling at them and hitting the passenger window with his hand and the knife. As W.P. drove away, Respondent hit the rear of the truck with the knife, causing a dent. M.A. stopped his vehicle and watching Respondent's actions, called 911. Respondent ran up to M.A.'s vehicle, yelling, "I'll kill you too!" and the police arrived soon after.

21. When Officer Dana arrived on the scene, he observed two vehicles stopped in the left turn lane, and a male (later identified as Respondent) walking on the sidewalk of the overpass. When Respondent saw the marked police vehicle, he turned and walked in the opposite direction, then threw a metallic object over the overpass fence. Officer Dana arrested respondent, who continually swore at the officer and was extremely aggressive, challenging the officers to fight. Respondent had an extremely strong odor of alcohol on his person and his eyes were bloodshot and watery. Police officers searched the area and retrieved the knife respondent had used, which was a folding knife with a three to four inch blade.

22. Respondent was advised of his Miranda rights and replied "yes" that he understood. He admitted that he drank four to five alcoholic drinks earlier that evening.

23. On or about August 2, 2006, a misdemeanor complaint titled *State of Arizona vs. Adrian Brown*, case no. CR2006-145680-001 was filed in Maricopa County Superior Court. Count 1 charged Respondent with a violation of ARS 13-2904 [disorderly conduct], a dangerous felony because the offense involved the use, or threatening exhibition of a knife, a deadly weapon.

24. On or about November 6, 2006, Respondent entered a plea of guilty, and the Court formally judged him guilty of violating ARS 13-2901, 2904, 3105, 701,702, 702.01, 707, 801, 802 [disorderly conduct, a class 6 undesignated felony.] Imposition of sentence was suspended, and he was placed on probation for 18 months, on the following terms and conditions: pay

restitution, fines and fees, not to consume any alcohol, complete 8 hours of community work service as directed by the Adult Probation Department (APD), participate and cooperate in any counseling as directed by APD. The Court granted the motion to dismiss the allegation of dangerousness. He was ordered to forfeit the weapon seized, to wit: folding knife with a four inch silver colored blade.

25. On or about November 11, 2007, Respondent filed a Petition for Early Termination of Probation. He completed 11 months of the 18 month court-ordered probation, and paid all court fees and restitution in full. On December 4, 2007, the Petition was granted with an effective date of January 7, 2008. The undesignated felony conviction was designated a misdemeanor.

August 30, 2006 Arizona DUI conviction

26. On or about March 22, 2006, while in the State of Arizona, Respondent was arrested for driving under the influence of alcohol in violation of Arizona State Statutes (ARS) 28-1381A1 [driving under the influence of liquor, drugs, vapors, or combination], ARS 28-701A [failure to control speed], ARS 28-1382A [extreme driving under the influence of alcohol], and ARS 28-1381A2 [driving under the influence with a blood alcohol content of .08% or more.] The circumstances are as follows:

27. On or about March 22, 2006, at approximately 2:01 a.m., Chandler Police Officers Grover and Emmons investigated a single vehicle rollover collision. Respondent was identified as the driver by his license. When Officer Emmons arrived on the scene, he observed a damaged sports utility vehicle lying on the roadway beside a brick wall that had been damaged. The Chandler Fire Department was on-scene, treating Respondent.

28. Officer Grover spoke with Respondent, who said, "I've been drinking and I know I'm going to jail." When asked what had happened, Respondent said that he did not remember anything before the accident. Officer Emmons searched the interior of the vehicle and found an open cardboard container of beer. The container had approximately ten unopened cans of beer, and there were several open, empty cans scattered throughout the vehicle and in the roadway. He also located a prescription bottle of Hydrocodone (generic for Vicodin) prescribed to "J. Brown" with only four pills remaining. The prescription label showed that it had been filled on

February 1, 2006, with a quantity of 75.

29. Officer Emmons' investigation of the collision site indicated that Respondent was driving at a minimum speed of 59 miles per hour (mph), above the 45 mph posted speed limit, when he lost control of his vehicle and crashed into the brick wall.

30. Respondent was transported to the hospital for treatment. Based on the totality of the circumstances, Officer Emmons contacted hospital personnel to advise them that he had probable cause to believe the Respondent had been under the influence of alcohol at the time of the collision, and he requested a portion of the blood draw. Officer Emmons spoke to Respondent in the hospital, and Respondent voluntarily agreed to submit a blood sample for testing. The results of the blood draw indicated Respondent's alcohol level was .187%.

