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

11 In the Matter of the Accusation Against:

Case No. R-2007

12 JOSEPH ALLEN CAPRAI
3717 South Parker Street
13 San Pedro, California 90731

A C C U S A T I O N

14 Respiratory Care Practitioner License No. 12240

15 Respondent.

16
17 Complainant alleges:

18 PARTIES

19 1. Stephanie Nunez (Complainant) brings this Accusation 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 October 25, 1988, the Respiratory Care Board issued
23 Respiratory Care Practitioner License Number 12240 to Joseph Allen Caprai (Respondent). This
24 license expired on July 31, 2004, and has not been renewed.

25 JURISDICTION

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

1 4. Section 3710 of the Code states: “The Respiratory Care Board of
2 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3,
3 the Respiratory Care Practice Act].”

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

6 6. Section 3750 of the Code states:

7 “The board may order the denial, suspension or revocation of, or the imposition of
8 probationary conditions upon, a license issued under this chapter, for any of the following
9 causes:

10 “ . . .

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

14 7. Section 3750.5 of the Code states:

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

18 “. . .

19 “(b) Used any controlled substance as defined in Division 10 (commencing with
20 Section 11000) of the Health and Safety Code. . . .

21 “. . .

22 “(d) Been convicted of a criminal offense involving the consumption or
23 self-administration of any of the substances described in subdivisions (a) and (b), or the
24 possession of, or falsification of a record pertaining to, the substances described in
25 subdivision (a), in which event the record of the conviction is conclusive evidence thereof.
26 . . .”

27 8. Section 3752 of the Code states:

28 “A plea or verdict of guilty or a conviction following a plea of nolo contendere

1 made to a charge of any offense which substantially relates to the qualifications, functions,
2 or duties of a respiratory care practitioner is deemed to be a conviction within the meaning
3 of this article. The board shall order the license suspended or revoked, or may decline to
4 issue a license, when the time for appeal has elapsed, or the judgment of conviction has
5 been affirmed on appeal or when an order granting probation is made suspending the
6 imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the
7 Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of
8 not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
9 indictment.”

10 9. Section 490 of the Code states:

11 “A board may suspend or revoke a license on the ground that the licensee has been
12 convicted of a crime, if the crime is substantially related to the qualifications, functions, or
13 duties of the business or profession for which the license was issued. A conviction within
14 the meaning of this section means a plea or verdict of guilty or a conviction following a
15 plea of nolo contendere. Any action which a board is permitted to take following the
16 establishment of a conviction may be taken when the time for appeal has elapsed, or the
17 judgment of conviction has been affirmed on appeal, or when an order granting probation
18 is made suspending the imposition of sentence, irrespective of a subsequent order under the
19 provisions of Section 1203.4 of the Penal Code.”

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

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

27 “ . . .

28 “(c) Conviction of a crime involving driving under the influence or reckless driving

1 while under the influence. . . .”

2 11. Section 118 of the Code states:

3 “ . . .

4 “(b) The suspension, expiration, or forfeiture by operation of law of a license
5 issued by a board in the department, or its suspension, forfeiture, or cancellation by order
6 of the board or by order of a court of law, or its surrender without the written consent of
7 the board, shall not, during any period in which it may be renewed, restored, reissued, or
8 reinstated, deprive the board of its authority to institute or continue a disciplinary
9 proceeding against the licensee upon any ground provided by law or to enter an order
10 suspending or revoking the license or otherwise taking disciplinary action against the
11 licensee on any such ground.

12 “(c) As used in this section, ‘board’ includes an individual who is authorized by
13 any provision of this code to issue, suspend, or revoke a license, and ‘license’ includes
14 ‘certificate,’ ‘registration,’ and ‘permit.’”

15 COST RECOVERY

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

17 "In any order issued in resolution of a disciplinary proceeding before the board, the
18 board or the administrative law judge may direct any practitioner or applicant found to
19 have committed a violation or violations of law to pay to the board a sum not to exceed the
20 costs of the investigation and prosecution of the case."

21 13. Section 3753.7 of the Code states:

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

25 14. Section 3753.1, subdivision (a) of the Code states:

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

1 respondent with possession of a controlled substance, methamphetamine, a violation of
2 Health and Safety Code section 11377(a), a felony, resisting an executive officer, a
3 violation of Penal Code section 69, a felony, being under the influence of a controlled
4 substance, a violation of Health and Safety Code section 11550(a), a misdemeanor,
5 driving under the influence of alcohol or drugs, a violation of Vehicle Code section
6 23152(a), a misdemeanor, and unauthorized possession of a hypodermic needle or syringe,
7 a violation of Business and Professions Code section 4140, a misdemeanor.

8 C. On or about March 3, 2005, in a criminal proceeding entitled *People*
9 *v. Joseph Allen Caprai*, in Superior Court, Los Angeles County, Case Number TA077057,
10 respondent was convicted by a plea of nolo contendere to the crime of resisting an
11 executive officer, a violation of Penal Code section 69, a felony, and driving under the
12 influence of alcohol or drugs, a violation of Vehicle Code section 23152(a), a
13 misdemeanor.

14 D. On or about April 27, 2005, respondent was placed on probation for
15 three years. The terms and conditions of his probation included performing 15 days of Cal
16 Trans, completion of a three month licensed first-offender alcohol and drug program, and
17 restriction of his driving privilege for 90 days. Respondent was ordered to pay a \$20.00
18 court security assessment and a \$200.00 restitution fine.

19 SECOND CAUSE FOR DISCIPLINE

20 (Use of a Controlled Substance)

21 17. Respondent is subject to disciplinary action under section 3750.5,
22 subdivision (b) of the Code in that he used the controlled substance methamphetamine. The facts
23 and circumstances, set forth in Paragraph 16 of this Accusation, are incorporated herein by
24 reference.

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28 PRAYER

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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:

18. Revoking or suspending Respiratory Care Practitioner License Number 12240 issued to Joseph Allen Caprai;

19. Ordering Joseph Allen Caprai to pay the Respiratory Care Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring;

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

DATED: December 9, 2005

Original signed by Liane Zimmerman for:
STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
Department of Consumer Affairs
State of California
Complainant