

IN THE MATTER OF:)
)
David P. Rhodes, RCP)
License Number – 5111)

CONSENT ORDER

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 David P. Rhodes (the "Licensee"). His mailing address is 28 Nandina Drive, Greensboro, NC 27455. The Respiratory Care Practitioner holds North Carolina Respiratory Care License number 5111 (the "License"), first issued on May 15, 2007, with an expiration date of May 31, 2012.

3. Waiver of Rights

I, David P. Rhodes, the Respiratory Care Practitioner, understand that I have each of the following rights:

(Initials)

DP The right to a hearing before the Board;

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

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

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

DP The right to present legal arguments in a brief; and

DP 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 information from Board Staff alleging that the Licensee failed to provide proper continuing education (CE) documentation on his license renewal application. The Licensee renewed online on May 16, 2011 and attested to having completed a minimum of 12 hours of respiratory care continuing education (CE) during his renewal period, which was May 14, 2010 to May 16, 2011. The Licensee's license number was on the Board's randomly selected audit list for this year and a Notice of Audit letter was mailed to the Licensee's address of record on May 17, 2011. A second Notice of Audit was mailed by certified letter to the Licensee's address of record on June 20, 2011. The Board received a letter dated June 26, 2011 informing the Board that the Licensee had misplaced his CE records and was unable to comply with the Audit request.

C. A certified letter was mailed to the Licensee's address of record on June 30, 2011 asking him to attend an interview with the Board's Investigation and Informal Settlement Committee on July 13, 2011. The Licensee emailed the Board on July 13, 2011 asking to be excused due to illness. A second certified letter was mailed to the Licensee's address of record on August 1, 2011 asking him to attend an interview with the Board's Investigation and Informal Settlement Committee on October 12, 2011. The Licensee emailed the Board on October 3, 2011 asking for a continuance to the January 2012 Investigation and Informal Settlement Committee meeting. A third certified letter was mailed to the Licensee's address of record on November 7, 2011 asking him to attend an interview with the Board's Investigation and Informal Settlement Committee on December 12, 2011.

D. The Licensee attended the interview with the Board's Investigation and Informal Settlement Committee on December 12, 2011 at which time he stated that he lost the CE that he had completed during a move. The Licensee did not bring any completed CE with him to the Interview and informed the committee he had not completed any additional CE. The Licensee stated that he had checked with the Hospital (Alamance Regional) he was working for and that they had no CE records. The Board's Investigator visited the Hospital on January 4, 2012 and found that they had keep records and provided documentation of ACLS certification which counts for 5 CE.

5. Stipulated Order

A. Stipulation to Sections of Law Violated:

I, David P. Rhodes, the Respiratory Care Practitioner, admit that the allegations against me, if proven true, would constitute violations of N.C. Gen. Stat. § 90-659 (a)(4) and the regulations set forth in 21 N.C. Admin. Code § 61 .0307 (1), 21 N.C. Admin. Code § 61 .0307 (5) and 21 N.C. Admin. Code § 61 .0401 (g), and would provide a sufficient basis for the Board to permanently revoke my License.

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 issuance of a Board Reprimand.
2. The Respiratory Care Practitioner is assessed a civil penalty of five hundred and dollars (\$500.00) pursuant to N.C. Gen. Stat. § 90-666 and 21 N.C. Admin. Code § 61.0309. The RCP shall remit this sum to the Board within 30 days of execution of this consent order.
3. The completion of an additional 7 hours of CE directly related the practice of Respiratory Care and approved by this Board, the AARC or Physician's Category 1 CME. The CE the Licensee completed for his 2010 to 2011 renewal may not be used for the RCP's 2011-2012 renewal. The RCP shall remit documentation of the completed CE to the Board within 30 days of execution of this consent order.
4. To continue to comply with the Respiratory Care Practice Act, the Board's Rules, and the Board's published interpretation of those rules.
5. Failure to submit the civil penalty, disciplinary costs and the required CE documentation within 30 days of execution of this consent order will result in suspension of the license to practice respiratory care in North Carolina.

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.

The Respiratory Care Practitioner is assessed two hundred and fifty dollars (\$250.00) in costs pursuant to N.C. Gen. Stat. § 90-666(d). The RCP shall remit this sum to the Board within 30 days of execution 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.

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CONSENT TO ISSUANCE OF ORDER BY RESPIRATORY CARE PRACTITIONER

I, David P. Rhodes, 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.

David P. Rhodes
David P. Rhodes

STATE OF NORTH CAROLINA
COUNTY OF NC

There personally appeared before me, a Notary Public in and for the County of Guilford, State of North Carolina, David P. Rhodes, who, after having presented documentation of his identity that was satisfactory to me, did acknowledge that he executed the foregoing Consent Order as his free and voluntary act.

This 20 day of January, 2012.

Jason Kennedy
Notary Public



My Commission Expires: 7-15-14

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

The foregoing Consent Order is entered at Raleigh, North Carolina, this 23rd day of January, 2012.

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