

**IN THE MATTER OF**

**Michael C. Nero, R.C.P.**

**Respondent.**

**License No. L06765**

**\* BEFORE THE MARYLAND**

**\* STATE BOARD OF**

**\* PHYSICIANS**

**\* Case No. 7717-0098A**

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**ORDER AFTER SHOW CAUSE HEARINGS**

The issue in this case is whether Michael C. Nero, R.C.P., has violated a Disposition Agreement into which he entered with the Maryland State Board of Physicians (the "Board") on June 13, 2017. Pursuant to the Disposition Agreement, Mr. Nero enrolled in the Maryland Professional Rehabilitation Program ("MPRP"), agreed to comply with all of MPRP's recommendations, and agreed to fulfill all conditions of a Participant Rehabilitation Agreement that he signed with MPRP on June 26, 2017. On multiple occasions in 2018, MPRP reported to the Board that Mr. Nero had failed to comply with the terms and conditions of the Participant Rehabilitation Agreement. On November 18, 2018, Disciplinary Panel A ("Panel A") of the Board issued a Violation of Board Order and Notice to Show Cause regarding Mr. Nero's alleged violations of his Disposition Agreement. Panel A held a show cause hearing on December 5, 2018, during which Mr. Nero admitted his violations.

On December 21, 2018, Panel A received another report from MPRP that Mr. Nero had again failed to comply with his Rehabilitation Agreement. On December 31, 2018, the panel received a written acknowledgement of his failure to comply from Mr. Nero. On March 27, 2019, Panel A issued a second Violation of Board Order and Notice to Show Cause and held another show cause hearing on May 8, 2019 at which Mr. Nero had the opportunity to argue why his license should not be subject to further discipline. Panel A is issuing this Order after

considering the entirety of the record evidence and presentations before the panel at the show cause hearings held on December 5, 2018 and May 8, 2019.

## **FINDINGS OF FACT**

### **Background and Requirements of the Disposition Agreement**

On June 14, 2017, Mr. Nero was initially licensed in Maryland as a respiratory care practitioner (R.C.P.) by the Board. On June 13, 2017, Mr. Nero entered into a non-public Disposition Agreement with the Board in lieu of further investigation into information he had disclosed on his initial application for licensure.<sup>1</sup> The Disposition Agreement states:

The Applicant shall enter into a Board-monitored Participant Rehabilitation Agreement with the Maryland Professional Rehabilitation Program (“MPRP”) within ten (10) business days of the date the Board executes this Disposition Agreement. The Applicant shall comply with the Participant Rehabilitation Agreement into which he entered with the MPRP and will fulfill all conditions of the Participation Rehabilitation Agreement.

The Disposition Agreement further provides:

**AGREED**, that . . . if the Applicant fails to comply with any term or condition of this Agreement, this Agreement shall be treated as a public Consent Order, the violation of which authorizes the Board or a Board panel, after notice and opportunity to be heard, to take any action prescribed under §§ 14-5A-17(a) and 14-5A-23 of the . . . Act, including a reprimand, probation, suspension or revocation of the Applicant’s . . . license; and/or fine.

On June 26, 2017, Mr. Nero signed a Participant Rehabilitation Agreement with MPRP for a duration of three years.

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<sup>1</sup> The nature of the information Mr. Nero disclosed is confidential.

## **Violations of the Disposition and Participant Rehabilitation Agreements**

### **January-July, 2018: Non-Compliance with MPRP Conditions**

In January, February, March and June of 2018, MPRP reported to the Board that Mr. Nero had failed to comply with his Rehabilitation Agreement. On June 12, 2018, the Board requested a response from Mr. Nero regarding the reports from MPRP. On June 21, 2018, Mr. Nero provided a written explanation to the Board of events leading to his failures to comply with his Rehabilitation Agreement. He indicated that “these explanations do not excuse my actions,” that “[i]t was not my intention to blatantly disregard my responsibility as a participant [in MPRP],” and that he would “continue to work to improve these areas in order to be in compliance.”

