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

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

Case No. 7002016000221

12 **JOHN CHAO**  
13 **18909 Horst Avenue**  
14 **Artesia, CA 90701,**

**STATEMENT OF ISSUES**

15 Applicant.

16  
17 Complainant alleges:

18 **PARTIES**

19 1. Stephanie Nunez (Complainant) brings this Statement of Issues 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 September 28, 2015, the Respiratory Care Board of California,  
23 Department of Consumer Affairs received an application for a Respiratory Care Practitioner  
24 License from JOHN CHAO (Applicant). On or about May 19, 2015, Applicant certified under  
25 penalty of perjury to the truthfulness of all statements, answers, and representations in the  
26 application. The Board denied the application on January 12, 2016.

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1 **JURISDICTION**

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,  
6 hereafter referred to as the board, shall enforce and administer this chapter.” [Chapter 8.3, the  
7 Respiratory 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 “... ”

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

24 “... ”

25 8. Section 3750.5 of the Code states:

26 “In addition to any other grounds specified in this chapter, the board may deny, suspend,  
27 place on probation, or revoke the license of any applicant or licenseholder who has done any of  
28 the following:

1           “(a) Obtained, possessed, used, or administered to himself or herself in violation of law, or  
2 furnished or administered to another, any controlled substances as defined in Division 10  
3 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug as  
4 defined in Article 2 (commencing with Section 4105) of Chapter 9, except as directed by a  
5 licensed physician and surgeon, dentist, podiatrist, or other authorized health care provider, or  
6 illegally possessed any associated paraphernalia.

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

12           “... ”

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

17           “... ”

18           9.     Section 3752 of the Code states:

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

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

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

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

9 “... ”

10 “(c) Commission of an act or conviction of a crime involving driving under the influence  
11 or reckless driving while under the influence.

12 “... ”

13 **COST RECOVERY**

14 11. Section 3753.1 of the Code states:

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

18 “(b) The board shall not renew or reinstate the license of any licensee who has failed to pay  
19 all of the costs ordered under this section once a licensee has served his or her term of probation.”

20 **FIRST CAUSE FOR DENIAL OF APPLICATION**

21 (Conviction Crimes Substantially Related to the  
22 Qualifications of a Respiratory Care Practitioner)

23 12. Applicant's application is subject to denial under sections 3750, subdivision (d),  
24 3750.5, subdivision (d), and 3752 of the Code, and California Code of Regulations, title 16,  
25 section 1399.370, subdivision (c) in that:

26 **July 14, 2011 Conviction**

27 a. On or about July 14, 2011, in a criminal proceeding entitled *The People of the*  
28 *State of California vs. John Chao* in the Orange County Superior Court, Case Number

1 11NM13021 M A, Applicant was convicted by a plea of guilty to one count of violating  
2 California Vehicle Code section 23152(a), driving under the influence, a misdemeanor; and one  
3 count of violating California Vehicle Code section 23152(b), driving with a blood alcohol level  
4 .08 or greater, a misdemeanor. The circumstances are as follows:

5 i. On or about May 28, 2011, Buena Park Police Officer J.G. received a citizen  
6 complaint regarding a possible impaired driver. Officer J.G. located a vehicle that matched the  
7 description. Officer J.G. observed that the vehicle failed to stop for a red light, made a right-hand  
8 turn at an unsafe speed, and failed to properly complete a right-hand turn; all are violations of the  
9 California Vehicle Code. As such, Officer J.G. conducted a traffic stop of the vehicle.

10 ii. After executing the stop, officer J.G. approached the driver, later identified as  
11 Applicant John Chao, and asked him if he had anything to drink prior to driving. Applicant  
12 replied that he had approximately three beers earlier in the evening.

13 iii. Officer J.G. observed that Applicant's eyes were red and watery, his speech  
14 was slow and slurred and the officer noticed an odor of an alcoholic beverage emanating from  
15 Applicant's person and vehicle. Based upon his training and experience, Officer J.G. recognized  
16 each observation to be a sign and/or symptom of alcohol intoxication. Therefore, Officer J.G.  
17 conducted a DUI investigation.

18 iv. Officer J.G. asked Applicant a series of preliminary DUI investigation  
19 questions and conducted a series of field sobriety tests (FST). As part of the standard FST  
20 battery, Officer J.G. obtained two breath samples from Applicant using a preliminary alcohol  
21 screening (PAS) device that yielded a blood alcohol concentration (BAC) level of .100 and .112.  
22 Based upon Applicant's answers to the preliminary DUI investigation questions, performance on  
23 the FSTs and PAS results, Officer J.G. formed the opinion that Applicant was operating a vehicle  
24 while under the influence of alcohol, in violation of California Vehicle Code section 23152(a).  
25 Officer J.G. then advised Applicant of his obligation to submit to a chemical test. Applicant  
26 elected to submit to a "blood-draw" and advised the officer "You know I've been intoxicated for  
27 approximately an hour and a half, so my blood alcohol is [going to] be super concentrated."  
28 Applicant's blood was drawn and sent for testing. Applicant was then booked into the Buena

1 Park Jail under a violation of California Vehicle Code section 23152(a). Applicant was  
2 subsequently released with a citation.

3 v. On or about July 8, 2011, a criminal complaint was filed against Applicant  
4 alleging violations of California Vehicle Code sections 23152(a), driving under the influence of  
5 alcohol or a drug, and 23152(b), driving with a blood alcohol level of .08 or greater. On or about  
6 July 14, 2011, Applicant was arraigned and entered pleas of guilty as to both counts. Applicant  
7 was sentenced to three years of informal probation with relevant terms and conditions, ordered to  
8 pay various fines and fees, and to complete a first offender alcohol program.

9 September 15, 2014 Conviction

10 b. On or about September 15, 2014, in a criminal proceeding entitled *The People*  
11 *of the State of California vs. John Chao* in the Los Angeles Superior Court, Case Number  
12 4BF03634, Applicant was convicted by plea of guilty to a violation of California Vehicle Code  
13 section 23152(b), a misdemeanor. The circumstances are as follows:

14 i. On or about April 27, 2014, Los Angeles Sheriff's Deputy J.M. observed a  
15 vehicle exceeding the speed limit. As such, Deputy J.M. conducted a traffic stop. After the stop,  
16 Deputy J.M. contacted the driver, who was later identified as Applicant.

17 ii. Deputy J.M. observed that Applicant's eyes were bloodshot and watery, his  
18 speech was slurred, and the officer noticed an odor of an alcoholic beverage emanating from  
19 Applicant's breath and person. Based upon his training and experience, Deputy J.M. recognized  
20 each observation to be a sign and/or symptom of alcohol intoxication. Therefore, Deputy J.M.  
21 conducted a DUI investigation.

22 iii. Deputy J.M. asked Applicant a series of preliminary DUI investigation  
23 questions and conducted a series of FSTs. As part of the standard FST battery, Officer J.G.  
24 obtained two breath samples from Applicant that yielded a BAC level of .12 and .11. Based upon  
25 Applicant's answers to the preliminary DUI investigation questions, the performance on the FSTs  
26 and breath test results, Deputy J.M. formed the opinion that Applicant was operating a vehicle  
27 while under the influence of alcohol, in violation of California Vehicle Code section 23152(a).  
28 As such, Deputy J.M. arrested Applicant.



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**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 JOHN CHAO for a Respiratory Care Practitioner Licenses;
2. Directing Applicant JOHN CHAO to pay the Respiratory Care Board of California, if placed on probation, the costs of probation monitoring; and
3. Taking such other and further action as deemed necessary and proper.

DATED: June 15, 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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