

STATE OF NORTH CAROLINA

BEFORE THE NORTH CAROLINA
RESPIRATORY CARE BOARD

IN THE MATTER OF:)

)

CONSENT ORDER

Richard A. Rogers, RCP)

License Number -7285)

Case Number - 20-1015

1. 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 ("the Act") codified at 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 Richard A. Rogers (the "RCP"). His mailing address is 1437 Reynolds Mill Rd., Wake Forest, NC 27587. The RCP held a North Carolina Respiratory Care License Number 7285 (the "License"), first issued on July 11, 2013, and expires on July 31, 2021.

3. Waiver of Rights

I, Richard A. Rogers, 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)

RR The right to a hearing before the Board;

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

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

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

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

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

4. Stipulation to Facts

The Respiratory Care Practitioner ("RCP") and the Board stipulate to the following facts:

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

B. On August 11, 2020, the Board called the RCP after he renewed late. The RCP admitted to the Executive Director during the phone call that he practiced respiratory care with a lapsed license between August 1, 2020, and August 11, 2020, at UNC Homecare Specialist in Durham, NC.

C. On August 11, 2020, during the phone call, the RCP was informed that the Board policy authorizes the Executive Director to offer the option of a Reprimand to a licensee, including the \$250.00 Civil Penalty and \$100.00 disciplinary cost for practicing respiratory care with a lapsed license. He did not agree to the sanction due to the COVID-19 crisis. He felt it was too harsh, given the circumstances. The RCP was informed that the Board meets on October 8, 2020, and his case would be presented for a decision regarding his objection to the sanction.

D. On October 8, 2020, the Board discussed the case against the RCP during the Executive Session. The Board's decision was to not reduce fines, fees, or sanction levels for any late renewals for this case or any additional cases.

E. On October 27, 2020, the RCP was notified by email of the Board's decision and offered the Reprimand, including the \$250.00 Civil Penalty and \$100.00 disciplinary cost for practicing respiratory care with a lapsed license.

F. On November 6, 2020, the RCP was notified by email of the Board's decision and offered the Reprimand, including the \$250.00 Civil Penalty and \$100.00 disciplinary cost for practicing respiratory care with a lapsed license after receiving no response from October 27, 2020.

G. On November 12, 2020, the RCP was notified by email of the Board's decision and offered the Reprimand, including the \$250.00 Civil Penalty and \$100.00 disciplinary cost for practicing respiratory care with a lapsed license after receiving no response from November 6, 2020.

H. On November 13, 2020, in an email to the Executive Director, the RCP agreed to the sanction on his License.

5. Stipulated Order

A. Stipulation to Sections of Law Violated:

I, Richard A. Rogers, the RCP, admit if it were proven at a hearing that I practiced respiratory care with a lapsed license between August 1, 2020, and August 11, 2020 at UNC Homecare

Specialist in Durham, NC, before renewing on August 11, 2020, this would constitute a violation of N.C. Gen. Stat. § 90-659 (a)(1)(c) and the rule codified at 21 N.C. Admin. Code § 61 .0307 (4).

B. Stipulation to Sanctions:

Under N.C. Gen. Stat. § 90-652, in lieu of proceeding to a hearing, the Respiratory Care Practitioner and the Board hereby enter into this consent order and agree to the following terms:

- i) The RCP accepts and agrees to the issuance of a Board Reprimand;
- ii) 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;
- iii) The RCP accepts and agrees to the assessment of one hundred dollars (\$100.00) in 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. The RCP also assumes financial responsibility for any costs associated with fulfilling the terms of this Consent Order;
- iv) The RCP agrees that this Consent Order is a public record, as defined by N.C. Gen. Stat. § 132-1, except that documents in the Board's investigative file are not public record;
- v) The RCP acknowledges that this disciplinary action will be reported to 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);
- vi) Should circumstances arise that affect the RCP's ability to remain in compliance, the RCP agrees to notify the Board immediately in writing by return receipt mail, fully describing the situation, as well, as any attendant request for Board consideration;
- vii) Based on the understandings and agreements by the RCP that are recited in this Order, the Board agrees not to proceed with any further sanctions, based upon the conduct described above. However, if the RCP fails to comply with any of the foregoing provisions of this Consent Order, while it is in effect, including the deadlines set forth in the Order, that is a violation of 21 N.C. Admin. Code § 61 .0307(3). In that event, the Board may schedule a show cause hearing for the RCP to appear and provide evidence regarding any alleged violations of the terms of the Order. If the Board determines that violations have occurred, then it may suspend or revoke the RCP's License, revoke any stay, and may take additional disciplinary action.

C. Compliance with the Act, Board Rules, and Board Interpretations.

The RCP also agrees to continue to comply with the Act, the Board's Rules, and the Board's published interpretation of the Act and its Rules.

6. **Effective Date/Modification of Order**

All provisions of this Consent Order are effective upon the date that the Executive Director of the Board signs this Order. Fulfillment of any 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 Licensee is compliant with the terms of this Order. Therefore, any period of noncompliance or inactive practice will not accrue towards the fulfillment of those terms.

CONSENT TO ISSUANCE OF ORDER BY RESPIRATORY CARE PRACTITIONER

I, Richard A. Rogers, 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.

Richard A. Rogers
Richard A. Rogers

STATE OF NORTH CAROLINA
COUNTY OF Wake

There personally appeared before me, a Notary Public in and for the County of Wake, State of North Carolina, Richard A. Rogers, 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 29th day of November, 2020.

Christi A. Spencer
Notary Public

Christi A. Spencer
NOTARY PUBLIC
Wake County, NC
My Commission Expires October 16, 2024

My Commission Expires: 10/16/2024

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

The foregoing Consent Order is entered at Cary, North Carolina, this 2nd day of December 2020.

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