

By *Anita Joseph*

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7  
8 **BEFORE THE**  
9 **SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY AND HEARING AID**  
10 **DISPENSERS BOARD**  
11 **DEPARTMENT OF CONSUMER AFFAIRS**  
12 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. II 2015 13

12 **MARY FRANCES NICHOLSON, SPA**  
13 **7928 Sierra Vista Street**  
14 **Rancho Cucamonga, California 91730**

**A C C U S A T I O N**

15 **Speech-Language Pathology Assistant**  
16 **License No. SPA 1460,**

Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Paul Sanchez (Complainant) brings this Accusation solely in his official capacity as  
21 the Executive Officer of the Speech-Language Pathology and Audiology and Hearing Aid  
22 Dispensers Board (Board), Department of Consumer Affairs.

23 2. On or about October 4, 2010, the Board issued Speech-Language Pathology Assistant  
24 License Number SPA 1460 to Mary Francis Nicholson (Respondent). The Speech-Language  
25 Pathology Assistant License will expire on May 31, 2016, unless renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board under the authority of the following  
28 laws. All section references are to the Business and Professions Code unless otherwise indicated.

1           4.     Section 2531.5 of the Code states: "The board shall issue, suspend, and revoke  
2 licenses and approvals to practice speech-language pathology and audiology as authorized by this  
3 chapter."

4           5.     Section 2533 of the Code states:

5           "The board may refuse to issue, or issue subject to terms and conditions, a license on the  
6 grounds specified in Section 480, or may suspend, revoke, or impose terms and conditions upon  
7 the license of any licensee for any of the following:

8           "(a) Conviction of a crime substantially related to the qualifications, functions, and duties of  
9 a speech-language pathologist or audiologist or hearing aid dispenser, as the case may be. The  
10 record of the conviction shall be conclusive evidence thereof.

11          "(b) Securing a license by fraud or deceit.

12          "(c) (1) The use or administering to himself or herself, of any controlled substance; (2) the  
13 use of any of the dangerous drugs specified in Section 4022, or of alcoholic beverages, to the  
14 extent, or in a manner as to be dangerous or injurious to the licensee, to any other person, or to the  
15 public, or to the extent that the use impairs the ability of the licensee to practice speech-language  
16 pathology or audiology safely; (3) more than one misdemeanor or any felony involving the use,  
17 consumption, or self-administration of any of the substances referred to in this section; or (4) any  
18 combination of paragraph (1), (2), or (3). The record of the conviction shall be conclusive  
19 evidence of unprofessional conduct.

20          "(d) Advertising in violation of Section 17500. Advertising an academic degree that was not  
21 validly awarded or earned under the laws of this state or the applicable jurisdiction in which it  
22 was issued is deemed to constitute a violation of Section 17500.

23          "(e) Committing a dishonest or fraudulent act that is substantially related to the  
24 qualifications, functions, or duties of a licensee.

25          "(f) Incompetence, gross negligence, or repeated negligent acts.

26          "(g) Other acts that have endangered or are likely to endanger the health, welfare, and  
27 safety of the public.

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1           "(h) Use by a hearing aid dispenser of the term 'doctor' or 'physician' or 'clinic' or  
2 'audiologist,' or any derivation thereof, except as authorized by law.

3           "(i) The use, or causing the use, of any advertising or promotional literature in a manner  
4 that has the capacity or tendency to mislead or deceive purchasers or prospective purchasers.

5           "(j) Any cause that would be grounds for denial of an application for a license.

6           "(k) Violation of Section 1689.6 or 1793.02 of the Civil Code.

7           6.     Section 2533.1 of the Code states:

8           "A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a  
9 charge substantially related to the qualifications, functions, and duties of a speech-language  
10 pathologist or audiologist is deemed to be a conviction within the meaning of this article. The  
11 board may order a licensee be disciplined or denied a license as provided in Section 2533 when  
12 the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or  
13 when an order granting probation is made suspending the imposition of sentence irrespective of a  
14 subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or  
15 her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or  
16 dismissing the accusation, information or indictment."

17           7.     California Code of Regulations, title 16, section 1399.156, states:

18           "Unprofessional conduct as set forth in Section 2533 of the code includes, but is not limited  
19 to, the following:

20           "(a) Violating or conspiring to violate or aiding or abetting any person to violate the  
21 provisions of the Act or these regulations.

22           "(b) Committing any corrupt act, or any abusive act against a patient, which is substantially  
23 related to the qualifications, functions or duties of a speech-language pathologist or audiologist.

