

**STATE OF CONNECTICUT  
DEPARTMENT OF PUBLIC HEALTH  
BUREAU OF REGULATORY SERVICES**

In re: James Duke, R.T.

Petition No. 960514-026-002

**CONSENT ORDER**

WHEREAS, James Duke, R.T., of East Windsor, Connecticut (hereinafter "respondent") has been issued license number 000634 to practice as a respiratory therapist by the Department of Public Health (hereinafter "the Department") pursuant to Chapter 381a of the Connecticut General Statutes, as amended; and,

WHEREAS, the Department alleges that:

1. On approximately May 1 and 2, 1996, respondent sexually abused patient Jane Doe, a female patient diagnosed with Amyotrophic Lateral Sclerosis.
2. The above described facts constitute grounds for disciplinary action pursuant to the General Statutes of Connecticut, §20-162p.

WHEREAS, respondent, in consideration of this Consent Order, has chosen not to contest this matter. While admitting no guilt or wrongdoing, respondent agrees that for purposes of this or any future proceedings before the Department of Public Health (hereinafter "the Department"), this Consent Order shall have the same effect as if proven and ordered after a full hearing held pursuant to §§19a-10, 19a-14 and 20-162p of the General Statutes of Connecticut. However, this document shall specifically not be considered an admission by the respondent of any conduct, nor shall it be later, used or admitted in any civil or criminal matter now pending or instituted against him in the future.

NOW THEREFORE, pursuant to §§ 19a-17 and 20-162p of the General Statutes of Connecticut, James Duke, R.T. hereby stipulates and agrees to the following:

1. Respondent waives his right to a hearing on the merits of this matter.
2. Respondent shall pay a civil penalty of One Thousand dollars (\$1000.00) by certified or cashier's check payable to "Treasurer, State of Connecticut." The check shall reference the Petition Number on the face of the check, and shall be payable at the time respondent submits the executed Consent Order to the Department.
3. Respondent's license shall be placed on probation for a period of four years under the following terms and conditions:
  - a. Respondent shall provide all current and future employer(s) and supervisor(s) with a copy of this Consent Order within fifteen (15) days of its effective date or within fifteen (15) days of employment, and respondent's employer(s) and supervisor(s) shall agree to provide reports on a monthly basis for the first year of probation and quarterly thereafter, stating that respondent is practicing with reasonable skill and safety within the standard of care for a respiratory therapist, and that, *inter alia*, respondent is adhering to all acceptable patient boundary criteria. In the event that said supervisor or employer does not agree to provide the reports, fails to provide a report, or is unwilling to state in a given report that respondent is practicing with reasonable skill and safety, then such failure shall constitute a violation of this Consent Order.
  - b. Respondent shall not provide care or treatment to any patient who (1) has at least moderately restricted sensory perception due to a neurological or muscular deficit, and/or, (2) has been assessed as having or exhibits moderate to severe cognitive impairments; and/or, (3) cannot communicate either verbally, in writing, by sign

language, by use of a computer, or by letter board modality, except in the presence of another licensed practitioner, licensed by the Department, who shall sign respondent's treatment record.

- c. Within the first three months of his probation, respondent shall, at his own expense, undergo a psychiatric and/or psychological evaluation, by a psychiatrist and/or psychologist pre-approved by the Department (hereinafter "the evaluator(s)"). Said evaluator(s) shall be licensed in the State of Connecticut and such preapproval shall not be unreasonably withheld. Respondent shall fully cooperate with all requests made by the evaluator(s). Respondent hereby agrees that the evaluator(s) shall prepare evaluation report(s) and that the report(s) shall be provided by the evaluator(s) directly to the Department. The report(s) shall state whether or not in the evaluator(s)' opinion(s) respondent can safely practice as a respiratory therapist without having additional restrictions on his license and/or without having other treatment. If an evaluator concludes that respondent cannot do so, such finding shall constitute a violation of this Consent Order.

4. All correspondence and reports are to be addressed to:

Bonnie Pinkerton, Nurse Consultant  
Department of Public Health  
410 Capitol Avenue, MS # 12LEG  
P.O. Box 340308  
Hartford, CT 06134-0308

5. All reports required by the terms of this Consent Order shall be due according to the following schedule:
- a. Monthly reports shall be due on the tenth business day of each month.
  - b. Quarterly reports shall be due the tenth business day of every third month.

