



NORTH CAROLINA RESPIRATORY CARE BOARD
1100 Navaho Drive, Suite 242
Raleigh, NC 27609
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VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

July 23, 2012

James P. Whitman
2366 14th St. Court NE
Hickory, N.C. 28601

Re: Revocation of Your Respiratory Care Practitioner License

Dear Mr. Whitman,

The North Carolina Respiratory Care Board held a hearing on July 19, 2012, regarding the matters described in the Notice of Hearing on Revocation of License Number 3715 dated April 17, 2012. That Notice of Hearing was sent by certified mail, return receipt requested, to your last address of record in the Board files. Based on the Notice of Hearing, your case was called during the July 19, 2012 Board Meeting, but you did not appear and no one else appeared on your behalf. Following its normal procedure, and since you had been given formal notice to appear, the Board proceeded with the hearing.

The Board considered the testimony and exhibits submitted in evidence at the hearing, and based on the evidence presented, the Board determined to revoke your license to practice Respiratory Care, effective July 19, 2012, the date of the hearing. The Board entered the Findings of Fact and Conclusions of Law in the attached Final Board Decision. This letter and the attached decision serve as official notice of the Board's Findings of Fact, Conclusions of Law, and its Final Board Decision, along with notice of your appeal rights under the North Carolina Administrative Procedure Act.

Appeal Right – You have the right to appeal the Board's decision by filing a petition within thirty (30) days of your receipt of this letter. To compute the thirty day period, you should start counting on the day after this letter is signed for by you or by anyone else, because the Board will use the date of signature on the signature card that we will get back to define the start of the 30-day period. ***Your appeal must be filed before 5 P.M. on the thirtieth day after you receive this notice***, unless that day falls on a weekend or holiday recognized by North Carolina State Government. Please note that North Carolina does not share all of the same holidays as other states or the United States Government. If the thirtieth day falls on a weekend or on a holiday that is recognized by the State of North Carolina, then you must file before 5 PM on the next business day.

Your appeal must be ***FILED AT EITHER***: 1) the Office of the Clerk of Court at the Wake County Courthouse in Raleigh, North Carolina; or 2) at the office of the Clerk of Court in the county in North Carolina where you live.

If you do not file an appeal on time, in the correct place, then you will lose your right to appeal.

Should you have any questions regarding any aspect of this letter, please do not hesitate to contact me.

Sincerely,

Floyd E. Boyer, RRT, RCP
Executive Director



BEFORE THE NORTH CAROLINA RESPIRATORY CARE BOARD

IN THE MATTER OF THE LICENSE)
OF JAMES P. WHITMAN TO)
PRACTICE RESPIRATORY CARE)
LICENSE NO. 3715)
_____)

**FINAL BOARD DECISION
REVOKING LICENSE**

This matter involves License Number 3715, issued by the North Carolina Respiratory Care Board (“the Board”) to Mr. James P. Whitman (“the Licensee”).

PROCEDURAL HISTORY OF THIS CASE

The subject of this case is the conduct of the Licensee that led to his termination from his position at Charles Cannon Jr. Memorial Hospital in Linville, NC. On or about October 14, 2011, the Board received notice that the Licensee was terminated from employment as a result of a determination that he had abused a patient in his care. This matter came for hearing before the Board on July 19, 2012, as part of the Board’s regularly scheduled meeting on that date, and pursuant to a Notice of Hearing on Revocation of License Number 3715 dated April 17, 2012, which had been sent by certified mail, return receipt requested, to the Licensee’s last address of record in the Board files.

APPEARANCES/WITNESSES

At the hearing, neither the Licensee, James P. Whitman, nor any other person appeared on his behalf. The case for the Board was presented by its counsel, William R. Shenton. Mr. Shenton called Floyd Boyer, Executive Director of the Board and Judy Green, Board Investigator as the Board’s witnesses.

EVIDENCE/EXHIBITS

Board Evidence:

The Board presented the testimony of Floyd Boyer, Executive Director of the Board and Judy Green, Board Investigator and the following Exhibits were accepted into the record without objection.

Board Exhibit #1--- Copy of email received by the Board on October 14, 2011 from Dennis Blair, RCP of Appalachian Regional Healthcare System which informed the Board that the licensee had been suspended from his position at Charles Cannon Jr. Memorial Hospital for alleged patient abuse. Included with the email was the 24 Hour Initial-Report that was sent to the NC Department of Health and Human Services.

