

**State of New Hampshire  
Office of Licensed Allied Health Professionals  
Respiratory Care Practitioners Governing Board  
Concord, New Hampshire**

In the Matter of:  
Joseph W. Leo  
(Application for Licensure)

**ORDER ON APPLICATION DENIAL**

The New Hampshire Governing Board of Respiratory Care Practitioners ("Board") received an application for licensure on July 21, 2010 from Joseph W. Leo ("Mr. Leo" or "Applicant") for the practice respiratory care in the State of New Hampshire. For the following reasons, the Board has voted to **DENY** Mr. Leo's application for licensure.

**Background:**

On July 21, 2010 Mr. Leo sent an application for licensure to the Office of Licensed Allied Health Professionals, Respiratory Care Practitioners Governing Board. On this application Mr. Leo marked "Yes" to the question "Have you been found guilty or entered a plea of no contest to any felony or misdemeanor?"

On July 21, 2010 the Board also received a document titled "Written Explanation of Criminal History for Vermont". This document contained an explanation for:

1. A conviction of a misdemeanor charge for "DUI #1-Influence" with a conviction date of April 17, 2006 in the State of Vermont.
2. A plea of guilty to a misdemeanor charge for "Possession of Drugs 318-B:2" with a court date of March 2, 2009 in the State of New Hampshire.
3. A conviction of a violation charge for "Operation After Suspension" with a conviction date of March 2, 2009 in the State of New Hampshire.
4. A conviction of a misdemeanor charge for "DUI #2-Influence" with a conviction date of November 23, 2009 in the State of Vermont.
5. A plea of guilty to a violation charge for "Possession of a Controlled Drug" with a conviction date of November 7, 2009 in New Hampshire.

Mr. Leo also provided the Board with a New Hampshire criminal history record report and a Vermont criminal history record report confirming the criminal history outlined in the "Written Explanation of Criminal History for Vermont".

Mr. Leo further provided a letter from Terry V. Mosher, Probation and Parole Officer from the State of Vermont Department of Corrections dated August 2, 2010 which indicates that Mr. Leo is currently being supervised by the Vermont Department of Corrections specifically the Hartford Probation and Parole District Office for the offense of Driving under Influence-2<sup>nd</sup>.

Mr. Leo also provided a letter from Kathy Marshall, BA, MA, Substance Abuse Counselor with Head Rest Day and Night stating that Mr. Leo completed a five (5) month course of treatment regarding his past Substance Abuse convictions.

**Relevant Law and Rules:**

RSA 326-E:3, I:

An applicant for an initial license to practice respiratory care shall be of good professional character.

RSA 328-F:23, II: Misconduct sufficient to support disciplinary proceedings shall include:

- (b) Any criminal conviction in any jurisdiction, excluding traffic violations, or failure to report such conviction within 30 days.
  
- (f) Actual or potential inability to render care with reasonable skill and safety by reason of illness, by reason of use of alcohol or drugs or any other material, or by reason of mental or physical condition.

RSA 328-F:23, V

Each governing board is authorized to deny an application for license renewal or reinstatement as an additional sanction.

Resp 405.01(c):

- (c) Violation of the ethical standards adopted by the board.

Resp 405.01(f):

Misconduct

- (f) Actual or potential inability to render care with reasonable skill and safety by reason of illness, by reason of use of alcohol or drugs or any other material, or by reason of mental or physical condition;

AARC Ethics and Professional Conduct:

- Demonstrate behavior that reflects integrity, supports objectivity, and fosters trust in the profession and its professionals
- Refuse to participate in illegal or unethical acts.

**Findings of Fact and Rulings of Law:**

- The Board finds Mr. Leo had one (1) misdemeanor conviction for possession of drugs, one (1) violation for possession of controlled drug, and one (1) violation for operation after suspension in the State of New Hampshire in violation of RSA 328-F:23, II(b), RSA 328-F:23, II(f), Resp 405.01(c), Resp 405.01(f), and the American Association for Respiratory Care Ethics and Professional Conduct.
- The Board finds Mr. Leo had two (2) misdemeanor convictions for DUI in the State of Vermont in violation of RSA 328-F:23, II(b), RSA 328-F:23, II(f), Resp 405.01(c), Resp 405.01(f), and the American Association for Respiratory Care Ethics and Professional Conduct.
- The Board finds the applicant not of good professional character as mandated by RSA 326-E:3, I and/or has an actual or potential inability to render care with reasonable skill and safety by reason of use of alcohol or drugs or any other material as stated in RSA 328-F:23, II(f).

**Conclusion:**

For the reasons stated above, and in accordance with RSA 328-F:23, V, the Applicant's application for licensure is **DENIED**.

THEREFORE IT IS ORDERED this Order on Application Denial ("Order") will become a 'final order' within fifteen (15) days of the effective date of this Order, as defined further below, unless prior to 4:00 p.m. on the fifteenth day of the effective date of this Order the Board receives a written request for a hearing; and

IT IS FURTHER ORDERED that receipt of a timely filed hearing request shall automatically stay this Order and a further order shall be issued in due course in which the Board establishes a date and time of the hearing, and specifies the issues to be heard; and

IT IS FURTHER ORDERED that any hearing held in response to this Order shall be a non-adjudicatory hearing conducted pursuant to RSA chapter 326-F; RSA chapter 328-F and RSA chapter 541-A. The Applicant may request to be heard on any relevant matter of law or fact, but evidentiary proceedings shall be conducted only to the extent the Applicant has identified disputed factual issues which require resolution. This non-adjudicatory hearing will be conducted in non-public session unless the Applicant makes a timely written request to conduct it in public session. Subsequent to such hearing, the Board will issue a 'final order' within the statutory amount of time; and

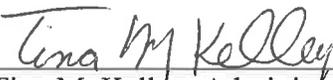
IT IS FURTHER ORDERED that by analogy to RSA 318:31, V, a 'final order' is a public document; and

IT IS FURTHER ORDERED that once a Board order is a 'final order' in accordance with either of the circumstances outlined above, the Applicant has thirty (30) days to file a request for reconsideration pursuant to RSA 541:3. Such motion shall comply with RSA 541:4.

IT IS FURTHER ORDERED that this Order shall take effect as an Order of the Board on the date it is signed by an authorized representative of the New Hampshire Governing Board of Respiratory Care Practitioners.

BY ORDER OF THE BOARD

October 14, 2010

  
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Tina M. Kelley, Administrator  
Authorized Representative of the  
Respiratory Care Practitioners Governing Board