

STATE OF NORTH CAROLINA

BEFORE THE NORTH CAROLINA  
RESPIRATORY CARE BOARD

IN THE MATTER OF:

Erica H. Cole, RCP  
License Number – 5944

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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 the Respiratory Care Practice Act (“RCPA”), codified at N.C. Gen. Stat. § 90-646, et seq. The Board has jurisdiction over this matter under N.C. Gen. Stat. § 90-652 and 21 N.C. Administrative Code 61 .0307 in the Board’s rules.

**II. Identification of Licensee**

The Respiratory Care Practitioner whose license is the subject of this matter is Erica H. Cole (the “RCP”). Her mailing address is 10000 Lattice Court, Charlotte, NC 28269 . The RCP holds North Carolina Respiratory Care License number 5944 (the “License”), first issued on April 08, 2011, with a current expiration date of April 30, 2019.

**III. Waiver of Rights**

I, Erica H. Cole, 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:

(Initials)

EMC

The right to a hearing before the Board;

EMC

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

EMC

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

EMC

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

EMC

The right to present legal arguments to the Board; and

EMC

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

#### **IV. Stipulation to Facts**

Having waived all rights to present any evidence on this matter, the RCP stipulates with the Board to the following facts:

A) The RCP was employed and engaged in the practice of respiratory care in North Carolina and her License was subject to the Board's jurisdiction during the time period when the events described in this Consent Order occurred.

B) On June 14 2018, the Board received a complaint regarding the conduct of the RCP while employed with Carolinas Health System/Atrium Health-Union (AH-Union). The complaint states that on the night of June 6, 2018, the RCP was noted to be acting suspiciously. Her behavior was erratic, and her communication was altered. Based on her behavior, she was tested for drugs and alcohol tested on the morning of June 7, 2018. The alcohol screening was negative, but the drug screen was positive for Morphine. The RCP was placed on administrative leave pending teammate health follow-up.

C) On June 22, 2018, the Board Investigator interviewed Heather Neal, Cardiopulmonary Director - Carolinas Health System/Atrium Health - Union. Ms. Neal stated that on June 6, 2018, The RCP was reported acting suspiciously by her teammates. Her behavior was reported as erratic with altered communication. One nurse witnessed her slurring her words and having trouble communicating. Per hospital policy, the RCP was reported to the night nursing supervisor, Dawn Phillip. Both Ms. Phillip and the day nursing supervisor, Chanda Pope, made the decision to get a "reasonable suspicion" drug screen the morning of June 7, 2018. The screen was negative for alcohol but positive for morphine.

D) On August 10, 2018, the Board Investigator interviewed the RCP. The RCP stated she had been suffering with hip pain for years and was prescribed morphine. She stated that she had informed both Heather Neal and her night supervisor that she had a problem with prescribed pain medication secondary to a hip injury. She was referred to a pain management facility but opted to not enter the Employee Assistance Program (EAP).

E) During the interview with the Board Investigator, she stated after having surgery and losing weight, she was relatively pain free but continued to use pain medicine that had been prescribed in the past. She stated that she never used the medication while at work.

F) On the morning of June 7, 2018, she stated that she was asked to do a "reasonable suspicion" drug screen. When the test was done, the RCP stated that she knew that she would test positive for morphine and that her prescription had expired over a year ago.

G) On June 7, 2018, The RCP admitted that she had a problem and entered the outpatient EAP on that day.. She attended the program from 9:30 AM until 12:00 PM, three days a week then she entered the aftercare program for one day a week following her release from EAP.

H) On September 4, 2018, the RCP appeared for an interview before the Board's Investigation Committee; and she admitted to being on multiple medications for hip pain

secondary to a number of car accidents in the past. She admitted to taking an old prescription on the day in question that included cough syrup with codeine. She stated that it caused her to test positive for Morphine. Since the prescriptions were no longer valid, she stated that she was placed into EAP and completed the EAP. She stated that she is receiving aftercare. She took full responsibility for her actions, and demonstrated insight and awareness of how this action could impact his practice of respiratory care

I) On October 11, 2018 the Board considered this matter and determined to place the RCP on probation for 24 months with the following stipulations to include quarterly supervisory reports, counseling evaluation and follow plan of care, quarterly counseling reports, and random drug screens.

## **V. Stipulated Order**

During an Executive Session at its regular quarterly meeting on October 11, 2018 the Board considered this matter and determined to offer a Consent Order to the RCP, on the terms set out in this document; and in a telephone call with the Executive Director on October 15, 2018, the RCP accepted each of the provisions of this Consent Order.

