

IN THE MATTER OF	*	BEFORE THE
ELLEN MYRA NUSSBAUM, R.C.P.	*	MARYLAND STATE BOARD
RESPONDENT	*	OF PHYSICIANS
LICENSE NUMBER: L01186	*	CASE NUMBER: 2217-0013 B

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**CONSENT ORDER**

On July 6, 2018, Disciplinary Panel B (“Panel B”) of the Maryland State Board of Physicians (the “Board”) charged Ellen Myra Nussbaum, R.C.P. (“Respiratory Care Practitioner”) (the “Respondent”), License Number L01186, under the Maryland Respiratory Care Practitioners Act (the “Act”), Md. Code Ann, Health Occ. (“Health Occ.”) §§ 14-5A-01 *et seq.* (2014 Repl. Vol. and 2017 Supp.).

The pertinent provisions under §14-5A-17 of the Act provide the following:

(a) Subject to the hearing provisions of § 14-405 of this title, the Board, on the affirmative vote of a majority of a quorum of the Board, may deny a license to any applicant, or 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 applicant or licensee:

- (18) Fails to meet appropriate standards for the delivery of respiratory care performed in any inpatient or outpatient facility, office, hospital or related institution, domiciliary care facility, patient’s home or any other location in this State;

....

- (27) Fails to practice under the supervision of a physician or violates a supervisory order of a supervising physician[.]

On October 17, 2018, Disciplinary Panel B was convened as a Disciplinary Committee for Case Resolution (“DCCR”) in this matter. Based on negotiations occurring as a result of the DCCR, Respondent agreed to enter this Consent Order, consisting of Findings of Fact, Conclusions of Law, Order and Consent.

### **FINDINGS OF FACT**

Panel B makes the following findings of fact:

#### **I. Background**

1. At all times relevant to the charges, the Respondent was and is a licensed respiratory care practitioner in the State of Maryland.

2. The Respondent initially obtained her respiratory care practitioner license in Maryland on June 8, 1992. On or about May 11, 2018, the Respondent last renewed her license, which will expire on May 30, 2020.

3. Previously, the Respondent became a Certified Respiratory Therapy Technician on July 16, 1988, and a Registered Respiratory Therapist on June 1, 1991.

4. From March 21, 2016 to December 9, 2016, the Respondent was employed full-time as a respiratory therapist at Hospital A,<sup>1</sup> when she was placed “off-duty.”

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<sup>1</sup> The names of institutions, individuals, and patients are not disclosed in the Consent Order. The Respondent has been provided with a Confidential Identification List which contains the name of the patient, institutions, and individuals.

5. From February 6, 2017 to July 7, 2017, the Respondent was employed full time as a respiratory therapist at Hospital B, when she was terminated.

6. As of July 13, 2017, the Respondent was not employed as a respiratory care practitioner.

## **II. Complaints**

7. On or about December 16, 2016, the Board received a complaint from a respiratory care manager (the “Respiratory Care Manager”) at Hospital A, stating that on September 1, 2016, the Respondent did not comply with a direct provider order to provide non-invasive ventilator support by way of a BIPAP<sup>2</sup> to a patient, Patient 1, in the post-anesthesia care unit (“PACU”), which resulted in delayed ventilation support.

8. On or about July 7, 2017, the Board received a Mandated 10-Day Report<sup>3</sup> from Hospital B documenting that the Respondent’s probationary status as a new employee was terminated due to several clinical issues resulting from unprofessional communication with her interdisciplinary peers which resulted in a breakdown in patient care.

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<sup>2</sup> BIPAP stands for Bilevel Positive Airway Pressure. A BIPAP machine is a non-invasive form of therapy for patients suffering from sleep apnea and for ventilatory support for patients, if needed.

<sup>3</sup> Pursuant to Health Occ. § 14-5B-15(a), a hospital and other employer is required to report to the Board if the employer of a licensed respiratory care practitioner limited, reduced, or otherwise changed, or terminated any licensee for any reason that might be grounds for disciplinary action under Health Occ. § 14-5B-14. The hospital shall submit the report within 10 days of the action.

