

# Louisiana State Board of Medical Examiners

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	:	<b>No. 09-I-257</b>
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<b>In The Matter Of</b>	:	
	:	<b>STIPULATION AND</b>
	:	<b>AGREEMENT FOR</b>
<b>JEFFERY CARROLL MCELVEEN, CRT.</b>	:	<b>VOLUNTARY SURRENDER</b>
<b>(Certificate No. CRT.LT0958)</b>	:	<b>OF RESPIRATORY THERAPY</b>
	:	<b>LICENSE</b>
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This *Stipulation and Agreement* is made by Jeffery Carroll McElveen, CRT ("Mr. McElveen"), a certified respiratory therapist who at all times material to the facts and matters alleged herein is licensed by the Louisiana State Board of Medical Examiners (the "Board") to engage in the provision of respiratory therapy in the state of Louisiana, as evidenced by Certificate No. CRT.LT0958

1. *Acknowledgment and Stipulations.* Mr. McElveen hereby acknowledges, stipulates and agrees that:

- (a) On or about June 25, 2009, Mr. McElveen pled guilty to one count of Health Care Fraud, 18 U.S.C §1347.<sup>1</sup> Thereafter on October 28, 2009, Mr. McElveen was sentenced to eighteen (18) months in prison, three (3) years of supervised probation, thereafter, and a fine of two hundred thousand (\$200,000) dollars.
- (b) The charge against Mr. McElveen is based on allegations that between April 2004 and August 2005, Mr. McElveen, his company Positive Home Oxygen, LLC, and Dr. Robert Cleveland defrauded the Medicare program by seeking reimbursement from Medicare for motorized wheelchairs for patients that did not have a medical necessity for motorized wheelchairs.
- (c) In addition to the guilty plea, on June 25, 2009, Mr. McElveen entered into an Exclusion Agreement with the Office of Inspector General for the United States

<sup>1</sup> June 24, 2009 Correspondence from Patrice Harris Sullivan, Asst United States Attorney, Jeffery McElveen, and Jeffery Baird, counsel for Mr. McElveen, filed into the record of *USA v. Jeffery C. McElveen*, 2:09-cr-00128, USDC E.D. La., Doc. #28, on June 25, 2009.

Department of Health and Hospitals whereby Mr. McElveen agreed to be permanently excluded, pursuant to 42 U.S.C. §1320a-7(a)(1) and 42 U.S.C. §1320a-7(b)(7), from Medicare, Medicaid, and all other Federal health care programs. While excluded, no Federal health care program shall pay anyone for items or services, including administrative and management services, furnished, ordered, or prescribed by Mr. McElveen in any capacity and Mr. McElveen shall not submit or cause to be submitted to any Federal health care program any claim or request for payment for items or services, including administrative and management services, furnished, ordered, or prescribed by Mr. McElveen.

- (d) By law, pursuant to the Louisiana Respiratory Therapy Practice Act, La. Rev. Stat. §37:3352, *et seq.*, and the Louisiana Administrative Procedure Act, La. Rev. Stat. §§49:951, *et seq.*, Mr. McElveen would be entitled, prior to final disciplinary action against his respiratory therapist license, to have notice of the allegations and charges asserted against him and to administrative adjudication of such charges, pursuant to La. Rev. Stat. §§49:951 *et seq.* At such hearing, Mr. McElveen would be entitled to be represented by legal counsel, to call witnesses and to present evidence on his 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.*

2. *Voluntary Surrender of License.* Notwithstanding his right to notice of formal charges, administrative hearing and a decision thereon, as provided by La. Rev. Stat. §§49:951 *et seq.*, in recognition of the stipulations set forth hereinabove, and in lieu of the continued prosecution of formal administrative proceedings, Mr. McElveen hereby voluntarily surrenders to the Board for cancellation his license to provide respiratory therapy in the state of Louisiana, as evidenced by Certificate No. CRT.LT0958. By his subscription hereto, Mr. McElveen also hereby authorizes the Investigating Officer designated by the Board with respect hereto to present this Stipulation to the Board for its consideration and to fully disclose to and discuss with the Board the nature and results of the investigation, and he waives any objection to such disclosures under La. Rev. Stat. §49:960.

