

**OHIO RESPIRATORY CARE BOARD**

77 S. HIGH STREET, 16TH FLOOR

COLUMBUS, OHIO 43215-6108

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## **OFFICIAL BOARD MEETING MINUTES OF JUNE 8, 2016**

### **REGULAR BUSINESS MEETING**

#### **MEMBERS IN ATTENDANCE (Exhibit A):**

Kenneth Walz, J.D., R.R.T., R.C.P., President

Michael C. Aquillo, Public Member

Nancy Colletti, Ph.D., R.R.T., R.C.P.

Melissa Cross, HME Member

Carol Gilligan, HME Member

Marc Mays, M.S., R.R.T., R.C.P.

Andrea Yagodich, R.R.T., R.C.P.

#### **Staff in attendance:**

Corey C. Schaal, J.D. /M.P.A., Executive Director

Marcia L. Stephenson, HME Manager

Michael S. Roever, Investigator

Traci L. McDonald, Administrative Professional I

#### **Others in Attendance:**

Wendy Marie Johnson

Cheryl Lozier, Professional Court Reporter – Anderson Reporting Services, Inc.

James M. McGovern, Esq.

Melissa Wilburn, Senior Assistant Attorney General – Office of the Ohio Attorney General

### **ADMINISTRATIVE HEARINGS (Agenda Items 1.a)**

#### **In the matter of Wendy Marie Johnson, Case #2016 ORCB 02**

The matter of Wendy Marie Johnson came before the following members of the Ohio Respiratory Care Board on June 8, 2016 at 9:07 a.m. in Room West B & C, 31st Floor of the Vern Riffe Center for Government and the Arts, 77 S. High Street, Columbus, Ohio 43215. Present were Kenneth Walz, J.D., R.R.T., R.C.P., President; Michael C. Aquillo, Public Member; Nancy Colletti, Ph.D., R.R.T., R.C.P.; Melissa Cross, HME Member; Carol Gilligan, HME Member; and Marc Mays, R.R.T., R.C.P. While present in the room, Andrea D. Yagodich, R.R.T., R.C.P. recused herself from the proceedings based upon her role as the Board's liaison to the investigatory Probable Review Committee.

Kenneth Walz, J.D., R.R.T., R.C.P. served as the Appointed Hearing Officer in this matter.

Melissa L. Wilburn, Senior Assistant Attorney General, represented the State of Ohio.

Ms. Wendy Marie Johnson appeared with her attorney, James M. McGovern, Esq., Graff & McGovern, LPA, 604 E. Rich Street, Columbus, Ohio 43215.

Cheryl Lozier was the Court Reporter, Anderson Reporting Services, Inc., 3242 West Henderson Road, Suite A, Columbus, Ohio 43220.

Preliminary matters:

Mr. Walz asked Ms. Johnson if she received the Ohio Respiratory Care Board's Notice of Opportunity for Hearing wherein she was advised of her right to be represented by an attorney. Ms. Johnson affirmed that she did receive the Ohio Respiratory Care Board's Notice of Opportunity for Hearing. Mr. Walz noted that the record would so reflect that Ms. Johnson was represented by counsel, James M. McGovern.

Mr. Walz asked the members of the Board to introduce themselves. Ms. Johnson and Mr. McGovern introduced themselves.

Mr. Walz briefly reviewed the rules of the hearing and then inquired if there were any other preliminary matters. Ms. Wilburn stated that she had spoken with Mr. McGovern prior to the hearing and Mr. McGovern had agreed to stipulate to the admissibility of State's Exhibits 1 through 5.

Ms. Wilburn gave an opening statement. Mr. McGovern gave an opening statement. The State presented its case in chief. The State called Wendy Marie Johnson, as on cross-examination. The State of Ohio moved for the admission of State's Exhibits 1 through 5. Hearing no objection from Mr. McGovern, the State's exhibits were admitted.

Mr. McGovern presented Ms. Johnson's case in chief. Ms. Johnson testified on her own behalf. Mr. McGovern presented Deborah Duff and Bernard C. O'Reilly as witnesses via telephone. Mr. McGovern moved for the admission of Respondent's exhibits A through I. Hearing no objection from Ms. Wilburn, the Respondent's exhibits were admitted.

Ms. Wilburn gave a closing statement. Mr. McGovern gave a closing statement. The hearing concluded at 11:36 a.m.

### **DELIBERATION IN QUASI-JUDICIAL SESSION**

#### **Agenda item 4.a: Deliberation in Private Session – Wendy Marie Johnson (Case #2016 ORCB 02)**

Mr. Walz announced that the Board would be entering into quasi-judicial session for deliberations concerning the matter of Wendy Marie Johnson (Case#2016 ORCB 02). The session started at 11:39 a.m. and concluded at 12:04 p.m. Ms. Yagodich was excused from participating in the quasi-judicial session.

