

BEFORE THE ARIZONA STATE BOARD OF  
RESPIRATORY CARE EXAMINERS

2019 APR 16 AM 11 05

1  
2 In the Matter of: )  
3 )  
4 **PHILLIP NELSON, RCP** ) **CASE NO. 2019-RCE-0046**  
5 Holder of License No. **011570** ) **CONSENT AGREEMENT AND**  
6 For the Practice of Respiratory Care ) **NON-DISCIPLINARY ORDER**  
7 In the State of Arizona )  
8 )

CONSENT AGREEMENT

RECITALS

9 In the interest of a prompt and judicious settlement of the above-captioned matter before  
10 the Arizona State Board of Respiratory Care Examiners ("Board"), and in the interest of  
11 protecting the people of the State of Arizona, consistent with the statutory requirements and  
12 responsibilities of the Board pursuant to A.R.S. § 32-3501, *et seq.* and A.R.S. § 41-1092.07  
13 (F)(5), Phillip Nelson, RCP ("Respondent"), holder of license number 011570 to practice  
14 respiratory care in the State of Arizona, and the Board enter into the following Consent  
15 Agreement for Findings of Fact, Conclusions of Law, and Non-Disciplinary Order for  
16 Continuing Education and Civil Penalty ("Consent Agreement") as the final disposition of this  
17 matter.

18 1. Respondent has the right to consult with an attorney prior to entering into this  
19 Consent Agreement. Respondent has read and understands this Consent Agreement as set forth  
20 herein, and has had the opportunity to discuss this Consent Agreement with an attorney or has  
21 waived the opportunity. Respondent voluntarily enters into this Consent Agreement for the  
22 purpose of avoiding the expense and uncertainty of an administrative hearing.

23 2. Respondent understands that he has a right to a public administrative hearing  
24 concerning each and every allegation set forth in the above-captioned matter, at which time  
25 Respondent could present evidence and cross-examine witnesses. By entering into this Consent  
26 Agreement, Respondent freely and voluntarily relinquishes all rights to such an administrative

1 hearing, as well as all rights of rehearing, review, reconsideration, appeal, judicial review, or  
2 any other administrative, and/or judicial action concerning the matters set forth herein.  
3 Respondent affirmatively agrees that this Consent Agreement shall be irrevocable and any  
4 modifications to this original document are ineffective and void unless mutually approved by  
5 the parties in writing.

6 3. Respondent agrees that the Board may adopt this Consent Agreement or any part  
7 of this agreement under A.R.S. §§ 32-3552 and 32-3553. Respondent understands that the  
8 Board may consider this Consent Agreement or any part of it in any future disciplinary action  
9 against him.

10 4. Respondent understands that this Consent Agreement does not constitute a  
11 dismissal or resolution of other matters currently pending before the Board, *if any*, and does not  
12 constitute any waiver, express or implied, of the Board's statutory authority or jurisdiction  
13 regarding any other pending or future investigation, action, or proceeding.

14 5. All admissions Respondent makes in this Consent Agreement are made solely  
15 for the final disposition of case numbers 2019-RCE-0046, and any related administrative  
16 proceedings or civil litigation involving the Board and Respondent. Respondent further  
17 understands that acceptance of the Consent Agreement does not preclude any other agency,  
18 subdivision, or officer of this state from instituting other civil or criminal proceedings with  
19 respect to the conduct that is the subject of this Consent Agreement.

20 6. Respondent acknowledges that it is the Board's position that if this matter  
21 proceeded to formal hearing, the Board could likely establish sufficient evidence to support a  
22 conclusion that certain of Respondent's conduct constituted unprofessional conduct under  
23 A.R.S. § 32-3552 and A.A.C. R4-45-214. Therefore, Respondent has agreed to enter into this  
24 Consent Agreement as an economical and practical means of resolving the issues associated  
25 with the Board's investigation.

26 7. The Consent Agreement shall be subject to approval by the Board and shall be

1 effective only when signed by the Executive Director and accepted by the Board. In the event  
2 that the Board does not approve this Consent Agreement, it is withdrawn and shall be of no  
3 evidentiary value and shall not be relied upon nor introduced in any action by any party. The  
4 parties agree that if the Board rejects this Consent Agreement and this case proceeds to hearing,  
5 Respondent shall assert no claim that the Board was prejudiced by its review and discussion of  
6 this document or any other records relating thereto.

7 8. Respondent understands that this Consent Agreement is a public record that may  
8 be publicly disseminated as a formal action of the Board.

9 9. Respondent understands that any violation of this Consent Agreement could be  
10 grounds for further disciplinary action by the Board pursuant to A.A.C. R4-45-214(3).

