

BEFORE THE IOWA BOARD OF
RESPIRATORY CARE EXAMINERS

IN THE MATTER OF:) CASE NO. 05-001
SUSAN M. CONNOR,) DIA NO. 06DPHRC002
Respondent)
) FINDINGS OF FACT,
) CONCLUSIONS OF LAW,
) DECISION AND ORDER

On January 23, 2006, the Iowa Board of Respiratory Care Examiners (Board) filed a Statement of Charges against Susan M. Connor (Respondent) alleging that Respondent:

Count I: Violated Iowa Code sections 147.55(4), 152B.12, 272C.10(4)(2005) and 645 IAC 263.2(10) and 263.2(6)(b) and (7) by excessive use of drugs which impaired Respondent's ability to practice with reasonable skill and safety.

Count II: Violated Iowa Code sections 272C.9, 272C.10(4)(2005) and 645 IAC 263.2(19) and 263.2(6), by failing to comply with a Board Order for Evaluation resulting in the grounds for the evaluation being established.

Count III: Violated 645 IAC 263.2(15) by failing to report criminal convictions within 30 days.

The Circumstances supporting the Statement of Charges were provided in a confidential attachment. On February 6, 2006, a Notice of Hearing was issued scheduling the hearing for April 24, 2006.

The hearing was held on April 24, 2006 at 12:40 p.m. at the Lucas State Office Building, Fifth Floor Conference Room, Des Moines, Iowa. Respondent appeared by telephone and was self-represented. Assistant Attorney General John Baty represented the state of Iowa. The following Board members served as the presiding officers for the hearing: Kerry George, RRT, Board Chair; Robert Zeman, RRT; Kathelene Semke, RRT; and Craig Bainbridge, MD. The hearing was closed to the public at Respondent's request, pursuant to Iowa Code section 272C.6(1). The hearing was recorded by a certified court reporter. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing.

At the close of the state's case, the Board granted the state's Motion to Dismiss Count II. Following the hearing, the Board convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f), for deliberations. The administrative law judge was instructed to prepare the Board's Findings of Fact, Conclusions of Law, Decision and Order, in conformance with their deliberations.

THE RECORD

The record includes the testimony of the witnesses and the following exhibits:

State Exhibit 1:	Notice of Hearing
State Exhibit 2:	Statement of Charges
State Exhibit 3:	Confidential Attachment
State Exhibit 4:	Proof of Service, exhibits 1-3
State Exhibit 5:	"Passport"
State Exhibit 6:	Confidential Order for Evaluation
State Exhibit 7:	Proof of Service for Exhibit 6
State Exhibit 8:	Narrative re: Personal Service
State Exhibit 9:	Postponement of Evaluation
State Exhibit 10:	Dr. Rios' Evaluation, 1/28/06
State Exhibit 11:	Dr. Rios' Memo, 4/19/06
State Exhibit 12:	Letter, 4/7/05 (Burt to Board)
State Exhibit 13:	Investigation Report
State Exhibit 14:	Personnel Record
State Exhibit 15:	Charges, Dispositions, and Sentences
State Exhibit 16:	645 IAC 263.2

FINDINGS OF FACT

1. On August 8, 2003 Respondent was issued license number 306-01933 to practice respiratory care in the state of Iowa. Respondent's license lapsed on March 31, 2006. (Testimony of Marilyn Ubaldo; State Exhibit 5)

2. Covenant Health Systems employed Respondent as a respiratory care practitioner from August 2003 until March 21, 2005. On March 20, 2005, Respondent was scheduled to work from 11:00 p.m. until 7:00 a.m. the next morning. At approximately 2:45 a.m., employees reported that Respondent was missing. At approximately 3:30 a.m., three employees found Respondent passed out on a bench in the front entryway of the hospital. The employees tried to wake Respondent, but she appeared dazed, had

trouble sitting up, and kept losing her balance. Respondent was taken immediately to the hospital's emergency room for drug and alcohol testing. Respondent tested positive for methamphetamines and cocaine, and the test results were later confirmed by an independent laboratory. A bottle of Ativan was found in Respondent's smock pocket. Respondent's locker was searched, and several new syringes, an empty zip lock baggie, and a zip lock baggie with a small amount of white powder was found in her pants' pocket.

The police had been called when Respondent was reported missing, and a police report was prepared. Covenant Health System terminated Respondent's employment on March 21, 2005 for patient abandonment and being under the influence of and in possession of illegal substances, including substances wrongfully obtained from the hospital, while at work. Covenant Health System reported the termination to the Board. (Testimony of Darby Matteson; State Exhibits 12, 13, 14)

3. The Board's investigator interviewed Respondent on September 23, 2005. Respondent admitted that she had taken methamphetamine before reporting to work on March 21, 2005. When Respondent arrived at work she was feeling very shaky and she decided to take some Ativan to try to calm down. Respondent used her ID to access the PYXIS system and to remove a bottle of Ativan. Respondent took a drink out of the bottle and then began experiencing decreased pulse and blood pressure and eventually passed out. Respondent denied consuming any cocaine but speculated that the methamphetamine may have contained some cocaine. (Testimony of Darby Matteson; State Exhibit 13, p. 3)

4. On November 10, 2005, the Board issued Respondent a Confidential Order for Evaluation. The Confidential Order was eventually personally served on Respondent on November 21, 2005. Respondent did not report for the substance abuse evaluation until January 28, 2006. Respondent admitted a long history of drug use and relapse following prior inpatient and outpatient treatment. She was diagnosed with methamphetamine dependence and marijuana and alcohol abuse. The evaluator, Dr. Tonita Rios, recommended residential substance abuse treatment, followed by a structured aftercare program. (Testimony of Darby Matteson; Tonita Rios, Ph.D, CADC; State Exhibits 6-10)

