

1 KAMALA D. HARRIS
Attorney General of California
2 GLORIA L. CASTRO
Supervising Deputy Attorney General
3 STEVE DIEHL
Deputy Attorney General
4 State Bar No. 235250
2550 Mariposa Mall, Room 5090
5 Fresno, CA 93721
Telephone: (559) 477-1626
6 Facsimile: (559) 445-5106
Attorneys for Complainant

7
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-2012-520

12 **TREVON EMEAL BUYARD**
13 **1000 El Sereno Drive**
Bakersfield CA 93304

STATEMENT OF ISSUES

14 Respondent.
15

16
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.

22 2. On or about June 14, 2012, the Respiratory Care Board of California received an
23 application for a Respiratory Care Practitioner License from Trevon Emeal Buyard (Respondent).

24 On or about May 7, 2012, Trevon Emeal Buyard certified under penalty of perjury to the
25 truthfulness of all statements, answers, and representations in the application. The Board denied
26 the application on November 8, 2012.

27 \\
28 \\
29

1 JURISDICTION

2 3. This Statement of Issues is brought before the Respiratory Care Board, under the
3 authority of the following laws. All section references are to the Business and Professions Code
4 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 of the Code states, in relevant part:

18 "The board may order the denial, suspension or revocation of, or the imposition of
19 probationary conditions upon, a license issued under this chapter, for any of the 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 8. Section 3752 of the Code states:

26 "A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a
27 charge of any offense which substantially relates to the qualifications, functions, or duties of a
28 respiratory care practitioner is deemed to be a conviction within the meaning of this article. The

1 board shall order the license suspended or revoked, or may decline to issue a license, when the
2 time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when
3 an order granting probation is made suspending the imposition of sentence, irrespective of a
4 subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or
5 her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
6 dismissing the accusation, information, or indictment."

7 9. Section 3752.5 of the Code states:

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

12 COST RECOVERY

13 10. Section 3753.5, subdivision (a) of the Code states:

14 "In any order issued in resolution of a disciplinary proceeding before the board, the board or
15 the administrative law judge may direct any practitioner or applicant found to have committed a
16 violation or violations of law or any term and condition of board probation to pay to the board a
17 sum not to exceed the costs of the investigation and prosecution of the case. A certified copy of
18 the actual costs, or a good faith estimate of costs where actual costs are not available, signed by
19 the official custodian of the record or his or her designated representative shall be prima facie
20 evidence of the actual costs of the investigation and prosecution of the case."

21 11. Section 3753.7 of the Code states:

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

25 12. Section 3753.1 of the Code states:

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

1 CAUSE FOR DENIAL OF APPLICATION

2 (Conviction of a Crime)

3 13. Respondent's application is subject to denial under 3732, subdivision (b); section
4 3750, subdivision (d); section 3752; and section 3752.5, in that he was convicted of a crime
5 substantially related to the qualifications, functions, and duties of a respiratory care practitioner.
6 The circumstances are as follows:

7 14. On or about May 4, 2011, at approximately 3:07 a.m., San Bernardino County
8 Sheriff's Deputies were dispatched to a residence regarding an incident of domestic violence. On
9 arrival, the deputies contacted Respondent's estranged wife, who had bruising to her left eye and
10 right temple area. She explained that she was still legally married to Respondent, but they were
11 in the process of separating. At the time, she allowed Respondent to visit and stay at the
12 residence to see his child. Earlier in the evening, she had gone to bed, and later had been
13 awakened by Respondent who was going through her cell phone, and who was upset at what he
14 found. She explained that Respondent yelled at her, and punched her in the face twice with a
15 closed fist. She called police, and Respondent left carrying her cell phone with him. The incident
16 was also witnessed by the victim's brother, and the victim's daughter.

17 15. On or about May 9, 2011, Respondent was arrested, and interviewed at the Victor
18 Valley Jail in San Bernardino County. Prior to making any statements, Respondent was advised
19 of his Miranda rights, which he waived. Respondent explained that he had fought with his wife
20 over the time she had come home. The interviewing Sheriff's deputy asked Respondent how
21 many times he had struck his wife, and Respondent replied that he had struck her one or two
22 times, but was unsure.

23 16. On or about June 6, 2011, in a criminal proceeding entitled *The People of the State of*
24 *California vs. Trevon Emeal Buyard*, in San Bernardino Superior Court Case Number
25 MV11102031, Respondent was charged with Corporal Injury to a Spouse, in violation of Penal
26 Code Section 273.5, subdivision (a), a misdemeanor (Count 1).

27 17. On or about February 2, 2012, the Complaint against Respondent was amended by
28 interlineation to allege a violation of Battery, in violation of Penal Code Section 242, a

1 misdemeanor (Count 2). Respondent was convicted by plea of nolo contendere to Count 2, and
2 Count 1 was dismissed pursuant to a plea agreement. Respondent was placed on summary
3 probation for 3 years under the following terms and conditions:

- 4 a. Serve 20 days jail, with credit for 3 days;
- 5 b. Pay fines and fees in the amount of \$352;
- 6 c. Complete 24 week Anger Management Program;
- 7 d. No negative contact with his wife.

8
9 PRAYER

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

- 12 1. Denying the application of Trevon Emeal Buyard for a Respiratory Care Practitioner
13 License;
- 14 2. Directing Trevon Emeal Buyard to pay the Respiratory Care Board of California the
15 costs of the investigation and enforcement of this case, and if placed on probation, the costs of
16 probation monitoring;
- 17 3. Taking such other and further action as deemed necessary and proper.

18 DATED: February 14, 2013

19 Original signed by Liane Freels for:
20 STEPHANIE NUNEZ
21 Executive Officer
22 Respiratory Care Board of California
23 State of California
24 *Complainant*

25 LA2013606905
26 95071753.doc