In July, 2018, MPRP reported to the Board that Mr. Nero had self-reported a more recent violation of his Rehabilitation Agreement. On July 20, 2018, Mr. Nero provided a written explanation to the Board of the events leading to this violation.

### **Show Cause Hearing – December 5, 2018**

On November 15, 2018, Panel A issued a Violation of Board Order and Notice to Show Cause based on these alleged violations and held a show cause hearing on December 5, 2018. Through his counsel, Mr. Nero stated that there was no denial of the facts in his case and further acknowledged that the July 2018 incident clearly was a violation of his Rehabilitation Agreement.

### **December, 2018: Additional Non-Compliance with MPRP Conditions**

On December 21, 2018, prior to the issuance of an Order based on that first show cause hearing, MPRP reported to the Board that Mr. Nero had again violated his Rehabilitation Agreement. The Board requested a written response from Mr. Nero on December 26, 2018. In

an answer to the Board sent on December 31, 2018, Mr. Nero acknowledged the additional violation of his Rehabilitation Agreement and provided written information concerning the circumstances.

Show Cause Hearing – May 8, 2019

On March 27, 2019, Panel A issued a Violation of Board Order and Notice to Show Cause to Mr. Nero. Panel A again granted Mr. Nero the opportunity to show cause, at a hearing with his counsel, as to why the panel should not issue further sanctions based on his violations of the June 13, 2017 Disposition Agreement. The second show cause hearing was conducted on May 8, 2019.

At the hearing, Mr. Nero did not dispute the additional violations of his Rehabilitation Agreement with MPRP and his Disposition Agreement with the Board. Mr. Nero requested that the panel impose a Reprimand and an extension of his period of enrollment and participation in MPRP. The State also recommended continued enrollment in and compliance with MPRP's recommendations and further argued that the pattern of repeated violations by Mr. Nero warranted a suspension of his license for nine months and probation for a period of five years.

Based upon all of the reports from MPRP and the information presented at the show cause hearings, Panel A finds that Mr. Nero failed to comply with the conditions of his June 13, 2017 Disposition Agreement and his June 26, 2017 Rehabilitation Agreement. Mr. Nero's violations are undisputed.

### **CONCLUSIONS OF LAW**

Panel A concludes that Mr. Nero violated the terms and conditions of the June 13, 2017 Disposition Agreement by failing to comply with the terms of his MPRP Participant Rehabilitation Agreement.

## ORDER

It is, on an affirmative vote of a majority of a quorum of Disciplinary Panel A, hereby **ORDERED** that the June 13, 2017 Disposition Agreement is terminated; and it is further **ORDERED** that the respiratory care practitioner license of Michael C. Nero, R.C.P., license number L06765, is **SUSPENDED**<sup>2</sup> for a minimum of **SIX (6) MONTHS**.<sup>3</sup> During the period of suspension, Mr. Nero shall comply with all of the following terms and conditions:

1. Mr. Nero shall remain enrolled in MPRP and continue in his Participant Rehabilitation Agreement and Participant Rehabilitation Plan with MPRP;
2. Mr. Nero shall fully and timely cooperate and comply with all MPRP 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 screenings as directed by MPRP;
3. Mr. Nero's failure to comply with any term or condition of the Participant Rehabilitation Agreement(s) or Participant Rehabilitation Plan(s) shall constitute a violation of this Order;
4. Mr. Nero shall 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 written disclosures to the Board and to authorize the Board to disclose relevant information from MPRP records and files in a public order. A failure to, or withdrawal of, consent, is a violation of this Order;
5. Mr. Nero 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. Nero's current therapists and treatment providers) verbal and written information

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<sup>2</sup> If Mr. Nero's license expires during the period of the suspension, the suspension and any conditions will be tolled.