### **CALL REGULAR MEETING TO ORDER**

Mr. Walz called the meeting to order at 1:14 pm. Mr. Walz requested role be taken by Ms. Yagodich who served as Acting Secretary. In attendance is as follows: Mr. Walz, Mr. Aquillo, Ms. Cross, Dr. Colletti, Ms. Gilligan, Mr. Mays and Ms. Yagodich. Absent, Mr. Pavlak and Dr. Sasidhar. Mr. Walz thanked Ms. Yagodich for stepping in as the Secretary for this Board Meeting.

#### **Agenda item 2: Adoption of Proposed Meeting Agenda (Exhibit B)**

Mr. Walz requested a motion to approve the agenda.

**Motion # 1:** Mr. Mays moved to approve the proposed agenda. Dr. Colletti seconded the motion. Motion carried: 6 – 0, Mr. Aquillo abstained. Ms. Yagodich reported that all Board members were present with the exception of Mr. Pavlak and Dr. Sasidhar.

#### **Agenda item 3: Approval of Prior Meeting Minutes (Exhibit C)**

Mr. Walz requested a motion to approve the prior meeting minutes.

**Motion # 2:** Ms. Cross moved to adopt the meeting minutes from April 20, 2016. Mr. Mays seconded the motion. The motion carried: 6 – 0, Mr. Aquillo, abstained.

## OFFICER AND STAFF REPORTS

### **Agenda item 6.a: President's Report**

Mr. Walz discussed that he will be meeting with Director Schaal the beginning of July to discuss his performance. Mr. Walz requested that anyone who wished to contact him to provide input should note the Sunshine Laws and Rules. Mr. Schaal had previously sent an Ohio Supreme Court opinion, *White vs. King*, to the Board. Ms. Wilburn read part of the syllabus. Revised Code §121.22 prohibits any private, prearranged discussion of public business, by a majority of the members of a public body, regardless of whether the discussion occurs face to face, telephonically, by video conference or electronically by email, text, tweet or other form of communication. Ms. Wilburn also added that she has had the question raised regarding snapchat and she stated that yes, that it is also included. Ms. Wilburn indicated someone can submit information to the Board President and someone else may submit information, but you cannot have a discussion about it and you can't have a round robin discussion. Ms. Wilburn also stated that while the members may wish to embrace all the forms of technology that we are now accustomed to using, it is clear that you cannot defeat public meeting restrictions by picking a brand new technology that is not necessarily spelled out in the statute.

Ms. Wilburn stated that to enter executive session a roll call vote, by majority of the members of the board, is required. Technically you should name the provision of ORC §121.22 that permits you to go into executive session, to discuss discipline of a public employee or discipline of a licensee. Anything you make a decision about, you must then vote in your public session.

### **Agenda item 6.b: Executive Director's Report (Exhibit D)**

Director Schaal introduced Mr. Aquillo to the board members. Mr. Aquillo gave a brief synopsis of his background. He is Vice President with an electric co-op out in Union County and has been with them for 16 years. Mr. Aquillo is involved in several local community boards. He has two children and lives in Powell, Ohio.

Director Schaal gave the Board an update on the IT assessment. The office is scheduled to have "Loaner Computers" put in place on June 23, 2016. This is part of what all the State Agencies are going through where they are basically taking everything off of our desktops and cleansing them and reimagining. IT will be in our office in the evenings, going through and making it a bit more uniform and secure. This was scheduled for the last week of June, the funding is through DAS and terminates at the end of this fiscal year. In checking with the Licensing Examiner, this should not be a problem or interfere with Renewals due to the work being done after the office is closed.

The office is getting a new computer to replace the Investigator's old model. Director Schaal was able to push back the lease on the Board's copier until after renewals. The Board will not be going with a color model or one that has a built in fax capability. Most agencies lease machines for 3 years and then for another 3 years after that is up. Director Schaal did find that it will be more cost effective to do a 5 year lease right from the start and this would decrease the cost per copy. Our new copier will be coming in on July 29 and the old will be going out the same day.

Director Schaal sent letters, after the last board meeting, to the Chair of the Board of Trustees, President and the Administrators at Eastern Gateway Community College. As was discussed at the last Board meeting, the school had decided to end their program and cut the staff down to one person to maintain the program for this one upcoming year. Director Schaal did expressing concerns with their intent to eliminate their Respiratory Therapy Program and to do it in a way that could jeopardize their CoARC Accreditation. Under our law, this could possibly jeopardize the Board's ability to give licenses to those students. Director Schaal reported that Eastern Gateway Community College has made the decision to maintain full staff at the college through May of 2017.

