

<b>IN THE MATTER OF</b>	*	<b>BEFORE THE</b>
<b>RAINIER SIMON MERCADO, R.C.P.</b>	*	<b>MARYLAND STATE</b>
<b>Respondent</b>	*	<b>BOARD OF PHYSICIANS</b>
<b>License Number: L00292</b>	*	<b>Case Number: 2220-0084A</b>

\* \* \* \* \*

**CONSENT ORDER**

On June 22, 2020, Disciplinary Panel A (“Panel A”) of the Maryland State Board of Physicians (the “Board”) charged **RAINIER SIMON MERCADO, R.C.P.** (the “Respondent”), License Number L00292, with violating the Maryland Respiratory Care Practitioners Act (the “Act”), Md. Code Ann., Health Occ. §§ 14-101 *et seq.* (2014 Repl. Vol. & 2019 Supp.).

The relevant provisions of the Act provide the following:

**Health Occ. § 14-5A-17. Denials, reprimands, suspensions, and revocations – In general.**

- (a) Subject to the hearing provisions of § 14-405 of this subtitle, a disciplinary panel, on the affirmative vote of a majority of a quorum of the disciplinary panel, may . . . reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the . . . licensee:

...

- (28) Fails to submit to a criminal history records check under § 14-308.1 of this title.

**Health Occ. § 14-308.1. Criminal history records check.**

- (a) In this section, “Central Repository” means the Criminal Justice Information System Central Repository of the Department of Public Safety and Correctional Services.

- (b) An applicant, a licensee, or a certificate holder shall apply to the Central Repository for a State and national criminal history records check.
- (c) As part of the application required under subsection (b) of this section, an individual shall submit to the Central Repository:
  - (1) Two complete sets of legible fingerprints taken on forms approved by the Director of the Central Repository and the Director of the Federal Bureau of Investigation;
  - (2) The fee authorized under § 10-221(b)(7) of the Criminal Procedure Article for access to State criminal history records; and
  - (3) The mandatory processing fee required by the Federal Bureau of Investigation for a national criminal history records check.

On October 7, 2020, Panel A was convened as a Disciplinary Committee for Case Resolution (“DCCR”) in this matter. Based on negotiations occurring as a result of this DCCR, the Respondent agreed to enter into this Consent Order, consisting of Findings of Fact, Conclusions of Law, Order, and Consent.

### **FINDINGS OF FACT**

Panel A finds the following:

1. At all times relevant hereto, the Respondent was, and is, licensed to practice respiratory care in the State of Maryland. The Respondent was initially licensed to practice respiratory care in Maryland on April 15, 1992, under License Number L00292. The Respondent’s license is currently active.<sup>1</sup>

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<sup>1</sup> Respondent’s license was scheduled to expire on May 30, 2020. Effective March 12, 2020, due to an ongoing state of emergency and catastrophic health emergency, the Governor of the State of Maryland issued an Executive Order extending the expiration date of all licenses that would otherwise expire during

2. On or about May 6, 2018, the Respondent submitted an online application (the "Application") for the renewal of the Respondent's license using the Board's online renewal application process.

3. When a licensee applies online to renew his or her license, the licensee checks a box attesting that he or she has completed a Criminal History Record Check ("CHRC") and acknowledges on the same application that a licensee faces disciplinary action if the licensee fails to comply with the CHRC requirement.

4. Prior to completion of the application a pop-up screen appears that informs the licensee that the Board may not renew a license if the Board has not received the licensee's CHRC information, which includes the licensee's submission of his or her fingerprints to the Criminal Justice Information Services ("CJIS") before attempting to complete the renewal application. The pop-up notice also notifies the licensee that failure to submit to a CHRC may result in disciplinary action.

5. The Respondent's signed Application contains two acknowledgments /affirmations by the Respondent that the Respondent had completed a CHRC.

6. By e-mail dated August 24, 2018, Board staff informed the Respondent that the Board had not received the CHRC.<sup>2</sup> Board staff further informed the Respondent that the Respondent had ten business days to submit the CHRC.

7. The Respondent did not reply to the e-mail.

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the state of emergency until the 30th day after the state of emergency is terminated and the catastrophic health emergency is rescinded. As such, Respondent's license remains active.

