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

10 In the Matter of the Statement of Issues
11 Against:

Case No. 1H 2009 185

12 **JANRI SOMERA BUSTAMANTE**
13 **7043 Falcon Drive**
Buena Park, CA 90620

STATEMENT OF ISSUES

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16 Applicant/Respondent.
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19 Complainant alleges:

20 PARTIES

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

24 2. On or about March 26, 2009, the Respiratory Care Board of California, Department
25 of Consumer Affairs received an application for a Respiratory Care Practitioner License from
26 Janri Somera Bustamante (Respondent). On or about March 17, 2009, Respondent certified
27 under penalty of perjury to the truthfulness of all statements, answers, and representations in the
28 application. The Board denied the application on September 15, 2009.

1 JURISDICTION

2 3. This Statement of Issues 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 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 3732 of the Code states:

11 "(a) The board shall investigate an applicant for a license, before a license is issued, in
12 order to determine whether or not the applicant has the qualifications required by this chapter.

13 "(b) The board may deny an application, or may order the issuance of a license with terms
14 and conditions, for any of the causes specified in this chapter for suspension or revocation of a
15 license, including, but not limited to, those causes specified in Sections 3750, 3750.5, 3752.5,
16 3752.6, 3755, 3757, 3760, and 3761."

17 7. Section 3750.5 of the Code states:

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

20 "(a) Obtained, possessed, used or administered to himself or herself in violation of law or
21 furnished or administered to another any controlled substances as defined in Division 10
22 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug as
23 defined in Article 2 (commencing with section 4015) of Chapter 9 except as directed by a
24 licensed physician and surgeon, dentist, podiatrist or other authorized healthcare provider.

25 "(b) Used any controlled substance as defined in Division 10 (commencing with Section
26 11000) of the Health and Safety Code, or any dangerous drug as defined in Article 2
27 (commencing with section 4015) of Chapter 9 of this code, or alcoholic beverages, to an extent or
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1 in a manner dangerous or injurious to himself or herself, or to others such that the use impaired
2 his or her ability to conduct with safety the practice authorized by his or her license.

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

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

12 (Possession/Use of Controlled Substance)

13 9. Respondent's application is subject to denial under code sections 3750.5(a)
14 [possession and use of a controlled substance) and 3750.5(b) [use of a controlled substance] in
15 that she tested positive for methamphetamine, a controlled substance, on or about April 13, 2005.
16 The circumstances are as follows:

17 10. From 2001 through 2005, Respondent was a Petty Naval Officer with the United
18 States Navy. On or about July 12, 2005, Respondent was discharged under other than honorable
19 conditions based on misconduct due to drug abuse. On or about April 13, 2005, respondent
20 submitted a urine sample pursuant to random screening procedures. The Department of Defense
21 established cut-off levels for methamphetamine, a controlled substance, in the amount of 500
22 nanograms per milliliter (ng/ml). Respondent's urine sample tested positive for
23 methamphetamine in the amount of 631 ng/ml.

24 11. Therefore, Respondent's application for licensure is subject to denial based on her
25 April 13, 2005 positive test results for methamphetamine which is in violation of code sections
26 3750.5(a) [obtained, possessed or used a controlled substance] and 3750.5(b) [used a controlled
27 substance in a manner dangerous to self or others.]

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1 PRAYER

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

4 1. Denying the application of Janri Somera Bustamante for a Respiratory Care
5 Practitioner License;

6 2. Directing Janri Somera Bustamante to pay the Respiratory Care Board of California
7 the costs of the investigation and enforcement of this case, and if placed on probation, the costs of
8 probation monitoring;

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

10 DATED: January 26, 2010

Original signed by Liane Freels for:

11 STEPHANIE NUNEZ
12 Executive Officer
13 Respiratory Care Board of California
14 Department of Consumer Affairs
15 State of California
16 *Complainant*

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