STATE OF NORTH CAROLINA

BEFORE THE NORTH CAROLINA
RESPIRATORY CARE BOARD

IN THE MATTER OF:	)	
	)	**CONSENT ORDER**
Jeffrey R. Ware, RCP	)	
License Number – 3308	)	

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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 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 90-659 and 21 N.C. Admin. Code 61.0307.

2. Identification of RCP

The Respiratory Care Practitioner is Jeffrey R. Ware (the "RCP"). His mailing address is 1123 Geyser, Rock Hill, SC 29715. The RCP holds North Carolina Respiratory Care License number 3308 (the "License"), first issued on June 14, 2005, with a current expiration date of June 30, 2015.

3. Waiver of Rights

I, Jeffrey R. Ware, the RCP, hereby confirm that I understand that I have each of the following rights, and as noted by my initials below, 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:

JW The right to a hearing before the Board;

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

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

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

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

JW The right to appeal from any final decision adverse to my license to practice respiratory care.

4. Stipulated Facts

The Respiratory Care Practitioner 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 July 15, 2014, the Board received information from Carmita Edison at Carolina Specialty Hospital (CSH) in Pineville, NC alleging that staff members were not following approved department policies and procedures in the operation of ventilators and patients were at risk of harm. The RCP was not one of the individuals whose conduct was the subject of the information from Ms. Edison.

C. Investigations of the other RCP's identified in the information from Ms. Edison were begun as Case # 14-714 and Case # 14-715; and the Board conducted interviews of those two individuals and subpoenaed pertinent information from CSH. On October 9, 2014, the Board voted to continue those two cases in order to gather more information, and the Board issued a subpoena to CSH for pertinent information.

D. As a result of the information obtained during interviews with Ms. Edison and other individuals concerning ventilator policies and protocols for high and low pressure settings on patients, the Board requested the RCP to attend an interview at the Board's Investigation and Informal Settlement Committee meeting concerning his role as one of six lead RCPs in the Respiratory Care Department at CSH.

E. On November 12, 2014, in response to its subpoena, the Board received documentation from CSH covering the services provided to some of its patients during the periods of September 28 and 29, 2013; January 12 and 13, 2014; February 8-9, 2014; April 19-20, 2014; and July 12, 2014.

F. The subpoenaed documentation shows that Respiratory Care staff members at CSH: 1) set high pressure limits at 60 cmH20 and low pressure limits at 10 cmH20 on all of the patients covered by the documentation; 2) failed to assess patient status according to the CSH policy that was in effect; 3) failed to chart treatment modalities consistently; and 4) failed to use the appropriate licensed credential designation.

G. The Policy # RT-602 submitted to the Board by Carolina Specialty Hospital was last revised in May 2013 and it describes the procedure for setting high and low pressure alarms, and monitoring breath sounds and vital signs on ventilator patients. The Policy establishes the following procedures for setting high and low pressure alarms on ventilators: 1) high-pressure alarm(HPL) ideally is set at 15 cmH2) pressure above peak inspiratory pressure (PIP), but may be set higher when indicated by the patient's condition; and 2) low-pressure alarm ideally is set at 15 cmH2) pressure below peak inspiratory pressure (PIP). In addition, the policy also states that "the routine ventilator assessments are to be performed Q4 hours and should include monitoring breath sounds and verifying ET tube position.

H. On November 20, 2014, the RCP attended the Board's Investigation and Informal Settlement Committee meeting held at a local hotel in Pineville. During the November 20 interview, the RCP could not recall the policy language and was unaware of the location of the manual but said that he recalls seeing it during his orientation.

