SETTLEMENT AGREEMENT BETWEEN MISSOURI BOARD FOR RESPIRATORY CARE AND MALINDA FOUCHE

Come now Malinda Fouche ("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 Licensee understands the various rights and privileges afforded Licensee by law, including the right to a hearing of the charges against Licensee; the right to appear and be represented by legal counsel; the right to have all charges against Licensee proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against Licensee; the right to present evidence on Licensee's 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 Licensee and, subsequently, the right to a disciplinary hearing before the Board at which time Licensee may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against Licensee's license. Being aware of these rights provided her 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 Licensee.

Licensee acknowledges that Licensee has received a copy of the investigative report and/or other documents relied upon by the Board in determining there was cause to discipline Licensee's 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 2007014938 is subject to disciplinary action by the Board in accordance with the provisions of Chapter 621and Sections 334.800 through 334.930, RSMo.

Joint Stipulation of Fact and Conclusions of Law

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

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, Malinda Fouche, is licensed by the Board as a respiratory care practitioner, license number 2007014938. Licensee's Missouri license is now current and active.

3. On or about September 2, 2016, the Board sent Licensee a letter stating that Licensee had been randomly selected by the Board to provide proof of Licensee's required twenty-four hours of continuing education for the 2014-2016 renewal period. The Board requested that Licensee submit the continuing education course completion certificates to the Board no later than October 1, 2016.

4. On or about September 26, 2016, Licensee provided some documentation verifying completion of continuing education hours, however the documentation did not reflect the completion of the 24 hours of continuing education necessary for the reporting period audited.

5. On October 7, 2016, the Board sent Licensee a second letter stating that documents verifying completion of Licensee's required twenty-four hours of continuing education for the 2014-2016 renewal period had not been received by the initial October 1, 2016 deadline. The Board, in the October 7th correspondence extended the deadline to October 31, 2016.

6. On or about October 12, 2016, Licensee emailed the Board office stating she would have all CEU hours completed by November 11, 2016 and would forward the missing paperwork to the Board office.

7. As of December 2, 2016, the date on which the Board last convened, nothing had been received from the Licensee.

8. Section 334.880.1, RSMo states:

> A license issued pursuant to sections 334.800 to 334.930 shall be renewed biennially, except as provided in sections 334.800 to 334.930. The board shall mail a notice to each person licensed during the preceding licensing period at least thirty calendar days prior to the expiration date of the license. The board shall not renew any license unless the licensee shall provide satisfactory evidence of having complied with the board's minimum requirements for continuing education.

9. Regulation 20 CSR 2255-4.010 states, in relevant part:

> (1) As a condition for renewal of a license, all respiratory care practitioners are required to complete twenty-four (24) hours of approved continuing education in the practice of respiratory care as defined by

section 334.800(11), RSMo in the continuing education reporting period preceding renewal of the license. The continuing education reporting period is the twenty-four (24)-month period beginning on August 1 of even numbered years and ending on July 31 of even numbered years. Continuing education hours earned after July 31 shall apply to the next continuing education reporting period. At least twelve (12) hours credit shall be from approved, traditional programs during each continuing education reporting period. Traditional educational programs are those programs, attended either in person or attended remotely, by the use of telecommunication technology, where the presentation is "live," and where the attendee can interact with and ask questions of the presenter during the presentation. Non-traditional programs are those approved programs that include a testing mechanism, not presented "live" where the attendee is not able to interact with and ask questions of the presenter during the presentation. The licensee is exempt from continuing education requirements for the first renewal period after initial licensing.

(2) For the license renewal due on August 1, 2002, and each subsequent renewal thereafter, the licensee shall certify, on the renewal form provided by the board that he/she has obtained at least twenty-four (24) hours of continuing education during the continuing education reporting period preceding the license renewal. The renewal form shall be submitted to the board office on or before the expiration date. The renewal form shall not be considered complete until all of the required information has been received by the board. The licensee shall not submit the record of continuing education attendance to the board except in the case of a board audit.

...

