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10 **BEFORE THE**  
**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 319

13 JANICE CABASAL AQUINO  
3040 E. Cecelia Street  
14 West Covina, California 91789

**STATEMENT OF ISSUES**

15 Respondent.

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17 Complainant alleges:

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PARTIES

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

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23 2. On or about May 16, 2008, the Board received an application for a  
Respiratory Care Practitioner License from Janice Cabasal Aquino (Respondent). On or about  
24 May 6, 2008, Respondent certified under penalty of perjury to the truthfulness of all statements,  
25 answers, and representations in the application. The Board denied the application on November  
26 24, 2008.

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JURISDICTION

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2           3.       This Statement of Issues is brought before the Board under the authority of  
3 the following laws. All section references are to the Business and Professions Code (Code),  
4 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 3732, subdivision (b) of the Code states:  
11                “The board may deny an application, or may order the issuance of a license  
12 with terms and conditions, for any of the causes specified in this chapter for  
13 suspension or revocation of a license, including, but not limited to, those causes  
14 specified in Sections 3750, 3750.5, 3752.5, 3752.6, 3755, 3757, 3760, and 3761.”

15          7.       Section 3750 of the Code states:  
16                “The board may order the denial, suspension or revocation of, or the  
17 imposition of probationary conditions upon, a license issued under this chapter, for  
18 any of the following causes:

19                “ . . .

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

23                “ . . .

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

27                “ . . . .”

28          8.       Section 3750.5 of the Code states:

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

4            "(a) Obtained or possessed in violation of law, or except as directed by a  
5 licensed physician and surgeon, dentist, or podiatrist administered to himself or  
6 herself, or furnished or administered to another, any controlled substances as  
7 defined in Division 10 (commencing with Section 11000) of the Health and Safety  
8 Code.

9            ". . . ."

10           9.        Section 3752 of the Code states:

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

22           10.        Section 492 of the Code states:

23            "Notwithstanding any other provision of law, successful completion of any  
24 diversion program under the Penal Code, or successful completion of an alcohol  
25 and drug problem assessment program under Article 5 (commencing with section  
26 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any  
27 agency established under Division 2 ([Healing Arts] commencing with Section  
28 500) of this code, or any initiative act referred to in that division, from taking

1 disciplinary action against a licensee or from denying a license for professional  
2 misconduct, notwithstanding that evidence of that misconduct may be recorded in a  
3 record pertaining to an arrest.”

4 11. California Code of Regulations, Title 16, section 1399.370, states:

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

11 “ . . .

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

13 “. . . .”

#### 14 COST RECOVERY

15 12. Section 3753.5, subdivision (a) of the Code states:

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

21 13. Section 3753.7 of the Code states:

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

25 14. Section 3753.1, subdivision (a) of the Code states:

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



1 personal property (Count 2). As to Count 1, the court deferred entry of judgment,  
2 and Respondent was placed on diversion pursuant to Penal Code 1000. She was  
3 ordered to pay a \$150.00 diversion program administrative fee and complete a drug  
4 program. As to Count 2, proceedings were suspended. Respondent was placed on  
5 probation for three years with terms and conditions including: serve 1 day in  
6 county jail (with credit for 1 day), pay fees and fines of \$283.00, complete a drug  
7 program, and stay away from JC Penney.

8 SECOND CAUSE FOR DENIAL OF APPLICATION

9 (Possession of a Controlled Substance)

10 17. Respondent's application is subject to denial under Code section  
11 3750.5, subdivision (a), in conjunction with section 3732, subdivision (b), in that she  
12 possessed the controlled substance methamphetamine. The facts and circumstances set  
13 forth in Paragraph 16 of this Statement of Issues are incorporated herein by reference.

14 THIRD CAUSE FOR DENIAL OF APPLICATION

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

16 18. Respondent is subject to disciplinary action under Code section  
17 3750, subdivision (j), in conjunction with section 3732, subdivision (b), in that she  
18 committed a fraudulent, dishonest or corrupt act substantially related to the qualifications,  
19 functions, or duties of a respiratory care practitioner. The facts and circumstances set forth  
20 in Paragraph 16 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 Janice Cabasal Aquino for a Respiratory Care Practitioner License;
2. Directing Janice Cabasal Aquino 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: March 23, 2009

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