31. Officer Emmons issued a citation to Respondent for violating ARS 28-1381A1 [driving under the influence of liquor, drugs, vapors, or combination] and ARS 28-701A [failure to control speed]

32. On or about May 24, 2006, a misdemeanor complaint titled *State of Arizona vs. Adrian R.D. Brown*, case no. 06-P-871261 was filed in Maricopa County Municipal Court. Count 1 charged Respondent with a violation of ARS 28-1381A2 [driving under the influence with a blood alcohol content of .08% or more.] Misdemeanor complaint case no. 06-P-871262 was filed in Maricopa County Municipal Court. Count 1 charged Respondent with a violation of ARS 28-1382A [extreme driving under the influence of alcohol.] On May 22, 2006, the two cases were consolidated to case no. 06-C-2727361.

33. On or about August 30, 2006, Respondent was convicted on his plea of guilty to ARS 28-1381A1 [driving under the influence of liquor, drugs, vapors, or combination.] He was sentenced to the following terms and conditions: pay fines; serve 10 days in jail of which 9 days were suspended upon enrolling in an Alcohol/Drug Abuse Screening and successful completion of education/counseling program; attend one Alcohol Impact sessions sponsored by MADD and provide written proof of attendance to the court within 2 months.

34. Respondent filed an Application to Set Aside the Judgment of conviction on August 30, 2006 pursuant to ARS 13-907. On November 17, 2008, the Court granted the Application

and an Order Dismissing the Complaint.

35. Therefore, Respondent's application for a license is denied based on his substantially related convictions which are in violation of code sections 3750(d), 3750.5(b), 3752, and CCR 1399.370(c).

SECOND CAUSE FOR DENIAL OF APPLICATION

(Discipline by another state)

36. Paragraphs 19 through 34 are incorporated herein.

37. Respondent's application is subject to denial under section 3750(m) [discipline by another state licensing agency.] The circumstances are as follows:

38. On or about August 18, 2006, Respondent filed an application for licensure with the Arizona State Board of Respiratory Care Examiners (hereinafter "Arizona Board.") He failed to reveal that in July 2006, he was arrested and charged with a felony offense, which resulted in a conviction of a class 6 undesignated felony. Based on the information he revealed at the time he applied, he was issued a temporary license. If he had revealed the information, the Arizona Board would have issued the license in conjunction with a probationary order. Respondent then applied for an extension of the temporary license.

39. At a public meeting held on April 19, 2007, the Arizona Board considered Respondent's request for an extension. Respondent admitted the felony conviction, which constituted admission of an act which is defined as unprofessional conduct in A.R.S. section 32-3501(10)(1) in conjunctions with A.R.S. section 32-3523. The Arizona Board was also concerned by Respondent's recent history of problems with anger management and alcohol abuse. These concerns warranted monitoring him, and the Board voted to grant an extension to the temporary license, only and on the condition that he agree to enter into a stipulated order of probation.

40. On or about May 17, 2007, Respondent entered into a Stipulation and Consent Order of Probation for extension of the temporary license through August 22, 2007. Respondent was placed on probation for the time period during which he held a valid temporary license extension, on terms and conditions, including that he comply with random biological fluid testing,

completely abstain from alcohol, work only under direct supervision of a licensed physician or licensed respiratory care practitioner, and that he successfully petition the court to restore his civil rights after he completed probation for the conviction of a class 6 undesignated felony.

41. On September 11, 2007, Respondent informed the Arizona Board that he was no longer sure about pursuing a career in respiratory care, and the Arizona Board discontinued the random drug screening condition.

Application for Permanent AZ License

42. On his application for permanent licensure in Arizona, Respondent answered yes to a question as to whether he had enrolled in or been committed to a substance abuse program in the prior ten years, and whether he had any convictions. On January 9, 2008, Respondent submitted to the Arizona Board office a copy of a court order reducing his felony conviction to a misdemeanor.

43. Respondent entered into a Consent Order granting a license pursuant to terms and conditions which was effective February 13, 2008. The Order placed his Arizona license on probation for three years from the effective date.

44. Therefore, Respondent's application is subject to denial based on the disciplinary action taken against his respiratory care practitioner license by the State of Arizona.

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. Denying the application of Adrian Brown for a Respiratory Care Practitioner License;

2. Directing Adrian Brown to pay the Respiratory Care Board of California the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring;

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

DATED: December 21, 2010

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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