

IN THE MATTER OF:)

)

CONSENT ORDER

Herman G. Wallace, RCP)

License Number – 4473)

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 Herman G. Wallace (the "Licensee"). His mailing address is 1521 Cobblestone Drive, Kinston NC 28504. The Respiratory Care Practitioner holds North Carolina Respiratory Care License number 4473 (the "License"), first issued on August 17, 2005, with an expiration date of August 17, 2009.

3. Waiver of Rights

I, Herman G. Wallace, the Respiratory Care Practitioner, understand that I have each of the following rights:

(Initials)

HW The right to a hearing before the Board;

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

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

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

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

HW 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 Respiratory Care Practitioner and the Board stipulate to the following facts:

A. The Respiratory Care Practitioner was engaged in the practice of respiratory care in North Carolina when the events occurred that led to the initiation of this complaint.

B. The Board received information from Board Staff, alleging that the Licensee misrepresented his continuing educations hours completed during his renewal period in that he renewed his RCP license online on July 18, 2008 and attested to the fact that he had completed a minimum of 12 hours of Continuing Education (CE) directly related to the practice of respiratory care and approved by the Board, the AARC or an ACCME provider.

C. The Board mailed an Audit letter to the address of record on July 21, 2008.

D. The Licensee responded to the request to submit documentation of CE completed during his renewal period on July 30, 2008. The documentation revealed that the Licensee had completed 7 hours of CE before the renewal date and 6 hours of CE after the renewal date. A letter requesting he appear before the Board's Investigation and Informal Settlement Committee was mailed to his address of record by certified mail on August 19, 2008.

E. The Licensee admitted during an interview with the Board's Investigation and Informal Settlement Committee on October 8, 2008 that he had completed 6 hours of CE after the renewal period.

5. Stipulated Order

A. Stipulation to Sections of Law Violated:

I, Herman G. Wallace, 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)(a) and the regulations set forth in 21 N.C. Admin. Code § 61 .0307 (5) and 21 N.C. Admin. Code § 61 .0401 (g).

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 accepts and agrees to the issuance of a Board Reprimand;

2. The Licensee agrees to provide to the Board proof of completion of 12 or more CE directly related to the practice of respiratory care and approved by the Board, the AARC or an ACCME provider with each renewal for the next 3 years;

3. The Licensee is assessed 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 Respiratory Care Practitioner shall remit this sum to the Board within 90 days of the date he signs the Consent Order;

4. 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. Costs

The Respiratory Care Practitioner assumes financial responsibility for any costs associated with fulfilling the terms of this Consent Order.

The Respiratory Care Practitioner is assessed one hundred dollars (\$100.00) in costs pursuant to N.C. Gen. Stat. § 90-666(d) and shall remit this sum to the Board within 90 days of the date he signs the Consent Order.

9. Effective Date

All provisions of this Consent Order are effective upon the date that the Executive Director of the Board signs this Order.

10. 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. Therefore, any period of noncompliance or inactive practice will not accrue towards fulfillment of those terms.

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.

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CONSENT TO ISSUANCE OF ORDER BY RESPIRATORY CARE PRACTITIONER

I, Herman G. Wallace, 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.

Herman G. Wallace
Herman G. Wallace

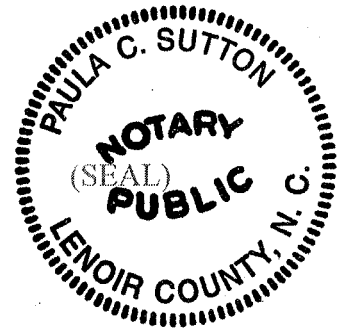
STATE OF NORTH CAROLINA
COUNTY OF NC

There personally appeared before me, a Notary Public in and for the County of Lenoir, State of North Carolina, Herman G. Wallace, 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 31 day of October, 2008.

Paula C. Sutton
Notary Public

My Commission Expires: 11/29/08



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

The foregoing Consent Order is entered at Raleigh, North Carolina, this 3rd day of November, 2008.

Floyd E. Boyer
Floyd E. Boyer, RRT, RCP
Executive Director, North Carolina Respiratory Care Board