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| <b>IN THE MATTER OF</b>       | * | <b>BEFORE THE MARYLAND</b>    |
| <b>DAVID HOLLEY, RCP</b>      | * | <b>STATE BOARD OF</b>         |
| <b>Respondent</b>             | * | <b>PHYSICIANS</b>             |
| <b>License Number: L00873</b> | * | <b>Case Number: 2013-0203</b> |
| * * * * *                     |   |                               |

**ORDER OF DEFAULT**

**BACKGROUND**

The Maryland Board of Physicians (the “Maryland Board”) received information that David Holley, RCP. (the “Respondent”) (D.O.B. 11/09/1963), License Number L00873, was disciplined by the District of Columbia Board of Respiratory Care (the “D.C. Board”) based on the Respondent’s failure and refusal to provide proof of completion of required continuing education credits (CEU’s). In an Order dated August 13, 2012, the D.C. Board disciplined the Respondent by revoking his license subject to certain terms.

Based on the above referenced D.C. Board sanction, the Maryland Board has grounds to charge the Respondent with violating the following provisions of the Maryland Medical Practice Act (the “Act”) under H. O. § 14-5A-17:

- (a) Subject to the hearing provisions of § 14-405 of this title, the Board, on the affirmative vote of a majority of a quorum, may deny a license to any applicant, reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the licensee:
  - (17) Is disciplined by a licensing or disciplinary authority or is convicted or disciplined by a court of any state or country or is disciplined by any branch of the United States uniformed services or the Veterans’ Administration for an act that would be grounds for disciplinary action under the Board’s disciplinary statutes;

The Maryland Board has determined that the acts for which the Respondent was disciplined in D.C. would be grounds for disciplinary action under H.O. § 14-5A-17. The grounds for disciplinary action under H.O. § 14-5-A-17(a) are as follows:

- (3) Is guilty of unprofessional or immoral conduct in the practice of respiratory care.
- (11) Willfully fails to file or record any report as required under law, willfully impedes or obstructs the filing or recording of a report, or induces another to fail to file or record a report.
- (26) Fails to cooperate with a lawful investigation conducted by the Board

On October 9, 2012, the Maryland Board attempted to notify the Respondent, by certified and regular mail, at his address of record of its investigation of this matter and offered a Consent Order imposing a reciprocal sanction. The Respondent was further advised that if he did not respond to the Board's letter within 30 days after receipt, the Board would enter a Default Order, making the same findings and imposing the same sanctions as in the D.C. Board Order. Both mailings, certified and regular, were returned to the Board as undeliverable on November 1, 2012. Additionally, the Board received no response to a letter sent by certified and regular mail on December 11, 2012, with a respond by date of December 20, 2012.

### **I. FINDINGS OF FACT**

The Board finds the following:

1. At all times relevant to these charges, the Respondent was licensed to practice respiratory care in the State of Maryland. The Respondent was initially licensed in Maryland on or about May 7, 1992.

2. In its August 13, 2012 Order, the D.C. Board found that the Respondent failed and refused to submit proof of having completed the required continuing education credits as he had attested to on his 2011 renewal application.
3. As a result, the D.C. Board revoked the Respondent's license for 5 years and a day subject to certain terms.

A copy of the D.C. Order is attached hereto.

## **II. CONCLUSIONS OF LAW**

Based on the foregoing Findings of Fact, the Maryland Board concludes as a matter of law that the disciplinary action taken by the D.C. Board against the Respondent was for an act or acts that would be grounds for disciplinary action under Health Occ. § 14-5A-17 (a) with underlying grounds of (3) (11) and (26) had these offenses been committed in this State.

