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

10 In the Matter of the Accusation Against:

Case No. R-2072

11 DONALD W. CLEMENS
12 220 Marina Way, Number 45
Redondo Beach, California 90277

A C C U S A T I O N

13 Respiratory Care Practitioner
14 License Number 6604

15 Respondent.

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17 Complainant alleges:

18 PARTIES

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

22 2. On or about July 12, 1985, the Board issued Respiratory Care Practitioner
23 License Number 6604 to Donald Wilson Clemens (Respondent). This license was in full force
24 and effect at all times relevant to the charges brought herein and will expire on April 30, 2008,
25 unless renewed.

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1 any provision of Division 2 (commencing with Section 500), or violating, or
2 attempting to violate, directly or indirectly, or assisting in or abetting the violation
3 of, or conspiring to violate any provision or term of this chapter or of any
4 provision of Division 2 (commencing with Section 500)”

5 8. Section 3750.5 of the Code states in pertinent part:

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

9 " . . .

10 "(b) Used any controlled substance as defined in Division 10
11 (commencing with Section 11000) of the Health and Safety Code. . . .”

12 9. Health and Safety Code section 11055 states in pertinent part, as follows:

13 “(a) The controlled substances listed in this section are included in Schedule II.

14 . . .

15 “(d) Stimulants. Unless specifically excepted or unless listed in another schedule,
16 any material, compound, mixture, or preparation which contains any quantity of
17 the following substances having a stimulant effect on the central nervous system:

18 “(1) Amphetamine, its salts, optical isomers, and salts of its optical
19 isomers.

20 “(2) Methamphetamine, its salts, isomers, and salts of its isomers.”

21 10. Government Code section 11529, subdivision (a) states:

22 “The administrative law judge of the Medical Quality Hearing
23 Panel established pursuant to Section 11371 may issue an interim order
24 suspending a license, or imposing drug testing, continuing education, supervision
25 of procedures, or other license restrictions. Interim orders may be issued only if
26 the affidavits in support of the petition show that the licensee has engaged in, or is
27 about to engage in, acts or omissions constituting a violation of the Medical
28 Practice Act or the appropriate practice act governing each allied health

1 profession, or is unable to practice safely due to a mental or physical condition,
2 and that permitting the licensee to continue to engage in the profession for which
3 the license was issued will endanger the public health, safety, or welfare.”

4 COST RECOVERY

5 11. Section 3753.1, subdivision (a) of the Code states:

6 “An administrative disciplinary decision imposing terms of
7 probation may include, among other things, a requirement that the
8 licensee-probationer pay the monetary costs associated with monitoring the
9 probation.”

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

11 “In any order issued in resolution of a disciplinary proceeding
12 before the board, the board or the administrative law judge may direct any
13 practitioner or applicant found to have committed a violation or violations of law
14 to pay to the board a sum not to exceed the costs of the investigation and
15 prosecution of the case.”

16 13. Section 3753.7 of the Code states:

17 “For purposes of the Respiratory Care Practice Act, costs of
18 prosecution shall include attorney general or other prosecuting attorney fees,
19 expert witness fees, and other administrative, filing, and service fees.”

20 CONTROLLED SUBSTANCE

21 14. Methamphetamine is a Schedule II controlled substance pursuant to Health
22 and Safety Code section 11055.

23 FIRST CAUSE FOR DISCIPLINE

24 (Use of a Controlled Substance)

25 15. Complainant hereby incorporates by reference Paragraphs 1 through 14 as
26 if each were fully set forth herein.

27 16. Respondent is subject to disciplinary action under Sections 3750,
28 subdivision (g) and 3750.5, subdivision (b) of the Code, in that he used the controlled substance

1 methamphetamine. The facts and circumstances are as follows:

2 a. In February 2007, Respondent was employed by Children’s Hospital Los
3 Angeles (Children’s).

4 b. On or about February 1, 2007, the respiratory care supervisor at Children’s
5 observed that Respondent, while he was engaged in providing respiratory care service, appeared
6 to be under the influence of drugs or alcohol.

7 c. Respondent was therefore referred to Employee Health Services and was
8 asked to submit to a drug and alcohol screening test; Respondent consented.

9 d. Respondent also admitted to being under the influence of
10 Methamphetamine in the course of his employment as a Respiratory Care Therapist. The
11 laboratory report from Quest Diagnostics dated February 1, 2007, indicated Respondent tested
12 positive for Methamphetamine; tests also confirmed that drug was “street” quality and not
13 manufactured by a legitimate pharmaceutical company.

14 e. Respondent was suspended that day, February 1, 2007, from his
15 employment with Children’s.

16 SECOND CAUSE FOR DISCIPLINE

17 (Use of Drugs in a Manner Dangerous to the Public)

18 17. Complainant hereby incorporates by reference Paragraphs 1 through 14
19 and Paragraph 16, subsections (a) through (e) as if each were fully set forth herein.

20 18. Respondent is subject to discipline action under section 3750, subdivision
21 (g) and 2239, subdivision (a) of the Code, in that he used a controlled substance in such a manner
22 as to be dangerous or injurious to himself and/or to the public.

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PRAYER

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WHEREFORE, Complainant requests that a hearing be held on the matters herein

1 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

- 2 1. Revoking or suspending Respiratory Care Practitioner License Number
3 6604, issued to Donald W. Clemens;
- 4 2. Ordering Donald W. Clemens to pay the Respiratory Care Board the costs
5 of the investigation and enforcement of this case, and if placed on probation, the costs of
6 probation monitoring;
- 7 3. Taking such other and further action as deemed necessary and proper.

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9 DATED: May 17, 2007
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13 Original signed by Liane Zimmerman for:
14 STEPHANIE NUNEZ
15 Executive Officer
16 Respiratory Care Board of California
17 Department of Consumer Affairs
18 State of California
19 Complainant
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