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

12 In the Matter of the Accusation Against:

Case No. 1H-2008-162

13 MICHAEL T. CASTRO, R.C.P.
14 P.O. Box 6523
Buena Park, CA 90622

A C C U S A T I O N

15 Respiratory Care Practitioner License No. 22459
16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about July 24, 2002, the Respiratory Care Board issued Respiratory
24 Care Practitioner License No. 22459 to MICHAEL T. CASTRO, R.C.P. (Respondent). The
25 Respiratory Care Practitioner License was in full force and effect at all times relevant to the
26 charges brought herein and will expire on April 30, 2009, unless renewed.

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JURISDICTION

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2 3. This Accusation 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
6 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter
7 8.3, the Respiratory Care Practice Act].”

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

10 6. Section 3750 of the Code states:
11 “The board may order the denial, suspension or revocation of, or the imposition of
12 probationary conditions upon, a license issued under this chapter, for any of the following
13 causes:

14 “....”

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

18 “....”

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

24 “....”

25 7. Section 3750.5 provides in pertinent part:

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

1 “(a) Obtained or possessed in violation of law, or except as directed by a licensed
2 physician and surgeon, dentist, or podiatrist administered to himself or herself, or
3 furnished or administered to another, any controlled substances as defined in Division 10
4 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug
5 as defined in Article 2 (commencing with Section 4015) of Chapter 9.

6 “....”

7 8. Section 3752 of the Code states:

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

17 9. Section 492 of the Code states:

18 “Notwithstanding any other provision of law, successful completion of any
19 diversion program under the Penal Code, or successful completion of an alcohol and drug
20 problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12
21 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2
22 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in
23 that division, from taking disciplinary action against a licensee or from denying a license for
24 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a
25 record pertaining to an arrest.

26 “This section shall not be construed to apply to any drug diversion program
27 operated by any agency established under Division 2 (commencing with Section 500) of this
28 code, or any initiative act referred to in that division.”

1 10. California Code of Regulations, title 16, section 1399.370, provides in
2 pertinent part:

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

9 “(a) Violating or attempting to violate, directly or indirectly, or assisting or
10 abetting the violation of or conspiring to violate any provision or term of the Act.

11 “....”

12 **COST RECOVERY**

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

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

18 12. Section 3753.7 of the Code states:

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

22 13. Section 3753.1, subdivision (a), of the Code states:

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

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Conviction of a Crime)**

3 14. Respondent is subject to disciplinary action under sections 3750,
4 subdivisions (d) and (g), 3752, and 492, in that he was convicted of a crime substantially related
5 to the qualifications, functions, or duties of a respiratory care practitioner. The circumstances are
6 as follows:

7 A. On or about March 13, 2008, at approximately 1:50 a.m., respondent was
8 stopped by police officers for driving with a broken headlight. Officers saw a bag of
9 methamphetamine, along with an opium pipe, in respondent's vehicle. Respondent was arrested
10 and charged with violating Health and Safety Code sections 11377, subdivision (a) [felony
11 possession of a controlled substance] and 11364 [possession of controlled substance
12 paraphernalia].

13 B. On or about June 11, 2008, in the case of *The People of the State of*
14 *California v. Michael Thomas Castro*, case number 08NF1037, in the Superior Court of
15 California, County of Orange, respondent pled guilty to possession of a controlled substance in
16 violation of Health and Safety Code section 11377, subdivision (a), and possession of controlled
17 substance paraphernalia in violation of Health and Safety Code section 11364. Entry of
18 judgment was deferred and respondent was required to complete a drug diversion program by
19 January 14, 2009.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Possession of a Controlled Substance)**

22 15. Respondent is further subject to disciplinary action under section 3750.5,
23 subdivision (a) of the Code in that he possessed a controlled substance, methamphetamine, as
24 more particularly alleged in paragraph 14, which is hereby incorporated by reference and
25 realleged as if set forth herein.

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1 **PRAYER**

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

4 1. Revoking or suspending Respiratory Care Practitioner License No. 22459,
5 issued to Michael T. Castro, R.C.P.;

6 2. Ordering Michael T. Castro, R.C.P. to pay the Respiratory Care Board the
7 costs of the investigation and enforcement of this case, and if placed on probation, the costs of
8 probation monitoring; and,

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

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11 DATED: August 4, 2008

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14 Original signed by:
15 STEPHANIE NUNEZ
16 Executive Officer
17 Respiratory Care Board of California
18 Department of Consumer Affairs
19 State of California
20 Complainant
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