

IN THE MATTER OF	*	BEFORE THE
COLLEEN A. GITHENS, RCP	*	MARYLAND STATE
Respondent	*	BOARD OF PHYSICIANS
License Number: L05511	*	Case Number: 2017-0335A
* * * * *		

CONSENT ORDER

On November 16, 2017, Disciplinary Panel A of the Maryland State Board of Physicians (the "Board") charged **COLLEEN A. GITHENS**, Respiratory Care Practitioner ("RCP") (the "Respondent"), License Number L05511, under the Maryland Respiratory Care Practitioners Act (the "Act"), Md. Code Ann., Health Occ. II ("Health Occ.") §§ 14-5A-01 *et seq.* (2014 Repl. Vol. & 2016 Supp.).

The pertinent provisions of the Act are as follows:

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

- (a) *In general.* 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 and licensee, may place any licensee on probation, or suspend or revoke a license, if the applicant or licensee:
 - ...
 - (3) Is guilty of unprofessional...conduct in the practice of respiratory care;
 - ...
 - (11) Willfully fails to file or record any report as required under law...;
 - ...
 - (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;
 - ...

(23) Practices or attempts to practice beyond the authorized scope of practice;

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

On February 14, 2018, a conference with regard to this matter was held before a panel of the Board's Disciplinary Committee for Case Resolution ("DCCR"). As a result of the DCCR, the Respondent agreed to enter into this Consent Order, consisting of Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. At all times relevant hereto, the Respondent was licensed to practice respiratory care in the State of Maryland. The Respondent was initially licensed on November 19, 2010. Her license is scheduled to expire on May 30, 2018.
2. On March 21, 2017, the Respondent was licensed in Virginia as a respiratory care practitioner.
3. On or about November 10, 2016, the Board received a Mandated 10-Day Report (the "Report") from the Respondent's former employer, "Hospital A,"¹ stating that the Respondent had been terminated for "consistent failure to deliver care as ordered by a physician, inconsistent documentation of care, and a failure to communicate with her health care peers."
4. The Board initiated an investigation of the Report which included review of the Respondent's Hospital A employment file, interviews by Board staff of relevant Hospital A staff and the Respondent, and review of the Respondent's employment records from two previous employing hospitals ("Hospital B" and "Hospital C"). The

¹ In order to maintain confidentiality, identifying names will not be used in this document.

Board thereafter referred the case for expert review by a Registered Respiratory Therapist/Registered Pulmonary Function Technologist (the "expert"). The results of the Board's investigation are summarized below.

INVESTIGATIVE FINDINGS

HOSPITAL A

5. The Respondent was employed as a respiratory care practitioner at Hospital A from approximately October 1, 2013 to November 3, 2016, upon which date she was terminated.
6. Review of Hospital A's employment file for the Respondent reveals instances in which the Respondent:
 - a. Failed to perform respiratory treatments to patients as ordered by a physician because the Respondent felt the treatments were not necessary;
 - b. Failed to perform respiratory treatments as ordered by a physician without clinical justification;
 - c. Failed to document treatments appropriately when she performed them;
 - d. Failed to document the reason she did not perform treatments;
 - e. Failed to communicate with her supervisors regarding delays in providing treatments or failure to provide treatment; and
 - f. Communicated with hospital staff in a rude and argumentative manner.
7. The expert opined that while employed at Hospital A, the Respondent engaged in unprofessional conduct in the practice of respiratory care, failed to practice under the supervision of a physician, violated a supervisory order of a supervisory

physician and failed to meet appropriate standards of care for the delivery of respiratory care.

HOSPITAL B

8. The Respondent was employed at Hospital B as a respiratory care practitioner from February 4, 2103 through February 7, 2014.
9. The Respondent was terminated from Hospital B because of her unsatisfactory work performance.
10. Review of Hospital B's employment file for the Respondent reveals instances in which the Respondent:
 - a. Failed to perform respiratory care treatments as ordered by a physician;
 - b. Failed to document treatments that she provided appropriately; and
 - c. In one instance, the Respondent falsely documented that she had performed an assessment of a patient who had been discharged prior to the documented date of the Respondent's assessment.
11. The expert opined that while employed at Hospital B, the Respondent failed to meet appropriate standards of care for the delivery of respiratory care, failed to practice under the supervision of a physician, violated a supervisory order of a physician and willfully made a false report or record in the practice of respiratory care.

HOSPITAL C

12. The Respondent was employed at Hospital C as a respiratory care practitioner from November 29, 2010 to December 5, 2012.

13. The Respondent resigned from Hospital C in lieu of being terminated for failure or refusal to perform assigned duties.
14. Review of Hospital C's employment file for the Respondent reveals instances which the Respondent:
 - a. Failed to perform respiratory treatments as ordered by a physician;
 - b. Failed to document why she did not perform respiratory treatments; and
 - c. Failed to assure that patient supplies were adequately checked and maintained.
15. The expert opined that that while employed at Hospital C, the Respondent failed to meet appropriate standards of care for the delivery of respiratory care, failed to practice under the supervision of a physician and violated a supervisory order of a physician.

