

1 KAMALA D. HARRIS
Attorney General of California
2 ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General
3 CHRISTINE A. RHEE
Deputy Attorney General
4 State Bar No. 295656
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2639
7 Facsimile: (619) 645-2061

8 *Attorneys for Complainant*

9
10 **BEFORE THE**
RESPIRATORY CARE BOARD
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA
12

13 **In the Matter of the Accusation Against:**

Case No. 7002016000116

14 **NATALIYA S. BUTENKO, R.C.P.**
15 **2827 Weeping Willow Road**
Chula Vista, CA 91915

A C C U S A T I O N

16 **Respiratory Care Practitioner**
17 **License No. 23463,**

18 **Respondent.**

19 Complainant alleges:

20 **PARTIES**

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

24 2. On or about March 5, 2004, the Respiratory Care Board issued Respiratory Care
25 Practitioner License No. 23463 to Nataliya S. Butenko (Respondent). Respiratory Care
26 Practitioner License No. 23463 was in full force and effect at all times relevant to the charges
27 brought herein and will expire on July 31, 2017, unless renewed.

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JURISDICTION

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

5 4. Section 3710 of the Code states: “The Respiratory Care Board of California, hereafter
6 referred to as the board, shall enforce and administer this chapter.” [Chapter 8.3, the Respiratory
7 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 3750 of the Code states, in pertinent part:

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

22 “...”

23 7. Section 3752 of the Code states:

24 “A plea or verdict of guilty or a conviction following a plea of nolo contendere made
25 to a charge of any offense which substantially relates to the qualifications, functions, or
26 duties of a respiratory care practitioner is deemed to be a conviction within the meaning of
27 this article. The board shall order the license suspended or revoked, or may decline to issue
28 a license, when the time for appeal has elapsed, or the judgment of conviction has been

1 affirmed on appeal or when an order granting probation is made suspending the imposition
2 of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code
3 allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or
4 setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.”

5 8. California Code of Regulations, title 16, section 1399.370, states:

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

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

15 “(b) Commission of an act or conviction of a crime involving fraud, fiscal
16 dishonesty, theft or larceny.

17 “...”

18 **COST RECOVERY**

19 9. 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 or any term and condition of board probation to
23 pay to the board a sum not to exceed the costs of the investigation and prosecution of the
24 case. A certified copy of the actual costs, or a good faith estimate of costs where actual
25 costs are not available, signed by the official custodian of the record or his or her designated
26 representative shall be prima facie evidence of the actual costs of the investigation and
27 prosecution of the case.”

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1 10. Section 3753.7 of the Code states:

2 “For purposes of the Respiratory Care Practice Act, costs of prosecution shall include
3 attorney general or other prosecuting attorney fees, expert witness fees, and other
4 administrative, filing, and service fees.”

5 11. Section 3753.1, subdivision (a), of the Code states:

6 “An administrative disciplinary decision imposing terms of probation may include,
7 among other things, a requirement that the licensee-probationer pay the monetary costs
8 associated with monitoring the probation.”

9 **FIRST CAUSE FOR DISCIPLINE**

10 **(Conviction of a Crime)**

11 12. Respondent’s license is subject to disciplinary action under section 3750, as defined
12 by 3750, subdivision (d), and 3752 of the Code, in that she has been convicted of a crime
13 substantially related to the qualifications, functions or duties of a respiratory care practitioner, as
14 more particularly alleged hereinafter:

15 13. On or about March 27, 2015, Officers N.L. and G.A. of the Chula Vista Police
16 Department responded to a call regarding a theft at Wal-Mart located at 1360 Eastlake Parkway.
17 Upon arrival, Officer N.L. was informed that Respondent had placed five items of merchandise
18 valued at \$28.43 in her purse without paying for the items. Respondent made two separate
19 purchases for other items and then passed all points of purchase without paying for the five items
20 placed in her purse. Respondent was then detained by witness K.S. until the police arrived.

21 14. On or about May 6, 2015, in the case entitled, *The People of the State of California v.*
22 *Nataliya Butenko*, San Diego Superior Court Case No. S279238, respondent was charged with
23 count one, a misdemeanor violation of section 484 of the Penal Code, (petty theft), on March 27,
24 2015.

25 15. On or about September 9, 2015, respondent was convicted on her plea of guilty to
26 count one, a misdemeanor violation of section 484 of the Penal Code, (petty theft), on March 27,
27 2015.

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1 stayed, and was placed on probation for a period of three (3) years with certain terms and
2 conditions. That decision is now final, and is incorporated by reference as if fully set forth herein.

3 20. To further determine the degree of discipline, if any, to be imposed on Respondent,
4 Complainant alleges that on or about December 2, 2003, the Board filed the case entitled, *In the*
5 *Matter of the Statement of Issues Against Nataliya S. Butenko*, Case No. S-328, based on
6 Respondent's conviction on or about December 6, 2002, for a violation of section 602(j) of the
7 Penal Code (trespassing), in the case entitled *The People of the State of California v. Nataliya*
8 *Butenko*, San Diego Superior Court Case No. C224671. On or about February 27, 2004, the
9 Board adopted a Stipulated Settlement and Disciplinary Order effective March 5, 2004, whereby
10 Respondent's Respiratory Care Practitioner License No. 23463 was publicly reprimanded. That
11 decision is now final, and is incorporated by reference as if fully set forth herein.

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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 of California issue a decision:

1. Revoking or suspending Respiratory Care Practitioner License No. 23463, issued to Respondent Nataliya S. Butenko;

2. Ordering Respondent Nataliya S. Butenko, to pay the Respiratory Care Board of California the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring; and

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

DATED: March 1, 2016

Original signed by Liane Freels for:
STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
State of California
Complainant

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