

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

**CONSENT ORDER**

On April 2, 2021, Disciplinary Panel A (“Panel A”) of the Maryland State Board of Physicians (the “Board”) charged **MELISSA RUTHERFORD, R.C.P.** (the “Respondent”), License Number L07049, under the Maryland Respiratory Care Practitioners Act (the “Act”), Md. Code Ann., Health Occ. (“Health Occ.”) §§ 14-5A-01 *et seq.* (2014 Repl. Vol. & 2020 Supp.).

The pertinent provisions of the Act under Health Occ. § 14-5A-17(a) provide as follows:

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

(a) *In general.* Subject to the hearing provisions of § 14-405 of this subtitle, a disciplinary panel of the Board, on the affirmative vote of a majority of the quorum of the disciplinary panel, may . . . reprimand any licensee, place any licensee on probation, or suspend or revoke a license, if the . . . licensee:

. . . .

- (3) Is guilty of unprofessional or immoral conduct in the practice of respiratory care;

. . . .

(7) Is addicted to or habitually abuses any narcotic or controlled dangerous substance as defined in § 5-101 of the Criminal Law Article; [and]

(8) Provides professional services while:

...

(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 June 9, 2021, Panel A was convened as a Disciplinary Committee for Case Resolution (“DCCR”) in this matter. Based on negotiations occurring as a result of this DCCR, the Respondent agreed to enter into this Consent Order, consisting of Findings of Fact, Conclusions of Law and Order.

### **FINDINGS OF FACT**

Panel A finds:

#### **I. BACKGROUND/LICENSING INFORMATION**

1. At all times relevant to these charges, the Respondent was licensed to practice respiratory care in the State of Maryland. The Respondent was originally licensed to practice respiratory care in Maryland on July 2, 2019, under License Number L07049. The Respondent’s license is current through May 30, 2022.

2. At all times relevant to these charges, the Respondent practiced as a respiratory care practitioner at a health care facility (the "Facility")<sup>1</sup> located in Baltimore County, Maryland.

3. On March 31, 2021, Panel A, pursuant to 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), issued an Order for Summary Suspension, in which it summarily suspended the Respondent's license to practice respiratory care, concluding that the public health, safety or welfare imperatively required emergency action. The Respondent's respiratory care practitioner license remains suspended as of the date of these charges.

## **II. THE COMPLAINT**

4. 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 on January 22, 2021, it placed the Respondent on a leave of absence after she was found asleep while on duty.

5. 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

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<sup>1</sup> 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.

used an illicit controlled dangerous substance (“CDS”).<sup>2</sup> Facility staff then escorted the Respondent to the Facility’s Occupational Health department for a fitness-for-duty 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.<sup>3</sup>

### **III. BOARD INVESTIGATION**

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

7. 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.

8. Board staff interviewed the Facility staff persons who supervised the Respondent. These 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

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<sup>2</sup> 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 charge the Respondent under the Act.

<sup>3</sup> 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 charge the Respondent with violating the Act.

Occupational Health department. Board staff confirmed during these interviews that on January 22, 2021, the Respondent had been seeing patients during her shift.

9. 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.”<sup>4</sup>

10. 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.

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<sup>4</sup> Wednesday, January 20, 2021.

## CONCLUSIONS OF LAW

Based on the above findings of fact, Panel A concludes that the Respondent is guilty of unprofessional or immoral conduct in the practice of respiratory care, in violation of Health Occ. § 14-5A-17(a)(3), Is addicted to or habitually abuses any narcotic or controlled dangerous substance as defined in § 5-101 of the Criminal Law Article, in violation of Health Occ. § 14-5A-17(a)(7); and provides professional services while using any narcotic or controlled dangerous substance as defined in § 5-101 or the Criminal Law Article or any other drug that is in excess of therapeutic amounts or without valid medical indication, in violation of Health Occ. § 14-5A-17(a)(8)(ii).

### ORDER

It is, by Disciplinary Panel A of the Board, hereby:

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

**ORDERED** that the Order for Summary Suspension, dated March 31, 2021, is **TERMINATED**; and it is further

**ORDERED** that the Respondent's license to practice medicine is **SUSPENDED** for a minimum of **ONE YEAR**,<sup>5</sup> and it is further

**ORDERED** that during the suspension, the Respondent shall comply with the following terms and conditions of the suspension<sup>6</sup>:

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<sup>5</sup> If the Respondent's license expires during the period of the suspension, the suspension and any conditions will be tolled.