24           "(c) Incompetence or negligence in the practice of speech-language pathology or audiology  
25 which has endangered or is likely to endanger the health, welfare, or safety of the public."

26           8.     California Code of Regulations, title 16, section 1399.156.1, states:

27           "For the purposes of denial, suspension or revocation of a license or registration pursuant to  
28 Division 1.5 (commencing with Section 475) of the code, a crime or act shall be considered to be

1 substantially related to the qualifications, functions or duties of a person holding a license under  
2 the Act if to a substantial degree it evidences present or potential unfitness of a person holding a  
3 license to perform the functions authorized by his or her license or registration in a manner  
4 consistent with the public health, safety, or welfare. Such crimes or acts shall include, but not be  
5 limited to, those involving the following:

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

8 "(b) Conviction of a crime involving fiscal dishonesty."

9 **COST RECOVERY**

10 9. Section 125.3 of the Code states, in pertinent part, that the Board may request the  
11 administrative law judge to direct a licentiate found to have committed a violation or violations of  
12 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
13 enforcement of the case.

14 **FIRST CAUSE FOR DISCIPLINE**

15 **(Criminal Convictions)**

16 10. Respondent is subject to disciplinary action under Sections 2533, subdivision (a), and  
17 (c)(3) and section 2533.1 of the Code and California Code of Regulations, title 16, sections  
18 1399.156, subdivision (a) and section 1399.156.1, subdivision (a), in that she has sustained  
19 convictions for driving under the influence of alcohol. The circumstances are as follows:

20 **May 16, 2014 Arrest and March 5, 2015 Conviction**

21 11. On or about May 16, 2014, Respondent's white colored sedan was reported to have  
22 been involved in a hit and run accident in the City of Chino. The reporting party called the police  
23 and followed the suspected vehicle. A San Bernardino County Sheriff's Department patrol  
24 officer was dispatched to the scene because Chino Police Department units were unavailable.  
25 The Officer pulled up behind the stopped vehicle along the west curb of Morningfield Drive, just  
26 south of Eucalyptus Avenue in the City of Chino Hills.

27 12. When the Officer made contact with the Respondent, she was seated in the front  
28 driver seat with the engine on. The Officer noticed that her face was flushed and she was

1 confused as to the time of day and what city she was in; when asked what time it was, she said  
2 10:00 p.m., when it was still daylight, and when asked what city she was in, she blurted Rancho  
3 Cucamonga. Respondent also answered Rancho Cucamonga when asked where she was coming  
4 from and where she was headed. The Officer also noted that Respondent had watery eyes and  
5 slurred and very confused speech. In a defensive manner, Respondent repeatedly asserted that  
6 she was not driving. The Officer told Respondent that he smelled an alcoholic beverage  
7 emanating from her breath, and Respondent admitted to having had one Bud Light at  
8 approximating 9:00 a.m.

9 13. The Officer checked the exterior of Respondent's vehicle for any recent damage, and  
10 did not see any. Although the reporting party maintained Respondent's vehicle rear-ended his  
11 vehicle twice, after checking his own vehicle for damage and finding none, the reporting party  
12 decided against filing a report for a hit and run.

13 14. The Officer then told Respondent to turn off the vehicle and step out to perform a  
14 field sobriety test. Confused and taken aback by the Officer's request, Respondent turned off the  
15 vehicle and placed her keys in the center console, but refused to move. The Officer then opened  
16 her driver side door and told her to step out of the vehicle. Respondent almost fell when stepping  
17 out of the vehicle, but caught her fall by holding onto her car for balance. Respondent refused to  
18 perform the field sobriety test and, again, claimed she was not driving. Respondent finally agreed  
19 to a preliminary alcohol screening (PAS) test. At 7:28 p.m., Respondent's breath sample revealed  
20 a BAC of .306%.<sup>1</sup> Respondent refused to provide additional breaths. The Officer determined  
21 that Respondent demonstrated objective signs of intoxication, was under the influence, and was  
22 unable to safely operate a motor vehicle. The Officer placed Respondent under arrest for  
23 violation of Vehicle Code section 23152, subdivisions (a) and (b). Respondent was transferred to  
24 the West Valley Detention Center.

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28 <sup>1</sup> It should be noted that Respondent is 5'4" and weights 125 lbs.



1 drinking vodka. There were full and empty bottles of vodka in Respondent's vehicle.

