

IN THE MATTER OF

*

BEFORE THE

THOMAS F. FAHEY, JR., RCP

*

MARYLAND STATE

Respondent

*

BOARD OF PHYSICIANS

License Number: L06311

*

Case Number: 7722-0001 B

* * * * *

ORDER AFTER SHOW CAUSE HEARING

FINDINGS OF FACT

Background

On May 3, 2018, Disciplinary Panel B (“Panel B”) of the Maryland State Board of Physicians (the “Board”) and Thomas F. Fahey, Jr., RCP, entered into a consent order that suspended his license based on his violations of Health Occ. § 14-5A-17(a)(3) (unprofessional conduct); Health Occ. § 14-5A-17(a)(6) (habitually intoxicated); and Health Occ. § 14-5A-17(a)(7)(i) & (ii) (providing professional services while: (i) Under the influence of alcohol; and (ii) Using any narcotic or controlled dangerous substance). The Consent Order suspended Mr. Fahey’s license with terms and conditions that, among other things, required Mr. Fahey to enroll in the Maryland Professional Rehabilitation Program (“MPRP”) and comply with all MPRP’s referrals, rules, and requirements, including but not limited to, the term and conditions of the Participation Rehabilitation Agreement and Participant Rehabilitation Plan. Mr. Fahey allowed his license to lapse on May 30, 2018, and the suspension and conditions were tolled. *See* COMAR 10.32.02.05B(3). On October 26, 2020, Mr. Fahey’s license was administratively reinstated, his suspension continued, and he re-enrolled in MPRP on November 5, 2020. On July 9, 2021, after MPRP deemed Mr. Fahey safe to practice, the Panel issued an Order Terminating Suspension and Imposing Probation, which placed Mr. Fahey on probation for five years and required that he

remain enrolled in MPRP and comply with all of MPRP's rules and requirements, including compliance with his Participant Rehabilitation Agreement.

July 9, 2021 Order

The terms of the July 9, 2021 Order terminating the suspension and imposing probation stated:

Mr. Fahey shall remain enrolled in MPRP and shall:

1. continue his Participant Rehabilitation Agreement and Participant Rehabilitation Plan with MPRP or be entered into an amended Participant Rehabilitation Agreement and amended Participant Rehabilitation Plan as determined by MPRP; and
2. fully and timely cooperate and comply with all of MPRP's referrals, rules, and requirements, including, but not limited to, the terms and conditions of the Participant Rehabilitation Agreement and Participant Rehabilitation Plan entered into with MPRP, and he shall fully participate and comply with all therapy, treatment, evaluations, and screenings as directed by MPRP[.]

* * *

[It is] **ORDERED** that, if Mr. Fahey allegedly fails to comply with any term or condition of probation or this Order Terminating Suspension and Imposing Probation, he shall be given notice and an opportunity for a hearing. If the disciplinary panel . . . determines there is no genuine dispute as to a material fact, Mr. Fahey shall be given a show cause hearing before Panel B; and it is further

ORDERED that, after the appropriate hearing, if Panel B determines that Mr. Fahey has failed to comply with any term or condition of probation or this Order Terminating Suspension and Imposing Probation, Panel B may reprimand Mr. Fahey, place Mr. Fahey on additional probation with additional probation with appropriate terms and conditions, or suspend Mr. Fahey's license with appropriate terms and conditions, or revoke Mr. Fahey's license to respiratory care in Maryland. Panel B may in addition to one or more of the sanctions set forth above, impose a civil monetary fine upon Mr. Fahey;

Current Violation

On February 9, 2023, Mr. Fahey informed MPRP that he had violated the terms of his Participant Rehabilitation Agreement. When contacted by the Board, Mr. Fahey admitted the same. Subsequently, Mr. Fahey's noncompliance was verified by MPRP.¹

On May 11, 2023, Panel B issued a Violation of Order Terminating Suspension and Imposing Probation and Notice to Show Cause alleging Mr. Fahey violated the MPRP's Participant Rehabilitation Agreement.

Show Cause Hearing

On August 23, 2023, Panel B held a show cause hearing where Mr. Fahey had the opportunity to argue why his license should not be subject to further discipline. Mr. Fahey appeared on his own behalf and the State was represented by the Administrative Prosecutor. At the hearing, Mr. Fahey was contrite and apologetic. He admitted his violation of the July 9, 2021 Order and he asked that he be given another chance to comply. In response, the State summarized Mr. Fahey's disciplinary history and the facts of the current violation.

CONCLUSION OF LAW

Based upon Mr. Fahey's admission and corresponding evidence, Panel B concludes that Ms. Fahey violated the terms of his Participant Rehabilitation Agreement which violated Condition 2 of the July 9, 2021 Order Terminating Suspension and Imposing Probation.

