

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

In the Matter of:  
**Joseph Corkery, RCP**  
License No. 857  
(Adjudicatory Proceedings)

Docket No. 2004-01

**ORDER OF EMERGENCY LICENSE SUSPENSION  
AND NOTICE OF HEARING**

1. In cases where public health, safety or welfare requires emergency action, RSA 328-F:23; RSA 541-A:30, III, and New Hampshire Office of Licensed Allied Health Professionals Rule (“Ahp”) 209.02 authorize the New Hampshire Respiratory Care Practitioners Governing Board (“Board”) to suspend a license to practice pending completion of an adjudicatory proceeding. In such cases, the Board must commence a hearing not later than 10 days after the date of the emergency order. If the Board does not commence the hearing within 10 days, the suspension order shall be automatically vacated. *See*, 541-A:30, III. The Board may not continue such a hearing without the consent of the licensee to the continuation of the emergency suspension. Ahp 209.02(c). Accordingly, neither the date of the initial evidentiary hearing nor the date for concluding this proceeding shall be postponed or extended unless The Respondent agrees to continue the suspension period pending issuance of the Board’s final decision in this matter. RSA 541-A:30, III; Ahp 209.02.

2. Joseph Corkery, RCP (“The Respondent”), holds an active license, No. 857, issued on June 12, 2003, to practice respiratory care in the State of New Hampshire. The Respondent practices respiratory care at Lakes Region General Hospital in Laconia, New

Hampshire. Prior to his job in Laconia, The Respondent was employed as a respiratory care practitioner at HealthSouth in Concord, New Hampshire.

3. The Board has received information indicating that the continued practice of respiratory care by The Respondent poses a threat to public health, safety and/or welfare. This warrants the temporary suspension of The Respondent's license to practice respiratory care pending a hearing on whether permanent and/or temporary disciplinary sanctions should be imposed. An investigation was conducted and a Report of Investigation was provided to the Board.

4. In support of this Order of Emergency License Suspension and Notice of Hearing, the Board alleges the following facts:

- 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 drugs. 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 Percocet tablets. After conducting an investigation, the Concord Police proceeded with a misdemeanor theft charge against The Respondent.
- B. On April 2, 2004, The Respondent pled "nolo" (no contest) to a Class A misdemeanor charge of Theft by Unauthorized Taking in connection with the events at HealthSouth, which occurred on November 16, 2003. The 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 The Respondent obtain a LADAC evaluation and follow recommendations. A review hearing is scheduled for October 5, 2004 in the Concord District Court. The Respondent failed to notify the Board that he received this conviction.

- C. According to The Respondent's supervisor, Mr. K, on November 16, 2003, The Respondent left his shift early, telling Mr. K that he quit. Later that day, The Respondent spoke on the phone with the CEO of HealthSouth. She informed him that he was suspended from his job pending an investigation of his conduct. On November 25, The Respondent was notified over the phone by the HealthSouth Human Resources Manager that he was terminated from employment. On November 26, 2003, The Respondent provided a renewal form to the Board and responded NO to question #8, concerning limitations on employment.
- D. According the CEO of HealthSouth, their investigation revealed that Mr. Corkery had failed to fulfill his job duties and that patients had gone without respiratory care during his shifts on November 15 and 16, 2003.
- E. According to records from Concord Hospital, The Respondent went to the hospital for treatment on Nov. 22, 2003, complaining of severe

depression and suicidal thoughts. Those records reflect that The Respondent stated that he walked off his job at HealthSouth several days before and that he feared his job at HealthSouth was in jeopardy because he had been told he would have to be evaluated before returning to work. The records also reflect a self-reported history of substance abuse. A blood test taken during his stay at Concord Hospital was positive for alcohol, barbiturates, THC and cocaine. From Concord Hospital, The Respondent was sent to New Hampshire State Hospital on an Involuntary Emergency Admission. According to The Respondent, he remained at New Hampshire State Hospital for several days.

- F. The records from Concord Hospital also revealed relevant history. The Respondent had prior admissions to Concord Hospital, the New Hampshire State Hospital and Hampstead Hospital for substance abuse and mental health problems. The Respondent reported five past suicide attempts. The recorded discharge diagnosis included polysubstance abuse (opiates and benzodiazepines), depression, ADHD and bipolar disorder.
- G. After leaving employment at HealthSouth, The Respondent obtained a new job at Lakes Region General Hospital. The Respondent failed to inform the Board of his change of employment.

H. During the investigation of these allegations, The Respondent and Hearing Counsel discussed a program of counseling and supervision for The Respondent. These efforts to craft a program were unsuccessful and The Respondent is not at this time obtaining substance abuse or mental health counseling or supervision.

5. Based upon the above information, the Board finds that The Respondent's untreated substance abuse and mental health issues and his failure to report required information to the Board creates a threat to public health, safety and/or welfare. Further, the Board believes there is a reasonable basis for immediately suspending The Respondent's license on a temporary basis, and for commencing an expedited disciplinary hearing against The Respondent pursuant to RSA 326-E:8; 328-F:23; 541-A:30, III, and Ahp 209.02.

6. The purpose of the hearing will be to determine whether The Respondent has engaged in professional misconduct contrary to RSA 326-E:8; 328-F:23; and, 328-F:25; which warrants the continued imposition of a temporary license suspension, the imposition of permanent disciplinary sanctions, or both. The specific issues to be determined in this proceeding are:

A. Whether, on or about November 16, 2003, The Respondent committed professional misconduct by committing the crime of theft of controlled drugs in violation of RSA 637:3 and RSA 328-F:23, II(j).