2 Respondent confessed she made a big mistake and was very lucky she did not kill anyone.

3 20. Respondent agreed to a field sobriety test, but was unable to perform the test as  
4 demonstrated. Respondent started the Walk and Turn test too soon and could not keep her  
5 balance during the instruction stage. Respondent used her arms for balance during the entire test,  
6 but stepped off line and missed heel-to-toe on almost every step on both sets of nine.  
7 Respondent's eyes tracked equally during the Horizontal Gaze Nystagmus test, but she had a lack  
8 of smooth pursuit, distinct and sustained nystagmus at maximum deviation and nystagmus onset  
9 prior to forty-five degrees. Respondent swayed and raised her arms throughout the One Leg  
10 Stand test and put her foot down at two points during the test. Respondent missed low three  
11 times and right twice on the Finger to Nose test. On the Rhomberg test, Respondent estimated  
12 thirty seconds to be seventeen and swayed one inch left to right and one inch front to back.

13 21. Respondent agreed to a PAS test. Respondent's first breath sample revealed a BAC  
14 of .264%. The second sample revealed a BAC of .247%. The Officer determined that  
15 Respondent demonstrated objective signs of intoxication, was under the influence, and was  
16 unable to safely operate a motor vehicle. Respondent was arrested for violation of Vehicle Code  
17 section 23152, subdivisions (a) and (b).

18 22. On or about September 19, 2014, in *The People of the State of California v. Mary*  
19 *Frances Nicholson*, San Bernardino Superior Court case number TWV1402238, Respondent was  
20 charged in Count 1 of the complaint with violation of Vehicle Code section 23152, subdivision  
21 (a), driving under the influence of alcohol or drugs, a misdemeanor. Count 2 of the complaint  
22 alleged a violation of Vehicle Code section 23152, subdivision (b), driving under the influence  
23 while having a 0.08 percent or higher blood alcohol level, a misdemeanor.

24 23. On or about March 5, 2015,<sup>2</sup> Respondent pled nolo contendere as to Count 2. The  
25 remaining Count was dismissed. Respondent was placed on sixty months probation with terms  
26 and conditions. The terms and conditions include: obey all laws, pay fines totaling \$1923.00,

27 <sup>2</sup> Case numbers TWV1401552 and TWV1402238 were consolidated for entry of plea,  
28 conviction and sentencing.

1 attend a multiple offender DUI program (SB 38, to run concurrent with case no. TWV1401552),  
2 not drive a motor vehicle unless properly licensed and insured, not drive a motor vehicle with a  
3 measurable amount of alcohol in her system, submit to a blood alcohol test upon request of  
4 arresting officer, serve 120 days in a San Bernardino County Jail Facility, with credit for time  
5 served of two days, and report to Glen Helen Rehabilitation Center on March 20, 2015 by 2:00  
6 p.m.

7 **SECOND CAUSE FOR DISCIPLINE**

8 (Dangerous Use of Alcohol)

9 24. Respondent is subject to disciplinary action under Sections 2533, subdivision (c)(3)  
10 of the Code in that she used alcohol in a manner as to be dangerous or injurious to herself, to  
11 other persons and to the public. The circumstances are as follows:

12 25. Complainant refers to and, by this reference, incorporates herein paragraphs 11  
13 through 23, above, as though set forth in full.

14 **DISCIPLINE CONSIDERATIONS**

15 March 25, 2015 DUI Arrest

16 26. Twenty days after she was convicted of her two DUI arrests, on or about March 25,  
17 2015, at approximately 6:33 p.m., a San Bernardino Sheriff's Deputy arrived on scene at the Red  
18 Hill Gas Station on 8166 Foothill Boulevard in Rancho Cucamonga and made contact with  
19 Respondent. Respondent was parked in front of pump number 6, sitting in the driver seat with the  
20 keys in the ignition, the vehicle on and running, and her seatbelt buckled. As the Deputy was  
21 speaking with Respondent, he noticed a strong odor of an alcoholic beverage emitting from her  
22 breath and person. Respondent appeared to be very confused and was not making sense. The  
23 Deputy removed the keys from the vehicle, placed them on the hood of the car, and requested  
24 assistance.

