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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 Statement of Issues Against:

Case No. S-393

13 MAXIMO ARMENTA
7040 San Luis Street
14 Paramount, California 90723

STATEMENT OF ISSUES

15 Respondent.

16
17 Complainant alleges:

18 PARTIES

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

22 2. On or about December 12, 2006, the Board received an application for a
23 Respiratory Care Practitioner License from Maximo Armenta (Respondent). On or about
24 December 1, 2006, Respondent certified under penalty of perjury to the truthfulness of all
25 statements, answers, and representations in the application. The Board denied the application on
26 August 16, 2007.

27 JURISDICTION

28 3. This Statement of Issues is brought before the Board under the authority of

1 the following laws. All section references are to the Business and Professions Code (Code),
2 unless otherwise indicated.

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

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

8 6. Section 3732, subdivision (b) of the Code states:

9 "The board may deny an application, or may order the issuance of a license
10 with terms and conditions, for any of the causes specified in this chapter for
11 suspension or revocation of a license, including, but not limited to, those causes
12 specified in Sections 3750, 3750.5, 3752.5, 3752.6, 3755, 3757, 3760, and 3761."

13 7. Section 3750 of the Code states:

14 "The board may order the denial, suspension or revocation of, or the
15 imposition of probationary conditions upon, a license issued under this chapter, for
16 any of the following causes:

17 " . . .

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

21 " . . . "

22 8. Section 3750.5 of the Code states:

23 "In addition to any other grounds specified in this chapter, the board may
24 deny, suspend, or revoke the license of any applicant or license holder who has
25 done any of the following:

26 " . . . "

27 "(b) Used any controlled substance as defined in Division 10 (commencing
28 with Section 11000) of the Health and Safety Code.

1 " "

2 COST RECOVERY

3 9. Section 3753.5, subdivision (a) of the Code states:

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

9 10. Section 3753.7 of the Code states:

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

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

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

17 CONTROLLED SUBSTANCES

18 12. Marijuana is a Schedule I controlled substance pursuant to Health
19 and Safety Code Section 11054. Cocaine is a Schedule II controlled substance pursuant to
20 Health and Safety Code Section 11055.

21 FIRST CAUSE FOR DENIAL OF APPLICATION

22 (Use of a Controlled Substance)

23 13. Respondent's application is subject to denial under Code sections
24 3750.5, subdivision (b), in conjunction with section 3732, subdivision (b), in that he used
25 the controlled substances marijuana and cocaine. The circumstances are as follows:

26 A. In 2000, Respondent was a private in the United States Department
27 of the Army at Fort Bragg, North Carolina. On or about September 5, 2000,
28 Respondent was drug tested during a random Unit Urinalysis Inspection. The

1 results indicated that Respondent tested positive for cocaine and
2 Tetrahydrocannabinol (THC), the active ingredient in marijuana.

3 B. On or about October 5, 2000, proceedings were held pursuant to
4 Article 15, Uniform Code of Military Justice (UCMJ), in which Respondent was
5 charged with wrongful use of the controlled substance, cocaine, in violation of
6 Article 112(A), UCMJ.

7 C. On or about October 17, 2000, Respondent received Non-Judicial
8 punishment consisting of reduction to grade E-1, forfeiture of \$503.00 pay per
9 month for two months, suspended, to be automatically remitted if not vacated
10 before November 17, 2000, extra duty for 45 days, and restriction for 45 days.

11 D. On or about October 26, 2000, an investigation was conducted.
12 During an interview, Respondent stated that on September 3, 2000, he had about
13 two beers with dinner. When he came back to his residence, he saw a man in the
14 parking lot who gave him six beers, and then offered him some marijuana. After
15 taking about three “hits off a joint” (slang for smoking a marijuana cigarette), the
16 man told Respondent the “joint” was laced with cocaine. Respondent signed a
17 sworn statement dated October 26, 2000, in which he admitted that he used
18 marijuana which was laced with cocaine.

19 SECOND CAUSE FOR DENIAL

20 (Commission of a Fraudulent, Dishonest, or Corrupt Act)

21 14. Respondent is subject to disciplinary action under Code section
22 3750, subdivision (j), in that he committed a fraudulent, dishonest or corrupt act
23 substantially related to the qualifications, functions, or duties of a respiratory care
24 practitioner. The circumstances are as follows:

25 A. On or about December 12, 2006, the Board received Respondent’s
26 application for a respiratory care practitioner license. Respondent answered “No”
27 to question number 19 on the application regarding whether he had ever been
28 arrested, charged or convicted or had a conviction expunged, dismissed, reduced or

1 diverted by the court. On or about December 1, 2006, Respondent signed the
2 license application declaring under penalty of perjury that the information on the
3 application was true and correct. He thereafter submitted the license application to
4 the Board. As Respondent was well aware at the time he signed this license
5 application, his answer was false by virtue of his being charged with wrongful use
6 of the controlled substance, cocaine, as set forth in the above Paragraph 13,
7 subparagraph B.

8 PRAYER

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

- 11 1. Denying the application of Maximo Armenta for a Respiratory Care
12 Practitioner License;
- 13 2. Directing Maximo Armenta to pay the Respiratory Care Board the
14 costs of the investigation and enforcement of this case, and if placed on probation, the
15 costs of probation monitoring; and
- 16 3. Taking such other and further action as deemed necessary and
17 proper.

18 DATED: December 5, 2007

19
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21 Original signed by Liane Zimmerman for:
22 STEPHANIE NUNEZ
23 Executive Officer
24 Respiratory Care Board of California
25 Department of Consumer Affairs
26 State of California
27 Complainant
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