

1 **BEFORE THE ARIZONA STATE BOARD OF**
2 **RESPIRATORY CARE EXAMINERS**

3 In the Matter of:) **CASE NO. 2019-RCE-0284**
4)
5 **SAMANTHA MESSER, RCP**) **CONSENT AGREEMENT AND**
6 Holder of License No. **011329**) **NON-DISCIPLINARY ORDER**
7)
8 For the Practice of Respiratory Care)
9 In the State of Arizona)
10 _____)

11 **CONSENT AGREEMENT**

12 **RECITALS**

13 In the interest of a prompt and judicious settlement of the above-captioned matter before
14 the Arizona State Board of Respiratory Care Examiners (“Board”), and in the interest of
15 protecting the people of the State of Arizona, consistent with the statutory requirements and
16 responsibilities of the Board pursuant to A.R.S. § 32-3501, *et seq.* and A.R.S. § 41-1092.07
17 (F)(5), Samantha Messer, RCP (“Respondent”), holder of license number 011329 to practice
18 respiratory care in the State of Arizona, and the Board enter into the following Consent
19 Agreement for Findings of Fact, Conclusions of Law, and Non-Disciplinary Order for
20 Continuing Education and Civil Penalty (“Consent Agreement”) as the final disposition of this
21 matter.

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

2. Respondent understands that he/she has a right to a public administrative hearing
concerning each and every allegation set forth in the above-captioned matter, at which time
Respondent could present evidence and cross-examine witnesses. By entering into this Consent
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 her.

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-0284, 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
13 DATED: 10-15-19

14 SIGNED: Samantha Messer
RCP Samantha Messer, Respondent

15
16 **FINDINGS OF FACT**

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

21 2. Samantha Messer, RCP, is the holder of License Number 011329, which enables
22 him/her to practice respiratory care in the State of Arizona.

23 3. Respondent was selected for a Continuing Education Audit pursuant to A.A.C.
24 R4-45-208. Respondent did not comply with the Board's mandate to complete and/or provide
25 proof that they had completed 20 hours of approved Continuing Education Units to within the
26 prior their prior renewal time frame. Respondent was unable to produce documentation showing
they had obtained TWO (2) hour(s) of approved continuing education as required by law.

1 Respondent has failed to demonstrate compliance with the continuing education requirement
2 mandated for 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** Samantha Messer, RCP, holder of License No.
19 011329 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)** for failing to complete 2 continuing education hours within the required renewal period.
23 This Civil Penalty shall be paid to the Arizona State Board of Respiratory Care Examiners by no
24 later than **NINETY (90) DAYS** from the effective date of this Order. If Respondent is
25 experiencing a financial hardship that requires payment of the Civil Penalty in increments or an
26 extension of the Civil Penalty due date, please contact the Board offices at (602) 542-5995 to

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

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



ARIZONA STATE BOARD OF RESPIRATORY CARE

Jack Confer, Executive Director

DATED THIS ____ DAY OF _____, 2019.

13
14 Original Consent Agreement for Findings
15 of Fact, Conclusions of Law and Non-
16 Disciplinary Order filed this
____15th____ day of October, 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 15th day
22 of October 2019 to:

23 Samantha Messer, RCP
24 Address on Record
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