

IN THE MATTER OF:

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CONSENT ORDER

Marshall W. Powers, RCP
License Number – 95

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 Marshall W. Powers (the “Licensee”). His mailing address is 7317 Trevorwood Drive, Willow Springs, NC 27592. The Licensee holds North Carolina Respiratory Care License number 95 (the “License”), first issued on December 19, 2001, with a current expiration date of October 31, 2011.

3. Waiver of Rights

I, Marshall W. Powers, the Licensee, understand that I have each of the following rights: (Licensee notes waiver of each right by entering Initials in each blank space.)

- mw The right to a hearing before the Board;
- mw The right to present evidence to disprove all or some of the charges against me;
- mw The right to present evidence to limit or reduce any sanction that could be imposed for a violation;
- mw The right to confront and cross-examine witnesses and to challenge evidence presented by the Board against me;
- mw The right to present legal arguments in a brief; and
- mw 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 each of 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. Stipulated Facts

The Licensee and the Board stipulate to the following facts:

A. The Licensee held a license to engage in the practice of respiratory care in North Carolina when the events occurred that led to the initiation of this matter.

B. On August 18, 2011 the Licensee called the Board office and self-reported an addiction to Vicodin. The Licensee stated that he would inform his supervisor at WakeMed that day.

C. The Board received information from WakeMed on September 8, 2011 that the Licensee had entered the hospital's Employee Assistance Program (EAP).

D. The Board received letters on September 9, 2011 and September 26, 2011 from Tony Woodall with Johnston Counseling Services that the Licensee was enrolled in their substance abuse outpatient treatment program and was following the Plan of Treatment.

E. On September 9, 2011 the Board received information from WakeMed that the Licensee had been discharged from employment.

F. The Licensee admitted during an interview with the Board's Investigation and Informal Settlement Committee held on October 12, 2011 that he had an addiction to Vicodin that was prescribed for gout and was currently in counseling. The Licensee informed the committee that he had been arrested on September 9, 2011 for drug diversion for filling two prescriptions from two different physicians for Vicodin on the same day back in April of 2011. The Licensee stated he had not used any pain medications since August 2011.

G. The Licensee entered into a Consent Order with the Board on October 27, 2011 and agreed to being licensed on a Probationary Status with conditions for a period of not less than 12 months from the date of execution of the order.

H. The Licensee notified the Board on October 31, 2011 that he will voluntarily surrender his license as a plea agreement with the Wake County Assistant District Attorney to avoid prosecution for the September 9, 2011 charges.

I. The Licensee requested reinstatement of his License to practice Respiratory Care in a letter received by the Board on December 12, 2012.

J. The Licensee attended the Board's Investigation and Informal Settlement Committee meeting on March 12, 2013 and stated that he has been in conversation with the Wake County District attorney's office and the Assistant District attorney has agreed to dismiss the case. The Licensee further stated he completed counseling in June 2012 and has had negative drug screens.

5. Stipulated Order

A. Stipulation to Sections of Law Violated:

I, Marshall W. Powers, 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 N.C. Gen. Stat. § 90-659 (a)(2) and the regulations set forth in 21 N.C. Admin. Code § 61 .0307 (10) and 21 N.C. Admin. Code 61 .0307 (14) and (24).

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 Licensee agrees to accept a license to practice respiratory care on Probationary Status for a period of 12 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 that the issuance of a Respiratory Care Practitioner license is subject to the approval by the Wake County District Attorney's office.

3. The Licensee agrees to complete a current application with the Board and meet the current requirements for issuance of a license including all required continuing education and Basis Life Support certification.

4. If employed in Respiratory Care, the Licensee shall cause his immediate supervisor to submit written quarterly reports to the Board during the time the Licensee is on Probation. 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.

5. During the entire time that the Licensee holds a license on Probationary Status, the Licensee agrees to permit the Board to conduct random drug testing of the Licensee, and further agrees that the entire costs of all drug testing will be paid by the Licensee. The Board will determine the laboratory where the testing would be performed and the manner in which the sample will be collected, and will instruct the Licensee regarding these and any other details of how any drug test should occur. The Board may accept drug screens performed by other state or federal agencies from those other agencies as proof of Licensee's ongoing compliance.

6. The Licensee accepts and agrees to the assessment of one hundred dollars (\$100.00) in costs pursuant to N.C. Gen. Stat. § 90-666(d) and to remit this sum to the Board no later than ninety (90) days following the execution of this Consent Order. The Licensee also assumes financial responsibility for any costs that may be associated with carrying out his responsibilities in fulfilling the terms of 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.

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. 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.

9. 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.

CONSENT TO ISSUANCE OF CONSENT ORDER BY RESPIRATORY CARE PRACTITIONER

I, Marshall W. Powers, 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 being granted a license from the North Carolina Respiratory Care Board.

Marshall W. Powers
Marshall W. Powers

STATE OF NORTH CAROLINA
COUNTY OF Wake

There personally appeared before me, a Notary Public in and for the County of Wake, State of North Carolina, Marshall Powers, 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 30 day of April, 2013.

Christina Morris
Notary Public

My Commission Expires: 01/23/2017



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

The foregoing Consent Order is entered at Raleigh, North Carolina, this 6th day of MAY, 2013.

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