

**State of New Hampshire  
Respiratory Care Practitioners Governing Board  
Concord, New Hampshire 03301**

In the Matter of  
Joseph Corkery, RCP  
No.: 857  
(Misconduct Allegations)

**CONSENT DECREE**

The New Hampshire Respiratory Care Practitioners Governing Board (“Board”) and Joseph Corkery, RCP (“Mr. Corkery” or “Respondent”), a respiratory care practitioner licensed by the Board, do hereby stipulate and agree to the following:

1. Pursuant to RSA 328-F:23 and RSA 328-F:24 and Allied Health Professionals Administrative Rule (“Ahp”) 209 and 213, the Board has jurisdiction to investigate and adjudicate allegations of professional misconduct committed by respiratory therapists. Pursuant to RSA 328-F:24, VI, and Ahp 214.01 the Board may, at any time, dispose of such allegations by settlement, such as this Consent Decree, and without completing a disciplinary hearing.
2. The Board first granted Respondent a license to practice respiratory care in the State of New Hampshire on June 12, 2003. Respondent holds license number 857. Respondent practices respiratory care. The Board issued an Order of Emergency License Suspension and Notice of Hearing on August 9, 2004. Respondent’s license has been suspended since that date.
3. On August 17, 2004, the Board commenced a hearing on the allegation against Respondent set out in item 6B of the Notice of Hearing. The remaining allegations were scheduled to be heard on August 26, 2004. At the time of the drafting of this

Consent Decree, the result of the August 17, 2004, hearing is not known by the parties.

4. On April 21, 2004, The Office of Allied Health Professionals received a letter from HealthSouth concerning conduct by Mr. Corkery. HealthSouth advised the Board that Mr. Corkery had been previously employed by HealthSouth. HealthSouth also notified the Board that Mr. Corkery had received a conviction in the Concord District Court for conduct that took place at HealthSouth.
5. In response to this, the Board conducted an investigation and obtained information from various sources pertaining to Respondent's theft of Percoset; his failure to notify the Board of his conviction for theft; his inability to work competently due to substance abuse and mental health problems; and, his failure to notify the Board of his change in employment.
6. Respondent freely admits to and requests that the NH Board make the following findings of fact:
  - A. On November 16, 2003, the Concord Police were called to HealthSouth on Pleasant Street in Concord for a report of an employee who had stolen Percoset pills. According to police reports, HealthSouth employees were interviewed and informed the police that one of HealthSouth's employees had forced open a nursing cart and stolen 19 Percoset tablets. After conducting an investigation, the Concord Police proceeded with a misdemeanor theft charge against Respondent.

- B. On April 2, 2004, Respondent pled “nolo” (no contest) in the Concord District Court to a Class A misdemeanor charge of Theft by Unauthorized Taking in connection with the events at HealthSouth, which occurred on November 16, 2003. Respondent was represented by counsel and received a sentence of \$500 fine and six months in the House of Correction, all of which was suspended for one year on the condition that Respondent obtain a LADAC evaluation and follow recommendations. A review hearing is scheduled for October 5, 2004 in the Concord District Court. Respondent failed to notify the Board that he received this conviction.
- C. According to the CEO of HealthSouth, HealthSouth’s internal investigation revealed that Mr. Corkery had failed to fulfill his job duties and that he had not provided his patients with respiratory care during his shift on November 16, 2003.
- D. According to records from Concord Hospital, Respondent went to the hospital for treatment on Nov. 22, 2003, complaining of severe depression and suicidal thoughts. The records also reflect a self-reported history of substance abuse.
- E. The records from Concord Hospital also revealed prior admissions to Concord Hospital, the New Hampshire State Hospital and Hampstead Hospital for substance abuse and mental health problems.

- F. After leaving employment at HealthSouth, Respondent obtained a new job at Lakes Region General Hospital. Respondent failed to inform the Board of his change in employment.
  - G. Respondent provided false information on his renewal application, specifically by responding "no" to question number 8.
7. The Board finds that Respondent committed the acts as described above and concludes that, by engaging in such conduct, Respondent committed professional misconduct by:
- A. Committing the crime of theft of controlled drugs from HealthSouth on November 16, 2003, in violation of RSA 637:3 and RSA 328-F:23, II(j).
  - B. Obtaining a conviction for Theft by Unauthorized Taking in the Concord District Court on April 2, 2004, in violation of RSA 328-F:23, II(b).
  - C. Failing to provide the Board with notice of his Concord District Court conviction as required by RSA 328-F:23, II(b).
  - D. Practicing respiratory care while unable to render care with reasonable skill and safety by reason of use of alcohol or drugs or by reason of mental condition in violation of RSA 328-F:23, II(f).
  - E. Failing to notify the Board of his employment at Lakes Region General Hospital, in violation of RSA 328-F:21, I and Ahp 403.02.
8. Respondent acknowledges that this conduct constitutes grounds for the Board to impose disciplinary sanctions against Respondent's license to practice respiratory care in the State of New Hampshire.