Board Exhibit #2--- A letter, dated February 2, 2012, inviting the Licensee to an Informal Interview with the Board’s Investigation and Informal Settlement Committee to be held on March 12, 2012. The certified mail receipt and signature card signed by the Licensee.

Board Exhibit #3--- A copy of an email sent to the Licensee on March 2 asking the Licensee to send confirmation that he will attend the March 12, 2012 interview.

Board Exhibit #4--- Notice of Hearing on Revocation of License Number 3715 dated April 17, 2012. The certified mail receipt and signature card which was signed for.

Board Exhibit #5 [Submitted to Corroborate Board Exhibits 6-8] --- A subpoena sent to Administration of Appalachian Regional Healthcare System, Boone, NC requesting documentation; and the documents received from Appalachian Regional Healthcare System which consist of:

- Staff allegation and staff report of initial incident
- 24 Hour Initial-Report that was sent to the NC Department of Health and Human Services
- 5-Working day Report that was sent to the NC Department of Health and Human Services
- Internal Investigative Notes
- Email dated 10/14/2011 that was sent to the Board
- Letter to James Whitman with decision to terminate his employment
- Email dated 10/27/2011 identifying the status of the SANE testing performed on the patient
- DHSR Response Letter regarding the report to the Healthcare Registry

The Board took Official Notice, under N.C. Gen. Stat. § 150B-30 of Exhibits 6-8, and admitted them into evidence as well:

Board Exhibit #6--- A copy of the Judicial Findings and Order for Sex-Offenders- Suspended Punishment

Board Exhibit #7--- A copy of the Judgment Suspending Sentence- Imposing an Intermediate Punishment

Board Exhibit #8--- A copy of the Judgment and Commitment Upon Revocation of Probation

Licensee Evidence:

Neither the Licensee nor a representative of the Licensee appeared at the hearing and no evidence was presented on his behalf.

FINDINGS OF FACT

1. On or about March 4, 2004, the Board issued License Number 3715 to the Licensee to practice respiratory care.
2. On October 14, 2011, the Board received notice of the suspension of Licensee's employment at Charles Cannon Jr. Memorial Hospital in Linville.
3. On November 17, 2011 the Board received notice of the termination of Licensee's employment at Charles Cannon Jr. Memorial Hospital, and after learning of that action, the Board began an investigation. The Board sent a subpoena to Appalachian Regional Healthcare System, in Boone, NC requesting documentation concerning the circumstances that resulted in the Licensee's termination from employment; and in response to the subpoena, the Board received the information contained in Board Exhibit 5 from Appalachian Regional Healthcare System.
4. The Board subsequently mailed a certified letter to the Licensee's last address of record in the Board's files, requesting that the Licensee attend an Informal Interview to provide information about this matter. The letter informed the Licensee that the interview was set for March 12, 2012, the next regularly scheduled meeting date for the Investigation and Informal Settlement Committee.
5. The certified mail signature card was returned to the Board signed by the Licensee, and when the Licensee failed to contact the Board to confirm that he would attend the interview, the Board's Executive Director sent an E-mail reminder of the scheduled interview to the last known E-mail account of the Licensee.

6. The Licensee failed to appear for the Informal Board Interview on March 12, 2012 as requested by the Board.
7. Based on information gathered by the Board in its investigation the Board Revoked the license and issued a Notice of Hearing on Revocation of License Number 3715 on April 17, 2012. The Notice informed the Licensee that the Hearing date was set for July 19, 2012. The certified mail signature card was returned signed to the Board on May 1, 2012.
8. On November 29, 2011 the Licensee pled guilty to the offense of sexual battery and received a 75-day jail sentence.
9. Evidence received by the Board indicated that the victim of the sexual battery was a patient who was under the Licensee's care at the time of the offense.
10. The Licensee failed to appear for the Hearing set for July 19, 2012 and also failed to appear at the scheduled interview to provide any information about the matter at issue.

CONCLUSIONS OF LAW

Based upon the foregoing Finding of Fact, the Board enters the following Conclusions of Law:

1. The Licensee's plea of guilty of sexual battery is a violation of N.C. Gen. Stat. § 90-659(a)(2).
2. The Licensee's plea of guilty of sexual battery is a violation of 21 N.C.A.C. 61 .0307(24).

FINAL DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the Board determined that the license of James P. Whitman to practice respiratory care in North Carolina shall be permanently revoked effective July 19, 2012.

IT IS SO ORDERED:

Entered by Order of the Board, this the 19th day of July, 2012



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