<sup>6</sup> During the suspension period, the Respondent shall not:

(1) practice respiratory care;

1. The Respondent shall enroll in the Maryland Professional Rehabilitation Program (MPRP) as follows:

(a) Within 5 business days, the Respondent shall contact MPRP to schedule an initial consultation for enrollment;

(b) Within 15 business days, the Respondent shall enter into a Participant Rehabilitation Agreement and Participant Rehabilitation Plan with MPRP;

(c) the 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 screenings as directed by MPRP;

(d) the Respondent 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. The Respondent shall not withdraw her release/consent;

(e) the 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 the Respondent's current therapists and treatment providers) verbal and written information concerning the Respondent and to ensure that MPRP is authorized to receive the medical records of the Respondent, including, but not limited to, mental health and drug or alcohol evaluation and treatment records. The Respondent shall not withdraw her release/consent;

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(2) take any actions after the effective date of this Order to hold herself out to the public as a current provider of medical services;

(3) authorize, allow or condone the use of the Respondent'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;

(5) dispense medications; or

(6) perform any other act that requires an active respiratory care license.

(f) the Respondent's failure to comply with any of the above terms or conditions including terms or conditions of the Participant Rehabilitation Agreement(s) or Participant Rehabilitation Plan(s) constitutes a violation of this Consent Order; and it is further

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

**ORDERED** that after the minimum period of suspension imposed by the Consent Order has passed and the Respondent has fully and satisfactorily complied with all terms and conditions for the suspension and if MPRP finds, and notifies the Board, that the Respondent is safe to return to the practice of respiratory care, the Respondent may submit a written petition to the disciplinary panel to terminate the suspension of the Respondent's license. The Respondent may be required to appear before the disciplinary panel to discuss her petition for termination. If the disciplinary panel determines that it is safe for the Respondent to return to the practice of respiratory care, the suspension will be terminated through an order of the disciplinary panel, and the disciplinary panel may impose any terms and conditions it deems appropriate on the Respondent's return to practice, including, but not limited to, probation and/or continuation of the Respondent's enrollment in MPRP. If the disciplinary panel determines that it is not safe for the Respondent to return to the practice of respiratory care, the suspension shall be continued through an order of the disciplinary panel for a length of time determined by the disciplinary panel, and the disciplinary panel may impose any additional terms and conditions it deems appropriate; and it is further



**ORDERED** that, if the Respondent allegedly fails to comply with any term or condition imposed by this Consent Order, the Respondent shall be given notice and an opportunity for a hearing. If the disciplinary panel determines 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 followed by an exceptions process before a disciplinary panel; and if the disciplinary panel determines there is no genuine dispute as to a material fact, the Respondent 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 the Respondent has failed to comply with any term or condition imposed by this Consent Order, the disciplinary panel may reprimand the Respondent, place the Respondent on probation with appropriate terms and conditions, or suspend with appropriate terms and conditions, or revoke the Respondent's license to practice medicine in Maryland. The disciplinary panel may, in addition to one or more of the sanctions set forth above, impose a civil monetary fine on the Respondent; and it is further

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

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

**ORDERED** that this Consent Order is a public document. *See* Health Occ. §§ 1-607, 14-411.1(b)(2) and Gen. Prov. § 4-333(b)(6).

07/09/2021  
Date

## *Signature on File*

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

### CONSENT

I, Melissa Rutherford, RCP, acknowledge that I have consulted with counsel before signing this document.

By this Consent, I agree to be bound by this Consent Order and all its terms and conditions and understand that the disciplinary panel will not entertain any request for amendments or modifications to any condition.

I assert that I am aware of my right to a formal evidentiary hearing, pursuant to Md. Code Ann., Health Occ. § 14-405 and Md. Code Ann., State Gov't §§ 10-201 *et seq.* concerning the pending charges. I waive this right and have elected to sign this Consent Order instead.

I acknowledge the validity and enforceability 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 behalf, and to all other substantive and procedural protections as provided by law. I waive those procedural and substantive protections. I acknowledge the legal authority and the jurisdiction of the disciplinary panel to initiate these proceedings and to issue and enforce this Consent Order.

I voluntarily enter into and agree to comply with the terms and conditions set forth in the Consent Order as a resolution of the charges. I waive any right to contest the Findings of Fact and Conclusions of Law and Order set out in the Consent Order. I waive all rights to appeal this Consent Order.

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

## Signature on File

6/30/21  
Date

Melissa Rutherford, R.C.P. T 9  
Respondent

### NOTARY

STATE OF Maryland

CITY/COUNTY OF Harford

I HEREBY CERTIFY that on this 30 day of JUNE 2021, before me, a Notary Public of the foregoing State and City/County, personally appeared Melissa Rutherford, R.C.P., 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.



Kelly L Gross  
NOTARY PUBLIC  
Harford County  
State of Maryland  
My Commission Expires  
July 11, 2023

Kelly L Gross  
Notary Public

My Commission expires: July 11, 2023