I. The subpoenaed documentation received from Carolina Specialty Hospital on November 12, 2014 was reviewed with the RCP during his interview on November 20, 2014:

- The RCP agreed that the documentation shows that on September 28 and 29, 2013; February 8-9, 2014; and July 12, 2014, the staff under his supervision did not chart vital signs or breath sounds for their assigned ventilator patients when receiving aerosolized medication and did not set ventilator pressure limits according to department policy.
- The RCP also acknowledged that the location in the records where staff documented treatments and ventilator checks was inconsistent and also was inconsistently charted on the flow sheet or the RT notes. He agreed that this inconsistency might create misunderstandings and problems for patient care.
- The RCP acknowledged that the CSH ventilator policy was not followed by staff based on the documentation that showed a number of patients having the HPL setting at 60.
- The RCP acknowledged that he does not feel the majority of patients at CSH require HPL of 60 and LPA of 10, but offered the explanation that the lungs of the patients were not as compliant as the basis for an HPL pressure of 60 as the standard. He stated that patient activity level and coughing affects the frequency of alarms so the staff were trying to avoid the high number of alarms from going directly to the phones, since the staff must respond to each.

J. On March 10, 2015, the RCP attended a second interview with the Board's Investigation and Informal Settlement Committee. The RCP acknowledged that during the time periods covered by the documentation received in response to the Board's subpoena, Respiratory Care staff had not documented according to department or CSH policy; but that staff compliance had improved since then.

K. During the March 10 interview, the RCP admitted that at the time of the November 20, 2014 interview, he did not understand the CSH Policy. He acknowledged the need to comply with policy and procedures, and stated that he is more familiar with the policies now and believes that the policy manual is kept at the nurses' station.

Stipulated Order

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

I, Jeffrey R. Ware, the Respiratory Care Practitioner, acknowledge that the CSH Policy correctly states the accepted practice for ventilator alarm settings. I agree that the stipulated facts demonstrate that I have violated the following provisions of the Respiratory Care Practice Act: N.C. Gen. Stat. § 90-659 (a) (1) (b) and (d), N.C. Gen. Stat. § 90-659 (4) and the Board rules set forth in 21 N.C. Admin. Code 61 .0307(10).

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

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 sanctions and future performance obligations:

1) The RCP acknowledges that in light of the Stipulated Facts set forth above, a reprimand is an appropriate sanction for the Board to impose under 21 N.C. Admin. Code 61 .0307 (10). Therefore, the RCP accepts a Reprimand from the Board and also agrees to comply with and complete each of the specific requirements set forth below within any time period for compliance with a requirement that may be specified in this Order.

2) The RCP agrees to pay 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 and also agrees to the assessment of two hundred and fifty dollars ($250.00) in costs pursuant to N.C. Gen. Stat. § 90-666(d). The RCP agrees that the civil penalty and cost amounts are reasonable in light of the factual stipulations and agrees to remit these sums to the Board no later than ninety (90) days after execution of this order. The RCP also assumes financial responsibility for any other costs associated with fulfilling the terms of this Consent Order.

3) The RCP agrees to complete 12 additional continuing education credits on ventilator management and submit the course credits to the Board at least 90 days after the next renewal of the License.

4) The RCP agrees to complete a two page essay on *The Role of Supervisors: Understanding Policies and Procedures* according to Board writing guidelines and submit it electronically no later than 30 days after signing this Consent Order.

5) The RCP acknowledges and agrees that this Consent Order and the materials compiled by the Board are matters of public record under the North Carolina Public Records Law, 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. 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).

6) The RCP acknowledges and agrees that if he fails to comply with the terms of this Consent Order, either by completely failing to carry out one of his obligations, or failing to complete it within the time specified, that will constitute a violation of 21 N.C. Admin. Code 61 .0307(3); the Board may suspend or revoke the License, or impose additional disciplinary sanctions or performance obligations on the RCP.

7) The RCP 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.

8) 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. Effective Date/Modification

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.

The terms of this Consent Order shall remain in effect for one year from its effective date and expire at that point. 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 that is not presented in the Stipulated Facts above 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 Stipulated Facts in this Consent Order.

CONSENT TO ISSUANCE OF ORDER BY RESPIRATORY CARE PRACTITIONER

I, Jeffrey R. Ware, 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.

Jeffrey R. Ware

STATE OF NORTH CAROLINA
COUNTY OF Mecklenburg

There personally appeared before me, a Notary Public in and for the County of Caldwell, State of North Carolina, Jeffrey R Ware, 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 29 day of June, 2015.

(SEAL)

Notary Public

My Commission Expires: Nov. 6, 2016

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

The foregoing Consent Order is entered at Cary, North Carolina, this 10th day of July, 2015.

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