

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS

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No. 16-I-870

IN THE MATTER OF:

KIMBERLY AUSTEN MCCONKEY, LRT
Applicant

**CONSENT ORDER FOR
ISSUANCE OF LICENSE ON
PROBATION**

This matter is before the Louisiana State Board of Medical Examiners (the "Board") on the application of Kimberly Austen McConkey ("Ms. McConkey") for a license to practice as a licensed respiratory therapist ("LRT") in this state. While a review of the materials submitted in support of her application indicate that she satisfies the educational and other requirements necessary for licensure consideration, Ms. McConkey was unable to pass the entry level credentialing examination offered by the NBRC within her first four (4) attempts, however subsequently she did successfully pass the examination. Further, after completing her educational program, she was issued a Louisiana Permit from July 22, 2015 through January 22, 2016 and submitted documentation of satisfactory employment as a respiratory therapist at Lane Regional Medical Center during that time period. In addition, she was issued a license in Mississippi as a Respiratory Care Practitioner in July 2016. Due to extraordinary family medical issues during the past year, Ms. McConkey has petitioned the Board to waive the failed attempts and to grant her a license so that she can practice in Louisiana. After review of the pertinent documents, the Board is persuaded that the public is adequately protected by the issuance of her license under a probationary status.

As evidenced by her subscription hereto, Ms. McConkey acknowledges the substantial accuracy of the foregoing information and that proof of such information upon administrative evidentiary hearing could establish sufficient cause for the rejection or denial of her application for licensure as a respiratory therapist in this state or such other action as the Board may deem appropriate, pursuant to the Louisiana Respiratory Therapy Practice Act, La. Rev. Stat. §37:3358.¹ and the Board's rules respecting respiratory therapists, La. Adm. C. 46XLV.2536.²

In consideration of this finding the Board has concluded that its responsibility to ensure the health, safety and welfare of the citizens of this state, pursuant to La. Rev. Stat. §§37:3351, *et seq.*, will be effectively served by entry of the Order set forth hereinafter by consent.

¹ Pursuant to La. Rev. Stat. 37:3358A. (19), the Board may refuse to issue, suspend or revoke a license to practice respiratory therapy as the result of: 'Violations of any rules and regulations of the board or any provisions of this Chapter.'

² Pursuant to La. Adm. C. 46XLV.2536. 'A. An applicant who failed to obtain a passing score upon taking the entry level credentialing examination offered by the NBRC four times shall be ineligible for licensure under this Chapter.'

Recognizing her right to have administrative adjudication of the above charges, at which time she would be entitled to be represented by legal counsel, to call witnesses and to present evidence on her own behalf in defense or in mitigation of the charges made and to a decision thereon by the Board based upon written findings of fact and conclusions of law, pursuant to La. Rev. Stat. §§49:951, *et seq.*, Ms. McConkey, nonetheless, hereby waives her right to notice of charges, formal adjudication and written decision and, pursuant to La. Rev. Stat. §49:955(D), consents to entry of the Order set forth hereinafter. Moreover, by her subscription hereto, Ms. McConkey also waives any right to which she may be entitled pursuant to the Louisiana Administrative Procedure Act³ or which otherwise may be afforded to her by law, to contest her agreement to or the force and effect of this document in any court or before any judicial or administrative agency or body, relating to the matters referred to herein. By her subscription hereto, Ms. McConkey also hereby authorizes the Investigating Officer designated by the Board with respect hereto to present this Consent Order to the Board for its consideration and to fully disclose to and discuss with the Board the nature and results of the investigation, and she waives any objection to such disclosures under La. Rev. Stat. §49:960. Furthermore, Ms. McConkey expressly acknowledges that the disclosure of information to the Board by the Investigating Officer shall be without prejudice to the Investigating Officer's authority to pursue any Administrative Complaint filed against her or to the Board's capacity to adjudicate such Complaint, should the Board decline to approve this Consent Order. Accordingly, in consideration of the foregoing, and pursuant to the authority vested in the Board by La. Rev. Stat. §37:3358 and La. Rev. Stat. §49:955D;

IT IS ORDERED that a license is hereby issued **on probation** for a minimum of one (1) year to Kimberly Austen McConkey to practice as a licensed respiratory therapist in the state of Louisiana, subject to her acceptance of and strict compliance with the following terms and conditions:

1. **Board Approval of Medical Practice.** Following the effective date of this Order and for the duration of the probationary period, Ms. McConkey shall provide the Board with information including a complete and accurate description, name and contact information of her practice setting and her immediate supervisor, and such further information as the Board may request, concerning any practice setting in which Respondent intends to practice. Ms. McConkey shall not engage in the practice of respiratory therapy in any practice setting in advance of the Board's specific written approval of such practice setting, and in any unsupervised setting.
2. **Notification of Order; Reports from Supervisors; Authorization.** Prior to beginning or returning to work, Ms. McConkey shall provide a copy of this Consent Order to each hospital, clinic, facility, physician or other employer or prospective employer at which or for whom she provides respiratory therapy care in this state. Thereafter, Ms. McConkey shall authorize and cause the supervisor, or another designee approved by the Board, to submit to the Board quarterly written reports of his/his determination concerning Ms. McConkey's professional competence as derived from such monitoring. In addition, upon request of the Board's probation officer, Ms. McConkey shall immediately execute and

³ La. Rev. Stat. §49:951, *et seq.*

provide, as may be necessary, authorization to obtain any and all peer review records or other employment records pertaining to her from any hospital, institution, physician or other health care entity where she is employed.