Pursuant to law, the Board asks applicants for the full 9-digits of their social security numbers. However, for the life of the office, the staff have only imputed the last 4 numbers into the state's eLicense system. We are required to ask for the full 9-digits for issues involving child support and for reporting to the National Practitioner Data Bank. In order to restrict access to the full 9-digits of the SSN's down, our office only utilized the last 4 digits. For all new license applications, as of July, staff are going to be required to enter the full 9-digit. All other Boards have used the 9-digits. Director Schaal is working to ensure that the staff do not have to go back through the previous licenses that only having 4 digits in eLicense to ensure it will work with the new system. DAS and Mike Miller, the Boards and Commissions eLicense liaison, are verifying that our Board will not have kinks in the system when the change comes.

Director Schaal reported that the General Assembly's Sunset Review Committee has come up with some recommendations that were recently reported in the newspapers. The Committee is proposing to eliminate one board and to merge several others. This would still have to be put into legislation, but it is the first time such a proposal has made it this far. The Motor Vehicle Repair Board would be eliminated. The Barber Board would merge with the Cosmetology Board and the Optical Dispensers Board would merge with the Optometry Board.

Director Schaal brought to the Board's attention a request for a medical waiver of the RCCE requirement. In the past, the former Director, Christopher Logsdon, would decide if this was acceptable and now the current Director would like the Board's opinion as to whether this practice should continue. Mr. Walz expressed the belief that the Board would prefer to have the request brought before them to make the decision.

Director Schaal included a Budget Overview in his materials to the Board. The total budget for the Board for FY 2016 is \$548,587.00 with current total expenses of \$494,775.51, total encumbrances of \$6,703.08 and a balance of \$83,108.41.

The Board has had a healthy increase in our revenues since we've gotten into renewals. We will be encumbering some funds to cover the expense for the credit card processing of license renewals. As of June 1, 2016, we had 4,900 licensees active in renewal and 3,361 had renewed.

### **Agenda item 6.c: HME Manager's Report (Exhibit E)**

Marcia Stephenson, HME Manager, shared with the board that since the last meeting the staff has approved 10 HME License application and 26 Respiratory Care Registration Applications. There are 10 Applications pending. Inspection schedules have been sent out to the inspectors, most have been returned; she is still waiting on dates from some inspectors. As of May 27, 2016, the HME License division had collected \$214,280.00 for the fiscal year 2016.

The renewal process is underway and going smooth. The larger organizations give the most feedback. The accredited facilities are renewing at a much faster pace than the non-accredited facilities. Additionally, there have been steady stream of licenses changing over to certificates of registration. Mr. Mays inquired about the spreadsheet that show the inspections that are scheduled and ones that remain to be scheduled.

**Motion # 3:** President Walz entertained a motion to approve the President's Report, Executive Director's Report and HME Manager's Report. Ms. Gilligan moved and Ms. Yagodich seconded the motion. Motion carried: 7 – 0.

## ADMINISTRATIVE HEARINGS (Agenda Items 1.b)

### **In the matter of Dennis Warren Pope, Case #2016 ORCB 11**

The matter of Dennis Warren Pope came before the following members of the Ohio Respiratory Care Board on June 8, 2016 at 2:03 p.m. in Room West B & C, 31st Floor of the Vern Riffe Center for Government and the Arts, 77 S. High Street, Columbus, Ohio 43215. Present were Kenneth Walz, J.D., R.R.T., R.C.P., President; Michael C. Aquillo, Public Member; Nancy Colletti, Ph.D., R.R.T., R.C.P.; Melissa Cross, HME Member; Carol Gilligan, HME Member; and Marc Mays, R.R.T., R.C.P. While present in the room, Andrea D. Yagodich, R.R.T., R.C.P. recused herself from the proceedings based upon her role as the Board's liaison to the investigatory Probable Review Committee.

Kenneth Walz, J.D., R.R.T., R.C.P. served as the Appointed Hearing Officer in this matter.

Melissa L. Wilburn, Senior Assistant Attorney General, represented the State of Ohio.

Dennis Pope did not appear for the hearing.

Cheryl Lozier was the Court Reporter, Anderson Reporting Services, Inc., 3242 West Henderson Road, Suite A, Columbus, Ohio 43220.

Preliminary matters:

Mr. Walz noted that Mr. Pope had failed to attend the hearing. Mr. Walz asked the members of the Board to introduce themselves.

Mr. Walz briefly reviewed the rules of the hearing and then inquired if there were any other preliminary matters. Ms. Wilburn stated that there were none.

Ms. Wilburn gave an opening statement. The State presented its case in chief. The State called Michael Roever, the Board's Investigator, as a witness. The State of Ohio moved for the admission of State's Exhibits 1 through 8. With no objections, the State's exhibits were admitted.

Ms. Wilburn gave a closing statement and the hearing concluded at 2:52 p.m.