9. Respondent consents to the Board imposing the following discipline for a probationary period of three years, pursuant to RSA 328-F:23, IV:
  - A. Respondent's license suspension is lifted conditioned on the terms outlined below. If Respondent fails to meet the terms of this Consent Decree, such failure shall constitute the basis for an emergency suspension of Respondent's license pursuant to RSA 328-F:26.
  - B. Respondent agrees to the monitoring of the terms of this Consent Decree by the Employee Assistance Program (EAP) at the Lakes Region General Hospital (Hospital) or another agency or agent designated by the Board should Respondent's employment at the Hospital end.
  - C. Respondent must provide a copy of this Consent Decree to the EAP at the Hospital within 24 hours of its being approved by the Board.
  - D. Respondent must submit to random urine screens up to two times per week for at least three months. The screens shall be taken by the EAP. The screens should test for the presence of alcohol, any nonprescribed narcotic or controlled substances. The first screen must take place within 48 hours of the approval of this Agreement by the Board. After the initial three months of screens, additional screens shall be conducted by the EAP on a random and unannounced basis for the duration of the probationary period.
  - E. Respondent must obtain a LADAC evaluation within 30 days of the Board's approval of this Consent Decree and follow any and all recommendations made in that evaluation. Any recommended substance abuse services shall

commence within thirty days of the evaluation and continue for the duration of the probationary period following the initiation of treatment.

- F. Respondent must abstain from alcohol and all controlled and/or narcotic drugs except those prescribed by his primary care physician or a specialist approved by the EAP program and/or his primary care physician for the duration of the probationary period.
- G. Respondent must take all prescribed medications as ordered by his primary care physician and any specialist approved by the EAP program and/or his primary care physician for the duration of the probationary period.
- H. Respondent must obtain a mental health evaluation within thirty days of the Board's approval of this agreement and must follow any and all recommendations made in that evaluation. Any recommended mental health services shall commence within thirty days of the evaluation and continue for the duration of the probationary period following the initiation of treatment.
- I. Respondent must report to the Board on a quarterly basis for at least one year and then on a yearly basis for the duration of the probationary period to inform the Board of his progress and compliance with the terms of this Consent Decree.
- J. Respondent understands that he is responsible for any out of pocket expenses generated by any treatment or service required in this Consent Decree.
- K. Respondent agrees to allow the EAP administrator to contact the Board in order to report the recommendations obtained from the evaluations;

Respondent's progress in attending or failure to attend any recommended treatment or therapy; Respondent's compliance or lack thereof with prescribed medication; and the results of all urine screens. Respondent agrees to allow the Board, or its agent, to have contact with the professionals providing treatment, care or therapy to respondent. Releases of information accompany this Consent Decree.

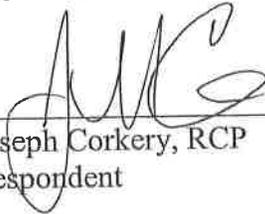
- L. Within 48 hours of the Board's approval of this Consent Decree, Respondent shall furnish a copy of the Consent Decree to any current employer for whom Respondent performs services as a respiratory therapist or work that requires a respiratory care license or directly or indirectly involves patient care, and to any agency or authority which licenses, certifies or credentials respiratory care practitioners with which Respondent is presently affiliated.
- M. From the effective date of this agreement, and throughout the probationary period, Respondent shall furnish a copy of this Consent Decree to any employer to which Respondent may apply for work as a respiratory care practitioner or for work in any capacity that 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.
- N. Respondent will notify the Board of any change in employment or change of address within 15 days of making that change.

- O. Within 15 days of securing a LADAC, Respondent will advise the Board of that person's name, address and phone number.
10. Respondent's breach of any terms or conditions of this Consent Decree shall constitute unprofessional conduct pursuant to RSA 328-F:23 and a separate and sufficient basis for further disciplinary action by the Board.
11. Except as provided herein, this Consent Decree 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.
12. All of Respondent's medical and treatment records shall be sealed by the Board, unless they are required for disciplinary purposes by the Board.
13. This Consent Decree shall become a permanent part of Respondent's file, which is maintained by the Board as a public document.
14. Respondent voluntarily enters into and signs this Consent Decree and states that no promises or representations have been made to him other than those terms and conditions expressly stated herein.
15. 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.

16. Respondent understands that his action in entering into this agreement is a final act and not subject to reconsideration or judicial review or appeal.
17. 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.
18. 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 this agreement is not accepted by the Board.
19. Respondent is not under the influence of any drugs or alcohol at the time he signs this agreement.
20. Respondent certifies that he has read this document titled Consent Decree. Respondent understands that he has the right to a formal adjudicatory hearing concerning this matter 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.
21. This Consent Decree shall take effect as an Order of the Board on the date it is signed by an authorized representative of the Board.

**FOR RESPONDENT**

Date: 8-26-04

  
\_\_\_\_\_  
Joseph Corkery, RCP  
Respondent

**FOR THE BOARD/\***

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

Date: August 26, 2004

  
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(Signature)

JAMES R. DALEY, RRT, RCP  
(Print or Type Name)  
Authorized Representative of the  
Respiratory Care Practitioner Governing Board

/\* Carl Rod, RCP, Board member, recused.

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