3. **Monitoring of Practice.** Ms. McConkey shall remain under monitoring until such time as the Board has received no less than four (4) consecutive quarterly reports attesting to the fact that her practice is in accordance with good respiratory therapy practice and the prevailing standards of care.
4. **Probation Monitoring Fee.** For each year of the probationary term, Ms. McConkey shall pay the Board a probation monitoring fee of Three Hundred (\$300.00) Dollars. Payment of the initial fee shall be due not later than sixty (60) days from the effective date of this Order. All subsequent annual payments shall be due on or before the anniversary date of the initial fee payment.
5. **Self-Reporting of Violations.** Ms. McConkey shall immediately self-report in writing to the probation officer any violation of or failure to adhere to the terms, conditions or restrictions of this order. Furthermore, Ms. McConkey shall immediately self-report in writing any personal action or inaction which constitutes a violation of the Act, and any and all investigations, inquiries, charges, convictions, or disciplinary actions taken by any local, state or Federal agency, or any institution of facility.
6. **Cooperation with Board's Probation and Compliance Officer.** Ms. McConkey shall immediately notify the Board's Probation and Compliance Officer of any change in her current home and professional addresses and telephone numbers and she shall direct all matters required pursuant to this Consent Order to the attention of the Probation and Compliance Officer, with whom she shall cooperate on all matters and inquiries pertaining to her compliance with the terms and conditions of this Consent Order.
7. **Absence from State/Practice/Effect on Probation.** Should Ms. McConkey at anytime during the period of probation ordered herein be absent from the state of Louisiana, relocate to and/or take up residency in another state or country, or discontinue practicing as a respiratory therapist for a period of thirty (30) days or more, she will so advise the Board in writing. In such instance, the probationary period ordered herein shall be deemed interrupted and extended for no less than the period of time during which she was not engaged in practice or was absent from the state of Louisiana; however, all terms and conditions may continue to be in effect as ordered or may be modified or altered as needed at the Board's discretion.
8. **Term of Probation/ Certification of Compliance/ Personal Appearance.** The probation term of this Order shall, at a minimum, remain in effect for one (1) year or for such longer period as the Board may, in its sole discretion, deem appropriate. At least sixty (60) days prior to the conclusion of the probationary period imposed herein, Ms. McConkey shall provide the Board with an affidavit certifying that she has complied with each of the terms of probation imposed by this Order and she shall contact the Board and

arrange for a personal appearance before the Board or its designee at its meeting preceding the expiration of her probationary period. The probationary period and all of its terms and conditions shall be, and shall be deemed to be, extended and continued in full force and effect pending Ms. McConkey's compliance with the requirements of this provision.

9. **Effect of Violation/Sanction/Resolution.** By her subscription hereto Ms. McConkey acknowledges that her receipt of written notification that the Board has received apparently reliable information which indicates her failure to comply with the requirements set forth by this Order in any respect, shall, without the need for formal hearing or for providing her with any right to which she may otherwise be entitled pursuant to the Louisiana Administrative Procedure Act, La. Rev. Stat. §§49:951, *et seq.*, or which otherwise may be afforded to her by law, constitute her irrevocable consent to the immediate suspension of her license to practice respiratory therapy in this state by the Board pending the final resolution of an administrative hearing and issuance of a final decision by the Board with respect to the information made the basis of such report or acceptance of a revised Consent Order.

IT IS FURTHER ORDERED that any violation of strict compliance with any of the terms or conditions of this Order by Ms. McConkey shall, upon proof of such violation or failure, be deemed adequate and sufficient cause for the suspension or revocation of Ms. McConkey's license to practice respiratory therapy in the state of Louisiana or for such other disciplinary action as the Board may deem appropriate, as if such violations were enumerated among the causes provided in La. Rev. Stat. §37:3358.

IT IS FURTHER ORDERED that this Consent Order shall be, and shall be deemed to be, a public record.

Signed at New Orleans, Louisiana, and effective this 5th day of DECEMBER 2016.

LOUISIANA STATE BOARD
OF MEDICAL EXAMINERS

BY: 

J. MICHAEL BURDINE, M.D.
President

STATE OF LOUISIANA


PARISH OF E. Baton Rouge

**ACKNOWLEDGMENT
AND CONSENT**

I, KIMBERLY AUSTEN MCCONKEY, LRT, hereby acknowledge, approve, accept and consent to entry of the above and foregoing Order, this 18 day of October 2016.


KIMBERLY AUSTEN MCCONKEY, LRT

WITNESSES:


Signature

Barbara Prather
Printed Name

1121 Church St.
Address

Zachary, LA 70791
City, State, Zip Code

Cathy Causey
Signature

Cathy Causey
Printed Name

1121 Church St.
Address

Zachary, LA 70791
City, State, Zip Code

Sworn to and subscribed before me this 18 day of October, 2016, in the presence of the two stated witnesses.


Notary Public (Signature and Seal)

Cindy L. Delatte #53065
Printed Name/Notary or Bar Number



OFFICIAL SEAL
CINDY L. DELATTE
NOTARY ID # 53065
STATE OF LOUISIANA
PARISH OF EAST FELICIANA
My Commission is for Life