## DELIBERATION IN QUASI-JUDICIAL SESSION

### **Agenda item 4.b: Deliberation in Private Session – Dennis Warren Pope (Case #2016 ORCB 11)**

Mr. Walz announced that the Board would be entering into quasi-judicial session for deliberations concerning the matter of Dennis Warren Pope (Case #2016 ORCB 11). The session started at 2:52 p.m. and concluded at 2:57 p.m. Ms. Yagodich was excused from participating in the quasi-judicial session.

**FINDINGS OF FACT, CONCLUSIONS OF LAW & ORDER OF THE BOARD**

**Agenda item 5.a: In the matter of Wendy Marie Johnson, Case #2016 ORCB 2 (Exhibit F)**

The Ohio Respiratory Care Board

**Adjudication Order**

Wendy Marie Johnson  
3796 Stonesthrow Court E  
Hilliard, OH 43026

THE MATTER OF WENDY MARIE JOHNSON CAME BEFORE THE FOLLOWING MEMBERS OF THE OHIO RESPIRATORY CARE BOARD ON JUNE 8, 2016 AT 9:07 A.M. IN ROOMS WEST B & C, 31ST FLOOR OF THE VERN RIFFE CENTER FOR GOVERNMENT AND THE ARTS, 77 S. HIGH STREET, COLUMBUS, OHIO 43215. PRESENT WERE KENNETH C. WALZ, J.D., R.R.T., R.C.P., PRESIDENT; MICHAEL C. AQUILLO; NANCY COLLETTI, PH.D., R.R.T., R.C.P.; MELISSA B. CROSS; CAROL A. GILLIGAN; AND MARC K. MAYS, R.R.T., R.C.P., M.S.A.

KENNETH C. WALZ, J.D., R.R.T., R.C.P. SERVED AS THE APPOINTED HEARING OFFICER IN THIS MATTER.

MELISSA L. WILBURN, SENIOR ASSISTANT ATTORNEY GENERAL, REPRESENTED THE STATE OF OHIO.

MS. WENDY MARIE JOHNSON APPEARED WITH HER ATTORNEY, JAMES M. MCGOVERN, ESQ., GRAFF & MCGOVERN, LPA, 604 E. RICH STREET, COLUMBUS, OHIO 43215.

CHERYL LOZIER WAS THE COURT REPORTER, ANDERSON REPORTING SERVICES, INC., 3242 WEST HENDERSON ROAD, SUITE A, COLUMBUS, OHIO 43220.

**Preliminary matters:** Mr. Walz asked Wendy Marie Johnson (hereafter, Ms. Johnson) if she received the Ohio Respiratory Care Board's Notice of Opportunity for Hearing wherein she was advised of her right to be represented by an attorney. Ms. Johnson affirmed that she did receive the Ohio Respiratory Care Board's Notice of Opportunity for Hearing. Mr. Walz asked Ms. Johnson if she had counsel present with her today. Ms. Johnson affirmed that she was represented by counsel, Mr. James M. McGovern. Mr. Walz noted that the record would so reflect her acknowledgement and the presence of Mr. McGovern.

Other preliminary matters: Melissa L. Wilburn, SAAG, stated she talked with Mr. McGovern prior to the hearing and Mr. McGovern had agreed to stipulate to the admissibility of State's Exhibits 1 through 5. Mr. McGovern confirmed this stipulation.

***State's Exhibits admitted:***

1. Notice of Opportunity for Hearing
2. Request for Hearing
- 3-A. First Scheduling Letter
- 3-B. Second Scheduling Letter
4. Indictment
5. Entry for Intervention in Lieu of Conviction

Witnesses called by the State:

1. Wendy Marie Johnson

Mr. McGovern stated that he talked with Melissa L. Wilburn, SAAG, prior to the hearing and Ms. Wilburn had agreed to stipulate to the admissibility of Respondent's Exhibits A through I. Ms. Wilburn confirmed this stipulation.

***Respondent's Exhibits admitted:***

- A. Letter of Support from Mark and Annette Gnatowski
- B. Letters of Commendation and Recognition from OhioHealth
- C. 2014 & 2015 Annual Performance Reviews from OhioHealth
- D. Franklin County Adult Probation Progress Notes Summary
- E. OhioHealth Job Description for Registered Respiratory Therapist and Continuing Education Transcript Report
- F. Treatment Summary from Foundations Family Counseling
- G. Intervention in lieu of conviction evaluation from Netcare Forensic Center
- H. Treatment Summary from Second Chance Counseling Center
- I. Attendance Records for Aftercare program at Second Chance Counseling Center

Witnesses called by the Respondent:

1. Wendy Marie Johnson, appearing on her own behalf.
2. Deborah Duff, Riverside Methodist Hospital (via phone)
3. Bernard C. O'Reilly, Second Chance Counseling Center (via phone)

### **FINDINGS OF FACT**

Upon consideration of all the evidence presented and the testimony of the witnesses, the Board makes the following FINDINGS OF FACT:

