

STATE OF NORTH CAROLINA

BEFORE THE NORTH CAROLINA  
RESPIRATORY CARE BOARD

IN THE MATTER OF:

)  
)  
)  
)  
)  
)

**CONSENT ORDER**

Kevin M. Westbrook, RCP  
License Number – 6215

**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 Kevin M. Westbrook (the “RCP”). The RCP’s mailing address is 513 Abington Court, Greenville, NC 27858. The RCP holds North Carolina Respiratory Care License Number 6215 (the “License”), first issued on May 27, 2010 with a current expiration date of May 31, 2017.

**III. Waiver of Rights**

I, Kevin M. Westbrook, 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)

KW The right to a hearing before the Board;

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

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

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

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

KW 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 or 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. Prior to the events leading to the initiation of this matter, in the Spring of 2012, while employed as a respiratory therapist at Vidant Medical Center in Greenville, the RCP tested positive on a drug screen for benzodiazepines, cocaine, and other opiates. During a subsequent interview with the Board's Investigation and Informal Settlement Committee in June of 2012, the RCP admitted that he was addicted to the drugs that were found on the drug screen. He stated that he was then under treatment in Greenville and had been receiving random drug screens, which had been negative.

C. The RCP entered a Consent Order with the Board on August 10, 2012 ("the 2012 Consent Order"), in which he agreed to hold the License on probationary status for 36 months, agreed to follow the plan of treatment outlined by his counselor, authorized the counselor to submit quarterly written reports to the Board, and agreed to submit to random drug screens at the direction of the Board.

D. From April of 2012 to March of 2014, the RCP was treated by ECU Psychiatric Services in Greenville, NC. The RCP consistently met with James Platania, LCSW, as required by the 2012 Consent Order. The information that the Board received shows that he routinely provided specimen samples to monitor for substance abuse, with results that were negative for alcohol and mood-altering substances. His probation ended July 30, 2014 after completing all requirements of the 2012 Consent Order.

E. On December 7, 2015, the RCP was hired at Johnston Memorial in Smithfield, NC. His drug screen when hired was negative, and a later random drug screen was also negative.

F. On April 4, 2016, the Board received a complaint concerning the RCP from Shelby Holt, Director of Cardiopulmonary Services/Sleep, at Johnston Medical Center in Smithfield, NC. Ms. Holt indicated that Johnston Medical Center had terminated the RCP's employment after he refused a drug test which was prompted by behavior on April 2, 2016 that was consistent with substance abuse.

G. Interviews conducted with witnesses and documentation received by the Board indicated that the RCP was observed with blood shot eyes, uncoordinated speech patterns, an unbalanced gait, and stumbling into the wall on the night of April 2, 2016.

H. On April 7, 2016, Board Investigator, Judy Green, interviewed Tim Hays, who was the administrator "on call" on Saturday, April 2, 2016. Mr. Hays stated that he received a call from the nursing supervisor that coworkers had observed suspicious behavior by the RCP. Mr. Hayes stated that the report indicated the RCP's pupils were dilated, he was unsteady on his

feet and he fell asleep at the table. Mr. Hayes decided that a drug screen should be done, then went to the hospital and met the supervisor in the ED where the RCP was in a treatment room.

I. On April 7, 2016, upon arrival to the hospital, Mr. Hayes explained to the RCP why they were doing the drug screen and asked if he was taking any medication. According to Mr. Hayes, the RCP was reasonable and willing to do the drug screen. While they were waiting on the urine sample, Mr. Hayes stated that the RCP admitted that he took some Versed. He had listed the drug on his pretesting form and said it was for a medical procedure, but never said when he had taken the drug.

J. However, the RCP could not provide a specimen according to Mr. Hayes and the RCP stated that he needed to be home by no later than 8:30 PM as he had a two-year-old child at home. The RCP was informed by Mr. Hayes that if he left, it would be a voluntary termination for not providing a specimen for the "reasonable cause" drug screen. The RCP decided to leave and the consent form was changed from voluntary to refusing the drug screen.

