

1 EDMUND G. BROWN JR.
Attorney General of California
2 THOMAS S. LAZAR
Supervising Deputy Attorney General
3 LORI JEAN FORCUCCI
Deputy Attorney General
4 State Bar No. 125345
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2080
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

12 In the Matter of the Statement of Issues Against:

Case No. 1H-2010-159

13 **SCOTT WILLIAM ALLEN**

14 **437 Rospaw Way**
Placentia, CA 92870
15 **Respiratory Care Practitioner Applicant**

STATEMENT OF ISSUES

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about March 2, 2010, the Respiratory Care Board of California, Department of
24 Consumer Affairs received a Respiratory Care Practitioner Application for Licensure from Scott
25 William Allen (Respondent). On or about January 10, 2010, Scott William Allen certified under
26 penalty of perjury to the truthfulness of all statements, answers, and representations in the
27 application. The Board denied the application on June 24, 2010.

28 ///

JURISDICTION

3. This Statement of Issues is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 3710 of the Code states:

"The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act]."

5. Section 3718 of the Code states, in pertinent part:

"The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter.

". . ."

6. Section 3732 of the Code states:

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

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

7. Section 3750 of the Code states, in pertinent part:

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

". . ."

///
///

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

4 “ . . .

5 “(g) Conviction of a violation of any of the provisions of this chapter or of
6 any provision of Division 2 (commencing with Section 500), or violating, or
7 attempting to violate, directly or indirectly, or assisting in or abetting the violation
8 of, or conspiring to violate any provision or term of this chapter or of any
9 provision of Division 2 (commencing with Section 500).

10 “. . .”

11 8. Section 3750.5 of the Code states:

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

15 “(a) Obtained, possessed, used, or administered to himself or herself in
16 violation of law, or furnished or administered to another, any controlled substance
17 as defined in Division 10 (commencing with section 11000) of the Health and
18 Safety Code, or any dangerous drug as defined in Article 2 (commencing with
19 Section 4015) of Chapter 9, except as directed by a licensed physician and
20 surgeon, dentist, podiatrist, or other authorized health care provider.”

21 “(b) Used any controlled substance as defined in Division 10 (commencing
22 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 of this code, or
24 alcoholic beverages, to an extent or in a manner dangerous or injurious to himself
25 or herself, or to others, or that impaired his or her ability to conduct with safety the
26 practices authorized by his or her license.”

27 ///

28 ///

1 9. Section 3752 of the Code states, in pertinent part:

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

12 “. . .”

13 10. Section 3753 of the Code states:

14 “The procedure in all matters and proceedings relating to the denial,
15 suspension, or revocation of licenses under this chapter shall be governed by the
16 provisions of the Administrative Procedure Act, (Chapter 5 (commencing with
17 Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code).”

18 11. Section 3754 of the Code states:

19 “The board may deny an application for, or issue with terms and conditions,
20 or suspend or revoke, or impose probationary conditions upon, a license in any
21 decision made after a hearing, as provided in Section 3753.”

22 12. California Code of Regulations, Title 16, section 1399.370, states:

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, functions
25 or duties of a respiratory care practitioner, if it evidences present or potential
26 unfitness of a licensee to perform the functions authorized by his or her license or
27 in a manner inconsistent with the public health, safety, or welfare. Such crimes or
28 acts shall include but not be limited to those involving the following:

1 **FIRST CAUSE FOR DENIAL OF APPLICATION**

2 (Conviction of Crimes Substantially Related to Qualifications, Functions or Duties
3 of a Respiratory Care Practitioner)

4 16. Respondent's Respiratory Care Practitioner Application for Licensure is subject to
5 denial under section 3752, as defined by section 3750, subdivision (d), of the Code, and Title 16,
6 California Code of Regulations, section 1399.370, subdivision (c), in that Respondent has been
7 convicted of crimes substantially related to the qualifications, functions or duties of a respiratory
8 care practitioner, as more particularly alleged hereinafter:

9 **September 26, 2006 Conviction**

10 17. On or about August 17, 2006, an officer was dispatched to West Malvern Avenue in
11 Fullerton, California, regarding a call that a male individual was trying to open neighbors' doors,
12 and was walking westbound on Malvern Avenue, hitting vehicles. Respondent was found asleep
13 on top of a vehicle at 140 West Malvern Avenue. The officer noted a strong odor of an alcoholic
14 beverage emitting from Respondent. Respondent stated that he had had three or four alcoholic
15 beverages. He was arrested for being drunk in public, in violation of Penal Code section 647,
16 subdivision (f), and taken to Fullerton City Jail for booking.

17 18. On or about September 18, 2006, in the case entitled, *The People of the State of*
18 *California vs Scott William Allen*, Orange County Superior Court, Case No. 06NM11268 M A,
19 Respondent was charged with the following criminal count: Drunk in Public, a misdemeanor, in
20 violation of Penal Code section 647, subdivision (f).

21 19. On or about September 26, 2006, Respondent was convicted, upon his plea of guilty,
22 of the following charge in Case No. 06NM11268 M A: Drunk in Public, a misdemeanor, in
23 violation of Penal Code section 647, subdivision (f).

24 20. On or about September 26, 2006, Respondent was sentenced in Case No.
25 06NM11268 M A to three years informal probation, payment of fines and fees, 5 days in county
26 jail, stayed pending completion of five days of community service with Caltrans, attendance at
27 Alcoholics Anonymous meetings and other probationary terms.