### **III. Investigation of Complaints**

#### **A. Hospital A**

9. Board staff subpoenaed and received the Respondent's personnel file from Hospital A which documents that on August 31, 2016, the Respondent received an order from an anesthesiologist (the "Anesthesiologist") for an arterial blood gas for Patient 1, in the PACU. The Anesthesiologist documented that she asked the Respondent to provide BIPAP treatment for Patient 1 after she got the blood gas results. The Respondent was asked at least twice by the Anesthesiologist to place Patient 1 on BIPAP. According to the Anesthesiologist, the Respondent eventually held the BIPAP mask on Patient 1's face without applying the straps.

10. On April 26, 2017, Board staff interviewed the Anesthesiologist who stated under oath that:

- a. The incident with the Respondent occurred on the night shift on August 31, 2016;
- b. Patient 1 had been involved in a motor vehicle accident and was in the operating room for fixture of a fracture. Her tongue had been bruised and swollen;
- c. Patient 1 was extubated and moved to the PACU, but she seemed to be getting "sleepier;"
- d. She asked the nurses to get an anterior blood gas;
- e. She and the Respondent were then bedside together. She told the Respondent to put Patient 1 on the BIPAP once she had obtained the blood gas, "because (Patient 1) is getting more sleepy." The Respondent agreed;
- f. She left to attend to another patient in the surgical intensive care unit ("SICU");

- g. She obtained the blood gas result which indicated that Patient 1 was somnolent;
- h. She saw the Respondent come into the SICU with the BIPAP machine and asked her why she was in the SICU with the BIPAP and not placing it on Patient 1. The Respondent stated that the nurses were about to transfer Patient 1 to the SICU and she would place Patient 1 on the BIPAP once Patient 1 had been transferred;
- i. She informed the Respondent that she wanted the BIPAP machine on Patient 1 "even during transfer" and to go back to the PACU with the BIPAP for Patient 1;
- j. She returned to the PACU and saw the Respondent standing next to Patient 1 with the BIPAP without it on Patient 1;
- k. She asked the Respondent why she had not placed Patient 1 on the BIPAP. The Respondent informed her that she was calling her team leader;
- k. She told the Respondent she needed her to put the BIPAP on Patient 1;
- l. The Respondent made "maneuvers that indicated she was about to put the BIPAP machine on (Patient 1), but then she would not continue to apply the machine."
- m. The Respondent said, "she would just place the BIPAP mask on Patient 1 because (the Respondent) knew that BIPAP would not work;" and
- l. She decided that the Respondent "had no intention of applying the BIPAP machine." She then intubated Patient 1; and
- m. Patient 1 then went into cardiopulmonary arrest and the staff resuscitated Patient 1.

11. The Respondent's personnel file documents several prior performance issues and concerns related to delays in patient care.

**B. Hospital B**

12. On July 7, 2017, the Board received a Mandated 10-Day Report from Hospital B documenting that the Respondent's probationary status as a new employee was terminated due to several clinical issues resulting from unprofessional communication with her interdisciplinary peers which resulted in a breakdown in patient care.

13. One of the events documented in the Respondent's personnel file concerned her interaction with an MICU (Medical Intensive Care Unit) attending during an intubation where she did not follow directions regarding ventilator settings and displayed unprofessional communication which broke down the collaboration needed for the patient procedure.

**C. The Respondent**

14. On July 13, 2017, Board staff interviewed the Respondent, under oath, who testified to the following:

- a. She denied allegations that she refused to follow a direct provider order; and
- b. Patient 1 began to deteriorate and from there, her supervisor, the Team Leader, took over and Patient 1 required intubation and was transported to the ICU.

**IV. Independent Review**

15. On December 27, 2017, the Board sent the investigative file to an individual who is a licensed Respiratory Care Practitioner in Maryland for an independent review.

16. On February 8, 2018, the Board received the reviewer's report. The reviewer opined that the Respondent failed to meet the appropriate standard of care for delivery of respiratory care because she failed to provide short-term non-invasive ventilatory support to Patient 1, as directed by the anesthesiologist. The result of the Respondent's failure to do this was that Patient 1 had to be intubated.

