

**SETTLEMENT AGREEMENT BETWEEN MISSOURI BOARD FOR RESPIRATORY CARE
AND BRIAN MANNING**

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Come now Brian Manning ("Licensee") and the Missouri Board for Respiratory Care ("Board") and enter into this settlement agreement for the purpose of resolving the question of whether Licensee's license as a respiratory care practitioner will be subject to discipline.

Pursuant to the terms of § 536.060, RSMo,¹ the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri ("AHC") regarding cause to discipline the Licensee's license, and, additionally, the right to a disciplinary hearing before the Board under § 621.110, RSMo.

Licensee acknowledges that he understands the various rights and privileges afforded him by law, including the right to a hearing of the charges against him; the right to appear and be represented by legal counsel; the right to have all charges against him proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against him; the right to present evidence on his own behalf at the hearing; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against him and, subsequently, the right to a disciplinary hearing before the Board at which time he may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against his license. Being aware of these rights provided him by operation of law, Licensee knowingly and voluntarily waives each and every one of these rights and freely enters into this settlement agreement and agrees to abide by the terms of this document, as they pertain to him.

Licensee acknowledges that he has received a copy of the investigative report and other documents relied upon by the Board in determining there was cause to discipline his license, along with citations to law and/or regulations the Board believes was violated.

For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in this settlement agreement are true and stipulates with the Board that Licensee's license, numbered 2009037542 is subject to disciplinary action by the Board in accordance with the provisions of Chapter 621 and Sections 334.800 through 334.930, RSMo.

¹ All statutory references are to Missouri Revised Statutes 2000, as amended, unless otherwise indicated.

Joint Stipulation of Fact and Conclusions of Law

1. The Missouri Board for Respiratory Care is an agency of the State of Missouri, created and established pursuant to § 334.830 RSMo., for the purpose of executing and enforcing the provisions of §§ 334.800 through 334.930, RSMo.
2. Licensee, Brian Manning, is licensed by the Board as a respiratory care practitioner, License No. 2009037542. Licensee's Missouri license is now, and was at all times relevant herein, current and active.
3. On or about June 18, 2012, Licensee renewed his respiratory care practitioner license online. On his renewal application, Licensee answered yes to the following questions on the renewal application:
 - 4.E. Since the filing of your last renewal, are you, or have you been convicted, adjudged guilty by a court, pled guilty or plead nolo contendere to any crime (felony or misdemeanor), whether or not sentence was imposed (excluding traffic violation)?
 - 4.F. Since the filing of your last renewal, are you, or have you been convicted, adjudged guilty by a court, pled guilty or pled nolo contendere to any traffic offense resulting from or related to the use of drugs or alcohol, whether or not sentence was imposed?
4. With his renewal application, Licensee included the following notarized statement:

In February and April of 2011 I received two DUIs and was convicted of two felonies for these DUIs. I was sentenced to a 120 day treatment through the DOC which I completed without any complications. I have completed my SATOP (substance abuse traffic offender's program[]) program. After my single car accident in April of 2011 I voluntarily went to a 42 day in patient drug and alcohol treatment in Jacksonville Florida. I attend AA, have a sponsor, work the 12 steps, and have been clean and sober since April 25, 2011. I am anxious to get back to work and am doing what I can to make sure I am doing everything right with no complications. I am an excellent Respiratory Therapist and take my job very seriously. I never let me disease affect my job performance or job attendance, and I never went to work under the influence.
5. A review of Licensee's Missouri criminal history reveals the following:
 - a. On or about November 7, 2011, Licensee pled guilty to the class D felony of driving while intoxicated, persistent offender, in the Circuit Court of Lafayette County, Missouri, case number 11LF-CR00091-01, as a result of a February 2, 2011 arrest. The Court sentenced Licensee to four years in the Missouri Department of Corrections but suspended the execution of sentence and ordered 120 days shock detention and five years supervised probation.

Licensee's probation is scheduled to end April 17, 2017. Licensee's probation is scheduled to end April 17, 2017.

b. On or about November 7, 2011, Licensee pled guilty to the class D felony of driving while intoxicated, persistent offender, in the Circuit Court of Lafayette County, Missouri, case number 11LF-CR00403-01. The Court sentenced Licensee to four years in the Missouri Department of Corrections but suspended the execution of sentence and ordered 120 days shock detention and five years supervised probation, concurrent with the Court's sentence in case number 11LF-CR00091-01. Licensee's probation is scheduled to end April 17, 2017.

6. Licensee appeared before the Board during its regularly scheduled Board meeting on December 11, 2012. Licensee answered the Board's questions with regard to his pleas of guilty, treatment, rehabilitation and employment.

7. As a result of Licensee's pleas of guilty to the class D felony of driving while intoxicated, the Board has cause to discipline Licensee's license pursuant to § 334.920.2(2), RSMo.

8. Cause exists for the Board to take disciplinary action against Licensee's license under § 334.920.2(2), RSMo, which states in pertinent part:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by sections 334.800 to 334.930 or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit or license for any one or any combination of the following causes:

...

(2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of a respiratory care practitioner, for any offense an essential element is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed[.]

