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7
8 **BEFORE THE**
RESPIRATORY CARE BOARD
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the First Amended Accusation
11 Against:

Case No. R-2024

12 RODNEY ALAN BURFORD
6948 Catawba Drive
13 Fontana, CA 92336

First Amended
A C C U S A T I O N

14 Respiratory Care Practitioner License No. 21293

15 Respondent.

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17 Complainant alleges:

18 **PARTIES**

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

22 2. On or about February 9, 2000, the Respiratory Care Board issued Respiratory
23 Care Practitioner License Number 21293 to Rodney Alan Burford (Respondent). The Respiratory
24 Care Practitioner License was in full force and effect at all times relevant to the charges brought herein
25 and will expire on September 30, 2007, unless renewed.

26 **JURISDICTION**

27 3. This First Amended Accusation is brought before the Respiratory Care Board
28

1 (Board), Department of Consumer Affairs, under the authority of the following laws. All section
2 references are to the Business and Professions Code unless otherwise indicated.

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

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

8 6. Section 3750 of the Code states:

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

12 “* * * *

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

16 “* * * *

17 “(j) The commission of any fraudulent, dishonest, or corrupt act which is substantially
18 related to the qualifications, functions, or duties of a respiratory care practitioner.”

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

20 “In any order issued in resolution of a disciplinary proceeding before the board, the
21 board or the administrative law judge may direct any practitioner or applicant found to have
22 committed a violation or violations of law to pay to the board a sum not to exceed the costs of
23 the investigation and prosecution of the case. A certified copy of the actual costs, or a good
24 faith estimate of costs where actual costs are not available, signed by the official custodian of
25 the record or his or her designated representative shall be prima facie evidence of the actual
26 costs of the investigation and prosecution of the case.”

27 8. Section 3753.7 of the Code provides that for purposes of the Respiratory Care
28 Practice Act, costs of prosecution shall include attorney general or other prosecuting attorney fees,

1 expert witness fees, and other administrative, filing, and service fees.

2 9. Section 3753.1 of the Code states:

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

6 10. Section 3754 of the Code states: "The board may deny an application for, or
7 issue with terms and conditions, or suspend or revoke, or impose probationary conditions upon, a
8 license in any decision made after a hearing, as provided in Section 3753."

9 11. Section 3755 of the Code states:

10 "The board may take action against any respiratory care practitioner who is charged with
11 unprofessional conduct in administering, or attempting to administer, direct or indirect respiratory
12 care. Unprofessional conduct includes, but is not limited to, repeated acts of clearly administering
13 directly or indirectly inappropriate or unsafe respiratory care procedures, protocols, therapeutic
14 regimens, or diagnostic testing or monitoring techniques, and violation of any provision of Section
15 3750. The board may determine unprofessional conduct involving any and all aspects of
16 respiratory care performed by anyone licensed as a respiratory care practitioner. Any person who
17 engages in repeated acts of unprofessional conduct shall be guilty of a misdemeanor and shall be
18 punished by a fine of not more than one thousand dollars (\$1,000), or by imprisonment for a term
19 not to exceed six months, or by both that fine and imprisonment."

20 12. Section 3752 of the Code states:

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

1 verdict of guilty, or dismissing the accusation, information, or indictment.”

2 13. Section 3752.6 provides as follows:

3 “For purposes of Division 1.5 (commencing with Section 475), and this chapter, a crime
4 involving sexual misconduct or attempted sexual misconduct, whether or not with a patient, shall
5 be considered a crime substantially related to the qualifications, functions, or duties of a respiratory
6 care practitioner.”

7 14. Section 3752.7 provides as follows:

8 “Notwithstanding Section 3750, any proposed decision or decision issued under this
9 chapter in accordance with the procedures set forth in Chapter 5 (commencing with Section
10 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact
11 that the licensee or registrant engaged in any act of sexual contact, as defined in Section 729, with
12 a patient, or has committed an act or been convicted of a sex offense as defined in Section 44010
13 of the Education Code, shall contain an order of revocation. The revocation shall not be stayed
14 by the administrative law judge. For purposes of this section, the patient shall no longer be
15 considered a patient of the respiratory care practitioner when the order for respiratory procedures
16 is terminated, discontinued, or not renewed by the prescribing physician and surgeon.”

17 15. Section 44010 of the Education Code provides in pertinent part as follows:

18 “‘Sex offense,’ ... means any one or more of the offenses listed below:

19 “(a) Any offense defined in Section 220, 261, 261.5, 262, 264.1, 266, 266j, 267, 285,
20 286, 288, 288a, 288.5, 289, 311.1, 311.2, 311.3, 311.4, 311.10, 311.11, 313.1, 647b, 647.6,
21 or former Section 647a, subdivision (a), (b), (c), or (d) of Section 243.4, or subdivision (a) or (d)
22 of Section 647 of the Penal Code.”

23 16. Section 1399.370 of Title 16 of the California Code of Regulations states:

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

1 subdivision (a), of the Penal Code in that respondent engaged in corrupt acts substantially related to
2 the qualifications, functions, or duties of a respiratory care practitioner. The circumstances are as
3 follows:

4 A. On or about January 1, 2005, through May 31, 2005, respondent committed
5 a violation of Penal Code section 288, subdivision (a). The circumstances are as set forth in
6 Count 1 of the Felony Complaint, filed March 28, 2006, in the criminal case to which
7 reference is made in paragraph 19 above; and in the document entitled "Guilty Plea, Factual
8 Basis" filed on June 2, 2006, in the criminal case to which reference is made in paragraph 18
9 above. The Felony Complaint and Guilty Plea, Factual Basis are incorporated here by
10 reference. Specifically, while respondent, wearing boxer shorts, was lying on a bed with the
11 seven year old victim, he was sexually aroused when the victim touched his penis.
12 Respondent then lifted up the victim's night gown, pulled her panties to the side and rubbed
13 the victim's vagina with his fingers; respondent was sexually aroused by this.

14 B. Respondent's conduct referred to in paragraph 20.A. above constituted corrupt
15 acts.

16 C. Respondent's conduct referred to in paragraphs 20.A. and 20.B. above was
17 substantially related to the qualifications, functions, or duties of a respiratory care
18 practitioner.

19 **THIRD CAUSE FOR DISCIPLINE**

20 (Unprofessional Conduct)

21 21. Respondent is subject to disciplinary action under section 3755 of the Code in
22 that respondent engaged in unprofessional conduct. The circumstances are as follows:

23 A. The facts and allegations set forth in paragraphs 19 and 20 above are
24 incorporated here as if fully set forth.

25 **PRAYER**

26 WHEREFORE, Complainant requests that a hearing be held on the matters herein
27 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

28 1. Revoking or suspending Respiratory Care Practitioner License Number 21293,

1 issued to Rodney Alan Burford;

2 2. Ordering Rodney Alan Burford to pay the Respiratory Care Board the costs
3 of the investigation and enforcement of this case, and if placed on probation, the costs of probation
4 monitoring;

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

6 DATED: July 11, 2006

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Original signed by Liane Zimmerman for: _____

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STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
Department of Consumer Affairs
State of California

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