

SETTLEMENT AGREEMENT
BETWEEN
MISSOURI BOARD FOR RESPIRATORY CARE
AND
KELLY TALLEY

Kelly Talley (“Talley”) and the Missouri Board for Respiratory Care (“MBRC”) enter into this Settlement Agreement for the purpose of resolving the question of whether Talley’s license as a respiratory care practitioner, no. 100619, will be subject to discipline. Pursuant to § 536.060, RSMo 2000,¹ the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri and, additionally, the right to a disciplinary hearing before the MBRC under § 621.110, RSMo Supp. 2012. The MBRC and Talley jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo Supp. 2012.

Talley acknowledges that she understands the various rights and privileges afforded her by law, including the right to a hearing of the charges against her; the right to appear and be represented by legal counsel; the right to have all charges proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing against her at the hearing; the right to present evidence on her behalf at the hearing; the right to a decision upon the record of the hearing by a fair and impartial

¹ All statutory citations are to the 2000 Revised Statutes of Missouri unless otherwise noted.

administrative hearing commissioner concerning the charges pending against her; the right to a ruling on questions of law by the Administrative Hearing Commission; the right to a disciplinary hearing before the MBRC at which time Talley may present evidence in mitigation of discipline; the right to a claim for attorney fees and expenses; and the right to obtain judicial review of the decisions of the Administrative Hearing Commission and the MBRC.

Being aware of these rights provided to her by law, Talley 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 her.

Talley acknowledges that she has received a copy of documents that were the basis upon which the MBRC determined there was cause for discipline, along with citations to law and/or regulations the MBRC believes were violated. Talley stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the MBRC that Talley's license as a respiratory care practitioner, license no. 100619, is subject to disciplinary action by the MBRC in accordance with the relevant provisions of Chapter 621, RSMo, and §§ 334.800 through 334.930, RSMo, as amended.

The parties stipulate and agree that the disciplinary order agreed to by the MBRC and Talley in Part II herein is based only on the agreement set out in Part I herein. Talley understands that the MBRC may take further disciplinary action against her based on

facts or conduct not specifically mentioned in this document that are either now known to the MBRC or may be discovered.

I.
Joint Stipulation of Facts and Conclusions of Law

Based upon the foregoing, the MBRC and Talley herein jointly stipulate to the following:

1. Kelly Talley is licensed as a respiratory care practitioner, license no 100619. Talley's license was current and active from January 7, 2009, until it became suspended on April 11, 2011, pursuant to § 324.010, RSMo, for her failure to file state tax returns and/or pay her state tax liabilities. Talley's license remained suspended until August 9, 2012, at which time she became tax compliant.

2. From April 11, 2011, through August 8, 2012, Talley continued to practice as a respiratory care practitioner as an employee of Missouri Delta Medical Center during which time her license was suspended pursuant to § 324.010, RSMo.

3. Talley's practice as a respiratory care practitioner, while her licensed was suspended, was in violation of § 334.820, RSMo, which states:

No person in the state of Missouri, unless such person holds a current and valid license issued pursuant to sections 334.800 to 334.930, shall:

(1) Provide the services of a respiratory care practitioner, unless such person is otherwise exempt pursuant to section 334.900[.]

4. Talley's practice as a respiratory care practitioner, while her license was suspended, constitutes incompetency, misconduct, misrepresentation and dishonesty in the performance of the functions and duties of a respiratory care practitioner.

5. Talley's practice as a respiratory care practitioner, while her license was suspended, constitutes a violation of her professional trust and confidence.

6. Talley's conduct, as stated above, provides cause to discipline her license pursuant to § 334.920.2(5), (6), and (12), RSMo, which state:

The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 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:

...

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions and duties of a respiratory care practitioner;

(6) Violation of, or assisting or enabling any person to violate, any provision of sections 334.800 to 334.930 or any lawful rule or regulation adopted pursuant to sections 334.800 to 334.930;

...

(12) Violation of any professional trust or confidence[.]

II.
Joint Agreed Disciplinary Order

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the MBRC in this matter under the authority of § 536.060, RSMo, and §§ 621.045.4 and 621.110, RSMo Supp. 2012.

7. **Talley's license is on probation.** Talley's license as a respiratory care practitioner is hereby placed on PROBATION for a period of FIVE (5) YEARS. The period of probation shall constitute the "disciplinary period." During the disciplinary period, Talley shall be entitled to practice as a respiratory care practitioner under §§ 334.800 through 334.930, RSMo, as amended, provided Talley adheres to all the terms of this agreement.

8. **Terms and conditions of the disciplinary period.** The terms and conditions of the disciplinary period are as follows:

- A. During the disciplinary period, Talley shall keep the MBRC informed of her current work and home telephone numbers. Talley shall notify the MBRC in writing within ten days (10) of any change in this information.
- B. During the probationary period, Talley shall timely renew her license granted hereby and shall timely pay all fees required for licensure and comply with all other MBRC requirements necessary to maintain said license in a current and active state.
- C. During the probationary period, Talley shall accept and comply with unannounced visits from the MBRC's representatives to monitor compliance with the terms and conditions of this Settlement Agreement.