- B. Whether, on or about April 2, 2004, The Respondent committed professional misconduct when he was convicted of Theft by Unauthorized Taking in the Concord District Court in violation of RSA 328-F:23, II(b).
- C. Whether, on or about April 2, 2004, The Respondent committed professional misconduct by failing to provide the Board with notice of his conviction as required by RSA 328-F:23, II(b).
- D. Whether, on November 26, 2003, The Respondent provided a renewal form to the Board and responded NO to question #8, concerning limitations on employment after being made aware that he was suspended and terminated from employment by HealthSouth, in violation of RSA 328-F:23, (a) and Ahp 403.01.
- E. Whether, on or about November 15 and 16, 2003, The Respondent committed professional misconduct by 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).
- F. Whether, on or about April to June of 2004, The Respondent committed professional misconduct by 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.

G. If any of the above allegations are proven, whether and to what extent, The Respondent should be subjected to one or more of the disciplinary sanctions authorized by RSA 328-F:23, IV.

THEREFORE, IT IS ORDERED, that The Respondent's New Hampshire license to practice respiratory care is immediately suspended until further order of the Board; and

IT IS FURTHER ORDERED, that an adjudicatory proceeding be commenced for the purpose of resolving the issues articulated above pursuant to RSA 328-F:23; 541-A:30, III; Ahp 209.02. To the extent that this order or the Board's rules do not address an issue of procedure, the Board shall apply the New Hampshire Department of Justice Rules, Part 800; and the New Hampshire Code of Administrative Rules.

IT IS FURTHER ORDERED, that Joseph Corkery, RCP shall appear before the Board on Tuesday, August 17, 2004 at 900 a.m., at the Board's office located at 2 Industrial Park Drive, Concord, N.H., to participate in an adjudicatory hearing and, if deemed appropriate, be subject to sanctions pursuant to RSA 328-F:23.

IT IS FURTHER ORDERED that if The Respondent elects to be represented by counsel, at The Respondent's own expense, said counsel shall file a notice of appearance at the earliest date possible; and,

IT IS FURTHER ORDERED that The Respondent's failure to appear at the time and place specified above may result in the hearing being held *in absentia*, or the imposition of disciplinary sanctions without further notice or an opportunity to be heard, or both; and,

IT IS FURTHER ORDERED that Katherine Cooper, Esquire, 33 Capitol Street, Concord, N.H., 03301 is appointed to act as Hearing Counsel in this matter with all the

authority within the scope of RSA Chapter 328 to represent the public interest. Hearing Counsel shall have the status of a party to this proceeding; and,

IT IS FURTHER ORDERED that, James R. Daley, RCP, Chairperson, or any other person whom he may designate, shall act as presiding officer in this proceeding; and

IT IS FURTHER ORDERED that any proposed exhibits, motions or other documents intended to become part of the record in this proceeding, be filed by the proponent with the Board, in the form of an original and five (5) copies, and with an additional copy mailed to any party to the proceeding, and to Senior Assistant Attorney General Suzanne Gorman, Counsel to the Board, N.H. Department of Justice, 33 Capitol Street, Concord, New Hampshire 03301. All responses or objections to such motions or other documents are to be filed in similar fashion within ten (10) days of receipt of such motion or by the date of the hearing, whichever occurs first, other document unless otherwise ordered by the Board; and,

IT IS FURTHER ORDERED that a witness and exhibit list and any proposed exhibits, pre-marked for identification only, shall be filed with the Board no later than three (3) days before the date of the hearing. The Respondent shall pre-mark his exhibits with capital letters, and Hearing Counsel shall pre-mark her exhibits with Arabic numerals; and,

IT IS FURTHER ORDERED that unless good cause exists, all motions shall be filed at least three (3) days before the date of any hearing, conference, event or deadline which would be affected by the requested relief, except any motion seeking to postpone a hearing or conference, which shall be filed at least ten (10) days before the hearing or conference in question; and,

**/\* Carl Rod, Board Member is recused**

40452

IT IS FURTHER ORDERED that the entirety of all oral proceedings be recorded verbatim by the Board. A shorthand court reporter shall be provided at the hearing or conference and such record shall be transcribed by the Board if the requesting party or agency shall pay all reasonable costs for such transcription; and,

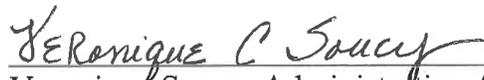
IT IS FURTHER ORDERED that all documents shall be filed with the Board by mailing or delivering them to Veronique Soucy, Administrative Assistant, N.H. Office of Licensed Allied Health Professionals, 2 Industrial Park Drive, Concord, New Hampshire 03301; and,

IT IS FURTHER ORDERED that routine procedural inquiries may be made by telephoning Veronique Soucy, Administrative Assistant, N.H. Board of Allied Health Professionals, at (603) 271-8390, but that all other communications with the Board shall be in writing and filed as provided above. *Ex parte* communications are forbidden by statute and the Board's regulations; and

IT IS FURTHER ORDERED that a copy of this Notice of Hearing shall be served upon The Respondent by hand-delivery See Ahp 207.03. A copy shall also be delivered to Hearing Counsel.

**BY ORDER OF THE BOARD/\***

Dated: August 9, 2004

  
Veronique Soucy, Administrative Assistant  
Authorized Representative of the  
New Hampshire Office of Licensed Allied Health  
Professionals and Respiratory Care Practitioners  
Governing Board