

IN THE MATTER OF: )

)

**CONSENT ORDER**

Shirley B. Lowery, RCP )

)

License Number – 4751 )

)

**1. Jurisdiction**

The North Carolina Respiratory Care Board (the Board) is an occupational licensing board of the State of North Carolina, organized under N.C. Gen. Stat. § 90-646, et seq. The Board has jurisdiction over this matter pursuant to N.C. Gen. Stat. § 90-652 and 21 N.C. Admin. Code § 61.0307.

**2. Identification of Licensee**

The Respiratory Care Practitioner is Shirley B. Lowery (the “Licensee”). Her mailing address is 134 Alexwood Drive, Red Springs, NC 28377. The Respiratory Care Practitioner holds North Carolina Respiratory Care License number 4751 (the “License”), first issued on May 18, 2007, and expiring on May 18, 2009.

**3. Waiver of Rights**

I, Shirley B. Lowery, the Respiratory Care Practitioner, understand that I have each of the following rights:

(Initials)

SL

The right to a hearing before the Board;

SL

The right to present evidence to disprove all or some of the charges against me;

SL

The right to present evidence to limit or reduce any sanction that could be imposed for a violation;

SL

The right to confront and cross-examine witnesses and to challenge evidence presented by the Board against me;

SL

The right to present legal arguments in a brief; and

SL

The right to appeal from any final decision adverse to my license to practice respiratory care.

As noted by my initials above, I hereby freely and knowingly waive these rights without further process and agree to the terms of this Consent Order regarding my license. In order to resolve this matter by a Consent Order, I also agree that the Board staff and counsel may discuss this Consent Order with the Board *ex parte* whether or not the Board accepts this Order as written.

#### **4. Stipulation to Facts**

The Respiratory Care Practitioner and the Board stipulate to the following facts:

A. The Respiratory Care Practitioner was engaged in the practice of respiratory care in North Carolina when the events occurred that led to the initiation of this complaint.

B. The Board received a complaint from Rick Hinson, RCP at Scotland Memorial Hospital, Laurinburg, NC; informing the Board that the Licensee was terminated from her position at the hospital for testing positive for a drug that she did not have a prescription for.

C. The Licensee was invited on September 22, 2008 to an Interview with the Board's Investigation and Informal Settlement Committee to be held on October 8, 2008 at the Board office. The Licensee did not appear for the interview.

D. The Licensee was invited a second time on November 3, 2008 to an Interview with the Board's Investigation and Informal Settlement Committee to be held on January 7, 2009 at the Board office. The Licensee did not appear for the interview.

#### **5. Stipulated Order**

##### **A. Stipulation to Sections of Law Violated:**

I, Shirley B. Lowery, the Respiratory Care Practitioner, admit that the allegations against me, if proven true, would constitute violations of N.C. Gen. Stat. § 90-659 (a)(1)(d), and the regulations set forth in 21 N.C. Admin. Code § 61 .0307 (5) and 21 N.C. Admin. Code § 61 .0307 (14).

##### **B. Stipulation to Sanction:**

Under N.C. Gen. Stat. § 90-652, in lieu of proceeding to hearing, the Respiratory Care Practitioner and the Board hereby enter into this consent order whereby the Respiratory Care Practitioner and the Board agree to the following terms:

1. The suspension of her respiratory care license until April 9, 2009, the date for the next Board Meeting.

2. To appear before the Board's Investigational and Informal Settlement Committee on April 8, 2009 to address the charges and offer information and references to the Licensee's performance of Respiratory Care.

3. To continue to comply with the Respiratory Care Practice Act, the Board's Rules, and the Board's published interpretation of those rules.

**6. Public Record**

The parties agree that this Consent Order is public record, as required by N.C. Gen. Stat. § 132-1. Documents that are part of the investigative file are not public record.

**7. Reporting**

This disciplinary action will be reported to the appropriate entities as outlined in Board policy and required by state and/or federal law or guidelines. Those entities include, but are not limited to, the National Databank maintained by the National Board for Respiratory Care and the Healthcare Integrity and Protection Data Bank (HIPDB).

**8. Costs**

The Respiratory Care Practitioner assumes financial responsibility for any costs associated with fulfilling the terms of this Consent Order.

**9. Effective Date**

All provisions of this Consent Order are effective upon the date that the Executive Director of the Board signs this Order.

## **10. Noncompliance with Consent Order**

Failure by the Respiratory Care Practitioner to comply with the terms of this Order, either in substance or in timing, is a violation of 21 N.C. Admin. Code § 61 .0307(3). If, during the term of this Consent Order, the Board staff receives evidence that the Respiratory Care Practitioner has violated any of the above conditions, the Board may schedule a show cause hearing for a determination of the violations. If the Board determines that such violations have occurred, then the Board may suspend or revoke the license, revoke any stay, or may impose additional disciplinary action.

All provisions of this Order are effective upon this Order's effective date. Fulfillment of time-specific elements intended to coincide with active practice (such as, but not limited to; probation, supervision or therapy) will only accrue during periods of active practice in which the Respiratory Care Practitioner is compliant with the terms of this Order. Therefore, any period of noncompliance or inactive practice will not accrue towards fulfillment of those terms.

Should circumstances arise that affect the Respiratory Care Practitioner's ability to remain in compliance, the Respiratory Care Practitioner shall immediately notify the Board in writing by return receipt mail, fully describing the situation along with any attendant request for Board consideration.

Any modification of this Consent Order must be pre-approved in writing by the Board before it may occur.

**THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK**

**CONSENT TO ISSUANCE OF ORDER BY RESPIRATORY CARE PRACTITIONER**

I, Shirley B. Lowery, state that I have read the foregoing Consent Order; that I know and fully understand its contents; that I agree freely and without threat or coercion of any kind to comply with the terms and conditions stated herein; and that I consent to the entry of this Consent Order as a condition of maintaining my license from the North Carolina Respiratory Care Board.

Shirley B. Lowery  
Shirley B. Lowery

STATE OF NORTH CAROLINA  
COUNTY OF Robeson

There personally appeared before me, a Notary Public in and for the County of Robeson, State of North Carolina, Shirley B Lowery, who, after having presented documentation of her identity that was satisfactory to me, did acknowledge that she executed the foregoing Consent Order as her free and voluntary act.

This 5 day of Feb, 2009.

Michael Bugg  
Notary Public

(SEAL)

My Commission Expires: My Commission Expires March 26, 2010

**ENTRY OF CONSENT ORDER ON BEHALF OF THE NORTH CAROLINA  
RESPIRATORY CARE BOARD**

The foregoing Consent Order is entered at Raleigh, North Carolina, this 6<sup>th</sup> day of February, 2009.

Floyd E. Boyer  
Floyd E. Boyer, RRT, RCP  
Executive Director, North Carolina Respiratory Care Board