

IN THE MATTER OF	*	BEFORE THE
THOMAS F. FAHEY, Jr., RCP	*	MARYLAND STATE
Respondent	*	BOARD OF PHYSICIANS
License Number: L06311	*	Case Number: 2017-02078
* * * * *	*	* * * * *

CONSENT ORDER

On December 29, 2017, Disciplinary Panel B ("Panel B") of the Maryland State Board of Physicians (the "Board") charged Thomas F. Fahey, Jr., R.C.P. ("Respiratory Care Practitioner") (the "Respondent"), License Number L06311, 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 provision under §14-5A-17 of the Act provides 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:

- (3) Is guilty of unprofessional or immoral conduct in the practice of respiratory care;
- (6) Is habitually intoxicated;
- (8) Provides professional services while:
 - (i) Under the influence of alcohol; or
 - (ii) Using any narcotic or controlled dangerous substance as defined in § 5-101 of the Criminal Law Article or any other drug that is in excess of therapeutic amounts or without valid medical indication[.]

On March 28, 2017, Panel B was convened as a Disciplinary Committee for Case Resolution ("DCCR") in this matter. Based on negotiations occurring because of the DCCR, Respondent agreed to enter this Consent Order, consisting of Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

Panel B makes the following findings of fact:

I. Background

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

2. Respondent initially obtained his respiratory care practitioner license in Maryland on August 27, 2014. On or about May 7, 2016, Respondent last renewed his license, which will expire on May 30, 2018.

3. From February 2, 2015 to July 2016, Respondent was employed full-time as a respiratory therapist at Hospital A,¹ when he voluntarily resigned.

4. From October 5, 2015 to October 5, 2016 Respondent worked PRN (as needed) as a respiratory therapist at Hospital B ("Hospital B"), when he was terminated for testing positive for controlled dangerous substances ("CDS").

5. From July 11, 2016 to February 6, 2017, Respondent worked as a night shift respiratory therapist at Hospital C, when he was terminated for being intoxicated at work.

6. Respondent is not currently employed as a respiratory care practitioner.

¹ The names of institutions and individuals are not disclosed in this Consent Order. Respondent has been provided with a Confidential Identification List which contains the name of institutions and individuals who are described in this Consent Order.

II. Complaint

7. On or about October 4, 2016, the Board received a complaint from Hospital B, stating that on July 30, 2016, Respondent arrived 30 minutes late for his shift, having called his charge person and stating that he had driven the wrong direction on the interstate. Upon arrival, staff members of Hospital B observed Respondent nodding/falling asleep, with slurred, incoherent speech, yellow, glassy eyes, and wearing the wrong color uniform for Hospital B. Respondent was instructed to return home and a staff person offered to drive him. Respondent complained of a headache and due to further concerns of the staff, Respondent was taken to the Emergency Room ("ER") by wheelchair. Based on continuing concerns about Respondent's fitness for duty, subsequently, on September 20, 2016, Respondent was required to have urine testing. The test results, received on September 28, 2016, were positive for Schedule IV CDS.

III. Investigation

Hospital B

8. Subsequent information received from Hospital B revealed that on July 30, 2016, Respondent was admitted to Hospital B having been diagnosed in the ER with overdose of a Schedule II CDS. Respondent was discharged as a patient from Hospital B on August 2, 2016.

9. Respondent was required to be evaluated by the Employee Health Program at Hospital B prior to his being allowed to return to work. On September 20, 2016, urine testing revealed that Respondent was positive for Schedule IV CDS.

10. On October 25, 2016, Hospital B notified Respondent that he was terminated effective October 5, 2016, due to his positive urine screen for CDS.

11. On March 21, 2017, Board staff interviewed, under oath, a charge respiratory therapist at Hospital B ("Respiratory Therapist 1") who confirmed that he received a telephone call from Respondent on July 30, 2016, stating that Respondent had gone in the wrong direction on the Interstate to work and that he was going to be late for his 7:00 pm to 7:00 am shift.

12. On March 21, 2017, Board staff interviewed, under oath, a respiratory therapist at Hospital B ("Respiratory Therapist 2") who observed and spoke with Respondent on July 30, 2016, when Respondent reported to Hospital B for his night shift. Respiratory Therapist 2 was trying to "give report" to Respondent but Respondent "started falling asleep a little bit" and "he didn't really seem focused and attentive to report." Respiratory Therapist 2 was "really concerned" about Respondent so she and another respiratory therapist ("Respiratory Therapist 3") convinced Respondent to go to the ER.

13. On March 21, 2017, Board staff interviewed, under oath, a nurse practitioner and clinical operations manager for occupational health at Hospital B (the "Nurse Practitioner") who confirmed that Respondent had been admitted to Hospital B for overdose of a Schedule II CDS. The Nurse Practitioner evaluated Respondent on September 15, 2016 for medical clearance to return to work. Respondent told the Nurse Practitioner that on July 30, 2016, he had taken two tablets of a Schedule II CDS and one tablet of a Schedule IV CDS, which were "old prescriptions."