- A. Ms. Johnson was issued a Notice of Opportunity for Hearing in compliance with Section 119.07 of the Revised Code.
- B. Ms. Johnson did request a hearing before the Ohio Respiratory Care Board.
- C. The Ohio Respiratory Care Board finds that Ms. Johnson was properly notified of the date, time, and place of the hearing.
- D. The Board finds that on or about July 6, 2015, in Franklin County Court of Common Pleas Case Number 14 CR 005714, Ms. Johnson pled guilty to two counts of Possession of Drugs to wit: Marijuana and Cocaine, each a felony of the fifth degree, in violation of § 2925.11 of the Ohio Revised Code, and were found eligible for Intervention in Lieu of Conviction.
- G. The Board finds the following as mitigating facts:
  - a. A lengthy record of personal and professional commendations;
  - b. Evidence of successfully fulfilling the requirements of Intervention in Lieu of Conviction programming;
  - c. Documentation of good work evaluations prior to and subsequent to entering pleas of guilt;
  - d. Testimony of support offered by Ms. Johnson's supervisor.

### **CONCLUSIONS OF LAW**

Upon consideration of the findings of fact and a review of Chapter 4761 of the Revised Code, the Ohio Respiratory Care Board makes the following CONCLUSIONS OF LAW:

1. Ohio Revised Code §4761.09 states in pertinent part:
  - (A) The Ohio respiratory care board may refuse to issue or renew a license or a limited permit, may issue a reprimand, may suspend or permanently revoke a license or limited permit, or may place

a license or limited permit holder on probation, on any of the following grounds:

- (1) A plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for an offense involving moral turpitude or of a felony, in which case a certified copy of the court record shall be conclusive evidence of the matter;
2. Rule 4761-11-03 (A) of the Ohio Administrative Code states:
  - (A) Any licensee or permit holder found by the board to be in violation of section 4761.09 of the Revised Code may be reprimanded, placed on probation or have his license or permit suspended, refused for renewal, or revoked by the board. In addition, the board may fine violators as provided for in division (A)(6) of section 4761.03 of the Revised Code, not less than one hundred dollars nor more than one thousand dollars.
3. Based upon a preponderance of the evidence, the Ohio Respiratory Care Board concludes that Ms. Johnson pled guilty and received a judicial finding of eligibility for intervention in lieu of conviction for a felony.
4. The Board finds by a preponderance of the evidence that Count I of the Board's Notice of Opportunity for Hearing is TRUE.
5. Pursuant to Section 4761.09 of the Ohio Revised Code, it is within the Board's discretion to refuse to issue a license or, after issuance of a license may issue a reprimand, may suspend or permanently revoke a license, or may place a license holder on probation based upon the Board's finding that Ms. Johnson pled guilty and received a judicial finding of eligibility for intervention in lieu of conviction for a felony.

### **ORDER OF THE BOARD**

THEREFORE, it is ordered, adjudged, and decreed by the Ohio Respiratory Care Board that:

In consideration of these findings and conclusions, the Board hereby places Wendy Marie Johnson on PROBATION with this Board for a period of three years beginning on the effective date of this Order of the Board.

The following provisions apply to Wendy Marie Johnson:

- A. For the term of probation imposed by the Board, Wendy Marie Johnson shall obey all federal, state and local laws, and all rules governing the practice of respiratory care in Ohio. Any arrest, criminal charge, citation, guilty or no contest plea, criminal jury verdict, conviction or treatment in lieu of conviction for any crime other than a minor misdemeanor traffic offense after the effective date of this order shall constitute a violation of an Order of the Board.

- B. Wendy Marie Johnson shall not use or possess illegal drugs or consume alcohol or other intoxicating substances.
- C. Wendy Marie Johnson shall not use or possess prescription drugs, except those prescribed, dispensed or administered to her by another so authorized by law. Any use of a prescription drug in a manner or dosage inconsistent with a physician's prescription will constitute a violation of this Order.
- D. Wendy Marie Johnson shall submit to unannounced random drug and alcohol testing at least four (4) times each year in the manner prescribed by the Board. Wendy Marie Johnson shall pay for such testing. If such drug test evidences the use of alcohol, illegal or non-prescribed prescription drugs, it shall be deemed a violation of this Order. A failure to submit to a drug screen upon request, or a submission of any adulterated OR diluted toxicology result, shall constitute a positive screen for the purposes of this Order. It is the responsibility of the respondent to have a working phone number with messaging system on file with the Board. Failure to do so will be a violation of this Order. A request from the Board's Executive Director, Investigator, or designated alcohol and drug screening service to provide a drug screen shall constitute an authorized drug screen request for the purpose of this Order.

The Order of the Board shall become effective upon the date of mailing of the Order.

