

1 BILL LOCKYER, Attorney General
of the State of California
2 JOSE R. GUERRERO
Supervising Deputy Attorney General
3 CATHERINE E. SANTILLAN
Senior Legal Analyst
4 California Department of Justice
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-5579
6 Facsimile: (415) 703-5480

7 Legal Representatives for Complainant

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

11 In the Matter of the Accusation Against:

Case No. R-1987

12 ERIC CLIFTON BROWN
13 2920 33rd Street
Sacramento, CA 95817

A C C U S A T I O N

14 Respiratory Care Practitioner License No. 9108

15 Respondent.
16

17 Complainant alleges:

18 PARTIES

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

22 2. On or about August 16, 1985, the Respiratory Care Board issued
23 Respiratory Care Practitioner License Number 9108 to Eric Clifton Brown (Respondent). The
24 Respiratory Care Practitioner License was in full force and effect at all times relevant to the
25 charges brought herein and will expire on December 31, 2005, unless renewed.

26 DISCIPLINARY HISTORY

27 3. On June 26, 2003, the Board filed Accusation R-1796 against respondent
28 based on his December 13, 2001 conviction of a violation of Vehicle Code section 23152(b),

1 driving with a .08% or higher blood alcohol level, which was a violation of Business and
2 Professions code sections 3750(d) and (g) and California Code of Regulations Title 16, Section
3 1399.370(c). On December 12, 2003, respondent signed a Stipulation for a Public Reprimand.
4 On February 4, 2004, the Board adopted the Stipulation with an effective date of February 17,
5 2004. A true and correct copy of the decision is attached as **Exhibit A**.

6 JURISDICTION

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

10 5. Section 3710 of the Code states: “The Respiratory Care Board of
11 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3,
12 the Respiratory Care Practice Act].”

13 6. Section 3718 of the Code states: “The board shall issue, deny, suspend, and
14 revoke licenses to practice respiratory care as provided in this chapter.”

15 7. Section 3750 of the Code states:

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

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

22 “(g) Conviction of a violation of any of the provisions of this chapter or of any
23 provision of Division 2 (commencing with Section 500), or violating, or attempting to
24 violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to
25 violate any provision or term of this chapter or of any provision of Division 2 (commencing
26 with Section 500).”

27 “(j) The commission of any fraudulent, dishonest or corrupt act which is
28 substantially related to the qualifications, functions, or duties of a respiratory care

1 practitioner.”

2 8. Section 3752 of the Code states:

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

13 9. Section 3752.6 of the Code states:

14 “For purposes of Division 1.5 (commencing with Section 475), and this chapter
15 [the Respiratory Care Practice Act], a crime involving sexual misconduct or attempted
16 sexual misconduct, whether or not with a patient, shall be considered a crime substantially
17 related to the qualifications, functions, or duties of a respiratory care practitioner.”

18 10. Section 3752.7 of the Code states:

19 “Notwithstanding Section 3750, any proposed decision or decision issued under
20 this chapter [Chapter 8.3, the Respiratory Care Practice Act] in accordance with the
21 procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3
22 of Title 2 of the Government Code, that contains any finding of fact that the licensee or
23 registrant engaged in any act of sexual contact, as defined in Section 729, with a patient, or
24 has committed an act or been convicted of a sex offense as defined in Section 44010 of the
25 Education Code, shall contain an order of revocation. The revocation shall not be stayed
26 by the administrative law judge. For purposes of this section, the patient shall no longer be
27 considered a patient of the respiratory care practitioner when the order for respiratory
28 procedures is terminated, discontinued, or not renewed by the prescribing physician and

1 surgeon.”

2 11. California Code of Regulations, title 16, section 1399.370, states:

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

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 “(e) Conviction of a crime involving lewd conduct, prostitution or solicitation
12 thereof, or pandering and/or indecent exposure, as defined by the Penal Code.”

13 COST RECOVERY

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

15 "In any order issued in resolution of a disciplinary proceeding before the board, the
16 board or the administrative law judge may direct any practitioner or applicant found to have committed
17 a violation or violations of law to pay to the board a sum not to exceed the costs of the investigation and
18 prosecution of the case."

