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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. 1H 2008 211

13 CARLOS ALBERTO CANAS  
14 14200 Polk Street #61  
Sylmar, California 91342

**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 March 28, 2008, the Board received an application for a  
23 Respiratory Care Practitioner License from Carlos Alberto Canas (Respondent). On or about  
24 February 27, 2008, 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 September 30, 2008.

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

21 “ . . .

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

25 “ . . . .”

26 8. Section 3752 of the Code states:

27 “A plea or verdict of guilty or a conviction following a plea of nolo  
28 contendere made to a charge of any offense which substantially relates to the

1 qualifications, functions, or duties of a respiratory care practitioner is deemed to be  
2 a conviction within the meaning of this article. The board shall order the license  
3 suspended or revoked, or may decline to issue a license, when the time for appeal  
4 has elapsed, or the judgment of conviction has been affirmed on appeal or when an  
5 order granting probation is made suspending the imposition of sentence,  
6 irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing  
7 the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or  
8 setting aside the verdict of guilty, or dismissing the accusation, information, or  
9 indictment.”

10 9. California Code of Regulations, Title 16, section 1399.370, states:

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

17 “ . . .

18 “(b) Conviction of a crime involving fiscal dishonesty, theft, or larceny.

19 “. . . .”

20 COST RECOVERY

21 10. Section 3753.5, subdivision (a) of the Code states:

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

27 11. Section 3753.7 of the Code states:

28 "For purposes of the Respiratory Care Practice Act, costs of prosecution

1 shall include attorney general or other prosecuting attorney fees, expert witness  
2 fees, and other administrative, filing, and service fees."

3 12. Section 3753.1, subdivision (a) of the Code states:

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

7 FIRST CAUSE FOR DENIAL OF APPLICATION

8 (Conviction of a Crime)

9 13. Respondent's application is subject to denial under Code sections  
10 3750, subdivision (d), and 3752, and California Code of Regulations, Title 16, section  
11 1399.370, subdivision (b), in conjunction with Code section 3732, subdivision (b), in that  
12 Respondent has been convicted of a crime substantially related to the qualifications,  
13 functions and duties of a respiratory care practitioner. The circumstances are as follows:

14 A. On or about December 9, 2005, a Los Angeles County Deputy  
15 Sheriff responded to a report of a possible embezzlement suspect being detained by  
16 a loss prevention agent at an Abercrombie and Fitch store in Valencia, California.  
17 Upon questioning by the deputy sheriff, Respondent, who was the assistant  
18 manager at Abercrombie and Fitch, admitted that he had authorized return  
19 transactions and then kept the cash, although no merchandise was ever returned.  
20 There were six transactions for a total amount of \$1112.82 which took place over a  
21 six week period. Respondent also signed a Security Statement dated December 9,  
22 2005, in which he admitted that he performed six fraudulent refunds by taking  
23 items from the floor and returning them without a receipt. He then removed cash  
24 from the drawer, which totaled \$1,112.82, for the period from October 27, 2005,  
25 through December 17, 2005. He also admitted that he would leave the store during  
26 his work hours, and later return to the store to clock out. Respondent was arrested  
27 for embezzlement by an employee.  
28

1           B.     On or about January 3, 2006, in Los Angeles County Superior Court  
2 Case No. 06NW00119, Respondent was charged with grand theft, in violation of  
3 Penal Code section 487, subdivision (a), a misdemeanor.

4           C.     On or about January 24, 2006, Respondent was convicted pursuant  
5 to his plea of nolo contendere to grand theft. He was placed on probation for three  
6 years on the following terms and conditions: serve 1 day in county jail (with credit  
7 for 1 day); pay fines of \$1,465.00; not to possess any dangerous or deadly  
8 weapons; not to use or possess any narcotics or dangerous drugs; not to associate  
9 with narcotic or drug users or sellers; stay away from Abercrombie and Fitch in  
10 Valencia; and pay restitution in the amount of \$1,112.82 to Abercrombie and Fitch.

11                           SECOND CAUSE FOR DENIAL OF APPLICATION

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

13           14.     Respondent's application is subject to denial under Code section  
14 3750, subdivision (j), in conjunction with section 3732, subdivision (b), in that he  
15 committed a fraudulent, dishonest or corrupt act that is substantially related to the  
16 qualifications, functions, or duties of a respiratory care practitioner. Respondent had a  
17 conviction for grand theft on January 24, 2006. The facts and circumstances, set forth in  
18 above Paragraph 13 of this Statement of Issues, are incorporated herein by reference.

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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 issue a decision:

1. Denying the application of Carlos Alberto Canas for a Respiratory Care Practitioner License;

2. Directing Carlos Alberto Canas 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; and

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

DATED: December 23, 2008

Original signed by Liane Zimmerman for:  
STEPHANIE NUNEZ  
Executive Officer  
Respiratory Care Board of California  
Department of Consumer Affairs  
State of California  
Complainant