3. *Effect of Voluntary Surrender of License.* Mr. McElveen acknowledges, stipulates and agrees that the voluntary surrender of his respiratory therapy license effected hereby in the presence of an administrative investigation shall have and shall be deemed by the Board to have, the same effect as if the Board had entered an order of revocation upon the conclusion of formal administrative proceedings. Further, Mr. McElveen acknowledges, stipulates and agrees that as a result of the voluntary surrender of Mr. McElveen's respiratory therapy license effected hereby that reinstatement of his license to practice respiratory therapy in the state of Louisiana shall be at the sole discretion of the Board and upon whatever probationary terms, conditions and restrictions that it may then determine to be appropriate. In addition, Mr. McElveen's acknowledges, stipulates and agrees that no request for reinstatement shall be considered by the Board until and unless the passage of five (5) years from the effective date of this Order and Mr. McElveen has: (1) demonstrated clinical competency through assessment at a program or facility approved by the Board and successfully completed any recommended remediation or training; and (2) scheduled and met with the Investigating Officer to discuss his then-current status and plans.

4. *Termination of Proceedings.* By the voluntary surrender of his respiratory therapy license, and the attendant dismissal of the investigation occasioned hereby, Mr. McElveen, moreover, acknowledges, stipulates and agrees that he hereby waives any right to which he may be entitled pursuant to the Louisiana Administrative Procedure Act, La. Rev. Stat. §§49:951 *et seq.*, or which otherwise may be afforded to him by law to contest his agreement to or the force and effect of this document in any court or other forum relating to the matters referred to herein.

5. *Advice of Counsel.* Mr. McElveen acknowledges that he has had the opportunity to seek the advice and guidance of legal counsel with respect to this Stipulation and that all of the terms, conditions, restrictions and limitations contained herein have been explained to him and/or that he fully understands them.

6. *Public Record.* Mr. McElveen acknowledges, stipulates and agrees that this Stipulation and Agreement for Voluntary Surrender of Medical License shall be and shall be deemed to be a Public Record.

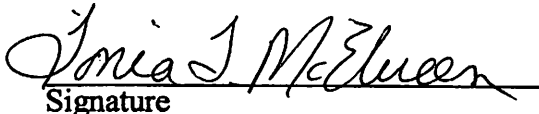
*Stipulation and Agreement Follow on Next Page*

**STIPULATION  
AND AGREEMENT**

I, JEFFERY CARROLL MCELVEEN, CRT, hereby acknowledge, approve, accept, stipulate, agree and consent to entry of the above and foregoing this 11 day of February, 2011.

  
JEFFERY CARROLL MCELVEEN, CRT

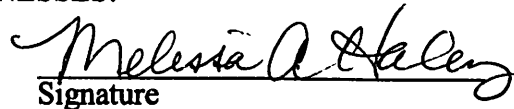
**WITNESSES:**

  
Signature

Tonja T. McElveen  
Typed Name

39174 Forest Hills DR  
Address

Franklinton, LA 70438  
City/State/Zip Code

  
Signature

Melissa A. Haley  
Typed Name

1215 Washington Street  
Address

Franklinton, LA 70438  
City/State/Zip Code

Sworn to and subscribed before me at Franklinton, Louisiana, this 11 day of February, 2011, in the presence of the two stated witnesses.

  
Notary Public (signature and seal)

NOTARY PUBLIC  
STATE OF LOUISIANA  
COMMISSION EXPIRES 12/31/2011

Printed Name/Notary # COMMISSION #001177

**ACCEPTANCE**

CONSIDERING THE ABOVE AND FOREGOING, the Stipulation and Agreement for Voluntary Surrender of Medical License is hereby **APPROVED AND ACCEPTED** by the Louisiana State Board of Medical Examiners, this 14 day of March, 2011, effective immediately.

**LOUISIANA STATE BOARD  
OF MEDICAL EXAMINERS**

BY: Mark H. Dawson MD  
Mark H. Dawson, M.D.  
*President*