## **III. ORDER**

Based on the foregoing Findings of Fact and Conclusions of Law, it is this hereby:

**ORDERED** that the Respondent's license to practice respiratory care in the State of Maryland be and is hereby **REVOKED**, until such time as his D.C. license is reinstated, at which time the Respondent shall notify the Maryland Board; and be it further

**ORDERED** that this **Consent Order** is a **PUBLIC DOCUMENT**, pursuant to Md. State Gov't Code Ann. § 10-611 et seq. (2009 Repl. vol.),

3-1-13  
Date

  
\_\_\_\_\_  
Carole J. Catalfo  
Executive Director  
Maryland Board of Physicians

**NOTICE OF RIGHT TO PETITION FOR JUDICIAL REVIEW**

Pursuant to Md. Code Ann., Health Occ. § 14-5A-17.1, the Respondent, David Holley, RCP., has the right to seek judicial review of this Order of Default. Any petition for judicial review shall be filed within thirty (30) days from the date of mailing of this Order of Default. The cover letter accompanying this Order indicates the date the decision is mailed. Any petition for judicial review shall be made as provided for in the Administrative Procedure Act, Md. Code Ann., State Gov't § 10-222 and Title 7, Chapter 200 of the Maryland Rules of Procedure.

If the Respondent files a petition for judicial review, the Board is a party and should be served with the court's process at the following address:

**Maryland State Board of Physicians  
Christine A. Farrelly, Deputy Director,  
Compliance & Licensure  
4201 Patterson Avenue  
Baltimore, Maryland 21215**

Notice of any petition should also be sent to the Board's counsel at the following address:

**Thomas W. Keech  
Assistant Attorney General  
Department of Health and Mental Hygiene  
300 West Preston Street, Suite 302  
Baltimore, Maryland 21201**

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
DEPARTMENT OF HEALTH  
HEALTH REGULATION AND LICENSING ADMINISTRATION  
BOARD OF RESPIRATORY CARE**

**IN RE:**

**DAVID HOLLEY**

**License No.: RC 0728**

**Respondent**

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**ORDER REVOKING LICENSE**

**Jurisdiction**

This matter comes before the District of Columbia Board of Respiratory Care (the "Board") pursuant to D.C. Official Code § 3-1201.01 *ff.* (2009), otherwise known as the Health Occupations Revision Act (the "HORA"). The HORA, at D.C. Official Code § 3-1202.14(b) (2009), authorizes the Board of Respiratory Care to regulate the practice of respiratory care in the District of Columbia.

**Background**

On or about June 21, 2012, the Board issued a Notice of Intent to Take Disciplinary Action against Respondent's District of Columbia respiratory therapist license. The notice charged Respondent as follows:

1. **You violated D.C. Code § 3-1210.04 (a) (2001) and D.C. Code § 3-1205.14 (a)(24)(2001) by filing a statement and certificate with the Board that you knew or should have known was false or misleading, for which the Board may take disciplinary action in accordance with D.C. Code § 3-1205.14 (c); and**
2. **You violated Title 17 DCMR § 7606.5 and D.C. Code § 3-1205.14 (a)(24)(2001) by failing to demonstrate completion of the required continuing education credits, for which the Board may take the proposed action pursuant to D.C. Official Code § 3-1205.14(c)(2001).**

Pursuant to Title 17 DCMR § 4105.2(c), the Notice was served by U.S. Postal Service Certified Mail, return receipt requested to the Respondent's mailing address on file with the Board. According to post office tracking records, the Notice was delivered to the Respondent's address on June 23, 2012. The Notice advised Respondent that he had twenty (20) days following receipt of the "Notice" in which to request a hearing.

The Board initially issued a Notice of Intent to Take Disciplinary Action to the Respondent on May 30, 2012. According to post office tracking records, Respondent received the initial notice on June 9, 2012. However, subsequent to issuance, it was discovered that the initial notice contained an incorrect regulation citation. Therefore, a corrected Notice was issued on June 21, 2012. The corrected Notice contained a cover letter which explained the error, advised the Respondent that the new Notice superseded the previous Notice, and advised the Respondent that if he had already requested a hearing he did not need to submit a new request.