19 13. Section 3753.7 of the Code states:

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

23 14. Section 3753.1 of the Code states:

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

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1 FIRST CAUSE FOR DISCIPLINE

2 (Conviction)

3 15. Respondent is subject to disciplinary action under sections 3750(d),
4 3750(g), 3752 (substantially related conviction), 3750(j) (corrupt act), 3752.6 (crime involving
5 sexual misconduct), 3752.7 (conviction of sexual offense), CCR 1399.397(a) and (e) (conviction
6 of a crime involving lewd conduct) in that he was convicted on his plea of nolo contendere to a
7 violation of Penal Code section 647(a), lewd act in a public place.

8 16. On or about March 16, 2004, Sacramento Police Officer Guillion issued
9 citation no. 634031 to respondent for violations of Penal Code section 647(a), lewd act in a public
10 place and Penal Code section 647(d), lewd act in a public toilet. On April 13, 2004, a criminal
11 complaint titled *People of the State of California vs. Eric Clifton Brown* was filed in Superior
12 Court, Sacramento County, case no. 04M04122. Count 1 charged respondent with a violation of
13 Penal Code section 647(a). Count 2 charged respondent with a violation of Penal Code section
14 314.1, indecent exposure. On November 5, 2004, respondent entered a plea of nolo contendere
15 and was convicted of a violation of Penal Code section 647(a), lewd act in a public place. The
16 circumstances of the arrest are as follows:

17 A. Sacramento Police Officer Gullion was assigned to the Problem Oriented
18 Policing (POP) team. One of the responsibilities of the Sector 4 POP team was investigating
19 individuals who solicit, agree to engage in, or engage in any act of illegal sexual activity.

20 B. On March 16, 2004, Officer Tillotson and Officer Gullion were working
21 undercover at the public bathrooms at Miller Park. Both officers wore civilian clothing. The area
22 is known for illegal sexual activity and the Sector 4 POP team had received complaints regarding
23 illegal sexual activity in and around the public bathrooms, parking lots and the nature area. Officer
24 Gullion stood in front of one of the two public bathrooms. He observed a man, later identified as
25 respondent, walk past him and into the bathroom. There were no stalls or barriers between the
26 urinals in the bathroom. The respondent stood in front of a urinal. Approximately two minutes
27 passed, and respondent was still standing in front of the urinal, continually looking over his
28 shoulder at Officer Gullion. Officer Gullion entered the bathroom and stood against the east wall.

1 Respondent turned his body and began stroking his penis. Respondent turned again so he was no
2 longer facing the urinal, and continued to stroke his penis for approximately fifteen seconds while
3 staring at Officer Gullion. Officer Gullion identified himself as a Sacramento Police Officer and
4 placed respondent under arrest for violations of Penal Code section 647(a), lewd act in a public
5 place and Penal Code section 647(d), lewd act in a public toilet.

6 C. Officer Tillotson read respondent his Miranda rights, and interviewed him.
7 Respondent admitted that he showed his penis to Officer Gullion.

8 17. Therefore, respondent's conviction of violating Penal Code section 647(a),
9 lewd act in a public place, constitutes conduct subject to discipline within the meaning of Business
10 and Professions code sections 3750(d), 3750(g), 3752 [substantially related conviction], 3750(j)
11 (corrupt act), 3752.6 (crime involving sexual misconduct), 3752.7 (conviction of sexual offense),
12 CCR 1399.397(a) and (e) (conviction of a crime involving lewd conduct) and is substantially
13 related to the qualifications, functions or duties of a respiratory care practitioner.

14 PRAYER

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

17 1. Revoking or suspending Respiratory Care Practitioner License Number
18 9108, issued to Eric Clifton Brown.

19 2. Ordering Eric Clifton Brown to pay the Respiratory Care Board the costs of
20 the investigation and enforcement of this case, and if placed on probation, the costs of probation
21 monitoring;

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28 3. Taking such other and further action as deemed necessary and proper.

1 DATED: July 26, 2005

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Original signed by Liane Zimmerman for:
STÉPHANIE NÚNEZ
Executive Officer
Respiratory Care Board of California
Department of Consumer Affairs
State of California
Complainant

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