- D. During the disciplinary period, Talley shall appear in person for interviews with the MBRC or its designee upon request.
- E. Talley shall cause an employment evaluation form from each and every respiratory care employer of hers to be submitted to the MBRC within six weeks of the effective date of this order. Thereafter, employment evaluation forms will be due, in the MBRC'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 Talley's supervisor within a four week period prior to the date it is due. If Talley ends employment with a healthcare employer, she shall, in addition, cause a final evaluation form from that supervisor to be submitted to the MBRC within six weeks following the last day of employment.
- F. The evaluation shall be sent by the supervisor to:
- Missouri Board for Respiratory Care
P.O. Box 1335
Jefferson City, Missouri 65102.
- G. Talley shall submit written reports to the MBRC on or before January 1 and July 1 during each year of the probationary period stating truthfully whether there has been compliance with all terms and conditions of this Settlement Agreement. The first such report shall be received by the MBRC on or before July 1, 2013.
- H. Talley shall execute any release or provide any other authorization necessary for the MBRC to obtain records of her employment during the disciplinary period.
- I. Talley shall comply with all provisions of §§ 334.800-.930 RSMo; all federal and state drug laws, rules, and regulations; and all federal and state criminal laws. "State" here includes the state of Missouri, all other states and territories of the United States, and the ordinances of political subdivisions of any state or territory. Talley shall immediately report any violation of this provision to the MBRC in writing. Talley shall also immediately

report any allegation that he has violated this provision to the MBRC, in writing. Examples of allegations of such a violation include, but are not limited to, any arrest, summons, inquiry by any law enforcement official into these topics, or inquiry into these topics by a health oversight agency. Talley shall sign releases or other documents authorizing and requesting the holder of any closed record related to this paragraph to release such records to the MBRC.

- J. Talley shall provide all current and future employers in the healthcare field a copy of this Settlement Agreement within five (5) business days of the effective date or the beginning date of each employment, whichever is earlier. Talley shall cause each employer to send written acknowledgment of receipt of a copy of this Settlement Agreement directly to the MBRC addressed as follows:

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

- K. Talley shall immediately submit documents showing compliance with the requirements of this Settlement Agreement to the MBRC when requested.
- L. If, at any time during the probationary period, Talley changes her address from the state of Missouri, or ceases to maintain her respiratory care practitioner license current or active under the provisions of Chapter 324, RSMo (as amended), or fails to keep the MBRC advised of all current places of residence, the time of such absence, unlicensed or inactive status, or unknown whereabouts shall not be deemed or taken to satisfy any part of the probationary period.
- M. Unless otherwise specified by the MBRC, all reports, documentation, notices, or other materials required to be submitted to the MBRC shall be forwarded to: Missouri State Board for Respiratory Care, P.O. Box 1335, Jefferson City, Missouri 65102.

9. Upon the expiration of the disciplinary period, the license of Talley shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the MBRC determines that Talley has violated any term or condition of this Settlement Agreement, the MBRC may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke or otherwise lawfully discipline Talley's license.

10. No additional discipline shall be imposed by the MBRC pursuant to the preceding paragraph of this Settlement Agreement without notice and opportunity for hearing before the MBRC as a contested case in accordance with the provisions of Chapter 536, RSMo.

11. This Settlement Agreement does not bind the MBRC or restrict the remedies available to it concerning any future violations by Talley of §§ 334.800 through 334.930, RSMo, as amended, or the regulations promulgated thereunder, or of the terms and conditions of this Settlement Agreement.

12. This Settlement Agreement does not bind the MBRC or restrict the remedies available to it concerning facts or conduct not specifically mentioned in this Settlement Agreement that are either now known to the MBRC or may be discovered.

13. If any alleged violation of this Settlement Agreement occurred during the disciplinary period, the parties agree that the MBRC may choose to conduct a hearing

before it either during the disciplinary period, or as soon thereafter as a hearing can be held, to determine whether a violation occurred and, if so, may impose further disciplinary action. Talley agrees and stipulates that the MBRC has continuing jurisdiction to hold a hearing to determine if a violation of this Settlement Agreement has occurred.

14. Each party agrees to pay all their own fees and expenses incurred as a result of this case, its litigation, and/or its settlement.

15. The terms of this Settlement Agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained 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.

16. The parties to this Settlement Agreement understand that the MBRC will maintain this Settlement Agreement as an open record of the MBRC as required by Chapters 324, 334 and 610, RSMo, as amended.

17. Talley, together with her partners, heirs, assigns, agents, employees, representatives and attorneys, does hereby waive, release, acquit and forever discharge the MBRC, its respective members, employees, agents and attorneys including former members, employees, agents and attorneys, of, or from any liability, claim, actions, causes of action, fees, costs, expenses and compensation, including, but not limited to, any claim

for attorney's fees and expenses, whether or not now known or contemplated, including, but not limited to, any claims pursuant to § 536.087, RSMo (as amended), or any claim arising under 42 U.S.C. § 1983, which now or in the future may be based upon, arise out of, or relate to any of the matters raised in this case or its litigation or from the negotiation or execution of this Settlement Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of the Settlement Agreement in that it survives in perpetuity even in the event that any court or administrative tribunal deems this agreement or any portion thereof void or unenforceable.

18. Talley understands that she may, either at the time the Settlement Agreement is signed by all parties, or within fifteen days thereafter, submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Talley's license. If Talley desires the Administrative Hearing Commission to review this Settlement Agreement, Talley may submit her request to: Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65102.

19. If Talley requests review, this Settlement Agreement shall become effective on the date the Administrative Hearing Commission issues its order finding that the Settlement Agreement sets forth cause for disciplining Talley's license. If the Administrative Hearing Commission issues an order stating that the Settlement Agreement does not set forth cause for discipline, then the MBRC may proceed to seek