SANCTION

Pursuant to the July 9, 2021 Order, upon a finding of a violation, the Panel may reprimand Mr. Fahey, place Mr. Fahey on probation with appropriate terms and conditions, or suspend or revoke Mr. Fahey's license to practice respiratory care in Maryland. Several mitigating facts support a more lenient sanction for Mr. Fahey. Mr. Fahey's violation of the July 9, 2021 Order

¹ The nature of the violation is confidential.

was a single instance and not repeated violation. Mr. Fahey promptly reported it to MPRP per the terms of his agreement, was forthright in his explanation of the violation, expressed contrition for the violation in his hearing before the Panel, and has not demonstrated any pattern of conduct aside from the single lapse. Based on the isolation of this violation, Mr. Fahey's acceptance of responsibility, and evidence that Mr. Fahey remains committed to complying with his MPRP participant rehabilitation plan, the Panel will impose a sanction of a Reprimand on Mr. Fahey's license and allow him to continue his probation and participation in MPRP.

ORDER

It is, thus, by Board Disciplinary Panel B, hereby

ORDERED that Thomas F. Fahey, Jr., RCP, is **REPRIMANDED**; and it is further

ORDERED that that the terms and conditions, including probation, of the July 9, 2021 Order are **TERMINATED** and superseded by this Order after Show Cause Hearing; and it is further

ORDERED that Mr. Fahey is placed on a new period of **PROBATION** for **THREE YEARS**² from the date of this Order, with the following probationary terms and conditions:

1. Mr. Fahey shall remain enrolled in the Maryland Professional Rehabilitation Program (MPRP) and shall:
 - (a) continue his Participant Rehabilitation Agreement and Participant Rehabilitation Plan with MPRP or be entered into an amended Participant Rehabilitation Agreement and Participant Rehabilitation Plan as determined by MPRP;
 - (b) 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 and Participant Rehabilitation Plan entered with MPRP, and shall fully participate and comply with all therapy, treatment, evaluations, and screenings as directed by MPRP;
 - (c) sign and update the written release/consent forms requested by the Board and MPRP, including release/consent forms to authorize MPRP to make verbal and

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

written disclosures to the Board and to authorize the Board to disclose relevant information from MPRP records and files in a public order. Mr. Fahey shall not withdraw his release/consent;

(d) sign and update the written release/consent forms as requested by the Board and MPRP. Mr. Fahey shall sign the release/consent forms to authorize MPRP to make verbal and written disclosures to the Board, including disclosure of any and all MPRP records and files possessed by MPRP. Mr. Fahey 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 Mr. Fahey's current therapists and treatment providers) verbal and written information concerning Mr. Fahey and to ensure that MPRP is authorized to receive the medical records of Mr. Fahey, including, but not limited to, mental health and drug or alcohol treatment records. Mr. Fahey shall not withdraw his release/consent;

IT IS FURTHER ORDERED that if, upon the authorization of MPRP, Mr. Fahey transfers to a rehabilitation program in another State, his failure to comply with any term or condition of the out-of-state's rehabilitation program, constitutes a violation of this Order. Mr. Fahey shall also sign any out-of-state written release/consent forms to authorize the Board to exchange with (i.e., disclose to and receive from) the out-of-state program verbal and written information concerning Mr. Fahey, and to ensure that the Board is authorized to receive the medical records of Mr. Fahey, including, but not limited to, mental health and drug or alcohol evaluation and treatment records. Mr. Fahey shall not withdraw the release/consent; and it is further

ORDERED that, after a minimum period of **THREE (3) YEARS**, after Mr. Fahey has complied with all terms and conditions of probation, and upon MPRP's determination that Mr. Fahey can practice safely without monitoring, Mr. Fahey may submit a written petition to the Board requesting termination of probation. After consideration of the petition, the probation may be terminated through an order of Panel B. Mr. Fahey may be required to appear before Panel B to discuss his petition for termination or the Panel may choose to administratively terminate the probation. Panel B will grant the petition to terminate the probation if Mr. Fahey has complied

with all of the probationary terms and conditions, the Panel determines that Mr. Fahey can safely practice without further monitoring, and there are no pending complaints related to the charges; and it is further

ORDERED that, if Mr. Fahey allegedly fails to comply with any term or condition of probation or this Order after Show Cause, Mr. Fahey 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 and, if there is no genuine dispute as to a material fact, Mr. Fahey shall be given a show cause hearing before Panel B; and it is further

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

ORDERED that there shall be no early termination of probation; and it is further

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

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

ORDERED that this Order is a public document pursuant to Md. Code Ann., Health Occ.

§§ 1-607, 14-411.1(b)(2) and Gen. Prov. § 4-333(b)(6).

09/08/2023

Date

Signature On File

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