11  
12 DATED: 4/11/19 SIGNED: [Signature]  
13 RCP Phillip Nelson, Respondent  
14

15 **FINDINGS OF FACT**

16 2. The Arizona State Board of Respiratory Care Examiners is the duly constituted  
17 agency for licensing and regulating of the practice of respiratory care in the State of Arizona and  
18 has jurisdiction over Respondent as a licensee of the Board and the subject matter pursuant to  
19 A.R.S. § 32-3501, *et seq.*

20 2. Phillip Nelson, RCP, is the holder of License Number 011570, which enables him  
21 to practice respiratory care in the State of Arizona.

22 3. Respondent was selected for a Continuing Education Audit pursuant to A.A.C.  
23 R4-45-208. Respondent did <sup>PM</sup> [redacted] comply with the Board's request for the Continuing Education  
24 Audit on or before the date specified in the audit notice and submitted <sup>22.5 PM</sup> [redacted] hours of approved  
25 Continuing Education Units to the Board. Respondent <sup>PM</sup> was unable to produce documentation  
26 showing he had obtained <sup>two PM</sup> [redacted] hours of approved continuing education as required by law and

PROFESSIONAL PM  
ETHICS

that per  
^

1 failed to demonstrate compliance with the continuing education requirement mandated for  
2 Respondent's last renewal period.

3 CONCLUSIONS OF LAW

4 1. The conduct described in the Findings of Fact constitute grounds for disciplinary  
5 action pursuant to A.R.S. §§ 32-3552(A)(1) and (3) and violate the provisions of A.R.S. § 32-  
6 3501(9)(i) which states, "Any conduct or practice which is contrary to recognized standards of  
7 ethics of the respiratory therapy profession or any conduct or practice which does or might  
8 constitute a danger to the health, welfare or safety of the patient or the public."

9 2. The conduct described in the Findings of Fact constitute grounds for disciplinary  
10 action pursuant to A.R.S. §§ 32-3552(A)(1) and (3) and violate the provisions of A.R.S. § 32-  
11 3501(9)(k), which states, "Violating or attempting to violate, directly or indirectly, or assisting in  
12 or abetting the violation of or conspiring to violate a provision of this chapter."

13 3. The conduct described in the Findings of Fact constitute grounds for disciplinary  
14 action pursuant to A.R.S. §§ 32-3552(A)(1) and (3) and violate the provisions of A.A.C. R4-45-  
15 214 (2) which states, "Procuring or attempting to procure by fraud or misrepresentation a license  
16 or renewal of a license to practice respiratory care."


17 ORDER

18 **IT IS HEREBY ORDERED THAT** Phillip Nelson, RCP, holder of License No. 011570  
19 shall be subject to the following:

20 1. Respondent shall pay a non-disciplinary **CIVIL PENALTY** of \$25.00 per  
21 missing continuing education hour in the total amount of **FIFTY AND 00/100 DOLLARS**  
22 **(\$50.00)** for failing to complete two (2) continuing education hours within the required renewal  
23 period. This Civil Penalty shall be paid to the Arizona State Board of Respiratory Care  
24 Examiners by no later than **NINETY (90) DAYS** from the effective date of this Order. If  
25 Respondent is experiencing a financial hardship that requires payment of the Civil Penalty in  
26 increments or an extension of the Civil Penalty due date, please contact the Board offices at

1 (602) 542-5995 to make alternative arrangements NO LATER THAN THIRTY (30) DAYS from  
2 the effective date of this Order.

3 2. Respondent shall submit **TWENTY (2) HOURS** of approved continuing  
4 education no later than **NINETY (90) DAYS** from the effective date of this Order. All costs  
5 associated with complying with the terms of this Order are to be paid by Respondent. These  
6 continuing education units shall be in addition to the normal continuing education units required  
7 for the current license renewal period

8  
9  ARIZONA STATE BOARD OF RESPIRATORY CARE  
10 SEAL  
11 \_\_\_\_\_  
12 Jack Confer, Executive Director  
13 DATED THIS 16<sup>th</sup> DAY OF APRIL, 2019.

14 Original Consent Agreement for Findings  
15 of Fact, Conclusions of Law and Non-  
16 Disciplinary Order filed this  
16<sup>th</sup> day of April, 2019 with the:

17 Arizona Board of Respiratory Examiners  
18 1740 West Adams Street, Suite 3406  
19 Phoenix, AZ 85007

20 Copy of the foregoing sent by electronic  
21 and regular mail this 16<sup>th</sup> day  
22 of April, 2019 to:

23 Phillip Nelson, RCP  
24 Address on Record  
25 \_\_\_\_\_  
26