

Before the

**N.H. Respiratory Care Practitioners Governing Board
Office of Allied Health Professionals
Concord, New Hampshire 03301**

In the Matter of:
David A. Damour, RCP
License No. 0109

SETTLEMENT AGREEMENT

In order to avoid the delay and expense of further proceedings and to promote the best interests of the public and the practice of respiratory care therapy, the New Hampshire Board of Respiratory Care Practitioners ("the Board") and David A. Damour, RCP ("the Respondent") agree to settle certain allegations of professional misconduct now pending before the Board in accordance with the following terms and conditions:

1. The Board has jurisdiction to investigate and adjudicate allegations of professional misconduct committed by respiratory care practitioners who are its licensees pursuant to RSAs 328-F:23 and 328-F:24. The Board may dispose of any such allegations by settlement and without commencing or completing a disciplinary hearing pursuant to RSA 328-F:24, VI and New Hampshire Office of Licensed Allied Health Professionals Administrative Rule ("Ahp") 214.01.

2. The Board first granted Respondent a license to practice respiratory care in the State of New Hampshire on February 6, 1991. Respondent holds license number 0109.

3. On November 21, 2011, the Board received Respondent's 2011 license renewal application in which Respondent stated that he had been terminated from New London Hospital on June 9, 2011. Respondent provided a detailed explanation.

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4. In response to this information, the Board, pursuant to RSA 328-F:24, conducted an investigation and obtained information from various sources regarding Respondent's conduct.

5. Respondent neither admits nor denies the allegations herein, but stipulates that if a disciplinary hearing were to take place, Hearing Counsel would present evidence upon which the Board could conclude that Respondent engaged in professional misconduct, in violation of RSA 328-F:23, II(c) by the following facts:

- A. From 1991 until about June 9, 2011, Respondent was employed as a respiratory care practitioner at New London Hospital in New London, New Hampshire.
- B. Respondent's responsibilities included testing machines called blood gas analyzers (BGAs).
- C. In 2009, Respondent began altering the level-three controls on the BGAs, such that they would appear to be within an acceptable range but only slightly below the standard deviations. Thus, the machine falsely appeared to be properly controlled.
- D. However, due to his manipulations of the control results he eventually found himself in a situation that he could not correct. The BGA was completely out of range, making the machine unable to be used for patient blood gas analysis.

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- E. Respondent attempted to cover up his errors until he realized he was no longer able to do so. At that time he contacted technical support in an attempt to try to correct the errors, but did not admit to his errors in running the controls or his errors in judgment but instead blamed the errors on the machine.
- F. Respondent finally voluntarily admitted his conduct to his superiors and was terminated on or about June 9, 2011.
- G. Respondent regrets falsifying the data. Respondent should have contacted technical support when his testing began to indicate that the BGAs initially appeared to be in need of adjustment or service.
- H. Respondent's conduct jeopardized patient safety.

6. The Board finds that Respondent committed the acts as described above and concludes that, by engaging in such conduct Respondent violated RSA 328-F:23, II(c) by violating the American Association for Respiratory Care's Statement of Ethics and Professional Misconduct, which is binding upon Respondent pursuant to Mhp 502.01 and 502.02.

7. Respondent acknowledges that this conduct constitutes grounds for the Board to impose disciplinary sanctions against Respondent's license to practice as a respiratory care practitioner in the State of New Hampshire.

8. Respondent consents to the following disciplinary action by the Board pursuant to RSA 328-F: 23, IV:

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- A. Respondent is REPRIMANDED.
- B. Respondent's license is SUSPENDED for a period of three (3) years beginning on the effective date of this *Settlement Agreement*.
- C. If Respondent seeks to have the license suspension lifted after three (3) years, Respondent is required to meaningfully participate in sixteen (16) hours of CONTINUING EDUCATION in the area of medical ethics. These hours shall be in addition to the hours required by the Board for renewal of licensure and shall be completed within one (1) year from the effective date of this *Settlement Agreement*. Within fifteen (15) days of completing these hours, Respondent shall notify the Board and provide written proof of completion.
- D. If Respondent seeks to have the license suspension lifted after three (3) years, Respondent is required to submit quarterly reports from his licensed physician (M.D. or D.O.), physician assistant or advanced practice registered nurse (A.P.R.N.). The quarterly reports shall include discussion of Respondent's treatment and any recommendations made by the licensed provider. The first report shall be due to the Board within ninety (90) days of the effective date of this *Settlement Agreement*, and every quarter thereafter for a

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total of twelve (12) quarters. Respondent must follow all recommendations of the licensed provider.

