



NORTH CAROLINA RESPIRATORY CARE BOARD
1100 Navaho Drive, Suite 242
Raleigh, NC 27609
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VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

October 29, 2009

James M. Gordon
515 Martin Circle
Kannapolis, NC 28081

Re: Revocation of Your License as a Respiratory Care Practitioner

Dear Mr. Gordon,

A hearing was held by the North Carolina Respiratory Care Board on October 8, 2009, regarding the matters described in the Order for Summary Suspension and Notice of Hearing dated April 9, 2009. The Board sent that notice by certified mail, return receipt requested, to your last address of record.

Based on the Notice of Hearing, your case was called during the Board meeting, but you did not appear and no one else appeared on your behalf. The Board proceeded with the hearing.

The Board considered the testimony and exhibits that were submitted at the hearing. From its review of this evidence, the Board entered the Findings of Fact and Conclusions of Law that are set out in the attached decision. Based on the evidence presented at the hearing, the Board has determined that it should revoke your license to practice Respiratory Care, effective October 8, 2009, the date of the hearing. This letter and the attached decision serve as official notice of the Board's Findings of Fact, Conclusions of Law, and its decision, together with notice of your appeal rights under the North Carolina Administrative Procedure Act.

Appeal Right – You have the right to appeal the Board's decision by filing a petition in the Superior Court of Wake County, North Carolina within thirty (30) days of your receipt of this letter. To compute the thirty days, start counting on the day after this letter is signed for by you or anyone else, because the Board will use the date of signature on the signature card that we will get back to define the start of the 30-day period. Your appeal must be **FILED** in the Office of the Clerk of Court at the Wake County Courthouse in Raleigh, North Carolina, no later than 5 P.M. on the thirtieth day, unless that day falls on a weekend or a holiday recognized by North Carolina State Government, and please note that North Carolina does not share the same holiday schedule as other states or the Federal government. If the thirtieth day falls on a weekend or recognized North Carolina state holiday, then you must file before 5 PM on the next business day. If you do not file an appeal within this thirty-day period, you lose your right to appeal.

Should you have any questions regarding any aspect of this letter, please do not hesitate to contact me.

Sincerely,

Floyd E. Boyer, RRT, RCP
Executive Director



BEFORE THE NORTH CAROLINA RESPIRATORY CARE BOARD

IN THE MATTER OF THE LICENSE)
OF JAMES M. GORDON TO)
PRACTICE RESPIRATORY CARE)
LICENSE NO. 5620)
_____)

**FINAL BOARD DECISION
REVOKING LICENSE**

This hearing came before the North Carolina Respiratory Care Board on October 8, 2009, as part of the Board's regularly scheduled meeting on that date.

PROCEDURAL HISTORY OF THIS CASE

The subject of this hearing is a complaint that the Board received on or about January 22, 2009 from Heather Neal, an RCP at Presbyterian Hospital in Charlotte, NC, that the Licensee had neglected patients in his care at Presbyterian Hospital on or about December 2, 2008 and December 10, 2008. The Board invited the Licensee to attend an interview with the Board's Investigation and Informal Settlement Committee on April 8, 2009, and during the interview, the Board gathered additional information about this matter. Based on information gathered by the Board in its investigation and in the course of the interview of the RCP conducted by the Board's Investigation and Informal Settlement Committee, on April 9, 2009, the Board summarily suspended and permanently revoked the license. The Licensee was informed of the Board's action against the license on April 9, 2009, and subsequently, the Licensee, through counsel, requested that a second interview be conducted by Board's Investigation and Informal Settlement Committee. On July 8, 2009, the Licensee was permitted to appear for a second interview before the Board's Investigation and Informal Settlement Committee. The Licensee was accompanied on July 8, 2009 by his legal counsel, Mr. Francis Considine. On that date, the Board gathered additional information in interviews of the Licensee, Heather Cooper, RN and Kim Ford, RCP. The Licensee was accompanied by his legal counsel during the interview, and the Licensee and his counsel were present in the room during the interviews of the other persons on that date. During his interview with the Committee on July 8, 2009, the Licensee stated that he had connected a patient to a ventilator without checking to verify that the device was connected properly to electricity and to oxygen and air supplies. During his interview with the Committee on July 8, 2009, the Licensee also stated that after finding a patient with a critical low oxygen saturation level who was not properly connected to oxygen, he had first called a nurse to the bedside to show the nurse that the patient was improperly connected to a nasal cannula and had failed to reconnect the patient's oxygen cannula immediately. During his interview with the Committee on July 8, 2009, the Licensee also stated that he has had some emotional problems and had experienced difficulty communicating with his peers. The Licensee also stated that he has attended counseling for his emotional problems and provided a copy of a written statement he and his legal counsel prepared, providing his perspective on the incidents in question and accepting responsibility for his actions. The Board considered this matter at its meeting on July 9, 2009, and determined to offer the Licensee a Consent Order which provided that: (The Licensee is referred to as "RCP" in the following)

Under N.C. Gen. Stat. § 90-652, in lieu of proceeding to hearing, the RCP and the Board hereby enter into this Consent Order, and agree to each of the following terms:

1. RCP must provide a copy of a psychological evaluation from a North Carolina Licensed Psychiatrist or Psychologist which addresses the RCP's fitness to return to the practice of respiratory care, within 3 months of his signature of this Consent Order.
2. If the Board receives an evaluation which meets the terms of Item 1, above, and the evaluation concludes that the RCP is fit to return to the Practice of Respiratory Care, the Board will rescind the suspension and permanent revocation of the RCP's License and the RCP then agrees to the following additional specific limitations relating to his License and his practice of respiratory care:
 - a. The RCP agrees to being licensed on Probationary Status, and to engage in the Practice of Respiratory Care, as defined in the Act and under the Board's Rules, **only** under the **direct supervision** of an Active Licensed Respiratory Care Practitioner. Direct Supervision is defined at NC General Statute 90-648 (3).
 - b. The RCP agrees to notify the Board of all Respiratory Care employment within 10 days of the start of employment.
 - c. The RCP agrees to cause his immediate Respiratory Care supervisor to submit written quarterly reports to the Board. Each such written report shall document the RCP's performance in the delivery of Respiratory Care, and detail any concerns of the supervisor about the RCP's practice of Respiratory Care.
 - d. The RCP agrees to sign a release of information form with his Counselor allowing him/her to provide written reports to the Board of all visits with his Counselor during the probationary period. The RCP shall agree to follow any Plan of Treatment suggested by the Counselor.
 - e. The RCP agrees to attend an interview with the Board's Investigation and Informal Settlement Committee at a time determined by that Committee following six months of employment as a Respiratory Care Practitioner.
 - f. The RCP agrees to continue to comply with the Respiratory Care Practice Act, the Board's Rules, and the Board's published interpretation of those rules.

On July 14, 2009 a copy of this Consent Order was emailed to Mr. Francis Considine, the Licensee's legal counsel. On August 3, 2009 an email was received from the Licensee stating that he would not sign the Consent Order.

APPEARANCES/WITNESSES

At the hearing, neither the Licensee, James M. Gordon, nor any other person appeared on his behalf. The case for the Board was presented by its counsel, William R. Shenton. Mr. Shenton called Mr. Floyd Boyer, Executive Director of the Board, as the Board's witness.

EVIDENCE/EXHIBITS

Board Evidence:

Mr. Boyer's testimony and the following Exhibits were accepted into the record without objection.

Board Exhibit # 1 – A Notice of Hearing mailed to the Licensee at his address of record on August 28, 2009.

Board Exhibit # 2 – An email with an attached Consent Order sent to the Licensee’s legal counsel on July 15, 2009.

Board Exhibit # 3 – A copy of the Licensee’s database screen documenting that the Licensee called the Board office on December 9, 2008 and self reported that he failed to connect air and oxygen to a new vent patient.

Board Exhibit # 4 – A copy of the complaint from Heather Neal, RCP of Presbyterian Hospital dated January 22, 2009 alleging that the Licensee failed to connect medical gases on a patient and failed to connect a patient with a critical value to oxygen.

Board Exhibit # 5 – A copy of the letter mailed February 4, 2009 to the Licensee at his address of record inviting him to an Informal Interview at the Board office on April 8, 2009 in regards to the complaint (Board Exhibit 4).

Board Exhibit # 6 – A copy of an email sent the licensee on February 18, 2009 in response to an email included in this exhibit. The email informs the Licensee that a complaint was received by the Board and provides information on concurrent therapy. Also included in this exhibit is an email sent to the Licensee on February 17, 2009 inviting him to an Informal Interview at the Board office on April 8, 2009 in regards to the complaint.

Board Exhibit # 7 – A copy of a Subpoena sent to Heather Neal, RCP by certified mail on January 27, 2009 requesting documentation of the incidents described in her complaint.

Board Exhibit # 8 – Copies on the Investigative file of Presbyterian Hospital in regards to the incidents described in the complaint.

Board Exhibit # 9 – A copy of Presbyterian Hospital policy in regards to reporting critical values.

Board Exhibit # 10 – Copies of email correspondence between the Licensee and Floyd Boyer, Board Executive Director, dated January 30, 2009. January 28, 2009 January 6, 2009 and December 22, 2008.

Board Exhibit # 11 – Copies of email correspondence between the Licensee and Floyd Boyer, Board Executive Director, dated January 31, 2009. January 30, 2009, January 28, 2009 January 6, 2009, December 22, 2008 and December 21, 2008.

Board Exhibit # 12 – A copy of an email received from the licensee on April 12, 2009.

Board Exhibit # 13 – A copy of an email received from the licensee on August 03, 2009.

Licensee Evidence:

Neither the Licensee nor a representative appeared.

FINDINGS OF FACT

1. The Licensee failed to provide respiratory care in a safe and competent manner at Presbyterian Hospital.
2. The Licensee did not sign and return the Consent Order issued by the Board on July 9, 2009.
3. The Licensee failed to appear before the Board for Hearing on October 8, 2009 as requested by the Board.

CONCLUSIONS OF LAW

Based upon the foregoing Finding of Fact, the Board enters the following Conclusions of Law:

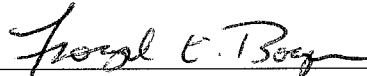
1. The Licensee's failure to provide respiratory care in a safe and competent manner constitutes conduct that presents an imminent hazard to public health, safety, and welfare, and this conduct is prohibited by N.C. Gen. Stat. § 90-659(a)(1).
2. The Licensee's conduct also constitutes unprofessional conduct in the delivery of respiratory care and therefore violates N.C. Gen. Stat. § 90-659(a)(1)(d) and 21 N.C.A.C. 61.0307(10).

FINAL DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the Board has determined that the license of James M. Gordon to practice respiratory care in North Carolina shall be permanently revoked effective October 8, 2009.

IT IS SO ORDERED:

This the 8th day of October, 2009



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