

IN THE MATTER OF:

Robert K. Wendell, RCP
License Number – 1418

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CONSENT ORDER

I. 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. General Statute § 90-652 and 21 N.C. Administrative. Code 61 .0307.

II. Identification of Licensee

The Respiratory Care Practitioner is Robert K. Wendell (the “RCP”). The RCP’s mailing address is 110 Redwood Trail, Goldsboro, NC 27534. The RCP holds North Carolina Respiratory Care License number 1418 (the “License”), first issued on July 08, 2002 with a current expiration date of July 31, 2016.

III. Waiver of Rights

I, Robert K. Wendell, the Respiratory Care Practitioner, 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:

(Initials)

RK The right to a hearing before the Board;

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

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

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

RK The right to present legal arguments to the Board; and

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

IV. Stipulation to Facts

The RCP and the Board stipulate to the following facts:

A. The RCP was employed and engaged in the practice of respiratory care in North Carolina during the time period when the events occurred that led to the initiation of this matter.

B. On July 28, 2015, the Board received a complaint from Lisa N. Mitchell, Risk Analyst, at Vidant Duplin Hospital regarding the unprofessional conduct of the RCP.

C. Ms. Mitchell reported that on July 17, 2015, the RCP while caring for a Hispanic male, the RCP was witnessed using excessive force to hold the patient's head. It was also witnessed that the RCP "thumped" and gently slapped the patients cheek in efforts to keep the patient from biting the ET tube. According to witnesses, the RCP 1) made racial and discriminatory remarks and about the patient once the patient was sedated; 2) used profanity and made threatening remarks to the patient. The RCP was placed on administrative leave from Vidant Duplin Hospital and he resigned his position there on July 23, 2015.

D. In a letter dated August 12, 2015 received by the Board, Ms. Mitchell enclosed the Internal Report prepared after the investigation of the event, which included email statements from witnesses.

E. The Internal Report described how the RCP had been seen to hold the patient to maintain a patent airway. Witnesses Jennifer Young, CNA, Ashley Braunstein, RCP and Auburn Perkins, RN wrote that the RCP used or made racial and discriminatory remarks and about the patient once the patient was sedated; 2) used profanity and made threatening remarks to the patient. Ms. Braunstein wrote that she witnessed the RCP "thumping" and gently slapping the patients cheek in efforts to keep the patient from biting the ET tube. All three also reportedly stated that he referred to the patient as a "thug".

F. On August 20, 2015, Witnesses Jennifer Young, CNA, Ashley Braunstein, RCP and Auburn Perkins, RN were interviewed by Board Investigator, Judy Green, RRT, RCP and Executive Director Bill Croft, PhD, RRT, RCP. Each witness provided a verbal account of the events confirming that the incident with the patient had occurred as described in the Internal Report.

G. The Internal Report stated that when the RCP was questioned about whether he thumped or slapped the patient, he stated that "I do not think so. That would not have been my normal response. I don't think I would have done that".

H. On September 8, 2015, the RCP appeared for an interview before the Board's Investigation and Informal Settlement Committee, and stated that he remembers some but not all of his remarks and does not deny that he might have made inappropriate remarks. He stated that he is very regretful and that he holds no bias against others. He denied choking or striking the patient but he stated that he was attempting to open his airway after the patient bit down on the ET-Tube. He demonstrated his hand placement relative to the forehead, jaw and mouth which

did not appear to be a choke hold. He could not recall all of the events but he remembered that this was one of many patients admitted for taking street drug Spice. He stated that he was having a very bad day after seeing multiple patients high on spice.

V. Stipulated Order

During an Executive Session at its regular quarterly meeting on October 8, 2015, the Board considered this matter and determined to offer a Consent Order to the RCP, on the terms set out in this document.

A. Stipulation to Sections of Law Violated:

I, Robert K. Wendell, the RCP, admit that if evidence were presented at a hearing to show that I had engaged in the conduct described in the Internal Report, that would constitute a violation of N.C. Gen. Stat. § 90-659 (a)(1) (d) and the Board Rule set forth in 21 N.C. Admin. Code 61 .0307 (10) which would provide a sufficient basis for the Board to permanently revoke my License.

B. Stipulation to Sanction:

Under N.C. Gen. Stat. § 90-652, in lieu of proceeding to hearing, the RCP and the Board hereby enter into this consent order and agree to the following terms, and the RCP understands that each and every one of these terms is an essential provision of this Consent Order, to which he agrees, and to which he must comply in every respect:

1. The RCP accepts and agrees to the issuance of a Board Reprimand;
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 90 days after execution of this Consent 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 report change of employment as a Respiratory Care Practitioner and/or change of address in writing to the Board within five business days after such change.
4. The RCP agrees to seek counseling with a Board approved counselor specializing in anger management within 30 days of his signature of this order and submit a copy of the counselor's initial findings and plan of treatment to the Board.
5. The RCP agrees to sign a release of information form with his Counselor allowing him/her to provide written reports to the Board of his sessions with his Counselor. The RCP shall follow any Plan of Treatment suggested by the Counselor.

6. The RCP agrees complete an anger management course within 90 days of his signature of this order and submit a copy course completion to the Board.

7. 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 National Practitioner Data Bank maintained by the US Department of Health and Human Services.

8. 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, or to make continued progress on completing the requirements, 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.

9. 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 an obligation within a time specified, that will constitute a violation of 21 N.C. Admin. Code 61 .0307(3), and that as a result, the Board may suspend or revoke the License, or impose additional disciplinary sanctions or performance obligations on the RCP.

10. However, the RCP must continue to comply with the Respiratory Care Practice Act and the Board's Rules; and the RCP acknowledges that 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 that 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.


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 this Consent Order shall remain in effect until the RCP completes each of the requirements listed above, or until amended in writing by the Board.

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**CONSENT TO ISSUANCE OF CONSENT ORDER BY RESPIRATORY CARE
PRACTITIONER**

I, Robert K. Wendell, state that I have read the foregoing Consent Order; that I know and fully understand its contents; that after having had an adequate opportunity to consult with and obtain advice of counsel, if I have chosen to do so, 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.

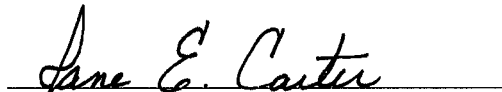


Robert K. Wendell

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, Robert K. Wendell, 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 2nd day of November, 2015.




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 Cary, North Carolina, this 3rd day of November, 2015.



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