

IN THE MATTER OF:)

)

CONSENT ORDER

Abby B. Whalen, RCP)

License Number – 5273)

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 Abby B. Whalen (the "Licensee"). Her mailing address is 6016 Storehouse Rd., Charlotte, NC 28227. The Respiratory Care Practitioner holds North Carolina Respiratory Care License number 5273 (the "License"), first issued on June 9, 2008 with an expiration date of June 30, 2015.

3. Waiver of Rights

I, Abby B. Whalen, the Respiratory Care Practitioner, understand that I have each of the following rights:

(Initials)

ABW

The right to a hearing before the Board;

ABW

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

ABW

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

ABW

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

ABW

The right to present legal arguments in a brief; and

ABW

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. On June 27, 2014, the Board received a complaint from Don Hite, owner of Aerflow Inc., located in Asheville, NC, stating that the Licensee stole two Respironics' Apnea Monitors from the organization as well as additional items from Cape Fear Respicare, Inc. in Wilmington. The complaint also stated that the Licensee attempted to sell the "Controlled Medical Devices" and refused to return the items with a value of \$2,000.00 each.

C. On July 3, 2014, subpoenaed documents received from Mr. Hite included: 1) A disciplinary warning dated and signed by the Licensee on December 31, 2013 for unprofessional behavior that stated frequent tardiness as well as being disrespectful and insubordinate with supervisor regarding the use of the company vehicle; 2) An action plan agreement dated and signed by the Licensee December 31, 2013 stated the company's expectations regarding teamwork.; 3) A disciplinary warning and termination notice dated January 9, 2014 issued by Aeroflow Manager, Megan Roberts, for failing to comply with action plan signed on December 31, 2013; 4) Drug test ordered on December 6, 2013 requested by Aeroflow for Licensee was positive for amphetamine; and 5) The Licensee's prescription written for Adderall from Dr. Joseph Whalen from Carolinas Health System dated December 17, 2013.

D. On July 7, 2014, Debra Marlowe, Manager of Cape Fear Respicare, Inc. located in Wilmington, NC filed a second complaint stating that the Licensee stole two apnea monitors, one LTV ventilator, patient paperwork, and a notebook of propitiatory information. Ms. Marlowe stated that the Licensee called patients after her dismissal, thus violating HIPPA laws. The complaint also stated: 1) The Licensee displayed unprofessional conduct by harassing other employees and by treating patients, staff and referral rudely; 2) The Licensee is unstable and may be on drugs; 3) The Licensee threatened Ms. Marlowe physically in front of the staff according to the complaint; and 4) The Licensee was terminated after working three weeks and two days.

E. On September 04, 2014, the Board received a letter from the Licensee responding to the complaint. The Licensee stated that she was not terminated from Cape Fear Respicare (CFR). The letter stated that the equipment was returned to Aeroflow with a returned receipt and inventory list attached. Attempts were made to return the equipment to CFR. Communication between the Licensee and CFR was not reasonable according to the Licensee's letter. The Licensee held the equipment until her last paycheck was issued. The Licensee denied threatening anyone physically in the office.

F. On September 8, 2014, the Board received subpoena documents from Debra Marlowe with written statements from the staff stating the unprofessional communication of the Licensee in the office.

G. On September 09, 2014, the Licensee attended the Board's Investigation and Informal Settlement Committee meeting at which time she stated that she was terminated from Aeroflow earlier this year, but she was not terminated from Cape Fear Respicare in June of 2014. The Licensee denied drug use other than prescription drugs. A physician's letter entered into evidence supports prescriptive drug used by the Licensee. The Licensee admitted to holding on to the equipment from both companies longer than she should have, but denied attempting to sell the

equipment or contact patients regarding the equipment. The Licensee provided receipts for the returned the equipment to both former employers. The Licensee admitted to unprofessional behavior in her communication with others in the workplace that lead to past terminations and requested help in resolving these issues.

5. Stipulated Order

A. Stipulation to Sections of Law Violated:

I, Abby B. Whalen, 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).

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 6 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 seek counseling with a Board approved counselor during the probationary period 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 and;

3. The Licensee accepts and agrees to the assessment of two hundred and fifty dollars (\$250.00) in civil penalties and two hundred and fifty (\$250.00) dollars costs pursuant to N.C. Gen. Stat. § 90-666(a) and N.C. Gen. Stat. § 90-666(d) payable within ninety days from the date of execution of this order and;

6. The Licensee also assumes financial responsibility for any costs associated with fulfilling the terms of this Consent Order and;

8. 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. 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.

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.

CONSENT TO ISSUANCE OF ORDER BY RESPIRATORY CARE PRACTITIONER

I, Abby B. Whalen, 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.

Abby B. Whalen
Abby B. Whalen

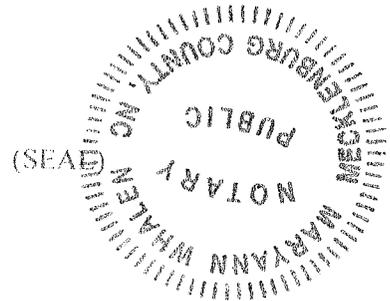
STATE OF NORTH CAROLINA
COUNTY OF NC

There personally appeared before me, a Notary Public in and for the County of Mecklenburg, State of North Carolina, Abby B. Whalen, 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 14 day of Nov., 2014.

MaryAnn Whalen
Notary Public MaryAnn Whalen

My Commission Expires: 10-13-2015



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

The foregoing Consent Order is entered at Cary, North Carolina, this 24th day of November, 2014.

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