

IN THE MATTER OF: )  
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)  
Cathy A. Garner, RCP )  
License Number – 1589 )

**CONSENT ORDER**

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**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 Cathy A. Garner (the "Licensee"). Her mailing address is 1149 Hibbs Road, Newport, NC 28570. The Licensee holds North Carolina Respiratory Care License number 1589 (the "License"), first issued on July 22, 2002, with an expiration date of July 31, 2012.

**3. Waiver of Rights**

I, Cathy A. Garner, the Licensee, understand that I have each of the following rights: (Note waiver of each right with Initials)

- CAG The right to a hearing before the Board;
- CAG The right to present evidence to disprove all or some of the charges against me;
- CAG The right to present evidence to limit or reduce any sanction that could be imposed for a violation;
- CAG The right to confront and cross-examine witnesses and to challenge evidence presented by the Board against me;
- CAG The right to present legal arguments in a brief; and
- CAG 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 Licensee and the Board stipulate to the following facts:

A. The Licensee was employed in the practice of respiratory care in North Carolina during the time period when the events occurred that led to the initiation of this matter.

B. The Board received a complaint on March 18, 2010 informing the Board that the Licensee was arrested for statutory rape.

C. The Board received information on July 8 2011 informing the Board that the Licensee was convicted of simple assault and received a suspended sentence with 36 months supervised probation.

D. On December 12, 2011, the Licensee appeared for an interview before the Board's Investigation and Informal Settlement Committee.

D. During her interview with the Committee, the Licensee stated that she was charged with statutory rape of a 15 year old male. The Licensee also stated that her husband had died unexpectedly on January 1, 2011 and the relationship occurred approximately 1 month after her husband's death. The relationship lasted less than one month and she no longer has contact with the male.

E. The Licensee acknowledged that she had made a serious mistake and assured the Committee that this would not happen again. The Licensee stated that she is required to have weekly counseling sessions with a clinical counselor in Havelock, NC as part of her probation.

F. The Licensee presented letters of reference from colleagues at Carteret General Hospital and Carteret Community College, which documented the quality of her service during her employment there.

G. On January 12, 2012 the Board considered this matter and determined to offer a Consent Order to the Licensee, on the terms set out in this document.

H. After careful consideration of the terms of this Consent Order, and after an opportunity to review it with legal counsel, the Licensee has agreed to its terms.

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

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

I, Cathy A. Garner, the RCP, admit that if the conduct described above was proven at a hearing, that 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 (10) and 21 N.C. Admin. Code § 61.0307 (24), and would provide a sufficient basis for the Board to permanently revoke my License.

**B. Stipulation to Interim Sanction:**

Under N.C. Gen. Stat. § 90-652, in lieu of proceeding to hearing, the Licensee and the Board hereby enter into this consent order and agree to the following terms, and the Licensee understands that each and every one of these terms is an essential provision of this Consent Order, to which she agrees:

1. The Licensee agrees to accept a license to practice respiratory care on Probationary Status for a period of not less than 36 months from the date of execution of this order; and as a specific condition of that Probationary Status the Licensee agrees to all of the following terms and limitations.

2. The Licensee agrees to comply with all orders and judgments issued in the criminal action in Carteret County, and to complete the restitution of funds and all community service mandated for her as a result of that criminal action.

2. The Licensee agrees to report change of employment as a Respiratory Care Practitioner and/or change of address in writing to the Board within five business days after such change.

3. The Licensee agrees to cause her immediate Respiratory Care supervisor to submit written reports to the Board, on a quarterly basis, during the next 36 months. Each such written report shall document the Licensee's performance in the delivery of Respiratory Care, and detail any concerns of the supervisor about the Licensee's practice of Respiratory Care.

4. During the probationary period the Licensee agrees to restrict her unsupervised respiratory care practice to patients who are 18 years of age or older. The practice of respiratory care to patients below the age of 18 must be supervised by a licensed health care provider.

5. The Licensee agrees to sign a release of information form with her Counselor allowing him/her to provide written reports to the Board of her sessions with her Counselor on a quarterly basis for 36 months. The Licensee shall agree to follow any Plan of Treatment suggested by the Counselor.

6. The Licensee agrees to an interview with the Investigation and Informal Settlement Committee of the Board, the exact dates to be determined by the Board in its discretion in the future, to determine compliance with this Consent Order.

7. The Licensee agrees to continue to comply with the Respiratory Care Practice Act, the Board's Rules, and the Board's published interpretation of those rules.

8. The Licensee understands and agrees that the entry of this Consent Order does not preclude the Board from taking further action against her license if the court enters a conviction on any future charge.

**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. Noncompliance with Consent Order**

Failure by the RCP 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 RCP 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, and may impose additional disciplinary sanctions.

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 RCP 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 RCP's ability to remain in compliance with the terms of this Consent Order, the RCP shall immediately notify the Board in writing by return receipt mail, fully describing the situation and making any attendant request for modification.

**10. Effective Date/Modification**

All provisions of this Consent Order are effective upon the date that the Executive Director of the Board signs this Order. Any modification of this Consent Order must be approved in writing by the Board before it becomes effective.

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

I, Cathy A. Garner, state that I have read the foregoing Consent Order; that I know and fully understand its contents; that after having an opportunity to consult with and obtain advice of counsel, 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.

Cathy A. Garner  
Cathy A. Garner

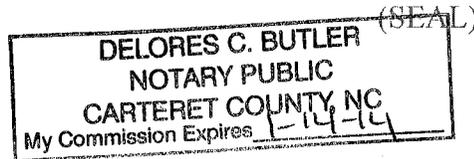
**STATE OF NORTH CAROLINA**  
**COUNTY OF Carteret**

There personally appeared before me, a Notary Public in and for the County of Carteret, State of North Carolina, Cathy A. Garner, 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 24<sup>th</sup> day of Jan., 2012.

Delores C. Butler  
Notary Public

My Commission Expires: 1-14-14



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

The foregoing Consent Order is entered at Raleigh, North Carolina, this 26<sup>th</sup> day of JANUARY, 2012.

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