**Motion # 4:**

MARC MAYS MOVED FOR FINDINGS OF FACT. MELISSA CROSS SECONDED THE MOTION. MOTION PASSED (AYE – 6/ NO – 0/ ABSTAINED – 1 (ANDREA YAGODICH)).

**Motion # 5:**

MARC MAYS MOVED FOR CONCLUSIONS OF LAW. MICHAEL AQUILLO SECONDED THE MOTION. MOTION PASSED (AYE – 6/ NO – 0/ ABSTAINED – 1 (ANDREA YAGODICH)).

**Motion # 6:**

MARC MAYS MOVED FOR THE ORDER OF THE BOARD. MICHAEL AQUILLO SECONDED THE MOTION. MOTION PASSED (AYE – 6/ NO – 0/ ABSTAINED – 1 (ANDREA YAGODICH)).

SO ORDERED

This Board hereby certifies that the above language is incorporated into the Board's journal in this case.

**Agenda item 5.b: In the matter of Dennis Warren Pope, Case #2016 ORCB 11 (Exhibit G)**

The Ohio Respiratory Care Board

Adjudication Order

Dennis Warren Pope  
2290 Yarmouth Ct.  
Lexington, KY 40504

THE MATTER OF DENNIS WARREN POPE CAME BEFORE THE FOLLOWING MEMBERS OF THE OHIO RESPIRATORY CARE BOARD ON JUNE 8, 2016 AT 2:03 P.M. IN ROOMS WEST B & C, 31ST FLOOR OF THE VERN RIFFE CENTER FOR GOVERNMENT AND THE ARTS, 77 S. HIGH STREET, COLUMBUS, OHIO 43215. PRESENT WERE KENNETH C. WALZ, J.D., R.R.T., R.C.P., PRESIDENT; MICHAEL C. AQUILLO; NANCY COLLETTI, PH.D., R.R.T., R.C.P.; MELISSA B. CROSS; CAROL A. GILLIGAN; AND MARC K. MAYS, R.R.T., R.C.P., M.S.A.

KENNETH C. WALZ, J.D., R.R.T., R.C.P. SERVED AS THE APPOINTED HEARING OFFICER IN THIS MATTER.

MELISSA L. WILBURN, SENIOR ASSISTANT ATTORNEY GENERAL, REPRESENTED THE STATE OF OHIO.

DENNIS WARREN POPE DID NOT APPEAR FOR THE HEARING

CHERYL LOZIER WAS THE COURT REPORTER, ANDERSON REPORTING SERVICES, INC., 3242 WEST HENDERSON ROAD, SUITE A, COLUMBUS, OHIO 43220.

**Preliminary matters:** There were no preliminary matters addressed by the State.

***State's Exhibits admitted:***

1. Notice of Opportunity for Hearing
2. Hearing Schedule Letter
3. Dennis Pope's Initial License Application
4. Verification of State License from Kentucky
5. Verification of State License from Louisiana
6. Verification of State License from Mississippi
7. Verification of State License from Florida
8. Letter to the Board from Dennis Pope

Witnesses called by the State:

1. Michael S. Roever, Ohio Respiratory Care Board Investigator

***Respondent's Exhibits admitted:***

None.

Witnesses called by the Respondent:

None.

### **FINDINGS OF FACT**

Upon consideration of all the evidence presented and the testimony of the witness, the Board makes the following FINDINGS OF FACT:

- A. Mr. Pope was issued a Notice of Opportunity for Hearing in compliance with Section 119.07 of the Revised Code.
- B. Mr. Pope did request a hearing before the Ohio Respiratory Care Board.
- C. The Ohio Respiratory Care Board finds that Mr. Pope was properly notified of the date, time, and place of the hearing.
- D. The Board finds that Mr. Pope had his license to practice respiratory care suspended in Mississippi for charting treatments done that were not and patient abandonment.

### **CONCLUSIONS OF LAW**

Upon consideration of the findings of fact and a review of Chapter 4761 of the Revised Code, the Ohio Respiratory Care Board makes the following CONCLUSIONS OF LAW:

6. Ohio Revised Code §4761.04(A)(1) states in pertinent part:

(B) Except as provided in division (B) of this section, no person is eligible for licensure as a respiratory care professional unless the person has shown, to the satisfaction of the Ohio respiratory care board, all of the following:

- (2) That the person is of good moral character;

7. Ohio Revised Code §4761.09(A)(5) and (7) states in pertinent part:

- (A) The Ohio respiratory care board may refuse to issue or renew a license or a limited permit, may issue a reprimand, may suspend or permanently revoke a license or limited permit, or may place a license or limited permit holder on probation, on any of the following grounds:
- (5) Being guilty of negligence or gross misconduct in the practice of respiratory care;
  - (7) Engaging in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public;
8. The Board finds by a preponderance of the evidence that Count I, Count II and Count III of the Board's Notice of Opportunity for Hearing are TRUE.
9. Pursuant to Section 4761.09 of the Ohio Revised Code, it is within the Board's discretion to refuse to issue a license or, after issuance of a license may issue a reprimand, may suspend or permanently revoke a license, or may place a license holder on probation based upon the Board's finding that Mr. Pope did not show to the satisfaction of the Board that he is of good moral character; was guilty of negligence or gross misconduct in the practice of respiratory care, and engaged in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public