CONCLUSIONS OF LAW

Based on the forgoing Findings of Fact, Disciplinary Panel A of the Board concludes as a matter of law that the Respondent is guilty of unprofessional conduct in the practice of respiratory care, in violation of Health Occ. § 14-5A-17(a)(3), willfully failed to file or record any report as required under law, in violation of Health Occ. § 14-5A-17(a)(11), failed to meet appropriate standards for the delivery of respiratory care, in violation of Health Occ. § 14-5A-17(a)(18), practiced or attempted to practice beyond the authorized scope of practice, in violation of Health Occ. § 14-5A-17(a)(23) and failed to practice under the supervision of a physician or violates a supervisory order of a supervising physician, in violation of Health Occ. § 14-5A-17(a)(27).

ORDER

It is, on the affirmative vote of a majority of the quorum of Board Disciplinary Panel A, hereby

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

ORDERED that the Respondent is placed on **PROBATION**² for a minimum period of **TWELVE (12) MONTHS**, to begin on the effective date of this Consent Order. During the probationary period, the Respondent shall comply with all of the following probationary terms and conditions:

1. During the entire probationary period, the Respondent shall consult with a panel-approved peer mentor who is licensed as a respiratory care practitioner in the State of Maryland. Within **THIRTY (30) DAYS**, the Respondent shall submit to Panel A the name and professional credentials of the respiratory care practitioner peer mentor she is offering for panel approval. Following panel approval, the Respondent and the peer mentor shall discuss Maryland law and regulations pertaining to respiratory care practitioners, the scope of practice and professional judgment appropriate to respiratory care practitioner practice and supervision by a physician. The Respondent shall meet with the peer mentor at least twice a month. The meetings may be either in person or telephonically, in the peer mentor's discretion. The discussions shall not include clinical issues.
2. The peer mentor shall submit quarterly reports to the panel detailing the issues discussed, the Respondent's progress and her understanding of the law and regulations that apply to her practice as a respiratory care practitioner in this State.
3. The Respondent has the sole responsibility for ensuring that the peer mentor submit the quarterly reports in a timely manner.
4. The Respondent shall complete a one-on-one consultation or tutorial that addresses the issues in this case. The Respondent must provide documentation to the Board that the Respondent has successfully completed the instruction; and it is further

ORDERED that if the Respondent allegedly fails to comply with any term or condition of probation or this Consent Order, the Respondent shall be given an opportunity for a

² If the Respondent's license expires while the Respondent is on probation, the probationary period and any probationary conditions will be tolled.

hearing. If there is a genuine dispute as to a material fact, the hearing shall be before an Administrative Law Judge of the Office of Administrative Hearings. If there is no genuine dispute as to a material fact, the Respondent shall be given a show cause hearing before the Board or Panel A; and it is further

ORDERED that, after the appropriate hearing, if the Board or Panel A determines that the respondent has failed to comply with any term or condition of probation or this Consent Order, the Board or Panel A may reprimand the Respondent, place the Respondent on probation with appropriate terms and conditions, or suspend or revoke the Respondent's license to practice medicine as a respiratory care practitioner in Maryland. The Board or Panel A may, in addition to one or more of the sanctions set forth above, impose a civil monetary fine upon the Respondent; and it is further

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

ORDERED that the Respondent shall not apply for early termination of probation; and it is further

ORDERED that after **TWELVE (12) MONTHS**, the Respondent may submit a written petition to the Board or Panel A requesting termination of probation. After consideration of the petition, the probation may be terminated through an order of the Board or Panel A. The Respondent may be required to appear before the Board or Panel A to discuss her petition for termination. The Board or Panel A will grant the petition to terminate the probation if the Respondent has complied with all of the probationary terms and conditions and there are no pending complaints related to the charges; and it is further

ORDERED that the Respondent shall comply with the Maryland Respiratory care practitioners Act, Md. Code Ann., Health Occ. §§ 14-5A-01 – 14-5A-25, and all laws and regulations governing the practice of respiratory care in Maryland; and it is further

ORDERED that unless stated otherwise in the order, any time period prescribed in this order begins when the Consent Order goes into effect. The Consent Order goes into effect upon the signature of the Board's Executive Director, who signs on behalf of Panel A; and it is further; and it is further

ORDERED that this Consent Order is a public document pursuant to Md. Code Ann., Gen. Prov. §§ 4-101 *et seq.* (2014).

May 10, 2018
Date

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

CONSENT

I, Colleen A. Githens, RCP, acknowledge that I had the opportunity to be represented by counsel before entering this Consent Order. By this Consent and for the purpose of resolving the issues raised by the Board, I agree and accept to be bound by the foregoing Consent Order and its conditions.

I acknowledge the validity of this Consent Order as if entered into 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 my own behalf, and to all other substantive and procedural protections provided by the law. I agree to forego my opportunity to challenge these allegations. I acknowledge the legal authority and jurisdiction of the Board to initiate these proceedings and to issue and enforce this Consent Order. I affirm that I am waiving my right to appeal any adverse ruling of a disciplinary panel of the Board that I might have filed after any such hearing.

I sign this Consent Order voluntarily and without reservation, and I fully understand and comprehend the language, meaning and terms of the Consent Order.

Signature on File

5/10/18
Date

Colleen A. Githens, RCP.
Respondent

NOTARY

STATE OF MARYLAND
CITY/COUNTY OF ANNE ARUNDEL

I HEREBY CERTIFY that on this 10 day of MAY 2018, before me, a Notary Public of the foregoing State and City/County, personally appeared Colleen A. Githens, RCP and made oath in due form of law that signing the foregoing Consent Order was her voluntary act and deed.

AS WITNESSETH my hand and notarial seal.

Stephen J. Tant
Notary Public

My commission expires: 06-27-2018