(8) A licensee shall be responsible for maintaining his/her records of continuing education activities. Each licensee shall maintain for a period of not less than the preceding two (2) continuing education reporting periods prior to renewal, documentation verifying completion of the appropriate number of continuing education hours for each renewal period.

(9) Upon request of the board, the licensee shall provide all documentation of completion of continuing educational activities. Documentation of the continuing education may consist of—

(A) Certificates or affidavits provided by the program;
(B) American Association for Respiratory Care or its successor organization(s) report of continuing education credits;
(C) Educational transcripts from an accredited respiratory care educational program; or
(D) A letter from the board showing approval of the continuing education hours and documentation of attendance at said program.

...

(11) Violation of any provision of this rule shall be deemed by the board to constitute misconduct, fraud, misrepresentation, dishonesty, unethical conduct or unprofessional conduct in the performance of the functions or duties of a respiratory care practitioner depending on the licensee's

> conduct. In addition, a licensee who fails to complete and report in a timely fashion the required twenty- four (24) hours of continuing education and engages in the practice of respiratory care without the expressed written consent of the board shall be deemed to have engaged in the unauthorized practice of respiratory care.

10. Licensee's conduct, as described in paragraphs 3 through 7 above, constitutes incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions and duties of a respiratory care practitioner for which the Board has cause to discipline Licensee's license.

11. Licensee's conduct, as described in paragraphs 3 through 7 above, constitutes violation of, assisting, or enabling any person to violate, any provision of sections 334.800 to 334.930, RSMo., or any lawful rule or regulation adopted pursuant to sections 334.800 to 334.930, RSMo., for which the Board has cause to discipline Licensee's license.

12. Licensee's conduct, as described in paragraphs 3 through 7 above, constitutes violation of a professional trust or confidence, for which the Board has cause to discipline Licensee's license.

13. Cause exists for the Board to take disciplinary action against Licensee's license under § 334.920.2(5), (6), (12), 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:
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> ...
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> (5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions and duties of a respiratory care practitioner;
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> (6) Violation of, 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;
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> ...
>
> (12) Violation of any professional trust or confidence[.]

Joint Agreed Disciplinary Order

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:

14. The terms of discipline shall include that the respiratory care practitioner license be placed on **PROBATION** for a period of two (2) years ("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 Licensee adheres to all of the terms of this Settlement Agreement.

I. EDUCATION REQUIREMENTS

A. Licensee shall complete the twenty-four (24) hours of continuing education required pursuant to § 334.880, RSMo, and 20 CSR 2255-4.010 for the 2016-2018 renewal cycle.

B. During the probationary period, Licensee shall complete an additional twenty (20) hours of traditional continuing education by July 1, 2018.

II. GENERAL REQUIREMENTS

A. 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.

B. Licensee shall submit reports to the Missouri Board for Respiratory Care, P.O. Box 1335, Jefferson City, Missouri 65102, stating truthfully whether Licensee 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.

C. Licensee shall keep the Board apprised of Licensee's 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.

D. 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.

E. During the disciplinary period, Licensee shall timely renew Licensee's 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.

F. If at any time during the disciplinary period, Licensee removes Licensee from the state of Missouri, ceases to be currently licensed under provisions of Sections 334.800 through 334.930, RSMo., or fails to advise the Board of Licensee's current place of business and residence, the time of Licensee's 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.

G. During the disciplinary period, Licensee shall accept and comply with unannounced visits from the Board's representatives to monitor Licensee's compliance with the terms and conditions of this Settlement Agreement.

H. 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).

I. This Settlement Agreement does not bind the Board or restrict the remedies available to it concerning any other violation of Sections 334.800 through 334.930, RSMo, by Licensee not specifically mentioned in this document.

15. 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.

16. 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.

17. Licensee, together with Licensee's heirs and assigns, and Licensee's 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.

18. 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**.

19. 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 fact 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

Malinda Fouche

Date 2.8.17

BOARD

Vanessa Beauchamp,
Executive Director
Missouri Board for Respiratory Care

Date 2/15/17