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

In the Matter of the Accusation Against: RAYMOND PAUL BREWITZ, R.C.P. 444 West Badillo Street Covina, California 91723 Respiratory Care Practitioner License Number 17365, Respondent.	Case No. 1H 2007 439 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about September 16, 1994, the Respiratory Care Board issued Respiratory Care Practitioner License Number 17365 to Raymond Paul Brewitz (Respondent). The license was in full force and effect at all times relevant to the charges brought herein except for brief periods of lapse, and will expire on November 30, 2011, unless renewed.

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JURISDICTION

3. This Accusation 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 3718 of the Code states: "The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter."

5. Section 118, subsection (b), of the Code states:

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

6. 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.

. . .

"(g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this chapter or of any provision of Division 2 (commencing with Section 500).

. . ."

7. 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."

8. Section 3753 of the Code states:

"The procedure in all matters and proceedings relating to the denial, suspension, or revocation of licenses under this chapter shall be governed by the provisions of the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code)."

9. Section 3754 of the Code states:

"The board may deny an application for, or issue with terms and conditions, or suspend or revoke, or impose probationary conditions upon, a license in any decision made after a hearing, as provided in Section 3753."

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 of the Code states:

"(a) 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 or 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 DISCIPLINE

(Substantially Related Convictions)

14. Respondent is subject to disciplinary action under section 3750, subdivision (d), and California Code of Regulations, title 16, section 1399.370, in that he was convicted of crimes substantially related to the qualifications, functions, or duties of a respiratory care practitioner. The circumstances are as follows.

15. On or about July 27, 2007, Respondent drove a red Toyota 4-Runner in the parking lot of a Food 4 Less store and sideswiped another vehicle, damaging it. Respondent

continued driving through the parking lot and turned onto a street. The owner of the car that had been hit drove behind Respondent and called the police. The police came and stopped Respondent. Respondent had bloodshot and watery eyes, slurred speech and a strong smell of alcohol coming from his breath and person. Respondent admitted he was driving through the parking lot and hit a car. He said that he "did not want to stop." When asked by the police officer if he knew it was a crime to leave the scene of an accident, Respondent said, "Yeah, yeah, whatever." Respondent admitted to the police officer that he had been drinking vodka all day but stated that he could "handle his alcohol." Later, when asked if he could feel the effects of alcohol as he drove, Respondent stated, "I'm buzzed a little bit." Respondent's preliminary alcohol screening test indicated a blood alcohol content of .33 percent. Two subsequent alcohol screening tests both indicated a blood alcohol content of .32 percent, four times the legal (0.08 percent) limit.

16. Respondent was arrested, spent a day in jail and signed a citation on which he agreed to appear in the Riverside Superior Court on September 4, 2007.

17. Respondent was charged in the Superior Court of California, County of Riverside, *People of the State of California v. Raymond Paul Brewitz*, Case Number RIM503209, with the following criminal violations: (1) Vehicle Code section 23152(A), driving under the influence of alcohol; (2) Vehicle Code section 23152(B), driving under the influence of alcohol with a blood alcohol content of .08 percent or higher; (3) Vehicle Code section 20002(A), hit and run.

18. On September 4, 2007, Respondent failed to appear in Court. A bench warrant was issued. The criminal complaint against Respondent was amended to add a charge that he violated Vehicle Code section 40508(A) by failing to appear.

19. Over a year and a half after a bench warrant had been issued for his arrest and almost two years subsequent to his driving under the influence of alcohol with a blood alcohol content of at least .32 percent, side-swiping another vehicle in a parking lot, leaving the scene of the accident, being arrested, spending a day in jail, receiving a citation, and agreeing to appear in Court on September 4, 2007, Respondent appeared in Court on June 3, 2009.

20. On June 5, 2009, Respondent pled guilty to violating: (1) Vehicle Code section 23152(A), driving under the influence of alcohol; (2) Vehicle Code section 23152(B), driving under the influence of alcohol with a blood alcohol content of .08 percent or higher; (3) Vehicle Code section 20002(A), hit and run; (4) Vehicle Code section 40508(A), failure to appear.

21. Respondent was granted summary probation for forty-eight months with several conditions including paying restitution and serving forty-five days in the county jail with credit given for one actual day served. If residential rehabilitation were completed by September 8, 2009, then imposition of the forty-four remaining days of jail time would be suspended.

SECOND CAUSE FOR DISCIPLINE

(Violating Condition of Prior Discipline)

22. Respondent is subject to disciplinary action under section 3750(g) in that he violated the disciplinary order issued in *In the Matter of the Accusation Against Raymond Paul Brewitz* before the Respiratory Care Board of California, Case No. R-1808, effective October 6, 2003. That decision is final and is incorporated by reference as if fully set forth. In that case, Respondent was ordered to comply with conditions including that he agree that "no future violations of the law will occur." It provided that violation of any condition would be deemed a violation of Business and Professions Code section 3750(g) and permit further disciplinary action against Respondent following his receipt of notice and an opportunity to be heard. The circumstances of Respondent's violation of the prior disciplinary order and Business and Professions Code section 3750(g) include his violating the law as described in paragraphs eighteen to twenty-three, fully incorporated as if set forth here.

DISCIPLINARY CONSIDERATIONS

23. To determine the degree of discipline to be imposed on Respondent, Complainant alleges that on October 6, 2003, in the above-referenced disciplinary action entitled *In the Matter of the Accusation Against Raymond Paul Brewitz*, Case Number R-1808, Respondent's license was publicly reprimanded for his admitted violations of sections 490, 3750(d), 3750(g), CCR, title 16, sections 1399.370(a) and CCR, title 16, section 1399.370,

subdivisions (a) and (c). Respondent's misconduct causing the above referenced disciplinary action against him is similar to his misconduct presently alleged in the first charge above.

24. To further determine the degree of discipline to be imposed on Respondent, Complainant further alleges, as admitted in the above referenced disciplinary matter,

"a. On or about December 14, 2002, Respondent was pulled over for a violation because he was not wearing his seatbelt. Upon contact with Respondent, the officer smelled a strong odor of an alcoholic beverage on Respondent's breath. Respondent was asked to perform field sobriety tests which he failed to perform as demonstrated. Respondent was subsequently arrested for driving under the influence. Respondent provided a breath sample with the results of .28 and .28 blood alcohol."

"b. On or about March 24, 2003, a complaint was filed in Superior Court of California, County of Riverside, entitled *People of the State of California v. Raymond Paul Brewitz*, Case No. RIM29938, charging Respondent with Count 1 – violating Vehicle Code section 23152(a) [driving under the influence of alcohol] and Count 2 – violating Vehicle Code section 23152(b) [driving a vehicle while having .08% or higher blood alcohol]."

"c. On or about March 24, 2003, Respondent pled guilty and was convicted of Count 2 – violating Vehicle Code section 23152(b). He was granted summary probation for a period of 36 months with terms and conditions."

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. Revoking or suspending Respiratory Care Practitioner License Number RCP 17365, issued to Raymond Paul Brewitz.

2. Ordering Raymond Paul Brewitz 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;

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

DATED: February 10, 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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