17. The reviewer further opined that the Respondent violated the supervisory order of a supervising physician because the Respondent did not carry out the order of the anesthesiologist. The expert further explains:

Respiratory Therapists operate under the supervision of a physician and are not free to order, discontinue, or refuse any level of therapy prescribed by a physician unless they can clinically show undue harm to the patient may occur by the implementation of the prescribing therapy. Even then, the standard of care would be to call for an immediate consultation with the supervisory respiratory therapist on duty, and the physician or medical director of the unit. Providing non-invasive BIPAP in the clinical situation in this case would only benefit a patient who is having difficulty ventilating. However, withholding the BIPAP and failing to follow the physician order could have resulted in a much more serious clinical outcome for (Patient 1).

A reasonable therapist who expressed concern for providing a certain modality of therapy like BIPAP (in this case) would have placed the patient on BIPAP and then continued to have dialogue with the physician, nurse and supervisory respiratory personnel about their concerns for this type of therapy. Ms. Nussbaum did not act in a reasonable manner in this case and failed to follow a direct physician order.

Emphasis in the original.

### CONCLUSIONS OF LAW

Disciplinary Panel B of the Board concludes as a matter of law that the Respondent violated Md. Code Ann., Health Occ. § 14-5A-17(a)(18) (violation of the standard of care); and § 14-5A-17(a)(27) (fails to practice under the supervision of a physician or violates a supervisory order of a supervising physician).

### ORDER

It is thus by disciplinary Panel B of the Board, hereby

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

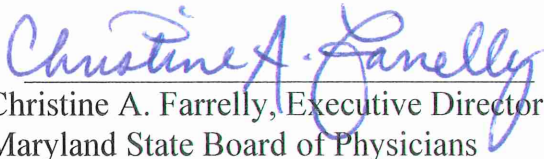
**ORDERED** that within two years, the Respondent shall pay a civil fine of \$3,000. The Payment shall be by money order or bank certified check made payable to the Maryland Board of Physicians and mailed to P.O. Box 37217, Baltimore, Maryland 21297. The Board will not renew or reinstate the Respondent's 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 or her designee. 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 this Consent Order is a public document. *See* Md. Code Ann., Health Occ. §§ 1-607, 14-411.1(b)(2) and Gen. Prov. § 4-333(b)(6).

12/03/2018  
date

  
Christine A. Farrelly, Executive Director  
Maryland State Board of Physicians

**CONSENT**

I, Ellen Myra Nussbaum, R.C.P., acknowledge that I have consulted with counsel before signing this document.

By this Consent, I agree to be bound by this Consent Order and all its terms and conditions and understand that the disciplinary panel will not entertain any request for amendments or modifications to any condition.

I assert that I am aware of my right to a formal evidentiary hearing, pursuant to Md. Code Ann., Health Occ. § 14-405 and Md. Code Ann., State Gov't §§ 10-201 *et seq.* concerning the pending charges. I waive these rights and have elected to sign this Consent Order instead.

I acknowledge the validity and enforceability of this Consent Order as if entered after the conclusion of a formal evidentiary hearing in which I would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on their behalf, and to all other substantive and procedural protections as provided by law. I waive those procedural and substantive protections. I acknowledge the legal authority and the jurisdiction of the disciplinary panel to initiate these proceedings and to issue and enforce this Consent Order.

I voluntarily enter into and agree to comply with the terms and conditions set forth in the Consent Order as a resolution of the charges. I waive any right to contest the Findings of Fact and Conclusions of Law and Order set out in the Consent Order. I waive all rights to appeal this Consent Order.

I sign this Consent Order, without reservation, and fully understands the language and meaning of its terms.

***Signature on File***

27. Nov. 2018

Date

Ellen Myra Nussbaum, R.C.P., Respondent

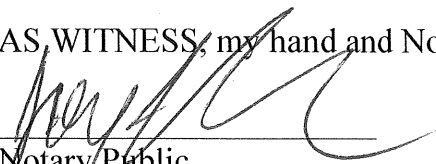
**NOTARY**

STATE OF Maryland

CITY/COUNTY OF Baltimore

I HEREBY CERTIFY that on this 27 day of November, 2018 before me, a Notary Public of the State and County aforesaid, personally appeared Ellen Myra Nussbaum, License number L01186, and gave oath in due form of law that the foregoing Consent Order was her voluntary act and deed.

AS WITNESS, my hand and Notary Seal.

  
Notary Public

11-27-18

Date

My commission expires 2-1-2022

