

IN THE MATTER OF:)
)
Sherry R. Alex, RCP)
License Number – 5619)

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 The Respiratory Care Practice Act, codified at 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 the Respiratory Care Practitioner and the License.

The Respiratory Care Practitioner whose license is at issue is Sherry R. Alex (the “RCP”). Her address of record with the Board is 5712 Bryanstone Place, Raleigh, NC 27610. The RCP holds North Carolina Respiratory Care License Number 5619 (the “License”), first issued on April 29, 2009, with a current expiration date of April 30, 2015.

3. Waiver of Rights

I, Sherry R. Alex, the RCP, understand that I have each of the following rights, and as noted by my initials below, I, Sherry R. Alex, the RCP, hereby freely and knowingly waive each of these rights without further process and agree to the terms of this Consent Order regarding my License:

- SRA The right to a hearing before the Board;
- SRA The right to present evidence to disprove all or some of the charges against me;
- SRA The right to present evidence to limit or reduce any sanction that could be imposed for a violation;
- SRA The right to confront and cross-examine witnesses and to challenge evidence presented by the Board against me;
- SRA The right to present legal arguments in a brief; and
- SRA The right to appeal from any final decision adverse to my License to practice respiratory care.

4. Stipulation to Relevant Facts

The RCP and the Board stipulate to the following facts:

A. The RCP was engaged in the practice of respiratory care in North Carolina when the events described in this Consent Order occurred.

B. On May 30, 2014, the Board received information from Sharon Denise Willard, who is the Director of Nursing at Winston Salem Nursing and Rehabilitation; the RCP had capped a tracheostomy patient without a physician's order, and did not follow the standard protocol for capping a tracheostomy. The RCP was terminated due to these patient care policy violations.

C. During an interview with the Board's Investigation and Informal Settlement Committee on September 9, 2014, the RCP denied that she performed the tracheostomy capping on a patient without a physician's order, and stated that she did initiate a trial of capping per protocol. The RCP stated that the order was to cap the tracheostomy tube in the afternoon of the day in question and that she spoke to the physician about delaying it until the next morning. The RCP stated that the next morning she proceeded to cap the tracheostomy tube and that she documented her actions in the chart and notified the nursing staff; but she admitted that she did not follow up to confirm that an order had been written to document the physician's verbal order that she claimed had been given.

D. On October 9, 2014, the Board voted to request more information regarding the events and to defer further action until the information was received.

E. On November 4, 2014, a second subpoena was issued to Sharon Willard of Winston Salem Nursing and Rehabilitation requesting records of the dates in question.

F. On November 5, 2014, a second letter was sent inviting the RCP to a second interview with the Board's Investigation and Informal Settlement Committee on December 18, 2014. The letter was returned to sender on November 24, 2014; but the RCP was contacted by email and in an email response, she confirmed that she would attend the interview on December 18.

G. On December 12, 2014, the subpoenaed documents were received from Sharon Willard of Winston Salem Nursing and Rehabilitation that on May 19, 2014 and May 28, 2014, the RCP had capped a tracheostomy patient without a physician's order, and did not follow the standard protocol for capping a tracheostomy and they showed no order for a tracheostomy capping or Passy-Muir trial on two separate occasions on patients under the RCP's care.

H. On December 18, 2014, the Board's Investigation and Informal Settlement Committee met, but Ms. Alex did not appear for the interview. At the meeting, the committee reviewed the documents received from Ms. Willard and those documents do not show an order for tracheostomy capping or Passey Muir trial on two separate occasions on patients under the RCP's care on the 19th or 28th of May 2014.

I. The information received by the Board in a written statement from Ms. Willard shows that: 1) the RCP did not follow physician orders and violated facility protocol capping the patient's tracheostomy; 2) the patient was found slumped over by Rebecca Gentry, RN after being notified by a CNA, and that after the patient was assessed for respiratory distress, the patient was stabilized after uncapping the tracheostomy and suctioning the airway; and 3) when the attending physician was notified of the event he was concerned that the trial capping had been initiated without his approval and believed that this placed the patient at risk for harm.

5. Stipulated Order

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

A. RCP's Stipulation as to Pertinent Sections of the Statute and Rules:

I, Sherry R. Alex, the RCP, admit that the Stipulated Facts set forth above in this Consent Order constitute violations of N.C. Gen. Stat. § 90-659 (a)(1) (b) and (d), and 21 N.C. Admin. Code § 61 .0307 (10) and (11) of the Board's Rules.