### **ORDER OF THE BOARD**

THEREFORE, it is ordered, adjudged, and decreed by the Ohio Respiratory Care Board that:

In consideration of these findings and conclusions, the Board hereby REFUSES to issue Dennis Warren Pope a license to practice as a respiratory care professional in the state of Ohio.

The Order of the Board shall become effective upon the date of mailing of the Order.

**Motion # 7:**

CAROL GILLIGAN MOVED FOR FINDINGS OF FACT. MARC MAYS SECONDED THE MOTION. MOTION PASSED (AYE – 6/ NO – 0/ ABSTAINED – 1 (ANDREA YAGODICH)).

**Motion # 8:**

MARC MAYS MOVED FOR CONCLUSIONS OF LAW. MICHAEL AQUILLO SECONDED THE MOTION. MOTION PASSED (AYE – 6/ NO – 0/ ABSTAINED – 1 (ANDREA YAGODICH)).

**Motion # 9:**

MARC MAYS MOVED FOR THE ORDER OF THE BOARD. MELISSA CROSS SECONDED THE MOTION. MOTION PASSED (AYE – 6/ NO – 0/ ABSTAINED – 1 (ANDREA YAGODICH)).

SO ORDERED

This Board hereby certifies that the above language is incorporated into the Board's journal in this case.

**PROBABLE REVIEW COMMITTEE (PRC) REPORT (Exhibits H & I)**

**Agenda item 8.a: Open Investigation Status Report**

**Motion #10:** Mr. Mays moved to enter Executive Session for the purpose of considering the investigation of charges or complaints against licensees under R.C. 121.22(G)(1) and which involves matters that are required to be kept confidential under R.C. 149.43(A)(2) and R.C. 4761.03(E) and 4752.08 (B). Mr. Aquillo seconded the motion. Discussion: None. Roll Call vote:

Kenneth Walz -	Yes	Michael Aquillo -	Yes
Dr. Nancy Colletti -	Yes	Marc Mays -	Yes
Melissa Cross -	Yes	Carol Gilligan -	Yes
Andrea Yagodich -	Yes	Steven Pavlak -	Absent
Dr. Madhu Sasidhar -	Absent		

Motion carried: 7 – 0

The Board entered executive session at 3:09 p.m. and returned to regular, public session at 3:20 p.m. As a member of the Probable Review Committee, Ms. Yagodich excused herself from participating in this portion of the meeting. Aside from the remaining Board members, also present during executive session were Director Schaal, Mr. Roever and Ms. Wilburn.

*\*Names and identifying information were redacted from discussion and from proposed consent agreements during the course of executive session deliberation and the public meeting. Matters were referred to only by case number in documentation and referenced by case number verbally. Identifying information based upon the correlating case number was added during the writing of the minutes after approval of the proposed consent agreements through a motion on the record during public session.*

In public session, the Board took the following actions:

**Agenda item 8.b.: Approval of Consent Agreements (Exhibits J, K, L, M & N)**

**Motion # 11:** Mr. Mays made a motion to approve the following Consent agreements, Dr. Colletti seconded the motion. Discussion: None. Motion carried: 6 – 0. Ms. Yagodich, abstained.

2015-ORCB-08  
2015-ORCB-13  
2015-ORCB-23  
2015-ORCB-26  
2015-ORCB-27

**Agenda item 8.c-1.: Approval of Notices of Opportunity for Hearing (Exhibits O & P)**

**Motion # 12:** Mr. Mays made a motion to approve the following Notices of Opportunity for Hearing, Mr. Aquillo seconded the motion. Discussion: None. Motion carried: 6 – 0. Ms. Yagodich, abstained.

2015-ORCB-14  
2015-ORCB-18

**Agenda item 8.c-2.: Dismissal of Notices of Opportunity for Hearing**

**Motion # 13:** Mr. Mays made a motion to dismiss the following previously approved Notices of Opportunity for Hearing. Dr. Colletti seconded the motion. Discussion: None. Motion carried: 6 – 0. Ms. Yagodich, abstained.

2015-ORCB-05  
2015-ORCB-06

**Agenda item 8.d: Closed Case Review**

**Motion # 14:** Mr. Mays made a motion, Dr. Colletti seconded the motion. Discussion: None. Motion carried: 6-0.  
2016-ORCB-23

**Agenda item 8.e: Probation Compliance Report**

**Motion #15:** Mr. Mays moved to approve the Probation Compliance Report. Mr. Aquillo seconded the motion. Discussion: None. Motion carried: 6 – 0. Ms. Yagodich, abstained.