The Respondent responded to the initial notice by mailing the following back to the Board, addressed to the Government of DC, Dept. of Health, Health Professional Licensing Adm., 899 N. Capitol St. NE, Washington, DC 20002: the initial notice torn into sixteen (16) pieces, his District of Columbia Respiratory Care Practitioner license torn into two (2) pieces, and a separate sheet of paper on which the words "F \_\_ \_ K Off !!!"<sup>1</sup> were typed in large, bold font, including the three (3) exclamation marks.

The Respondent did not submit any further response or information to the Board and did not request a hearing within the time allotted or to date.

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<sup>1</sup> The note submitted to the Board contained all four letters of the offensive word. The word is redacted for purposes of this order due to its offensive nature.

### Findings of Fact

Based upon the content of the Board's file in this matter, the Board hereby makes the following findings of fact:

1. At all times relevant, the Respondent was licensed to practice respiratory care in the District of Columbia.
2. On or about January 31, 2011, Respondent submitted an online application to the District of Columbia Board of Respiratory Care for renewal of his respiratory care license (2011 renewal application).
3. As part of the 2011 renewal application, Respondent certified that he had completed sixteen (16) continuing education credits since his last renewal, i.e. between February 1, 2009 and January 31, 2011.
4. Respondent was selected to submit proof of completion of the required sixteen (16) continuing education credits as part of the Board's random audit.
5. On or about June 22, 2011, Respondent was notified via regular and certified mail that he had been selected to submit proof of completion of sixteen (16) continuing education credits ("CEUs"), including three (3) credits in ethics and eight (8) credits completed in live, face-to-face courses, as part of the Board's random audit.
6. When the Respondent failed to provide the requested documentation, a second letter was sent to the Respondent on or about December 29, 2011 requesting the same information.
7. When the Respondent failed to provide the requested documentation, a final e-mail notification was sent to him on or about February 16, 2012 at the e-mail address on file with the Board requesting the same information.
8. On or about June 28, 2012, in Response to receiving the Board's Notice of Intent to Take Disciplinary Action, the Respondent submitted: the initial notice torn into sixteen (16) pieces, his District of Columbia Respiratory Care Practitioner license torn into two (2) pieces, and a separate sheet of paper on which the words "F \_ \_ \_ K Off !!!" were typed in large, bold font, including the three exclamation marks.
9. Respondent failed and refused to submit proof of having completed the required continuing education credits as he had attested to on his 2011 renewal application.

### Conclusions of Law

D.C. Official Code § 3-1205.14 (2001) provides in pertinent part:

(a) Each board, subject to the right of a hearing as provided by this subchapter, on an affirmative vote of a majority of its members then serving, may take 1 or more of the disciplinary actions provided in subsection (c) of this section against any Respondent, licensee, or person permitted by this subchapter to practice the health occupation regulated by the board in the District who: filed a statement with the Board that he knew or should have known was false or misleading in violation of D.C. Official Code § 3-1210.04(2001) for which the Board may take action under D.C. Official Code § 3-1205.14(a)(24); and fails to complete or demonstrate completion of the required continuing education hours in accordance with Title 17 DCMR section 7606.5 and D.C. Official Code § 3-1205.14(a)(24)(2001), for which the Board may take the proposed action pursuant to D.C. Official Code § 3-1205.14(a)(24)(2001).

Upon determination by the board that a Respondent, licensee, or person permitted by this subchapter to practice in the District has committed any of the acts described in subsection (a) of this section, the board may:

- (1) Deny a license to any Respondent;
- (2) Revoke or suspend the license of any licensee;
- (3) Revoke or suspend the privilege to practice in the District of any person permitted by this subchapter to practice in the District;
- (4) Reprimand any licensee or person permitted by this subchapter to practice in the District;
- (5) Impose a civil fine not to exceed \$5,000 for each violation by any Respondent, licensee, or person permitted by this subchapter to practice in the District;
- (6) Require a course of remediation, approved by the board, which may include:
  - (A) Therapy or treatment;
  - (B) Retraining; and
  - (C) Reexamination, in the discretion of and in the manner prescribed by the board, after the completion of the course of remediation;
- (7) Require a period of probation; or
- (8) Issue a cease and desist order pursuant to § 3-1205.16.