- E. Within ten (10) days of the effective date of this agreement, as defined further below, Respondent shall furnish a copy of this Settlement Agreement to any current employer for whom Respondent performs services as respiratory care practitioner or work which requires specialized training in respiratory care therapy or a respiratory care license, or which directly or indirectly involves patient care and to any agency or authority which licenses, certifies or credentials respiratory care practitioners with which Respondent is presently affiliated.
- F. For a continuing period of twelve (12) months from the effective date of this agreement, Respondent shall furnish a copy of this Settlement Agreement to any employer to which Respondent may apply for work as a respiratory care practitioner or for work in any capacity which requires respiratory care training, or license or directly or indirectly involves patient care and to any agency or authority that licenses, certifies or credentials respiratory care practitioners to which Respondent may apply for any such professional privileges or recognition.

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9. Respondent's breach of any terms or conditions of this Settlement Agreement shall constitute unprofessional conduct pursuant to RSA 328-F: 23, IV(d) and a separate and sufficient basis for further disciplinary action.

10. Except as provided herein, this Settlement Agreement shall bar the commencement of further disciplinary action by the Board based upon the misconduct described above. However, the Board may consider this misconduct as evidence of a pattern of conduct in the event that similar misconduct is proven against Respondent in the future. Additionally, the Board may consider the fact that discipline was imposed by this Order as a factor in determining appropriate discipline should any further misconduct be proven against Respondent in the future. Any future discipline by the Board could include license suspension or revocation.

11. This Settlement Agreement shall become a permanent part of Respondent's file, which is maintained by the Board as a public document.

12. Respondent voluntarily enters into and signs this Settlement Agreement and states that no promises or representations have been made to him other than those terms and conditions expressly stated herein.

13. The Board agrees that in return for Respondent executing this agreement, the Board will not proceed with the formal adjudicatory process based upon the facts described herein.

14. Respondent understands that his action in entering into this agreement is a final act and not subject to reconsideration or judicial review or appeal.

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15. Respondent has had the opportunity to seek and obtain the advice of an attorney of his choosing in connection with his decision to enter into this agreement.

16. Respondent understands that the Board must review and accept the terms of this agreement. If the Board rejects any portion, the entire agreement shall be null and void. Respondent specifically waives any claims that any disclosures made to the Board during its review of this agreement have prejudiced his right to a fair and impartial hearing in the future if the Board does not accept this agreement.

17. Respondent is not under the influence of any drugs or alcohol at the time he signs this agreement.

18. Respondent certifies that he has read this document entitled Settlement Agreement. Respondent understands that he has the right to a formal adjudicatory hearing concerning the matters stated herein and that at said hearing he would possess the rights to confront and cross examine witnesses, to call witnesses, to present evidence, to testify on his own behalf, to contest the allegations to present oral argument and to appeal to the courts. Further, Respondent fully understands the nature, qualities and dimensions of these rights. Respondent understands that by signing this agreement he waives these rights as they pertain to the misconduct described herein.

19. This *Settlement Agreement* shall take effect as an Order of the Board on the date it is signed by an authorized representative of the Board.

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FOR THE RESPONDENT

Date: Sept 5, 2012

David A. Damour, RCP
David A. Damour, RCP
Respondent

This proceeding is hereby terminated in accordance with the binding terms and conditions set forth above.

FOR THE BOARD*

Date: September 17, 2012

Tina M. Kelley
(Signature)

TINA M Kelley
(Print or Type Name)
Authorized Representative of the
New Hampshire Respiratory Care
Practitioners Governing Board

* Board Members, recused: Robert G. Fishwick, RCP; and Douglas Hall, RCP