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

11 In the Matter of the Statement of Issues
Against:

Case No. 1H 2011 365

12 **KELLY RAMOS BAILEY**
13 **8506 E Woodcove Drive, #142**
14 **Anaheim Hills, CA 92808**

STATEMENT OF ISSUES

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

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

21 2. On or about May 26, 2011, the Respiratory Care Board of California,
22 Department of Consumer Affairs, received a complete application for a Respiratory Care
23 Practitioner License from Kelly Ramos Bailey (Respondent). On or about May 19, 2011, Kelly
24 Ramos Bailey certified under penalty of perjury to the truthfulness of all statements, answers, and
25 representations in the application. On or about August 18, 2011, the Board denied the
26 application. On or about August 21, 2011, Respondent requested a hearing to contest the denial
27 of his application for licensure.

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1 **JURISDICTION**

2 3. This Statement of Issues is brought before the Respiratory Care Board,
3 Department of Consumer Affairs (Board), 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,
6 hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the
7 Respiratory Care Practice Act]."

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

10 6. Section 3732 of the Code states:

11 "...

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

16 7. Section 3750 of the Code states:

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

20 "...

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

24 "...

25 "(g) Conviction of a violation of any of the provisions of this chapter or of any
26 provision of Division 2 (commencing with Section 500), or violating, or attempting to
27 violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring
28

1 to violate any provision or term of this chapter or of any provision of Division 2
2 (commencing with Section 500).

3 "..."

4 8. Section 3750.5 of the Code states:

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

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

14 "..."

15 9. Section 3752 of the Code states:

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

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1 and prosecution of the case. A certified copy of the actual costs, or a good faith
2 estimate of costs where actual costs are not available, signed by the official custodian
3 of the record or his or her designated representative shall be prima facie evidence of
4 the actual costs of the investigation and prosecution of the case."

5 13. Section 3753.7 of the Code states:

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

9 14. Section 3753.1 of the Code states:

10 "(a) An administrative disciplinary decision imposing terms of probation may
11 include, among other things, a requirement that the licensee-probationer pay the
12 monetary costs associated with monitoring the probation. "

13 "..."

14 **FIRST CAUSE FOR DENIAL OF APPLICATION**

15 (Conviction of a Crime)

16 15. Respondent's application is subject to denial under section 3750, as defined by
17 3750, subdivision (d), 3752, 480(a)(1), of the Code, and Title 16 of the California Code of
18 Regulations, section 1399.370, subdivision (a), in that he has been convicted of a crime
19 substantially related to the qualifications, functions, or duties of a Respiratory Care Practitioner.
20 The circumstances are as follows:

21 A. On or about March 30, 2006, in the Superior Court of Orange County, in the
22 case of the *People of the State of California v. Kelly Ramos Bailey*, Case No. 05NF1959IA,
23 respondent entered a guilty plea to one count of possession of a controlled substance in violation
24 of Health and Safety Code section 11377(a), a felony, and one count of transporting a controlled
25 substance in violation of Health and Safety Code section 11379(a), a felony.

26 As a consequence of the conviction, the imposition of sentence was suspended and
27 Respondent was placed on five years formal probation with terms and conditions, including but
28 not limited to, one year jail (stayed pending completion of one year at the Salvation Army

1 Program), use no unauthorized drugs, narcotics or controlled substances, and pay fines. For
2 Count 2, the Court stayed the sentence pursuant to Penal Code section 654.

3 B. The circumstances of the conviction are as follows: On or about May 17, 2005,
4 an officer from the Anaheim Police Department stopped Respondent for traffic violation. The
5 officer observed Respondent weaving from one lane to another and straddling the lanes while
6 driving his vehicle. Upon contact, the officer observed Respondent trembling and sweating
7 profusely. The officer also smelled a slight odor of an alcoholic beverage on Respondent's
8 breath. Respondent appeared very nervous and appeared to conceal something on the left side of
9 his body. The officer conducted a search of Respondent's body. He found a pipe used to smoke
10 methamphetamine and a "film container" full of a crystallized substance totaling 20.16 grams.
11 Respondent admitted to the officer that the substance was methamphetamine. Respondent was
12 subsequently arrested and charged with Health and Safety Code sections 11378 and 11364.

13 C. On or about May 20, 2005, the District Attorney for the County of Orange, filed
14 a criminal complaint charging Respondent with possession of a controlled substance for sale in
15 violation of Health and Safety Code section 11378, a felony (Count 1); possession of a controlled
16 substance in violation of Health and Safety Code section 11377(a), a felony (Count 2); and
17 possession of an object used for smoking controlled substances in violation of Health and Safety
18 Code 11364, a misdemeanor (Count 3).

19 On or about July 28, 2005, the complaint was amended to charge Respondent with the
20 following: possession of a controlled substance for sale in violation of Health and Safety Code
21 section 11378, a felony (Count 1); possession of a controlled substance, a felony in violation of
22 Health and Safety Code section 11377(a), a felony (Count 2); and transporting a controlled
23 substance in violation of Health and Safety Code section 11379(a), a felony (Count 3).

24 Pursuant to a plea agreement, the District Attorney dismissed Count 1 of the Criminal
25 Complaint.

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2. Directing Kelly Ramos Bailey 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 19, 2011

Original Signed by Liane Freels for:

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

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