B. RCP's Stipulation to Sanctions and Future Performance Obligations:

I, Sherry R. Alex, the RCP, accept and agree to each of the following sanctions and future performance obligations:

1. The RCP acknowledges that in light of the Stipulated Facts set forth above, a suspension of her License for twelve (12) months would be an appropriate sanction for the Board to impose under N.C. Gen. Stat. § 90-659 (4). Therefore, the RCP accepts and agrees to the Board's Suspension of her License, with the provision that this suspension will be stayed for six (6) months pending her timely completion of or compliance with each of following Points 2 through 5.
2. The RCP accepts and agrees to the assessment of a civil penalty of two hundred and fifty dollars (\$250.00) 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 no later than ninety (90) days after execution of this order.
3. The RCP accepts and agrees to the assessment of two hundred and fifty dollars (\$250.00) in costs pursuant to N.C. Gen. Stat. § 90-666(d) and agrees to remit this sum to the Board no later than ninety (90) days following the execution of this Consent Order. The RCP also assumes financial responsibility for any costs that may be associated with fulfilling the terms of this Consent Order.
4. The RCP agrees to write an essay of at least 2 pages on the topic, "Why Should I Follow Physician's Orders?" The essay is to be completed and submitted to the Board no later than ninety (90) days after execution of this Consent Order.
5. 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.
6. The RCP acknowledges and agrees that if she fails to comply with the terms of this Consent Order, either by completely failing to carry out one of her obligations, or failing to complete it within the time specified, that will constitute a violation of 21 N.C. Admin. Code 61 .0307(3); and that if the Board staff receives information that the RCP has failed to comply with any of the terms of this Consent Order while it is in effect, the Board may revoke any stay permitted under this Consent Order without a hearing and suspend the RCP's License without a hearing; and also may revoke the License, or impose additional disciplinary sanctions or performance obligations on the RCP.

7. The RCP acknowledges and agrees that this Consent Order and the materials compiled by the Board are matters of public record under N.C. Gen. Stat. § 132-1 *et seq* ; and that the contents of this Consent Order will be reported to the appropriate entities as outlined in Board policy and as required by state and/or federal law or guidelines, including but not limited to the National Databank maintained by the National Board for Respiratory Care and the Healthcare Integrity and Protection Data Bank (HIPDB).
8. The RCP acknowledges and agrees that if circumstances arise which affect the RCP's ability to remain in compliance with any of the terms of this Consent Order; the RCP shall immediately notify the Board in writing by return receipt mail, fully describing the situation and providing a specific request to modify its terms for Board consideration. However, no modification of this Consent Order shall be in effect until the Board confirms such a modification in writing to the RCP.

C. Effective Date

All provisions of this Consent Order are effective upon the date that the Executive Director of the Board signs it, and it shall remain in effect for the time period or periods specified, or until amended in writing by the Board.

If the RCP completes each of requirements of this Consent Order within the time limits specified for each requirement, then at the conclusion of a six-month period from its effective date, the RCP's License will no longer be under threat of suspension as a result of the stipulated facts set forth in this Consent Order. However, the Licensee must continue to comply with the Respiratory Care Practice Act and the Board's Rules; and if other evidence of the RCP's non-compliance with the Act or the Rules should arise, then the Board may invoke other disciplinary measures against the RCP, based on that other evidence; and in determining the appropriate action to take, the Board also may consider the conduct of the RCP which is presented in the factual stipulations in this Consent Order.

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ACCEPTANCE OF CONSENT ORDER BY RESPIRATORY CARE PRACTITIONER

I, Sherry R. Alex, 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.

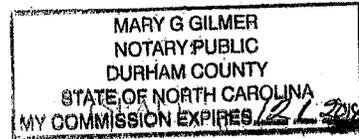
Sherry R. Alex
Sherry R. Alex

STATE OF NORTH CAROLINA
COUNTY OF Durham

There personally appeared before me, a Notary Public in and for the County of Durham, State of North Carolina, _____, 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 2nd day of MARCH, 2015.

Mary G. Gilmer
Notary-Public



My Commission Expires: 12/1/2018

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

The foregoing Consent Order is entered at Raleigh, North Carolina, this 2nd day of MARCH, 2015.

William L. Croft, PhD, RRT, RCP
William L. Croft, PhD, RRT, RCP
Executive Director, North Carolina Respiratory Care Board

CONSENT TO ISSUANCE OF ORDER BY RESPIRATORY CARE PRACTITIONER

I, Sherry R. Alex, 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.

Sherry R. Alex
Sherry R. Alex

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, Sherry Alex, 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 2nd day of March, 2015.

Jane E. Carter
Notary Public

(SEAL)

My Commission Expires: 12-8-17

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

The foregoing Consent Order is entered at Raleigh, North Carolina, this 2nd day of MARCH, 2015.

William L. Croft PhD, RRT, RCP
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Executive Director, North Carolina Respiratory Care Board