5. Respondent entered residential chemical dependency treatment at ASAC in Cedar Rapids on March 24, 2006 and was scheduled to graduate from the program on April 26, 2006. Respondent's first urinalysis when she entered treatment was

positive for marijuana but her subsequent urine tests have all been negative. The treatment program recommends that Respondent enter a halfway house or short-term intensive outpatient program after completing inpatient treatment. The treatment program also recommends a complete neuropsychological evaluation to diagnose possible cognitive deficits secondary to methamphetamine abuse. It was further recommended that Respondent continue to be monitored through urinalysis and that she live in a drug-free environment. In the opinion of Dr. Rios, Respondent needs to follow all recommendations made by the treatment program before she will be safe to return to the practice of respiratory care. Respondent reports that she plans to continue treatment at either Pathways or Horizon, depending on her insurance coverage. (Testimony of Dr. Tonita Rios; Shannon Melsha; Respondent; State Exhibit 11)

6. On May 20, 2005, Respondent was convicted in Black Hawk District Court of Contempt of Court, a simple misdemeanor. On September 22, 2005, Respondent was convicted in Black Hawk District Court of Theft in the Fifth Degree, also a simple misdemeanor. Respondent did not report these convictions to the Board. (Testimony of Darby Matteson; Marilyn Ubaldo; State Exhibit 15)

CONCLUSIONS OF LAW

Count I

Iowa Code section 147.55(4) (2005) provides, in relevant part:

A license to practice a profession shall be revoked or suspended when the licensee is guilty of any of the following acts or offenses:

...

4. Habitual intoxication or addiction to the use of drugs.

Accord, Iowa Code section 272C.10(4) (2005).

Iowa Code section 152B.12 provides that the board may suspend, revoke or impose probationary conditions upon a license issued pursuant to the rules adopted in accordance with section 152B.6.

645 Iowa Administrative Code (IAC) 263.2 provides, in relevant part:

645-263.2(152B,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in rule 645-263.3(147,272C) when the board determines

that the licensee is guilty of any of the following acts or offenses:

...

263.2(6) Habitual intoxication or addiction to the use of drugs.

...

b. The excessive use of drugs which may impair a licensee's ability to practice with reasonable skill and safety.

263.2(7) Obtaining, possessing, attempting to obtain or possess, or administering controlled substances without lawful authority.

The preponderance of the evidence established that Respondent violated Iowa Code sections 147.55(4), 272C.10(4)(2005) and 645 IAC 263.2(6)(b) and 263.2(7). Respondent is currently unable to practice as a respiratory care practitioner with reasonable skill and safety due to her history of drug use and relapse following treatment, as well as her recent use of illegal drugs while working as a respiratory care practitioner and her misappropriation of a controlled substance from her workplace.

Count III

645 IAC 263.2(15) provides:

645-263.2(152B,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in rule 645-263.3(147,272C) when the board determines that the licensee is guilty of any of the following acts or offenses:

...

263.2(15) Failure to notify the board of a criminal conviction within 30 days of the action, regardless of the jurisdiction where it occurred.

The preponderance of the evidence established that Respondent violated 645 IAC 263.2(15) when she failed to report two criminal convictions, Contempt of Court and 5th Degree Theft, to the Board.

Sanction

The Board considered the disciplinary sanctions listed in 645 IAC 263.3 and the relevant factors outlined at 645 IAC 263.4. Under the circumstances, the Board has no option but to indefinitely suspend Respondent's license to practice respiratory care until she can establish, by a preponderance of

the evidence, that the reasons for the suspension no longer exist and that it is in the public interest for her license to be reinstated. 645 IAC 11.31.

DECISION AND ORDER

IT IS THEREFORE ORDERED that license number 306-01933 issued to Respondent Susan Connor is hereby **INDEFINITELY SUSPENDED**.

IT IS FURTHER ORDERED that Respondent's license suspension will continue until Respondent establishes, through a reinstatement proceeding, that the basis for the suspension no longer exists, and it is in the public interest for her license to be reinstated. An initial application for reinstatement may not be made until two years has elapsed from the date of this Decision and Order. In addition, before the Board will consider an application for reinstatement, Respondent must establish:

- a. Full compliance with the aftercare recommendations made by Dr. Rios and ASAC, including but not limited to completion of intensive outpatient treatment or a halfway house program and regular attendance at Alcoholics Anonymous (AA) or Narcotics Anonymous (NA).
- b. Completion of a neuropsychological evaluation to exclude any cognitive deficits that would interfere with her ability to practice the profession of respiratory therapy in a safe manner.
- c. Twenty-four months of sobriety confirmed by a record of random drug testing administered at least semi-monthly.

FINALLY, IT IS ORDERED that the Respondent shall pay a \$75.00 hearing fee and the \$90.00 fee for the court reporter. The \$165.00 shall be paid within thirty (30) days of receipt of this decision. If a transcript is ordered, the cost will be charged to the party requesting it. Iowa Code section 272C.6(6); 645 IAC 11.23.

This findings of fact, conclusions of law, decision and order are approved by the board on May 31, 2006.

Any appeal to the district court from a decision in a contested case shall be taken within 30 days from the date of issuance of

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the decision by the board. Iowa Code section 17A.19; 645 IAC
11.29.