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

9
10 In the Matter of the Statement of Issues
Against:

11 STACY RENE BERZON
12 39234 Botticelli Drive
13 Palmdale, California 93551,

14 Applicant.

Case No. 1H 2009 529

OAH No.

STATEMENT OF ISSUES

15 Complainant alleges:

16 **PARTIES**

17 1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in her official
18 capacity as the Executive Officer of the Respiratory Care Board of California.

19 2. On or about August 19, 2009, the Respiratory Care Board of California received an
20 application from Stacy Rene Berzon (Applicant). On or about July 19, 2009, Applicant certified
21 under penalty of perjury the truthfulness of all statements, answers, and representations in the
22 application. The Board denied the application on February 22, 2010.

23 **JURISDICTION**

24 3. This Statement of Issues is brought before the Board under the authority of the
25 following laws. All section references are to the Business and Professions Code unless otherwise
26 indicated.
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1 4. Section 3710 of the Code states: "The Respiratory Care Board of California,
2 hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the
3 Respiratory Care Practice Act]."

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

6 6. Section 3732, subdivision (b), of the Code states: "(b) The board may deny an
7 application, or may order the issuance of a license with terms and conditions, for any of the
8 causes specified in this chapter for suspension or revocation of a license, including, but not
9 limited to, those causes specified in Sections 3750, 3750.5, 3752.5, 3752.6, 3755, 3757, 3760,
10 and 3761."

11 7. Section 3750 of the Code states:

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

15 ". . .

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

20 ". . .

21 "(g) Conviction of a violation of any of the provisions of this chapter or of
22 any provision of Division 2 (commencing with Section 500), or violating,
23 or attempting to violate, directly or indirectly, or assisting in or abetting
24 the violation of, or conspiring to violate any provision or term of this
25 chapter or of any provision of Division 2 (commencing with Section 500).

26 ". . ."

27 8. Section 3750.5 of the Code states:

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

"(a) Obtained, possessed, used or administered to himself or herself in
violation of law, or furnished or administered to another, any controlled

1 substances as defined in Division 10 (commencing with Section 11000) of
2 the Health and Safety Code, or any dangerous drug as defined in Article 2
3 (commencing with section 4015) of Chapter 9 except as directed by a
licensed physician and surgeon, dentist, or podiatrist, or other authorized
healthcare provider.

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

9 9. Section 3752 of the Code states:

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

17 10. Section 3752.5 of the Code states:

18 "For purposes of Division 1.5 (commencing with Section 475), and this
19 chapter [the Respiratory Care Practice Act], a crime involving bodily
20 injury or attempted bodily injury shall be considered a crime substantially
21 related to the qualifications, functions, or duties of a respiratory care
practitioner."

22 11. California Code of Regulations, title 16, section 1399.370, states in part:

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

1 (a) Violating or attempting to violate, directly or indirectly, or assisting or
2 abetting the violation of or conspiring to violate any provision or term of
3 the Act."

4 12. Section 492 of the Code states in part:

5 "Notwithstanding any other provision of law, successful completion of
6 any diversion program under the Penal Code, or successful completion of
7 an alcohol and drug problem assessment program under Article 5
8 (commencing with section 23249.50) of Chapter 12 of Division 11 of the
9 Vehicle Code, shall not prohibit any agency established under Division 2
10 ([Healing Arts] commencing with Section 500) of this code, or any
11 initiative act referred to in that division, from taking disciplinary action
12 against a licensee or from denying a license for professional misconduct,
13 notwithstanding that evidence of that misconduct may be recorded in a
14 record pertaining to an arrest.

15 13. California Penal Code section 594, subdivision (a), states in part:

16 "Every person who maliciously commits any of the following acts with
17 respect to any real or personal property not his or her own, in cases other
18 than those specified by state law, is guilty of vandalism:

19 (1) Defaces with graffiti or other inscribed material.

20 (2) Damages.

21 (3) Destroys.

22 14. California Health and Safety Code section 11550 states:

23 "(a) No person shall use, or be under the influence of any controlled
24 substance which is (1) specified in subdivision (b), (c), or (e), or paragraph
25 (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15),
26 (21), (22), or (23) of subdivision (d) of Section 11054, specified in
27 subdivision (b) or (c) of Section 11055, or specified in paragraph (1) or (2)
28 of subdivision (d) or in paragraph (3) of subdivision (e) of Section 11055,
or (2) a narcotic drug classified in Schedule III, IV, or V, except when
administered by or under the direction of a person licensed by the state to
dispense, prescribe, or administer controlled substances. It shall be the
burden of the defense to show that it comes within the exception. Any
person convicted of violating this subdivision is guilty of a misdemeanor
and shall be sentenced to serve a term of not less than 90 days or more
than one year in a county jail. The court may place a person convicted
under this subdivision on probation for a period not to exceed five years
and, except as provided in subdivision (c), shall in all cases in which
probation is granted require, as a condition thereof, that the person be
confined in a county jail for at least 90 days. Other than as provided by

1 subdivision (c), in no event shall the court have the power to absolve a
2 person who violates this subdivision from the obligation of spending at
3 least 90 days in confinement in a county jail."