**COMMITTEE REPORTS**

**Agenda item 7.a: HME Committee Report**

Ms. Gilligan indicated that the committee reviewed and approved the HME Licenses and Certificates of Registrations and noted that a number of HME facilities moved from HMER to HMEL. The committee noted that Ms. Stephenson and Director Schaal have made significant strides in reducing the number of outstanding license inspections. Director Schaal also shared with the committee that the Board is talking with 3 potential candidates to have one join the ranks of our contract HME inspectors. Director Schaal indicated that we may extend a contract with a current inspector who hasn't been able to take too many jobs recently, but may be able to handle some in the Central Ohio area. Director Schaal is working on an inspector complaint and will have an update at our next meeting. Ms. Stephenson indicated that the HME Renewal Process has been running smoothly and a number of individuals have commented positively on the availability of renewing online. Ms. Cross brought to the committee's attention an Inspector General's report which indicates that in the competitive bid-process for Medicare 63 out of 147 companies are not appropriately licensed in their jurisdictions. This report provided information on the macro level and additional information will be shared with the Board in the future regarding whether any companies in Ohio fall into this category of inappropriate licensure. Finally, there is an ADA lawsuit that is being floated in the HME community claiming that HME company websites are not ADA compliant. However, the federal government does not plan to set ADA standards for websites tentatively

until 2019. Ms. Gilligan wishes this issue to be raised with our Senior Assistant Attorney General to see if the Board should provide guidance to our HME licensees.

### **Agenda item 7.b: Education Committee Report**

Dr. Colletti indicated the committee would like to move forward on setting specific minimum education standards or guidelines for respiratory care programs based upon ORC §4761.03(A)(3). The committee would like to follow the same format that the Board followed in making the change to requiring the RRT credential for initial licensure. The goal would be to form a broad committee of interested party including educators and managers and invite the national groups to the table, such as CoARC. This is in response to the guidelines for associate and bachelor degrees set by the Ohio Department of Higher Education. The committee would also like to set what being in good standing means for students seeking a limited permit. One of the responses commonly heard at the education meeting held earlier in the year at the Fawcett Center was that educators would like to see a proposal come from the Board. Lastly, there is interested in having a needs assessment done of employers to see if there is still a need for the student limited permit.

**Motion #16:** Ms. Cross moved to approve the Education Committee Report and the HME Committee Report. Ms. Yagodich seconded the motion. Discussion: None. Motion carried: 6 – 0. Ms. Yagodich, abstained.

## **OLD BUSINESS**

### **Agenda item 9.a: Legislative Update (Exhibit Q)**

Director Schaal provide the Board with an update on Amended Substitute House Bill 483 which modifies the state's laws pertaining to the Ohio Department of Developmental Disabilities. Specifically, the bill had been amended in the Senate to provide that rules adopted pursuant to §5123.41 to 5123.45 and section 5123.452 would be done so in consultation with the Ohio Respiratory Care Board and the Ohio Society for Respiratory Care. These provisions deal with the provision of health-related activities to people receiving services from the Department.

## **NEW BUSINESS**

### **Agenda item 10.a: Acknowledgement of RCP Licenses and Limited Permits issued since the last meeting (Exhibit R)**

**Motion #17:** Mr. Mays moved to ratify respiratory care professional licenses and limited permits issued on the following dates:

Respiratory Care Professional Licenses and Limited Permits issued between 4/8/2016 – 5/27/2016.

Dr. Colletti seconded the motion. Discussion: None. Motion carried 6 - 0.

### **Agenda item 10.b: Acknowledgement of Home Medical Equipment Licenses and Certificates of Registration (Exhibit S)**

**Motion #18:** Mr. Mays moved to ratify HME licenses and certificates of registration issued on the following dates:

Home Medical Equipment Licenses and Certificates of Registration issued between 4/8/2016 – 5/27/2016.

Ms. Cross seconded the motion. Discussion: None. Motion carried: 6 – 0.

**FOR THE GOOD OF THE BOARD**

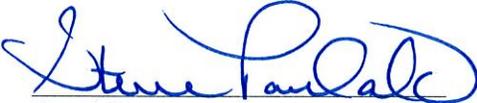
Mr. Walz asked if anyone had any other matters for the good of the Board. There was no further discussion.

**ADJOURNMENT**

Mr. Walz asked if there was any other business to bring before the Board.

Hearing none, Mr. Walz adjourned the meeting at 4:34 p.m.

Board Secretary's Certification: These are a true account of the proceedings in accordance with Section 121.11 of the Ohio Revised Code, approved by a majority of a quorum of the membership of the Board on August 10, 2016.

  
Board Secretary

  
Witness