6. Respondent shall comply with all state and federal statutes and regulations applicable to his licensure.
7. Respondent shall pay all costs necessary to comply with this Consent Order.
8. Respondent understands that this Consent Order is a matter of public record.
9. Any alleged violation of any provision of this Consent Order, may result in the following procedures at the discretion of the Department:
  - a. The Department shall notify respondent in writing by first-class mail that the term(s) of this Consent Order have been violated, provided that no prior written consent for deviation from said term(s) has been granted.
  - b. Said notification shall include the acts or omission(s) which violate the term(s) of this Consent Order.
  - c. Respondent shall be allowed fifteen (15) days from the date of the mailing of notification required in paragraph 9a above to demonstrate to the satisfaction of the Department that he has complied with the terms of this Consent Order or, in the alternative, that he has cured the violation in question.
  - d. If respondent does not demonstrate compliance or cure the violation by the limited fifteen (15) day date certain contained in the notification of violation to the satisfaction of the Department, he shall be entitled to a hearing before the Department which shall make a final determination of the disciplinary action to be taken.
  - e. Evidence presented to the Department by either the Department or respondent in any such hearing shall be limited to the alleged violation(s) of the term(s) of this Consent Order.

10. In the event of an alleged violation of any term of this Consent Order, respondent agrees immediately to refrain from practicing as a respiratory therapist, upon request by the Department, for a period not to exceed 45 days. During that time period, respondent further agrees to cooperate with the Department in its investigation of the violation, and to submit to and complete a medical, psychiatric and/or psychological evaluation, if requested to do so by the Department; and, that the results of the evaluation shall be submitted directly to the Department. Respondent further agrees that failure to cooperate with the Department in its investigation during said 45 day period shall constitute grounds for the Department to seek a summary suspension of respondent's license. In any such summary action, respondent stipulates that his failure to cooperate with the Department's investigation shall constitute an admission that his conduct constitutes a clear and immediate danger as required pursuant to the General Statutes of Connecticut, sections 4-182(c) and 19a-17(c).
11. In the event respondent violates any term of this Consent Order, said violation may also constitute grounds for the Department to seek a summary suspension of his license.
12. Respondent shall provide written notice to the Department within thirty (30) days in the event that at least a thirty (30) day period has passed in which he has been unemployed as a respiratory therapist. In the event that respondent is employed less than (20) hours per week, on the average for a consecutive four week period at a time, or is employed outside of the State of Connecticut at any time, such period(s) of time shall not be counted in reducing the probationary period covered by this Consent Order.
13. Legal notice shall be sufficient if sent to respondent's last known address of record reported to the Licensure and Registration Section of the Division of Health Systems Regulation of the Department.

14. This Consent Order is effective on the first day of the month immediately following the date this Consent Order is accepted and ordered by the Commissioner or his designee.
14. Respondent agrees that the Department's allegations as contained in this Consent Order shall be deemed true in any subsequent proceeding before the Department in which (1) his compliance with this Consent Order is at issue, or (2) his compliance with §20-162p of the General Statutes of Connecticut, as amended, is at issue.
15. Any extension of time or grace period for reporting granted by the Department shall not be a waiver or preclude the Department from taking action at a later time. The Department shall not be required to grant future extensions of time or grace periods.
16. This Consent Order and terms set forth herein are not subject to reconsideration, collateral attack or judicial review under any form or in any forum. Further, this Order is not subject to appeal or review under the provisions of Chapters 54 or 368a of the General Statutes of Connecticut, provided that this stipulation shall not deprive respondent of any rights that he may have under the laws of the State of Connecticut or of the United States.
17. This Consent Order is a revocable offer of settlement which may be modified by mutual agreement or withdrawn by the Department at any time prior to its being executed by the last signatory.
18. Respondent permits a representative of the Legal Office of the Bureau of Regulatory Services to present this Consent Order and the factual basis for this Consent Order to the Commissioner or his designee. Respondent understands that the Commissioner or his designee has complete and final discretion as to whether this executed Consent Order is approved or accepted.
19. Respondent understands and agrees that he is responsible for satisfying all of the terms of this Consent Order during vacations and other periods in which he is away from his residence.



20. Respondent has the right to consult with an attorney prior to signing this document.

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I, James Duke, R.T., have read the above Consent Order, and I stipulate and agree to the terms as set forth therein. I further declare the execution of this Consent Order to be my free act and deed.

James H. Duke  
James Duke, R.T.

Subscribed and sworn to before me this 31<sup>st</sup> day of January 1997.

Karlene R. Eaton  
Notary Public or person authorized  
by law to administer an oath or affirmation  
Comm. expires 11-30-2000

The above Consent Order having been presented to the duly appointed agent of the Commissioner of the Department of Public Health on the 31<sup>st</sup> day of January 1997, it is hereby accepted.

Cynthia Denne  
Cynthia Denne, Director  
Division of Health Systems Regulation

The above Consent Order having been presented to the Commissioner or his designee on the 5<sup>th</sup> day of February 1997, it is hereby ordered and accepted.

Catherine A. Hess  
Commissioner or his designee