28 ///

1 **May 24, 2006 Conviction**

2 21. On or about April 7, 2006, Respondent was driving a red Chevrolet, when he failed to
3 stop when entering a highway. Respondent was pulled over by a patrol officer and was noted to
4 have blood shot, watery eyes and to emit a strong odor of an alcoholic beverage. Field sobriety
5 tests were administered. A blood alcohol test was administered to Respondent and the result was
6 a Blood Alcohol Level of 0.14%.

7 22. On or about May 12, 2006, Respondent was charged in the case entitled, *The People*
8 *of the State of California vs Scott William Allen*, Orange County, Court Case No.
9 06NM06188MA with the following criminal counts:

10 (a) Driving Under the Influence of Alcohol/Drugs, a Misdemeanor, in violation of
11 Vehicle Code section 23152, subdivision (a),

12 (b) Driving With Blood Alcohol .08% or More, a Misdemeanor, in violation of
13 Vehicle Code section 23152, subdivision (b), and

14 (c) Failing to Yield the Right-Of-Way, an infraction, in violation of Section 21804,
15 subdivision (a).

16 23. On or about May 24, 2006, Respondent was convicted, upon his plea of guilty to the
17 following charges in Case No. 06NM06188MA:

18 (a) Driving Under the Influence of Alcohol/Drugs, a Misdemeanor, in violation of
19 Vehicle Code section 23152, subdivision (a),

20 (b) Driving with Blood Alcohol .08% or More, a Misdemeanor, in violation of
21 Vehicle Code section 23152, subdivision (b), and

22 (c) Failing to Yield the Right-Of-Way, an infraction, in violation of Section 21804,
23 subdivision (a).

24 24. On or about May 24, 2006, Respondent was sentenced in Case No. 06NM06188MA
25 to three years informal probation, payment of fines and fees, a three month Level 1 First Offender
26 Alcohol Program and attendance and completion of a Mothers Against Drunk Driving Victim
27 Impact Panel, among other probationary terms.

28 ///

1 **June 16, 2000 Conviction**

2 25. On or about May 27, 2000, an officer observed Respondent's Chevy Blazer approach
3 his marked patrol car at a high rate of speed on SR-95, in La Paz County, Arizona. The officer
4 stopped and approached Respondent's vehicle. The officer noted a flushed face, bloodshot and
5 watery eyes and detected the strong odor of an alcoholic beverage emitting from Respondent.
6 Field sobriety tests were administered and the officer concluded that Respondent was impaired
7 and under the influence of intoxicating liquor. Marijuana was found in the ashtray of the Chevy
8 Blazer. Respondent told the officer that he smoked marijuana on weekends, the previous day and
9 the morning on or about May 27, 2000. Respondent was booked in La Paz County Jail, in La Paz
10 County, Arizona.

11 26. On or about May 27, 2000, Respondent was charged in the La Paz County Justice
12 Court, in the State of Arizona with the following criminal counts under Arizona state law:

13 (a) Driving Under the Influence, Impaired, in violation of A.R.S. section 28-1381A1,
14 which prohibits driving under the influence of any drug, if the person is impaired to the slightest
15 degree;

16 (b) Driving Under the Influence Above .10%, in violation of A.R.S. section 28-
17 1381A2; and

18 (c) Underage Driving Under the Influence in violation of A.R.S. section 28-4-
19 244.34.

20 27. On or about June 16, 2000, Respondent was convicted, upon his plea of guilty, of
21 Driving Under the Influence, Impaired, in violation of A.R.S. section 28-1381A1, and the
22 remaining charges were dismissed.

23 28. On or about June 16, 2000, Respondent was sentenced in La Paz County, Arizona, to
24 two years unsupervised probation, 24 hours in County Jail, payment of fines, attendance at an
25 Alcohol Education program of at least 16 hours and other probationary terms.

26 ///

27 ///

28 ///

1 **SECOND CAUSE FOR DENIAL OF APPLICATION**

2 (Obtaining, Possessing and Using a Controlled Substance)

3 29. Respondent's Respiratory Care Practitioner Application for Licensure is further
4 subject to denial under section 3750.5, as defined by 3750.5, subdivision (a), of the Code, in that
5 he has obtained, possessed, and used a controlled substance and dangerous drug, to wit:
6 marijuana, as more particularly described in paragraph 25, above, which are hereby incorporated
7 by reference and realleged as if fully set forth herein.

8 **THIRD CAUSE FOR DENIAL OF APPLICATION**

9 (Use of Alcoholic Beverages in a Dangerous or Injurious Manner)

10 30. Respondent's Respiratory Care Practitioner Application for Licensure is further
11 subject to denial under section 3750.5, as defined by 3750.5, subdivision (b) of the Code, in that
12 he has used alcoholic beverages to an extent or in a manner dangerous our injurious to himself or
13 to others, as more particularly described in paragraphs 16 through 28, above, which are hereby
14 incorporated by reference and realleged as if fully set forth herein.

15 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

16 (Violation of Any Provision of the Act)

17 31. Respondent's Respiratory Care Practitioner Application for Licensure is further
18 subject to denial under section 3570, as defined by section 3750, subdivision (g), and Title 16 of
19 the California Code of Regulations, section 1399.370, subdivision (a), in that Respondent has
20 violated, or attempted to violate, directly or indirectly, or assisted in or abetted the violation of, or
21 conspired to violate any provision or term of the Respiratory Care Practice Act, as more
22 particularly described in paragraphs 16 through 30, above, which are hereby incorporated by
23 reference and realleged as if fully set forth herein.

24 **PRAYER**

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

27 1. Denying the application of Respondent Scott William Allen for a Respiratory Care
28 Practitioner;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2. Directing Respondent Scott William Allen 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: October 27, 2010

Original Signed by Liane Freels for:

STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
Department of Consumer Affairs
State of California
Complainant

SD2010701811
70346311.doc