<sup>3</sup> During the suspension period, Mr. Nero shall not:

- (1) practice as a respiratory care practitioner;
- (2) take any actions after the effective date of this Order to hold himself out to the public as a current provider of medical services;
- (3) authorize, allow or condone the use of Mr. Nero's name or provider number by any health care practice or any other licensee or health care provider;
- (4) function as a peer reviewer for the Board or for any hospital or other medical care facility in the State; or
- (5) perform any act that requires an active respiratory care practitioner license.

concerning Mr. Nero and to ensure that MPRP is authorized to receive the medical records of Mr. Nero, including, but not limited to, mental health and drug or alcohol evaluation and treatment records; and it is further

**ORDERED** that Mr. Nero shall not apply for early termination of suspension; and it is further

**ORDERED** that, after a minimum of six months has passed and Mr. Nero has fully and satisfactorily complied with all terms and conditions of the suspension, Mr. Nero may submit a written petition for termination of the suspension. After a determination that Mr. Nero has fully and satisfactorily complied with the relevant terms and conditions of the suspension, the disciplinary panel may administratively terminate Mr. Nero's suspension through an order of the disciplinary panel; and it is further

**ORDERED** that, upon termination of the suspension, Mr. Nero shall be placed on **PROBATION<sup>4</sup>** for a minimum period of **FIVE (5) YEARS**. During the probationary period, Mr. Nero shall comply with the following terms and conditions:

1. Mr. Nero shall remain enrolled in MPRP and continue in his Participant Rehabilitation Agreement and Participant Rehabilitation Plan with MPRP;
2. Mr. Nero shall fully and timely cooperate and comply with all MPRP 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 screenings as directed by MPRP;
3. Mr. Nero's failure to comply with any term or condition of the Participant Rehabilitation Agreement(s) or Participant Rehabilitation Plan(s) shall constitute a violation of this Order;
4. Mr. Nero shall 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 written disclosures to the Board and to authorize the Board to disclose relevant

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<sup>4</sup> If Mr. Nero's license expires during the period of probation, the probation and any conditions will be tolled.

information from MPRP records and files in a public order. A failure to, or withdrawal of, consent, is a violation of this Order;

5. Mr. Nero 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. Nero's current therapists and treatment providers) verbal and written information concerning Mr. Nero and to ensure that MPRP is authorized to receive the medical records of Mr. Nero, including, but not limited to, mental health and drug or alcohol evaluation and treatment records; and it is further

**ORDERED** that Mr. Nero shall not apply for early termination of probation; and it is further

**ORDERED** that after a minimum of five years has passed and Mr. Nero has fully and satisfactorily complied with all terms and conditions of probation, Mr. Nero may submit a written petition for termination of probation. After consideration of the petition, the probation may be terminated through an order of a disciplinary panel. Mr. Nero may be required to appear before the disciplinary panel to discuss his petition for termination. The disciplinary panel may grant the petition to terminate the probation through an order of the disciplinary panel, if Mr. Nero has successfully complied with all of the probationary terms and conditions and if there are no pending complaints related to the charges; and it is further

**ORDERED** that if Mr. Nero allegedly fails to comply with any term or condition imposed by this Order, Mr. Nero shall be given notice and an opportunity for a hearing. If the disciplinary panel determines that 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 the disciplinary panel determines that there is no genuine dispute as to a material fact, Mr. Nero shall be given a show cause hearing before a disciplinary panel; and it is further

**ORDERED** that, after the appropriate hearing, if the disciplinary panel determines that Mr. Nero has failed to comply with any term or condition imposed by this Order, the disciplinary

panel may reprimand Mr. Nero, place Mr. Nero on probation with appropriate terms and conditions, or suspend or revoke Mr. Nero's license to practice respiratory care in Maryland. The disciplinary panel may, in addition to one or more of the sanctions set forth above, impose a civil monetary fine upon Mr. Nero; and it is further

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

**ORDERED** that the effective date of this Order is the date the Order is signed by the Executive Director of the Board or her designee. The Executive Director or designee signs the Order on behalf of the disciplinary panel which has imposed the terms and conditions of this Order, and it is further

**ORDERED** that this is a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., Health Occ. §§ 1-607 and 14-411.1, and Gen. Prov. § 4-333(b) (2014 & 2018 Supp.).

06/04/2019  
Date

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