### **A. Stipulation to Violations of the RCPA and Board Rules:**

I, Erica H. Cole, the RCP, admit that testing positive for Morphine while on shift would violate 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) and would provide a sufficient basis for the Board to revoke my License. Therefore, in consideration of the Board allowing me to retain the License, I freely and voluntarily agree to the following:

### **B. RCP's Stipulation to Sanctions:**

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 she agrees:

1. The RCP agrees that she will retain the License to practice respiratory care on Probationary Status for a period of not less than 24 months from the date of her execution of this Consent 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 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 hundred dollars (\$100.00) in disciplinary costs pursuant to N.C. Gen. Stat. § 90-666(d) and to remit this sum to the Board no later than ninety (90) days following the execution of this Consent Order.

4. The RCP agrees to seek treatment and counseling with a Board approved substance abuse counselor within 30 days of her signature of this Consent Order and to submit a copy of that Counselor's findings and plan of treatment to the Board. The RCP also agrees to follow any Plan of Treatment suggested by the counselor to its completion and to sign a release of information form with her Counselor that allows the Counselor to provide written reports to the Board of her sessions with her Counselor on a quarterly basis for 24 months or until the plan of treatment is completed, whichever is sooner.

5. 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 is not required to, accept drug screens performed by other state or federal agencies or employers as proof of RCP's ongoing compliance.

6. The RCP agrees to pay the costs of any drug screens, or treatment, or testing required under this Consent Order and agrees to assume financial responsibility for any other costs associated with fulfilling the terms of this Consent Order.

7. The RCP shall 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 any such change;

8. During the entire time that the RCP holds the License on Probationary Status, and if employed as a Respiratory Care Practitioner or in any other health care occupation, the RCP shall cause her immediate supervisor to submit written quarterly reports to the Board. 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 or other professional duties, and detail any concerns of the supervisor about the RCP's Practice of Respiratory Care or other professional service on a form supplied by the Board.

9. The RCP shall report any disciplinary action taken against her in connection with her employment as a Respiratory Care Practitioner or in connection with any other employment in which she is involved in providing health care services.

10. The RCP agrees to attend one or more interviews with the Investigation and Informal Settlement Committee of the Board, the exact dates to be determined by the Board in its discretion in the future, to assess her compliance with this Consent Order.

11. 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) maintained by the U.S. Department of Health and Human Services.

12. 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, fully describing the situation and providing a specific request to modify the terms of this Consent Order for the Board's consideration. **However, the RCP acknowledges that unless and until the Board confirms such a modification IN WRITING to the RCP, no modification of this Consent Order shall be in effect.**

13. 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 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 immediately suspend or revoke the License, or impose additional disciplinary sanctions or performance obligations on the RCP.

14. The RCP acknowledges and agrees that she must continue to comply with the Respiratory Care Practice Act ("RCPA") and the Board's Rules; and further acknowledges that if evidence of her non-compliance with the RCPA or the Board's Rules that is not presented in the Stipulated Facts above should arise after execution of this Consent Order, then the Board may invoke other disciplinary measures against her, based on that other evidence; and that in determining the appropriate action to take in response to any such other evidence of her non-compliance with the RCPA or the Board's Rules, the Board also may consider the conduct of the RCP which is presented in the Stipulated Facts in this Consent Order.

## **VI. 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 period or periods specified, or until amended in writing by the Board.

The terms of this Consent Order shall remain in effect until the RCP completes each of the requirements listed above and receives written confirmation of completion from the Board.

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**CONSENT TO THE ENTRY OF CONSENT ORDER BY RESPIRATORY CARE PRACTITIONER**

I, Erica H. Cole, state that I have read the foregoing Consent Order; that I know and fully understand its contents; that after having an opportunity to consult with and obtain advice of counsel if I wanted to do so, I freely and without threat or coercion of any kind, consent to the entry of this Consent Order and agree to comply with the terms and conditions stated in it.

Erica H. Cole  
Erica H. Cole

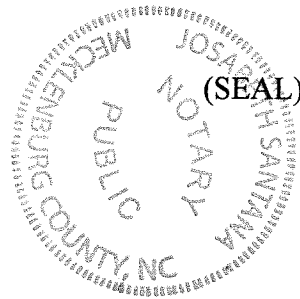
**STATE OF NORTH CAROLINA**  
**COUNTY OF** Mecklenburg

There personally appeared before me, a Notary Public in and for the County of Mecklenburg, State of North Carolina, Erica H. Cole, 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 24<sup>th</sup> day of October, 2018.

Joselyn Santana  
Notary Public

My Commission Expires: July 27, 2019



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

The foregoing Consent Order is entered at Cary, North Carolina, this 29<sup>th</sup> day of October, 2016, and a copy of the signed Consent Order was mailed to the RCP's Address of Record currently on file with the Board.

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