

IN THE MATTER OF: )  
 )  
Rosemerrie L. Mitchell, RCP )  
License Number – 5593 )

**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 Rosemerrie L. Mitchell (the "Licensee"). Her mailing address is 304 Windy Hill Drive, Wendell, NC 27591. The Respiratory Care Practitioner holds North Carolina Respiratory Care License number 5593 (the "License"), first issued on February 17, 2009, with an expiration date of February 28, 2014.

**3. Waiver of Rights**

I, Rosemerrie L. Mitchell, the Respiratory Care Practitioner, understand that I have each of the following rights:

(Initials)

RLM

The right to a hearing before the Board;

RLM

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

RLM

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

RLM

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

RLM

The right to present legal arguments in a brief; and

RLM

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 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 Bruce Handley, RCP of WakeMed-Cary alleging that the Licensee was impaired at work on March 6, 2013 and tested positive for oxycodone, opiates and benzodiazepines on a drug screen administered at the hospital. The Licensee was terminated from employment on March 25, 2013.

C. The Licensee attended the Board's Investigation and Informal Settlement Committee meeting on June 11, 2013 and stated that she had taken her father's medication (morphine) the night before. She stated that she takes medications for back pain.

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

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

I, Rosemerrie L. Mitchell, 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 (10) and (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. Suspension of her RCP License until January 9, 2014.
- \* 2. Permit the Board to conduct random drug testing of the Licensee during the time her license is suspended. The 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 would be collected, and will instruct the Licensee regarding the details of how any drug test should occur.

3. The Licensee agrees to seek treatment and counseling with a substance abuse counselor within 30 days of her signature of this order and submit a copy of the counselor's findings and plan of treatment to the Board.

4. The Licensee agrees to sign a release of information form and furnish it to the substance abuse counselor allowing the substance abuse counselor to provide quarterly written reports to the Board of all visits with the counselor during the suspension period. The Licensee agrees to follow any plan of treatment suggested by the counselor.

4. Attend an Interview with the Board's Investigation and Informal Settlement Committee meeting on December 17, 2013.

5. 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**

X 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. Effective Date**

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

#### **9. 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. <sup>\*</sup> Therefore, any period of ~~noncompliance or inactive practice~~ will not accrue towards fulfillment of those terms. *Ran TELB*

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**

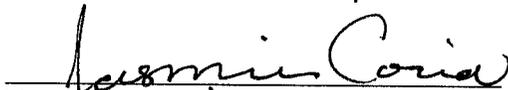
I, Rosemerrie L. Mitchell, state that I have read the foregoing Consent Order; that I know and fully understand its contents; that I agree freely and without threat or coercion of any kind to comply with the terms and conditions stated herein; and that I consent to the entry of this Consent Order as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

  
Rosemerrie L. Mitchell

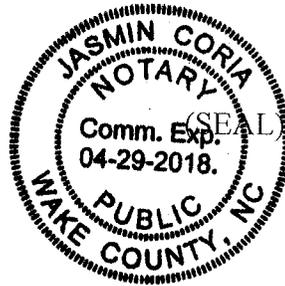
STATE OF NORTH CAROLINA  
COUNTY OF Wake

There personally appeared before me, a Notary Public in and for the County of Wake, State of North Carolina, Rosemerrie L. Mitchell 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 day of July, 2013.

  
Notary Public JASMIN CORIA

My Commission Expires: 4/29/2018



**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 July, 2013.

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