25 27. At approximately 6:45 p.m., Officer D.S. arrived on scene and made contact with the  
26 Deputy and Respondent. As Officer D.S. was speaking with Respondent, he could smell the  
27 strong odor of an alcoholic beverage emitting from her breath and from inside the vehicle.  
28 Respondent appeared to be confused and her speech was slow, incoherent, mumbled, and about

1 events or things that were unrelated to the situation at hand. Respondent's face was flushed and  
2 pale and her eyes were watery, red, bloodshot, and horizontal gaze nystagmus was present. When  
3 Officer D.S. asked Respondent why she was inside her vehicle, passed out for a long period of  
4 time, Respondent stared blankly and refused to answer. When Officer D.S. asked Respondent if  
5 she had consumed any alcoholic beverages throughout the night, Respondent claimed she had not.

6 28. Respondent initially refused to exit her vehicle and perform a field sobriety test, so  
7 Officer D.S. was forced to unbuckle Respondent's seatbelt. Respondent tried to get the seatbelt  
8 undone, but managed to get her right arm tangled in the process. Respondent was then only able  
9 to exit her vehicle by placing her right hand on the door, bracing herself. Respondent was unable  
10 to walk or stand, displaying signs of serious impairment. At times, Officer D.S. felt as if he may  
11 be forced to catch the Respondent because she was so unstable.

12 29. Officer D.S. conducted a records check on Respondent and found that she had a  
13 suspended or revoked driver's license for DUI, and had two prior DUI convictions and arrests in  
14 San Bernardino County.

15 30. Respondent refused to complete any field sobriety tests. Officer D.S. started to  
16 instruct Respondent on the Rhomberg test, but Respondent stopped paying attention, and turned  
17 and faced away from him, stating that she did not want to perform any of the field sobriety tests.  
18 Respondent further refused to submit to a PAS test.

19 31. Officer D.S. determined Respondent was under the influence of an alcoholic beverage  
20 and was operating the vehicle prior to her passing out in front of the gas pump. Officer D.S.,  
21 therefore, placed Respondent under arrest for violation of Vehicle Code section 23152,  
22 subdivisions (a) and (b), and transported her to the West Valley Detention Center. Respondent  
23 agreed to a blood test and at approximately 8:03 p.m., a LEMS nurse obtained a blood sample  
24 from Respondent. Respondent was booked into the West Valley Detention Center, but due to her  
25 level of intoxication was placed on sobering to delay her booking process.

26 32. On or about May 13, 2015, in *The People of the State of California v. Mary Frances*  
27 *Nicholson*, San Bernardino Superior Court case number TWV1501697, Respondent was charged  
28 in Count 1 of the complaint with violation of Vehicle Code section 23152, subdivision (a),

1 driving under the influence of alcohol or drugs, a misdemeanor. It was further alleged that  
2 Respondent sustained two prior convictions within the meaning of Vehicle Code sections 23540,  
3 subdivision (a) and 23546, subdivision (a). It was further alleged that in the above convictions,  
4 Respondent's concentration of blood alcohol was 0.20 percent by weight and more, within the  
5 meaning of Vehicle Code section 23556.

6 33. Respondent was charged in Count 2 of the complaint with violation of Vehicle Code  
7 section 23152, subdivision (b), driving under the influence while having a 0.08 percent or higher  
8 blood alcohol, a misdemeanor. It was further alleged that Respondent sustained two prior  
9 convictions within the meaning of Vehicle Code sections 23540, subdivision (a) and 23546,  
10 subdivision (a). It was further alleged that in the above convictions, Respondent's concentration  
11 of blood alcohol was 0.20 percent by weight and more, within the meaning of Vehicle Code  
12 section 23556.

13 34. Respondent was charged in Count 3 of the complaint with violation of Vehicle Code  
14 section 14601.2, subdivision (a), driving when driving privilege was suspended for prior DUI  
15 conviction, a misdemeanor.

16 **PRAYER**

17 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
18 and that following the hearing, the Speech-Language Pathology and Audiology and Hearing Aid  
19 Dispensers Board issue a decision:

- 20 1. Revoking or suspending Speech-Language Pathology Assistant License Number SPA  
21 1460, issued to Mary Frances Nicholson, SPA;
- 22 2. Ordering Mary Frances Nicholson, SPA to pay the Speech-Language Pathology and  
23 Audiology and Hearing Aid Dispensers Board the reasonable costs of the investigation and  
24 enforcement of this case, pursuant to Business and Professions Code section 125.3, and if placed  
25 on probation, the costs of probation monitoring; and,

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

DATED: July 28, 2015



PAUL SANCHEZ  
Executive Officer  
Speech-Language Pathology and Audiology and Hearing  
Aid Dispensers Board  
Department of Consumer Affairs  
State of California  
*Complainant*

LA2014615109