Joint Agreed Disciplinary Order

9. Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of § 621.045.3, RSMo:

10. The terms of discipline shall include that the respiratory care practitioner license be placed on **PROBATION to run concurrently with Licensee's probation ordered by the Court in case numbers 11LF-CR00091-01 and 11LF-CR00403-01** ("disciplinary period"). During Licensee's probation, Licensee shall be entitled to engage in the practice of respiratory care under Sections 334.800 through 334.930, RSMo, provided he adheres to all of the terms of this Settlement Agreement.

I. GENERAL REQUIREMENTS

- A. Licensee shall comply with all terms and requirements of his probation ordered by the Circuit Court of Lafayette County, Missouri in case numbers 11LF-CR00091-01 and 11LF-CR00403-01.
- B. Licensee shall meet with the Board or its representatives at such times and places as required by the Board after notification of a required meeting.
- C. Licensee shall submit reports to the Missouri Board for Respiratory Care, P.O. Box 1335, Jefferson City, Missouri 65102, stating truthfully whether he has complied with all the terms and conditions of this Settlement Agreement by no later than January 1 and July 1 during each year of the disciplinary period.
- D. Licensee shall keep the Board apprised of his current home and work addresses and telephone numbers. Licensee shall inform the Board within ten days of any change of home or work address and home or work telephone number.
- E. Licensee shall comply with all provisions of the Respiratory Care Practice Act, Sections 334.800 through 334.930, RSMo; all applicable federal and state drug laws, rules, and regulations; and all federal and state criminal laws. "State" here includes the state of Missouri and all other states and territories of the United States.
- F. During the disciplinary period, Licensee shall timely renew his license and timely pay all fees required for licensing and comply with all other board requirements necessary to maintain Licensee's license in a current and active state.
- G. If at any time during the disciplinary period, Licensee removes himself from the state of Missouri, ceases to be currently licensed under provisions of Sections 334.800 through 334.930, or fails to advise the Board of his current place of business and residence, the time of his absence, unlicensed status, or unknown whereabouts shall not be deemed or taken as any part of the time of discipline so imposed in accordance with § 334.920.3, RSMo.
- H. During the disciplinary period, Licensee shall accept and comply with unannounced visits from the Board's representatives to monitor his compliance with the terms and conditions of this Settlement Agreement.
- I. If Licensee fails to comply with the terms of this Settlement Agreement, in any respect, the Board may impose such additional or other discipline that it deems appropriate, (including imposition of the revocation).
- J. This Settlement Agreement does not bind the Board or restrict the remedies available to it concerning any other violation of §§ 334.800 through 334.930, RSMo, by Licensee not specifically mentioned in this document.

II. ADDITIONAL REQUIREMENTS

- A. Licensee shall not allow his license to lapse.
- B. Licensee shall notify, within 15 days of the effective date of this Settlement Agreement, all hospitals, nursing homes, out-patient centers, surgical centers, clinics, and all other facilities where Licensee practices or has privileges of Licensee's disciplinary status. Notification shall be in writing and Licensee shall, contemporaneously with the giving of such notice, submit a copy of the notice to the Board for verification by the Board or its designated representative.
- C. Licensee shall cause an employment evaluation form from each and every respiratory care employer of his to be submitted to the board within six weeks of the effective date of this order. That evaluation shall include information as to Licensee's orientation and training and overall competency in practicing respiratory care therapies. Thereafter, employment evaluation forms will be due, in the Board's office, on the 1st days of February, May, August and November of every year that this order is in force. The evaluation form shall be completed by Licensee's supervisor within a four week period prior to the date it is due. If Licensee ends employment with a healthcare employer, he shall, in addition, cause a final evaluation form from that supervisor to be submitted to the board within six weeks following the last day of employment.
- D. The evaluation shall be sent by the supervisor to:

Missouri Board for Respiratory Care
P.O. Box 1335
Jefferson City, Missouri 65102.

11. The parties to this Agreement understand that the Missouri Board for Respiratory Care will maintain this Agreement as an open record of the Board as provided in Chapters 334, 610, and 324, RSMo.

12. The terms of this settlement agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise provided herein, neither this settlement agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

13. Licensee, together with his heirs and assigns, and his attorneys, do hereby waive, release, acquit and forever discharge the Board, its respective members and any of its employees, agents, or attorneys, including any former Board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to § 536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case, its settlement, or from the negotiation or execution of this settlement agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this settlement agreement in that it survives in perpetuity

even in the event that any court of law deems this settlement agreement or any portion thereof to be void or unenforceable.

14. If no contested case has been filed against Licensee, Licensee has the right, either at the time the settlement agreement is signed by all parties or within fifteen days thereafter, to submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties to the settlement agreement constitute grounds for denying or disciplining the license of the licensee. If Licensee desires the Administrative Hearing Commission to review this Agreement, Licensee may submit this request to:

Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65101.

15. If Licensee has requested review, Licensee and Board jointly request that the Administrative Hearing Commission determine whether the facts set forth herein are grounds for disciplining Licensee's license and issue findings of act and conclusions of law stating that the facts agreed to by the parties are grounds for disciplining Licensee's license. Effective the date the Administrative Hearing Commission determines that the agreement sets forth cause for disciplining Licensee's license, the agreed upon discipline set forth herein shall go into effect.

LICENSEE



Brian Manning

Date 1/2/13

BOARD



Vanessa Beauchamp,
Executive Director
Missouri Board for Respiratory Care

Date 1-7-13