Hospital C

14. Information received from Hospital C revealed that on February 1, 2017,

Respondent was scheduled to work from 7:00 p.m. to 7:00 a.m. Hospital Staff was unable to reach Respondent for several hours at the beginning of his shift despite several attempts by the unit nurse. Later, a respiratory therapist found Respondent asleep on the floor and reported that it was difficult to rouse Respondent. Staff called Hospital Security who reportedly found Respondent in an impaired state, incoherent, disheveled, with slurred speech and unsteady gait. Staff transported Respondent to the ER for treatment and toxicology screening. Respondent admitted to ER staff that he drank alcohol while at work the evening of February 1, 2017.

15. On May 22, 2017, Board staff interviewed the Director of Respiratory Therapy at Hospital C ('the Director of RT'), under oath, who stated:

- a. Respondent was hired in July 2016, to work at Hospital C on the night shift, every third weekend;
- b. On February 1, 2017, just prior to midnight, the Director of RT received a telephone call from a charge therapist, informing the Director of RT that Respondent had been found asleep on the floor in the Intensive Care Unit, his speech was slurred, and he was disoriented. The Director of RT came to Hospital C and spoke with Respondent in the ER, where Respondent had been taken by hospital staff. According to the Director of RT, Respondent was "impaired" and "disoriented." Respondent admitted to ER personnel that he had been drinking alcohol. Respondent was discharged from the ER at or about 5:00 a.m. on February 2, 2017. The Director of RT accompanied Respondent to the hospital parking lot, but Respondent was unable to remember where he parked his car. Ultimately, they found Respondent's car in the doctors' parking lot; and
- c. On February 6, 2017, Respondent admitted to the Director of RT that on February 1, 2017, he left Hospital C and "had a few drinks in his car" and then came back in the hospital. Respondent acknowledged to the Director of RT that he had left the hospital during his shift on prior occasions to go to his car, without approval. Respondent acknowledged that he frequently parked on the doctors' parking lot, which is close to the hospital, without approval.

16. On June 7, 2017, Board staff interviewed, the Director of Risk Management at Hospital C ('the Director of RM") who stated:

- a. She conducted an audit of Respondent's ID badge access after Respondent was found to be under the influence of alcohol during his shift on February 1, 2017;
- b. The audit revealed that Respondent left his shift multiple times on multiple occasions during his employment at Hospital C. Also, the audit revealed that Respondent attempted to access the doctors' lounge twice, and Respondent attempted to access the main pharmacy twice. Respondent is not authorized to enter either of these areas;
- c. She spoke with Respondent about his unauthorized attempt to access the pharmacy. Respondent told her that he "did not ever remember doing that." Respondent also told her that he would go out to his car and he admitted to drinking alcohol in his car, more than one time at work.

Respondent

17. On May 23, 2017, Board staff interviewed Respondent, under oath, who testified to the following:

- a. He was suspended from Hospital B because he "tested positive for prescription drugs," i.e. Schedule II CDS and Schedule IV CDS;
- b. He had been in an automobile accident in mid-July 2016. He did not seek medical care after the accident but started taking Schedule IV CDS, which had been prescribed for him in 2010, "to help me sleep because I was in pain." He was also started taking Schedule II CDS, which had been prescribed for him in 2010;
- c. On July 30, 2016, during the day, he took some of the Schedule IV CDS for sleep. A couple hours before his 7:00 p.m. shift, he took two or three tablets of the Schedule II CDS, as well as a Schedule III CDS, which had been prescribed for him in May 2016;
- d. He was under the influence of these CDSs when he reported to work on July 30, 2016;
- e. After being terminated from Hospital B, on October 5, 2016, he started drinking alcohol;

- f. On February 1, 2017, he had been drinking alcohol a few hours before going to work at Hospital C. He reported 15 minutes late to work, took report, and went outside to his automobile "to try to sleep it off." He then came back in Hospital C and fell asleep on the floor of the breakroom in the ICU; and
- g. In approximately July 2015, he was hospitalized for symptoms related to his use of alcohol.

IV. Summary Findings

- 18. Respondent's conduct as described above, including but not limited to his:
 - a. Arriving at work at Hospital B and attempting to take report when he was under the influence of a narcotic and/or a CDS;
 - b. Testing positive for CDS at a fitness for duty evaluation;
 - c. Arriving at work at Hospital C and taking report while under the influence of alcohol;
 - d. Consuming alcohol off premises but while on duty at Hospital C; and
 - e. Leaving his shift multiple times on multiple occasions and attempting to access unauthorized areas during his employment at Hospital C;

is evidence of Respondent's engaging in unprofessional or immoral conduct in the practice of respiratory care in violation of Health Occ. § 14-5A-17(a)(3), being habitually intoxicated, in violation of Health Occ. § 14-5A-17(a)(6); and providing professional services while: (i) Under the influence of alcohol; and (ii) Using any narcotic or controlled dangerous substance, in violation of Health Occ. § 14-5A-17(a)(8)(i)(ii).

