

STATE OF NORTH CAROLINA

BEFORE THE NORTH CAROLINA
RESPIRATORY CARE BOARD

IN THE MATTER OF:)

SECOND CONSENT ORDER

Heath Kershaw,)
Former License Number – 8471)

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. Gen. Stat. § 90-652 and 21 N.C. Administrative Code § 61 .0307.

II. Identification of Petitioner

The Respiratory Care Practitioner, who has petitioned to have his license reinstated in this matter, is Heath Kershaw (the “Petitioner ”). His mailing address is 1044 State View Road in Boone, North Carolina, 28607. He held North Carolina Respiratory Care License number 8471 (the “License”), which was first issued on May 20, 2016, and which he surrendered on August 8, 2017.

III. Waiver of Rights

I, Heath Kershaw, the Petitioner, 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 Second Consent Order regarding issuance of a license to me by the Board:

(Initials)

HK The right to a hearing before the Board;

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

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

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

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

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

IV. Stipulation to Facts

The Petitioner and the Board stipulate to the following facts:

A. On or about July 18, 2017, Dennis Blair, the Respiratory Care Manager at Watauga Medical Center, reported that the Petitioner had been convicted of two felony offenses of buying a controlled substance over the internet and money laundering; and the Petitioner hereby stipulates that it is correct that he was convicted of each felony offense.

B. There is no indication that the Petitioner was under the influence of any controlled substance at any point during his employment at Watauga Medical Center, and Watauga Medical Center has not reported any concerns about the quality of the respiratory care that he has been providing there.

C. The Petitioner's sentence for the felony conviction was a term of not more than 21 months, and he began serving his sentence on or about September 1, 2017.

D. The Petitioner agreed in a Consent Order dated August 8, 2017 ("the 2017 Consent Order") to surrender his License to practice respiratory care on or before September 1, 2017, and to cease all practice of respiratory care on or before that date. He surrendered his License on August 8, 2017.

E. In the 2017 Consent Order, the Petitioner acknowledged and agreed that he would not be eligible to apply for a license to practice Respiratory Care until he completed serving his active sentence from his felony conviction.

F. In the 2017 Consent Order, the Petitioner acknowledged and agreed that if he applied for a license to practice respiratory care in the future, the Board would have discretion to determine to deny him a license, or to impose conditions that he must meet before a license is issued to him; and also that the Board may also determine to issue a license on probationary status, with limitations on his practice of Respiratory Care, as well as other ongoing conditions to which he must comply, including random drug screens and other monitoring conditions.

G. On July 31, 2019, the Board received a petition for reinstatement from the Petitioner.

H. On September 3, 2019, the Petitioner met with the Investigative Committee. He admitted his errors in judgment in the past, and he admitted his past mistakes.

I. On October 10, 2019, the Board decided at its regularly scheduled Quarterly Board Meeting to reinstate License Number 8471 and issue it to Petitioner on a probationary status for 24 months with additional stipulations as stated in this Second Consent Order.

J. On October 11, 2019, the Petitioner agreed to the stipulations offered by the Board in an email to the Executive Director.

V. Stipulated Order

During an Executive Session at its regular quarterly meeting on October 10, 2019, the Board considered this matter and determined to offer a Second Consent Order to the Petitioner, on the terms set out in this document.

A. Stipulation to Sections of Law Violated:

I, Heath Kershaw, the Petitioner, admit that the felony conviction described in this Second Consent Order would constitute a violation of N.C. Gen. Stat. § 90-659 (a) (2) and the Board Rule set forth in 21 N.C. Admin. Code 61 .0307 (25), and provides a sufficient basis for the Board to revoke my License.

B. Stipulation to Sanctions:

Under N.C. Gen. Stat. § 90-652, in lieu of proceeding to a hearing, the Petitioner and the Board hereby enter into this consent order and agree to the following terms, and the Petitioner understands that each and every one of these terms is an essential provision of this Second Consent Order, to which he agrees in full, and without reservation:

1. The Petitioner agrees to the issuance of his License on a Probationary Status and that the Probationary Status shall be in effect until at least the conclusion of the Board's Quarterly Meeting that occurs in October of 2021. The Petitioner further agrees that the Board may extend the period of this Probationary Status, or take further action against his License, up to and including revoking the License, based upon the Board's review of his compliance with the terms of this Second Consent Order.

2. As a specific condition of issuance of his License on Probationary Status, the Petitioner agrees to each and all of the following additional terms and limitations.

3. The Petitioner agrees to attend one or more interviews with the Investigation and Informal Settlement Committee of the Board to assess his compliance with this Second Consent Order during the period that he holds the License on Probationary Status, with the exact dates of each interview to be determined by the Board in its discretion in the future. The Petitioner understands that his attendance at these interviews is an essential component of the Board's monitoring of his compliance with this Second Consent Order and with the Board's statute and rules. Accordingly, Petitioner further agrees that if for some reason, he is unable to attend a scheduled interview with the Investigative Committee, then each time that he is unable to attend such an interview, the Board will have the discretion to extend the period that he holds the License on Probationary status by up to 180 days.