K. On June 7, 2016, The RCP attended an interview with the Board's Investigation and Informal Settlement Committee. He denied taking Versed, slurring his speech, or stumbling into the wall during the shift. He stated that he was prescribed Versed by his dentist but did not take any. He stated his dentures were loose and that was causing him to slur his speech. He provided letters of reference to the IISC.

## **V. Stipulated Order**

During an Executive Session at its regular quarterly meeting on July 14, 2016, the Board considered this matter and determined to offer this Consent Order to the RCP.

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

I, Kevin M. Westbrook, the RCP, admit that if it were to be proven that I was under the influence of Versed or any other mood altering substance while on duty as a respiratory care practitioner, 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) and (14); which would provide a sufficient basis for the Board to take action against my License. I understand and agree that in light of the conduct that led to the 2012 Consent Order, it is important that the Board receive assurance of my fitness to perform as a respiratory care therapist.

### **B. Stipulation to Sanction:**

Under N.C. Gen. Stat. § 90-652, and 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 with which he must comply in every respect:

1. The RCP agrees to accept a license to practice respiratory care on Probationary Status for a period of not less than 36 months from the date of execution of this order; and as a

specific condition of that Probationary Status, the RCP agrees to all of the following additional terms and limitations.

2. The RCP agrees that within 30 days of his signature of this order, he will seek treatment and counseling with a Board-approved substance abuse counselor to continue during the probationary period and to submit a copy of the counselor's findings and plan of treatment to the Board. The RCP agrees to follow any Plan of Treatment suggested by the Counselor, and to sign a release of information form with his Counselor allowing the counselor to provide written reports to the Board of the counselor's sessions with the RCP on a quarterly basis until the plan of treatment is completed.

3. During the entire time that the RCP holds the License on Probationary Status, the RCP agrees to permit the Board to conduct random drug testing of the RCP, and further agrees that the entire costs of all drug testing will be paid by the RCP. The Board will determine the laboratory where the testing would be performed and the manner in which the sample will be collected, and will instruct the RCP regarding these and any other details of how any drug test should occur. The Board may, but need not, accept drug screens performed by other state or federal agencies or the RCP's employer as proof of RCP's ongoing compliance.

4. The RCP shall cause his immediate supervisor in any respiratory care position to submit written quarterly reports to the Board during the time the RCP is on Probation, if employed. Each such written report shall be submitted in a format defined by the Board and shall document the RCP's performance in the delivery of Respiratory Care, and detail any concerns the supervisor has about the RCP's practice of Respiratory Care.

5. The RCP agrees to report any change of employment as a Respiratory Care Practitioner and any change of address in writing to the Board within five business days after such change.

6. The RCP agrees to attend one or more future interviews with the IISC at the direction of the Board, the exact number and dates to be determined by the Board in its discretion, to determine compliance with this Consent Order, to determine whether any adjustment in the length of the Probationary Status of the License should be made, and to determine whether the Probationary Status should be removed.

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 any of the requirements, the RCP shall immediately notify the Board in writing,

fully describing the situation and providing a specific request to modify the terms of the Consent Order 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. The RCP agrees to 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 it shall remain in effect for the time period or periods specified, until the RCP completes each of the requirements listed above, or until amended in writing by the Board.

**THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK**

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

I, Kevin M. Westbrook, 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.

Kevin Westbrook  
Kevin M. Westbrook

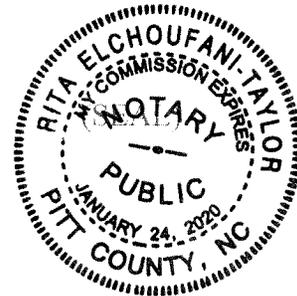
**STATE OF NORTH CAROLINA**  
**COUNTY OF Pitt**

There personally appeared before me, a Notary Public in and for the County of PITT, State of North Carolina, KEVIN WESTBROOK, 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 10 day of August, 2016.

[Signature]  
Notary Public

My Commission Expires: JAN 24, 2020



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

The foregoing Consent Order is entered at Cary, North Carolina, this 22<sup>nd</sup> day of August, 2016.

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