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, Disciplinary Panel B of the Board concludes as a matter of law that Respondent violated Health Occ. § 14-5A(a)(3) (unprofessional conduct); Health Occ. § 14-5A-17(a)(6) (habitually intoxicated); and Health Occ. § 14-5A-17(a)(8)(i)(ii) (providing professional services while: (i) Under the influence of alcohol; and (ii) Using any narcotic or controlled dangerous substance).

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is, by a majority of the quorum of Disciplinary Panel B, hereby:

ORDERED that Respondent's license to practice as a respiratory care practitioner is SUSPENDED subject the following terms and conditions:

1. Respondent shall enroll in the Maryland Professional Rehabilitation Program ("MPRP"). Within 5 business days, Respondent shall contact MPRP to schedule an initial consultation for enrollment. Within 15 business days, Respondent shall enter into a Participant Rehabilitation Agreement and Participant Rehabilitation Plan with MPRP. Respondent shall fully and timely cooperate and comply with all MPRP's referrals, rules, and requirements, including but not limited to, the terms and conditions of the Participant Rehabilitation Agreement(s) and Participant Rehabilitation Plan(s) entered with MPRP, and shall fully participate and comply with all therapy, treatment, evaluations, and toxicology screenings as directed by MPRP;
2. Respondent shall sign and update the written release/consent forms requested or required by the Board and MPRP. Respondent shall sign the release/consent forms to authorize MPRP to make verbal and written disclosures to the Board, including disclosure of all MPRP records and files possessed by MPRP. Respondent shall also sign any written release/consent forms to authorize MPRP to exchange with (*i.e.*, disclose to and receive from) outside entities (including all of Respondent's current therapists and treatment providers) verbal and written information concerning Respondent and to ensure that MPRP is authorized to receive the medical records of Respondent, including, but not limited to, mental health and drug or alcohol treatment records; and
3. Respondent shall be responsible for assuring that any treatment provider(s) submit written reports to the MPRP and to Panel B or the Board at least once every three (3) months regarding her attendance, progress, payment of fees, and recommendations as to the continuation, frequency, and/or termination of treatment. Respondent shall sign any consent forms required to authorize Panel B or the Board and the MPRP to receive written reports from any treating mental health and health professionals or any treatment providers, if any;

AND IT IS FURTHER ORDERED that if the MPRP determines that Respondent is safe to practice as a respiratory care practitioner, and if Respondent has complied with the conditions above, Respondent may petition Panel B or the Board serving as the Reinstatement Inquiry Panel of the Board to lift the suspension of Respondent's license. If Panel B determines that is safe for Respondent to return to practice, the suspension shall be terminated, and Panel B or the Board may impose any terms and conditions it deems appropriate on Respondent's return to practice as a respiratory care practitioner, including, but not limited to, probation, and it is further

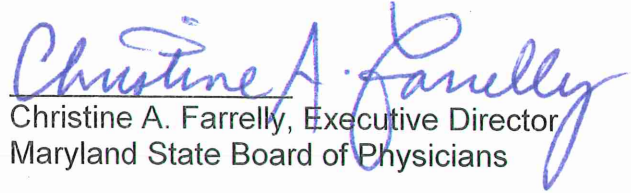
ORDERED that if Respondent allegedly fails to comply with any term or condition of this Consent Order, Respondent shall be given notice and an opportunity for a hearing. If there is a genuine dispute as to a material fact, the hearing shall be before an Administrative Law Judge of the Office of Administrative Hearings. If there is no genuine dispute as to a material fact, Respondent shall be given a show cause hearing before the Board or a disciplinary panel; and it is further

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

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

ORDERED that the Consent Order is a public document pursuant to Md. Code Ann., Gen. Prov. §§ 4-101 *et seq.* (2014 & 2017 Supp.).

05/03/2018
Date


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

CONSENT

I, Thomas J. Fahey, Jr., RCP, License No. L06331, by affixing my signature hereto, acknowledge that:

I am aware that I may request to consult with counsel before entering this Consent Order; but voluntarily and knowingly elected not to do so. By this Consent and for the sole 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 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 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 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

4/19/18
Date

Thomas F. Fahey, Jr., RCP, Respondent

NOTARY

STATE OF MD

CITY/COUNTY OF Baltimore

I HEREBY CERTIFY that on this 19 day of April, 2018 before me, a Notary Public of the State and County aforesaid, personally appeared Thomas F. Fahey, RCP, License number L06331, and gave oath in due form of law that the foregoing Consent Order was his voluntary act and deed.

AS WITNESS, my hand and Notary Seal.

R. Burgundy Mitchell
Notary Public

My commission expires 8-16-2020