<sup>2</sup> Board staff used the e-mail address provided by the Respondent on the Application as the "Official Email Address . . . the board will use for official correspondence."

8. By letter dated March 15, 2019, sent to the Respondent's address of record, the Board informed the Respondent that it opened a preliminary investigation based upon the failure to obtain a CHRC for license renewal and the attestation that the Respondent submitted to a CHRC. The letter notified the Respondent that he was subject to potential disciplinary action and requested that the Respondent submit documentation to the Board to support that the Respondent obtained a CHRC within ten business days.

9. The Respondent did not reply to the letter.

10. On July 10, 2019, sent to the Respondent's address of record, the Board informed the Respondent that the Board has attempted to reach him regarding his failure to submit to a CHRC via email in August 2018 and by letter in March 2019. The letter notified the Respondent that he was subject to potential disciplinary action and instructed the Respondent to contact the Board and submit evidence that the Respondent obtained a CHRC on or before July 24, 2019.

11. The Respondent did not reply to the letter.

12. By letter dated January 2, 2020, sent to the Respondent's address of record, the Board notified the Respondent that due to the Respondent's lack of response to previous Board communications, the Board had opened a formal investigation.

13. The Respondent did not reply to the letter and has not provided documentation to the Board that the Respondent obtained a CHRC.

14. On June 22, 2020, Panel A issued charges in this matter.

### CONCLUSIONS OF LAW

Based on the Findings of Fact, Disciplinary Panel A of the Board concludes as a matter of law that the Respondent failed to submit to a criminal history records check under § 14-308.1 of the Health Occupations Article, in violation of Health Occ. § 14-5A-17(a)(28). Panel A dismisses the remaining grounds under Health Occ. § 14-5A-17(a)(1), (3), (10), and (26).

### ORDER

It is thus by an affirmative vote of a majority of a quorum of Disciplinary Panel A of the Board, hereby:

**ORDERED** that the Respondent is **REPRIMANDED**; and it is further

**ORDERED** that the Respondent shall complete the federal portion of the Criminal Record History Check process pursuant to Health Occ. § 14-308.1 within **FORTY-FIVE (45) DAYS** of the effective date of this Consent Order; and it is further

**ORDERED** that within **ONE YEAR**, the Respondent shall pay a civil fine of **FIVE HUNDRED DOLLARS (\$500.00)**. The payment shall be by money order or bank certified check made payable to the Maryland Board of Physicians and mailed to P.O. Box 37217, Baltimore, Maryland 21297. The Board will not renew or reinstate the Respondent's license if the Respondent fails to timely pay the fine to the Board; and it is further

**ORDERED** that the effective date of the Consent Order is the date the Consent Order is signed by the Executive Director of the Board. The Executive Director signs the

Consent Order on behalf of the disciplinary panel which has imposed the terms and conditions of this Consent Order; and it is further


**ORDERED** that the Respondent is responsible for all costs incurred in fulfilling the terms and conditions of this Consent Order; and it is further

**ORDERED** this Consent Order is a public document. *See* Md. Code Ann., Health Occ. §§ 1-607, 14-5A-18.1(b)(2) and Gen. Prov. § 4-333(b)(6).

***Signature on File***

11/20/2020

Date

Christine A. Farrelly   
Executive Director  
Maryland State Board of Physicians

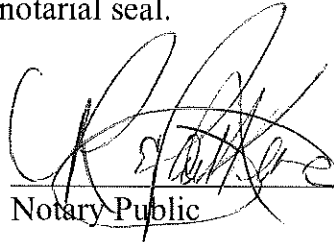


**NOTARY**

STATE OF Maryland  
CITY/COUNTY OF Baltimore

I HEREBY CERTIFY that on this 13<sup>th</sup> day of November 2020, before me, a Notary Public of the foregoing State and City/County, personally appeared Rainier Mercado, R.C.P., and made oath in due form of law that signing the foregoing Consent Order was his voluntary act and deed.

AS WITNESSETH my hand and notarial seal.

  
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Notary Public

My Commission expires: Aug 30, 2022

**RE'NELL ERIN PARKER**  
Notary Public  
Baltimore City  
Maryland  
My Commission Expires Aug. 30, 2022