

IN THE MATTER OF	*	BEFORE THE
MELISSA RUTHERFORD, R.C.P.	*	MARYLAND STATE
Respondent	*	BOARD OF PHYSICIANS
License Number: L07049	*	Case Number: 2221-0090A
* * * * *	*	* * * * *

**ORDER FOR SUMMARY SUSPENSION OF LICENSE TO PRACTICE
RESPIRATORY CARE**

Disciplinary Panel A (“Panel A”) of the Maryland State Board of Physicians (the “Board”) hereby **SUMMARILY SUSPENDS** the license to practice respiratory care of **MELISSA RUTHERFORD, R.C.P.** (the “Respondent”), License Number L07049, in the State of Maryland.

Panel A takes such action pursuant to its authority under Md. Code Ann., State Gov’t (“State Gov’t”) § 10-226(c)(2) (2014 Repl. Vol. & 2020 Supp.) and Md. Code Regs. (“COMAR”) 10.32.02.08B(7), concluding that the public health, safety or welfare imperatively requires emergency action.

INVESTIGATIVE FINDINGS

Based on information received by, and made known to Panel A, and the investigatory information obtained by, received by and made known to and available to Panel A, including the instances described below, Panel A has reason to believe that the following facts are true:¹

¹ The statements regarding the Respondent’s conduct are intended to provide the Respondent with reasonable notice of the asserted facts. They are not intended as, and do not necessarily represent a complete description of the evidence, either documentary or testimonial, to be offered against the Respondent in connection with this matter.

1. The Respondent was originally issued a license to practice respiratory care in Maryland on July 2, 2019, under License Number L07049. The Respondent's latest license was given the expiration date of May 30, 2022.

2. At all times relevant hereto, the Respondent practiced as a respiratory care practitioner at a health care facility (the "Facility")² located in Baltimore County, Maryland.

3. The Board initiated an investigation of the Respondent on February 3, 2021, after receiving a Mandated 10-Day Report (the "Report") from the Facility. The Facility reported that it placed the Respondent on a leave of absence after she was found asleep while on duty. The Facility stated that on January 22, 2021, two supervisory Facility staff persons (the Supervisor and Director) found the Respondent in the break room asleep with her head down. They called out her name multiple times before they were able to wake her up. The Respondent disclosed to the Director that she had been up all night and had used an illicit controlled dangerous substance ("CDS").³ Facility staff then escorted the Respondent to the Facility's Occupational Health department for a fitness-for-duty

² For confidentiality reasons, the name of the health care facility will not be identified in this document. The Respondent is aware of the identity of the health care facility.

³ For confidentiality reasons, the specific CDS the Respondent disclosed will not be identified in this document. The Board was aware of the specific CDS the Respondent disclosed and Panel A was aware of the CDS the Respondent disclosed at the time it voted to summarily suspend the Respondent's license.

evaluation, after which the Respondent was sent home pending the results of testing. The Facility received the test findings on February 2, 2021, which it attached to the Report.⁴

4. By letter dated February 19, 2021, the Board informed the Respondent that it was in receipt of the Facility's Report and that it had opened an investigation on her as a result. The Board directed the Respondent to provide a response to the Report on or before February 26, 2021.

5. By letter dated March 1, 2021, the Respondent submitted a written response to the Board in which she stated that due to increased stressors in her life, she became "easily influenced by a negative person in [her] life" and has since asked the Facility for assistance for her medical condition.

6. Board staff interviewed the Facility staff persons who supervised the Respondent at the Facility. Those individuals confirmed that they encountered the Respondent on January 22, 2021 and observed her sleeping in a break room while on duty. The Director confirmed that the Respondent made disclosures to her about her use of an illicit CDS and was "remorseful" and "embarrassed," after which she sent the Respondent to the Facility's Occupational Health department. Board staff confirmed during these interviews that on January 22, 2021, the Respondent had been seeing patients during her shift.

⁴ For confidentiality reasons, the test findings will not be identified in this document. The Board was aware of the specific test findings and Panel A was aware of the findings at the time it voted to summarily suspend the Respondent's license.

7. Board staff also reviewed Facility records which noted that in November 2019, the Facility sent the Respondent to its Occupational Health department for sleeping while on duty, during which time the Respondent disclosed that she was with an individual who was using an illicit CDS. Facility records state that the Respondent was working on January 22, 2021, the day she was relieved from duty. The records also state that the Respondent admitted to using illicit CDS since September 2020 and “had an all nightery (sic) on Wednesday.”⁵

8. On March 17, 2021, Board staff conducted an under-oath interview of the Respondent. During the interview, the Respondent stated that she began using an illicit CDS in or around September 2020, and that by the end of December 2020/beginning of January 2021, was using this illicit CDS on a daily basis. The Respondent stated that she missed one day of work in January 2021 due to her illicit CDS use. With respect to the incident that occurred on January 22, 2021, the Respondent stated that she used the illicit CDS during the early morning hours of January 21, 2021, which caused her to have an “all nighter.” The Respondent confirmed that she used the illicit CDS the night before her shift on January 22, 2021 and was found asleep by Facility staff in the break room. The Respondent stated that she continued to use the illicit CDS until February 3 or 4, 2021, when she left for treatment.

⁵ Wednesday, January 20, 2021.

CONCLUSION OF LAW

Based upon the foregoing Investigative Findings, Panel A of the Board concludes that, pursuant to State Gov't § 10-226(c)(2) and COMAR 10.32.02.08B(7), the public health, safety, or welfare imperatively requires emergency action.

ORDER

IT IS thus, by Panel A of the Board, hereby:

ORDERED that pursuant to the authority vested in Panel A by State Govt. § 10-226(c)(2)(2014 Repl. Vol. & 2020 Supp.) and COMAR 10.32.02.08B(7), the Respondent's license to practice respiratory care in the State of Maryland is hereby **SUMMARILY SUSPENDED**; and it is further

ORDERED that in accordance with Md. Code Regs. 10.32.02.08B(7) and E, a post-deprivation initial hearing on the summary suspension will be held on **Wednesday, April 14, 2021 at 11:30 a.m.** at the Board's offices, located at 4201 Patterson Avenue, Baltimore, Maryland, 21215-0095; and it is further

ORDERED that after the **SUMMARY SUSPENSION** hearing before Panel A, the Respondent, if dissatisfied with the result of the hearing, may request, within ten (10) days, an evidentiary hearing, such hearing to be set within thirty (30) days of the request, before an Administrative Law Judge at the Office of Administrative Hearings, Administrative Law Building, 11101 Gilroy Road, Hunt Valley, Maryland 21031-1301; and it is further

ORDERED that this is an Order of Panel A, and as such, is a public document. *See*
Health Occ. §§ 1-607, 14-411.1(b)(2) and Md. Code Ann., Gen. Prov. § 4-333(b)(6).

03/31/2021
Date

Signature on File

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