3 **COST RECOVERY**

4 15. Section 3753.5, subdivision (a) of the Code states: "In any order issued in resolution
5 of a disciplinary proceeding before the board, the board or the administrative law judge may
6 direct any practitioner or applicant found to have committed a violation or violations of law or
7 any term and condition of board probation to pay to the board a sum not to exceed the costs of the
8 investigation and prosecution of the case. A certified copy of the actual costs, or a good faith
9 estimate of costs where actual costs are not available, signed by the official custodian of record or
10 his or her designated representative shall be prima facie evidence of the actual costs of the
11 investigation and prosecution of the case."

12 16. Section 3753.7 of the Code states: "For purposes of the Respiratory Care Practice
13 Act, costs of prosecution shall include attorney general or other prosecuting attorney fees, expert
14 witness fees, and other administrative, filing, and service fees."

15 17. Section 3753.1 of the Code states: "(a) An administrative disciplinary decision
16 imposing terms of probation may include, among other things, a requirement that the
17 licensee-probationer pay the monetary costs associated with monitoring the probation."

18 **FIRST CAUSE FOR DENIAL OF APPLICATION**

19 (Conviction: Vandalism in 2003)

20 18. Applicant's application is subject to denial under sections 3750, subdivisions (d) and
21 (g), 3752, and 3752.5 of the Business and Professions Code, California Code of Regulations,
22 Title 16, section 1399.370, subdivision (a), and California Penal Code section 594, subdivision
23 (a), in that she was convicted of a crime substantially related to the qualifications, functions or
24 duties of a respiratory care practitioner. The circumstances are as follows:

25 19. On or about August 11, 2003, in the Antelope Valley Courthouse of Los Angeles
26 County, in proceedings entitled *The People of the State of California v. Stacy Rene Berzon* case
27 number 3AT03511, Applicant was convicted by plea of nolo contendere for violating Penal Code
28 section 594, subdivision (a), a misdemeanor.

1 20. The facts and circumstances surrounding the conviction referred to above were that
2 on or about July 24, 2003, Los Angeles Sheriff's Department (LASD) deputies responded to
3 Applicant's address regarding a family disturbance involving a knife. According to the Incident
4 Report, Applicant got into an argument with her brother that involved physical contact, and she
5 threatened to kill him. During the altercation, Applicant kicked in several holes in two bedroom
6 doors at the residence, and placed a two-inch stab mark on one of the bedroom doors.
7 Additionally, Applicant broke a wooden chair. The LASD deputy recovered the knife used by
8 Applicant to stab the door. After Applicant went to the station to give her statement, she was
9 arrested for criminal threats in violation of Penal Code section 422.

10 21. On or about July 28, 2003, a misdemeanor complaint was filed in *The People of the*
11 *State of California vs. Stacy Rene Berzon*, charging Applicant with the following:

12 Count 1: Criminal threats resulting in bodily injury in violation of Penal Code Section
13 422, a misdemeanor

14 Count 2: Vandalism in violation of Penal Code Section 594, subdivision (a), a
15 misdemeanor

16 22. On or about August 11, 2003, a trial setting conference was held. Applicant was
17 convicted of Count 2 following a plea of nolo contendere. Count 1 was dismissed in the interests
18 of justice. As to Count 2, the court suspended the imposition of sentence and placed Applicant on
19 summary probation for 36 months, and ordered Applicant to: (1) serve 10 days in Los Angeles
20 County jail or perform three days of California Department of Transportation community service
21 work; (2) pay fines and assessment fees totaling \$218; (3) attend a six-month anger management
22 counseling program; and (4) obey all laws and further orders of the court.

23 **SECOND CAUSE FOR DENIAL OF APPLICATION**

24 (Use of a Controlled Substance in 2005)

25 23. Applicant's application is subject to denial sections 3750.5, subdivisions (a) and (b),
26 and 492 of the Business and Professions Code, California Code of Regulations, Title 16, section
27 1399.370, subdivision (a), and California Health and Safety Code section 11550, in that she
28

1 unlawfully possessed and used a Central Nervous System (CNS) stimulant on or about February
2 26, 2005. The circumstances are as follows:

3 24. On or about March 11, 2005, in the Antelope Valley Courthouse of Los Angeles
4 County, in proceedings entitled *The People of the State of California vs. Stacy Rene Berzon* case
5 number 5AT01953, Applicant was charged with one count of being under the influence of a
6 controlled substance on or about February 26, 2005, in violation of Health and Safety Code
7 section 11550, a misdemeanor.

8 25. The facts and circumstances surrounding the incident referred to above were that on
9 or about February 26, 2005, LASD deputies responded to a family disturbance call at Applicant's
10 home. Applicant's mother and a family friend informed the LASD deputies that Applicant was
11 high on methamphetamines and that she had been using the controlled substance for the past
12 couple of days. When the LASD deputy contacted Applicant, he observed symptoms of her being
13 under the influence of a CNS stimulant. Based on his initial observations of Applicant, the
14 objective results of the CNS stimulant tests, and Applicant's admission to using
15 methamphetamines, the LASD deputy formed the opinion that she was under the influence of a
16 CNS stimulant and arrested her.

17 26. On or about July 7, 2005, a trial setting conference was held. The matter was
18 dismissed in furtherance of justice pursuant to Penal Code section 1385, since Applicant
19 submitted proof of completion of 30 Alcoholics Anonymous /Narcotics Anonymous meetings.

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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 Stacy Rene Berzon for a Respiratory Care Practitioner License;
2. Directing Stacy Rene Berzon 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: June 9, 2010

Original Signed by Colleen Allen for:
STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
State of California
Complainant

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statement of issues.rtf