4. Upon any employment as a Respiratory Care Practitioner, the Petitioner shall report that employment to the Board by email or other writing within five business days of his

hiring; and the Petitioner shall report any change of employment as a Respiratory Care Practitioner and any change of address by email or other writing to the Board within five business days after any such change.

PETITIONER UNDERSTANDS AND AGREES THAT HIS OBLIGATION TO REPORT EMPLOYMENT WITHIN FIVE BUSINESS DAYS IS ABSOLUTE, THAT THIS IS HIS INDIVIDUAL RESPONSIBILITY; AND THAT IT IS NOT CONDITIONED OR CONTINGENT ON THE ACTIONS OF ANY OTHER PERSON OR ORGANIZATION.

5. During the entire time that the Petitioner holds the License on Probationary Status, and if employed as a Respiratory Care Practitioner or in any other health care occupation, the Petitioner shall cause his immediate supervisor to submit written quarterly reports to the Board. Each such written report shall be submitted in a format or form defined by the Board and shall document the Petitioner's performance in the delivery of Respiratory Care or other professional duties and detail any concerns of the supervisor about the Petitioner's practice of Respiratory Care or other professional service.

PETITIONER UNDERSTANDS AND AGREES THAT HIS OBLIGATION TO HAVE HIS SUPERVISOR IN ANY HEALTH CARE OCCUPATION TO SUBMIT THESE REPORTS ON A TIMELY QUARTERLY BASIS IS ABSOLUTE, THAT THIS IS HIS INDIVIDUAL RESPONSIBILITY; AND THAT IT IS NOT CONDITIONED OR CONTINGENT ON THE ACTIONS OF ANY OTHER PERSON OR ORGANIZATION.

6. The Petitioner shall report, within five business days, any disciplinary action taken against him in connection with his employment as a Respiratory Care Practitioner or in connection with any other employment in which he is involved in providing health care services.

PETITIONER UNDERSTANDS AND AGREES THAT HIS OBLIGATION TO REPORT ANY SUCH ACTION WITHIN FIVE BUSINESS DAYS IS ABSOLUTE, THAT THIS IS HIS INDIVIDUAL RESPONSIBILITY; AND THAT IT IS NOT CONDITIONED OR CONTINGENT ON THE ACTIONS OF ANY OTHER PERSON OR ORGANIZATION.

7. During the entire time that the Petitioner holds the License on Probationary Status, the Petitioner shall cause his Parole Officer to submit written quarterly reports to the Board. Each such written report shall be submitted in a format defined by the Parole Officer and describe the Petitioner's level of compliance with the condition of his judicial probation.

8. The Petitioner acknowledges and agrees that this Second 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 Second 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).

9. The Petitioner acknowledges that if other evidence of the Petitioner's non-compliance with the Act or the Rules that are not presented in the Stipulated Facts above should arise, and regardless of whether any such other evidence relates to time periods before, during or after the time period of the stipulated facts in this Second Consent Order, then in determining the appropriate action to take, the Board also may consider the Petitioner's conviction which is presented in the Stipulated Facts in this Second Consent Order.

VI. Effective Date/Modification

All provisions of this Second 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, or until amended in writing by the Board.

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CONSENT TO ISSUANCE OF CONSENT ORDER BY RESPIRATORY CARE PRACTITIONER

I, Heath Kershaw, state that I have read the foregoing Second Consent Order; that I know and fully understand its contents; that after having an opportunity to consult with and obtain advice of counsel, 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 Second Consent Order.

Heath Kershaw

STATE OF NORTH CAROLINA
COUNTY OF Mecklenburg

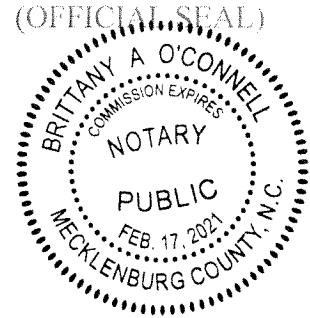
There personally appeared before me, a Notary Public in and for the County of Mecklenburg, State of North Carolina, Heath Kershaw, who, after having presented documentation of his identity that was satisfactory to me, did acknowledge that he executed the foregoing Second Consent Order as his free and voluntary act.

This 1st day of November 2019.

Brittany A O'Connell
Official Signature of Notary Public

Brittany A O'Connell, Notary Public
Notary's Printed or Typed Name

My Commission Expires: 02/17/2021



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

The foregoing Second Consent Order is entered at Cary, North Carolina, this 4th day of November, 2019.

William L. Croft, Ed.D., Ph.D., RRT, RCP

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