

1 KAMALA D. HARRIS
Attorney General of California
2 ROBERT MCKIM BELL
Supervising Deputy Attorney General
3 RANDALL R. MURPHY
Deputy Attorney General
4 California Department of Justice
State Bar No. 165851
5 300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
6 Telephone: (213) 897-2493
7 Facsimile: (213) 897-9395
E-mail: Randall.Murphy@doj.ca.gov
8 *Attorneys for Complainant*

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

12 In the Matter of the Statement of Issues
13 Against:

Case No. 1H 2011 082

14 JAMESON SCOTT ABERIN
1820 Seabreeze Street
15 Thousand Oaks, California 91320,

STATEMENT OF ISSUES

16 Applicant.

17 Complainant alleges:

18 PARTIES

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

22 2. On or about February 7, 2011, the Board received an application for a Respiratory
23 Care Practitioner License from Jameson Scott Aberin (“Applicant”). On or about January 12,
24 2011, Jameson Scott Aberin certified under penalty of perjury to the truthfulness of all
25 statements, answers, and representations in the application. The Board denied the application on
26 April 19, 2011.

27 ///

28 ///

1 (j) The commission of any fraudulent, dishonest, or corrupt act which is
2 substantially related to the qualifications, functions, or duties of a respiratory care
3 practitioner.

4 “...”

5 8. Section 3750.5 of the Code states:

6 “In addition to any other grounds specified in this chapter, the board may deny,
7 suspend, or revoke the license of any applicant or license holder who has done any of the
8 following:
9

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

17 9. Section 3752 of the Code states:

18 “A plea or verdict of guilty or a conviction following a plea of nolo contendere made
19 to a charge of any offense which substantially relates to the qualifications, functions, or
20 duties of a respiratory care practitioner is deemed to be a conviction within the meaning of
21 this article. The board shall order the license suspended or revoked, or may decline to issue
22 a license, when the time for appeal has elapsed, or the judgment of conviction has been
23 affirmed on appeal or when an order granting probation is made suspending the imposition
24 of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code
25 allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or
26 setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.”
27
28

1 10. California Code of Regulations, title 16, section 1399.370, states:

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

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

11 "(b) Conviction of a crime involving fiscal dishonesty theft, or larceny.

12 11. Section 492 of the Code states:

13 "Notwithstanding any other provision of law, successful completion of any diversion
14 program under the Penal Code, or successful completion of an alcohol and drug problem
15 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of
16 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2
17 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to
18 in that division, from taking disciplinary action against a licensee or from denying a license
19 for professional misconduct, notwithstanding that evidence of that misconduct may be
20 recorded in a record pertaining to an arrest."
21

22 FIRST CAUSE FOR DENIAL OF APPLICATION

23 (Conviction of Numerous Crimes)

24
25 12. Applicant's application is subject to denial under section 3750, subdivision (d), and
26 CCR section 1399.370, subdivisions (a) and (b) in that Applicant was convicted of numerous
27 crimes substantially related to the qualifications, functions and duties of a respiratory care
28 practitioner. The circumstances are as follows:

1 2004 Conviction for Being under the Influence of a Controlled Substance

2 a. On or about November 5, 2004, Applicant was arrested for violating Health and
3 Safety Code (H&S) section 11550, subdivision (a), being under the influence of a controlled
4 substance. On November 9, 2004, a criminal complaint was filed in Los Angeles County
5 Superior Court charging Applicant with violating H&S section 11550, subdivision (a). Applicant
6 was arrested by Los Angeles Police Department Officers during the course of, and in conjunction
7 with, a search of his residence, pursuant to a valid search warrant issued upon probable cause that
8 a methamphetamine laboratory was in operation at the residence.

9 b. On or about November 9, 2004, in a criminal proceeding entitled *People vs.*
10 *Jameson Scott Aberin* in the Los Angeles County Superior Court, Case Number 4PN06430,
11 Applicant was convicted by plea of guilty of violating H&S Code section 11550, subdivision (a),
12 a misdemeanor. Applicant was sentenced as follows:

- 13 1. Probation for 2 years;
- 14 2. Not use or possess, or associate with persons who are known to use and
15 possess, narcotics, dangerous or restricted drugs or associated paraphernalia and stay away
16 from places where users, buyers, or sellers congregate;
- 17 3. Pay a \$150 diversion administrative fee;
- 18 4. Pay a \$100 diversion fee;
- 19 5. Pay a \$100 restitution fine;
- 20 6. Pay \$250.00 probation fees;
- 21 7. Obey all laws and further Court orders;
- 22 8. Cooperate with the Probation Officer in a plan for drug education, and;
- 23 9. Maintain residence as approved by the Probation Officer.