Based on the foregoing findings of fact, the Board hereby concludes as a matter of law that that Respondent filed a statement with the Board that he knew or should have known was false or misleading in violation of D.C. Official Code § 3-1210.04 (2001) for which the Board can take the proposed action pursuant to D.C. Official Code § 3-1205.14(a) (24) (2001). Further the Board hereby concludes as a matter of law that Respondent failed to complete or demonstrate completion of the required continuing education hours in accordance with Title 17 DCMR section 7606.5 and D.C. Official Code § 3-1205.14(a)(24)(2001), for which the Board may take the proposed action pursuant to D.C. Official Code § 3-1205.14(a)(24)(2001).

Title 17 DCMR § 7606.5 reads as follows:

7606.5 To qualify for renewal of a license an applicant shall:

- (a) Have completed sixteen (16) CEUs in approved continuing education programs during the two (2) year period preceding the date the license expires. Beginning with the renewal period ending January 31, 2009, a minimum of three (3) hours of the total continuing education credits shall have been in ethics;
- (b) Attest to completion of the required continuing education credits on the renewal application form; and
- (c) Be subject to a random audit for compliance with the continuing education requirement.

When the Respondent submitted his application for renewal of licensure, he certified that he had completed the required continuing education credits and that he understood that he may be required to document such via a future audit. Respondent was aware that his license could not be renewed in the absence of this certification. Thereafter, however, after receiving three (3) separate notices that he had been selected in the audit, the Respondent willfully failed and refused to submit the required proof of completing the continuing education requirements.

Further, even after being notified of the Board's intent to take disciplinary action against his license, the Respondent still did not submit proof of having met the continuing education requirements. Having made no effort whatsoever to submit the proof as required, the Board concludes that the Respondent did not complete the required credits and that he was fully aware of it when he attested to having done so on his renewal application.

#### Decision

In formulating its decision as to the appropriate sanction to be imposed, the Board took into consideration the nature of the charges, the Board's paramount duty to protect the public, and the Respondent's response to being notified of the Board's intent to take disciplinary action against his license.

The Board views the submission of false and/or misleading statements to a professional licensing board to obtain or attempt to obtain a license as a serious matter. The Board relies upon the information presented in the licensure and renewal applications to evaluate an applicant's fitness to be licensed. Completion of the required continuing education credits was a prerequisite qualification for renewal of the Respondent's D.C. respiratory therapist practitioner license. The Respondent was aware that had he told the Board that he did not complete the credits and that he would not complete the credits within applicable time period, that his license would not have been renewed. As such, the submission of this false statement to the Board is no small matter. Further, since completion of the continuing education credits is an eligibility requirement for renewal of licensure, the fact that the Respondent failed to complete the required credits is sufficient to justify suspension or revocation of his license.

In determining whether suspension or revocation is appropriate, the Board took into consideration the Respondent's apparent desire to no longer be licensed in the District of Columbia. In response to receiving the notice, the Respondent tore his license in half and mailed

it back to the Board. This is clear evidence of his intent to sever his relationship with this Board. Licensure is a privilege. In seeking licensure in a particular jurisdiction, an applicant voluntarily subjects himself or herself to that jurisdiction's regulatory authority. In the absence of licensure, the regulatory authority, in this case, the District of Columbia Board of Respiratory Care, has no legal authority to require anything of that individual or to exercise any degree of control over that individual. In 2005, however, the Respondent voluntarily placed himself under the authority of the Board. In exchange for the privilege of being licensed to practice respiratory care in the District of Columbia, the Respondent agreed to abide by the laws and regulations of the District of Columbia and to be subject to the regulatory authority of this Board. It is clear that the Respondent now wishes to remove himself from that obligation. The Board, therefore, has chosen to grant his wish.

