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

12 In the Matter of the Accusation Against:
13 ROBERT LEROY BARTON
24110 Meadow Falls Drive
14 Diamond Bar, California 91765
15 Respiratory Care Practitioner License No. 9512
16 Respondent.

Case No.
A C C U S A T I O N

17
18 Complainant alleges:

19 PARTIES

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

23 2. On or about September 6, 1985, the Board issued Respiratory Care
24 Practitioner License Number 9512 to Robert Leroy Barton (Respondent). This license was in full
25 force and effect at all times relevant to the charges brought herein and will expire on October 31,
26 2007, unless renewed.

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1 accusation, information, or indictment.”

2 8. Section 3752.6 of the Code states:

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

8 9. Section 3752.7 of the Code states:

9 “Notwithstanding Section 3750, any proposed decision or decision issued under
10 this chapter [Chapter 8.3, the Respiratory Care Practice Act] in accordance with the
11 procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division
12 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee or
13 registrant engaged in any act of sexual contact, as defined in Section 729, with a patient,
14 or has committed an act or been convicted of a sex offense as defined in Section 44010 of
15 the Education Code, shall contain an order of revocation. The revocation shall not be
16 stayed by the administrative law judge. For purposes of this section, the patient shall no
17 longer be considered a patient of the respiratory care practitioner when the order for
18 respiratory procedures is terminated, discontinued, or not renewed by the prescribing
19 physician and surgeon.”

20 10. California Code of Regulations, Title 16, section 1399.370, states:

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

27 “ . . .

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

3 COST RECOVERY

4 11. Section 3753.5, subdivision (a) of the Code states:

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

9 12. Section 3753.7 of the Code states:

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

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

14 "An administrative disciplinary decision imposing terms of probation may
15 include, among other things, a requirement that the licensee-probationer pay the monetary
16 costs associated with monitoring the probation."

17 CAUSE FOR DISCIPLINE

18 (Conviction of a Crime)

19 14. Respondent is subject to disciplinary action under sections 3750,
20 subdivision (d), 3752, and 3752.6 of the Code, and section 1399.370, subdivision (e) of the
21 California Code of Regulations, Title 16, in that he was convicted of a crime substantially related
22 to the qualifications, functions, or duties of a respiratory care practitioner. The circumstances are
23 as follows:

24 A. On or about May 11, 2006, an Upland police officer was working an
25 undercover detail at the Mustang Adult Book Store. The police officer observed
26 Respondent masturbating while watching a pornographic movie. The officer identified
27 himself to Respondent who continued to masturbate. The officer identified himself a
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1 second time, and told Respondent he must stop masturbating. Respondent followed the
2 officer outside and was placed under arrest for lewd conduct. Upon questioning,
3 Respondent admitted to the officer that he was trying to arouse himself by masturbating.

4 B. On or about December 21, 2006, in San Bernardino County Superior
5 Court Case No. MWV109694, Respondent was charged with disorderly conduct:
6 solicitation to engage in a lewd act, in violation of Penal Code section 647(a), a
7 misdemeanor.

8 C. On or about April 20, 2007, pursuant to a negotiated plea agreement,
9 Respondent was convicted upon his plea of nolo contendere to disorderly conduct:
10 solicitation to engage in a lewd act. Proceedings were suspended, and Respondent was
11 placed on probation for one year on the following terms and conditions, among others:
12 complete 59 hours of community service, report to the San Bernardino County
13 Department of Health for a for an HIV antibody test and an aids education program, pay a
14 victim restitution fine of \$130.00, and stay away from Mustang Book Store.

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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. Revoking or suspending Respiratory Care Practitioner License Number 9512, issued to Robert Leroy Barton;
2. Ordering Robert Leroy Barton to pay the Respiratory Care Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring;
3. Taking such other and further action as deemed necessary and proper.

DATED: August 7, 2007

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