24 2005 Conviction of Petty Theft

25 c. On or about February 2, 2005, Applicant was arrested for violating Penal Code
26 (PC) section 484(a), petty theft. On February 3, 2005, a criminal complaint was filed in Los
27 Angeles County Superior Court charging Applicant with violating PC section 484(a). Applicant
28

1 was arrested after entering a Lowe's Hardware store where he was observed putting several items
2 in his pockets, and then exiting the store, without attempting to pay for the items.

3 d. On or about February 3, 2005, in a criminal proceeding entitled *People vs.*
4 *Jameson Scott Aberin* in the Los Angeles County Superior Court, Case Number 5SF00588,
5 Applicant was convicted upon his plea of nolo contendere of violating PC section 484(a).
6 Applicant was sentenced as follows:

- 7 1. Probation for 2 years;
- 8 2. Stay away from location of arrest;
- 9 3. Pay a \$100 fine or serve 3 days in the Los Angeles County Jail;
- 10 4. Pay a \$100 restitution fine, and;
- 11 5. Obey all laws and further Court orders.

12 2005 Conviction of Disturbing the Peace (Penal Code Section 415)

13 e. On or about August 9, 2005, Applicant was arrested for violating H&S section
14 11364, possession of drug paraphernalia. On August 29, 2005, a criminal complaint was filed in
15 Los Angeles County Superior Court charging Applicant with violating H&S section 11364.
16 Applicant was arrested after a California State University-Northridge Police Officer observed
17 Applicant in a vehicle, which he believed had been involved in a drug transaction. The Officer
18 searched the vehicle and found drug paraphernalia and a small amount of what he believed to be
19 methamphetamine.

20 f. On or about November 22, 2005, Applicant was convicted upon his plea of nolo
21 contendere of the amended charge of PC section 415 (fighting, noise, or offensive words).
22 Applicant was sentenced as follows:

- 23 1. Pay a \$100 fine, and;
- 24 2. Pay a \$210 state penalty fund assessment.

25 2011 Conviction of Possession of an Assault Weapon and Possession of Stolen Property

26 g. On or about October 14, 2009, Applicant was arrested for violating PC section
27 12280(a)(1), manufacture of an assault weapon, a felony. On or about October 16, 2009, a
28 criminal complaint was filed in Los Angeles County Superior Court charging Applicant with

1 violating PC sections 12280(b), possession of an assault weapon, a felony, and 496(a), possession
2 of stolen property, a felony. Applicant was arrested following a search of his residence pursuant
3 to a warrant. The search revealed a modified assault weapon, as well as other weapons, at least
4 one of which had been reported stolen, as well as drugs and drug paraphernalia, all of which were
5 seized.

6 h. On May 11, 2010, Respondent was convicted upon his plea of guilty of
7 violating PC sections 12280(b) and 496(a). Applicant was ordered to complete 15 days of Cal-
8 Trans service and provide proof of completion to the court, while awaiting further sentencing.

9 i. On or about January 27, 2011, a criminal sentencing proceeding entitled *People*
10 *vs. Jameson Scott Aberin* was held in the Los Angeles County Superior Court, Case Number
11 PA065572. Applicant provided proof of completion of the previously ordered Cal-Trans service
12 and was then sentenced for violating PC sections 12280(b) and 496(a), as follows:

- 13 1. Probation for 2 years;
- 14 2. Not own, use or possess any dangerous or deadly weapons, including any
15 firearms, knives or other concealable weapons, and;
- 16 3. Submit to any search and seizure at any time of the day or night, by any
17 probation officer or other peace officer, with or without a warrant, probable
18 cause or reasonable suspicion.
- 19 4. Obey all laws and orders of the Court.

20 SECOND CAUSE FOR DENIAL OF APPLICATION

21 (Possession of a Controlled Substance)

22 13. Applicant's application is subject to denial under section 3750.5, subdivision (a), in
23 that Applicant possessed a controlled substance in violation of law, as more particularly described
24 in paragraph 12 above, which are hereby incorporated by reference and realleged as if fully set
25 forth herein.

26 ///

27 ///

28 ///

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

THIRD CAUSE FOR DENIAL OF APPLICATION

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

14. Applicant’s application is subject to denial under section 3750, subdivision (j), in that Applicant committed a fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions and duties of a respiratory care practitioner, as more particularly described in paragraph 12 above, which are hereby incorporated by reference and realleged as if fully set forth herein.

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 Jameson Scott Aberin for a Respiratory Care Practitioner License;
- 2. Directing him 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

LA2011502549
50984575.docx