However, the Board takes issue with the manner in which the Respondent conveyed his request to terminate his professional relationship with this Board. The professional and appropriate response would have been to write a letter or to simply return the license to the Board. The Respondent, however, showed a complete lack of decorum and professionalism when he sent the document to the Board containing the expletive. Further, by tearing the notice into sixteen (16) separate pieces before mailing it back to the Board, the Respondent displayed a level of anger, lack of control, and poor judgment that calls into question his fitness to practice this profession. This is a highly stressful work environment which requires the licensed professionals to make split second decisions affecting patient lives. The Board has great concern as to whether the Respondent can presently handle these situations in a manner that does not jeopardize the health, safety, and welfare of the patients in his care. While the Board understands that anger may have been his initial response to receiving the Board's notice, the Board finds that at some point good reasoning should have prevailed before he placed the

documents into the envelope and placed the envelope in the mail. The fact that he was not able to stop himself from going through with this inappropriate conduct, and that in the month that has since passed he has not had a revelation that caused him to subsequently apologize to the Board, leads the Board to believe that whatever prompted his unprofessional behavior yet remains. Therefore, his fitness to practice remains presently in question.

### **ORDER**

Based upon the aforementioned it is hereby **ORDERED** that the license of David Holley, RC 0728, shall be and is hereby- **REVOKED**<sup>2</sup>, effective as of the date of service, which by definition means that the Respondent is not eligible to apply for reinstatement or a new license to practice respiratory care in the District of Columbia for five (5) years and a day from the effective date of this Order;

IT IS FURTHER ORDERED, that when the Respondent does become eligible to apply for a new license in the District of Columbia, in addition to meeting the requirements then in existence for a new license, any application he submits to the Board for licensure shall be accompanied by:

1. Payment of a fine in the amount of three thousand dollars (\$3,000.00), which shall be made payable to "D.C. Treasurer" and shall be submitted to Bonnie Rampersaud, Executive Director, Board of Respiratory Care, 899 North Capitol Street, NE, 2<sup>nd</sup> Floor, Washington, D.C. 20002;

2. A Fitness to Practice Evaluation Report from a licensed health care provider familiar with his care attesting that he doesn't have a condition or impairment affecting his ability to safely practice respiratory care; and

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<sup>2</sup> D.C. Official Code § 3-1201.01(12A)(2009).

3. Proof of completing a board-approved course in anger management within the twelve (12) months immediately preceding the date of the application for licensure.

8/13/12  
Date

Carolyn A. Williams, R.R.T.  
Carolyn A. Williams, R.R.T.  
Chairperson  
Board of Respiratory Care

**Judicial and Administrative Review**  
**of Actions of Board**

Pursuant to D.C. Official Code § 3-1205.20 (2001):

Any person aggrieved by a final decision of a board or the Mayor may appeal the decision to the **District of Columbia Court of Appeals** pursuant to D.C. Official Code § 2-510 (2001).

Pursuant to D.C. Court of Appeals Rule 15(a):

Review of orders and decision of an agency shall be obtained by filing with the clerk of this court a petition for review within thirty (30) days after the notice is given.

**This Order is the Final Order of the Board in this disciplinary matter and a public record and shall be posted on the Department of Health's website and Board newsletter, and reported to the National Practitioner Data Bank and the Healthcare Integrity Protection Data bank.**

Copies to:

David Holley  
Respondent

Christine L. Gephardt  
Assistant Attorney General  
Office of the Attorney General for the District of Columbia  
Civil Enforcement Division  
441 4<sup>th</sup> Street, N.W., Suite 650 North  
Washington, DC 20001