

IN THE MATTER OF	*	BEFORE THE
NETOSHA L. WILSON, RCP	*	MARYLAND STATE BOARD
Respondent	*	OF PHYSICIANS
License Number: L07216	*	Case Number: 2222-0071 B
* * * * *		

**FINAL DECISION AND ORDER OF DEFAULT**

**Procedural History**

On August 3, 2022, Disciplinary Panel B (“Panel B”) of the Maryland Board of Physicians (the “Board”) charged the Respondent Netosha L. Wilson, RCP (the “Respondent”), with violating the Maryland Respiratory Care Practitioners Act (the “Act”), Md. Code Ann., Health Occ. §§ 14-5A-01 *et seq.* Specifically, the Respondent was charged under the following provisions of the Act:

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

(a) Subject to the hearing provisions of § 14-405 of this title, a disciplinary panel, on the affirmative vote of a majority of a quorum of the disciplinary panel, may deny a license to any applicant, 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 [and]

...

(26) Fails to cooperate with a lawful investigation conducted by the Board or a disciplinary panel[.]

On November 2, 2022, the Office of Administrative Hearings (“OAH”) mailed a notice of remote scheduling conference (First Scheduling Conference) to the parties at the addresses of record. The Respondent’s notice was sent to her Maryland address of record, as well as a Mississippi address. The notice stated that the First Scheduling Conference would be held on the

Webex videoconferencing platform (Webex) on November 22, 2022, at 9:30 a.m. None of the notices mailed by OAH to the parties were returned by the United States Postal Service (“USPS”), and the Respondent did not request a postponement.

On November 22, 2022, the Administrative Law Judge (“ALJ”) convened the First Scheduling Conference. The Administrative Prosecutor from the Office of the Attorney General appeared and represented the State of Maryland. The Respondent did not appear. After waiting over fifteen minutes for the Respondent or her representative to appear and having determined that the Respondent received proper notice of the First Scheduling Conference, the ALJ went forward in the Respondent’s absence. On November 30, 2022, the ALJ issued the First Scheduling Order, scheduling a remote prehearing conference (“Prehearing Conference”) on Webex for 9:30 a.m., on January 26, 2023; a remote merits hearing on Webex for 9:30 a.m., on February 23-24, 2023; and discovery deadlines based, in part, on the first hearing date. Based on information obtained at the First Scheduling Conference, the ALJ directed OAH to add a third mailing address for notice to the Respondent (which was a second address in Mississippi). The First Scheduling Order sent to the Respondent was not returned by USPS.

On November 30, 2022, OAH separately mailed notices for the Prehearing Conference and the remote merits hearing to the parties, which also directed the parties to file prehearing conference statements. The notice for the Prehearing Conference stated that failure to attend the Prehearing Conference could result in a decision against the party failing to appear. None of the notices mailed by OAH to the parties were returned by USPS, and there was no request for a postponement of the Prehearing Conference. The State filed its prehearing conference statement on January 9, 2023. The Respondent did not file a prehearing conference statement.

On January 26, 2023, the ALJ convened the Prehearing Conference, and the Administrative Prosecutor appeared for the State. The Respondent did not appear. In assessing whether the Respondent received proper notice of the Prehearing Conference, it was determined that the notice of the Prehearing Conference was not sent to one of the Mississippi addresses and that the notice sent to the other Mississippi address contained an incorrect zip code. Because the notices of the Prehearing Conference were not sent to all of the Respondent's known addresses, the ALJ exercised his discretion to conduct a Second Scheduling Conference instead of the Prehearing Conference. On February 1, 2022, the ALJ issued the Second Scheduling Order, scheduling a Prehearing on Webex for 9:30 a.m., on February 23, 2023; a remote merits hearing on Webex for 9:30 a.m., on April 20-21, 2023; and discovery deadlines based, in part, on the first hearing date.

On January 26-27, 2023, OAH separately mailed notices for the Prehearing Conference and the remote merits hearing to the Respondent. The notice for the Prehearing Conference stated that failure to attend the Prehearing Conference could result in a decision against the party failing to appear. The notices sent to one of the Mississippi addresses were returned by USPS with the notation "no such street address." The Second Scheduling order sent to this address was returned by USPS for the same reason. None of the other notices mailed by OAH to the parties were returned by the Postal Service, and there was no request for a postponement of the Prehearing Conference. The Respondent has not updated her address with OAH or the Board.

On February 23, 2023, the ALJ convened the Prehearing Conference, and the Administrative Prosecutor appeared for the State. The Respondent did not appear. After waiting more than fifteen minutes, the ALJ commenced the Prehearing Conference. The ALJ reviewed the record and determined that the Respondent received proper notice of the Prehearing Conference. Based on the Respondent's failure to appear, the State made an oral motion for the

entry of a default order against the Respondent and requested that the ALJ propose the revocation of the Respondent's licensure under the Maryland Respiratory Care Practitioners Act. Health Occ. § 14-5A-17(a)(3) and (26). The ALJ took the motion for entry of a default order against the Respondent under advisement.

Under OAH's Rules of Procedure, "[i]f, after receiving proper notice, a party fails to attend or participate in a prehearing conference, hearing, or other stage of a proceeding, the judge may proceed in that party's absence or may, in accordance with the hearing authority delegated by the agency, issue a final or proposed default order against the defaulting party." COMAR 28.02.01.23A. Similarly, the Health Occupations Article provides, in pertinent part:

(d) If after due notice the individual against whom the action is contemplated fails or refuses to appear, nevertheless the hearing officer may hear and refer the matter to the Board or a disciplinary panel for disposition.

(e) After performing any necessary hearing under this section, the hearing officer shall refer proposed factual findings to the Board or a disciplinary panel for the Board's or disciplinary panel's disposition.

Health Occ. § 14-405. Read in conjunction with the OAH Rules of Procedure, § 14-405(d), which provides that the ALJ "may hear"<sup>1</sup> the matter if the individual fails to appear, and § 14-405(e), which uses the language "*any necessary hearing,*" clearly contemplate situations such as defaults where no hearing on the merits is required. (Italics added); *see also* COMAR 28.02.01.23A.

Upon consideration of the record, the ALJ found that the Respondent, who has not appeared, attended, or participated in any proceedings related to the charges against her, had proper notice of the February 23, 2023, Prehearing Conference and failed to appear in the Prehearing Conference.

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<sup>1</sup> The word "may" is generally considered to be permissive, as opposed to mandatory, language. *Board of Physician Quality Assurance*, 381 Md. 157, 166-67 (2004).

Accordingly, the ALJ issued a Proposed Default Order, proposing that the Respondent be found in default in this case, the Board adopt as fact the statements set out in the Allegations of Fact in the Charges under the Maryland Respiratory Care Practitioners Act, the Respondent be found to have violated § 14-5A-17(a)(3) and (26), and the Respondent's license to practice respiratory care in Maryland be revoked.

Neither party filed exceptions to the ALJ's Proposed Default Order.

### **FINDINGS OF FACT**

Board Disciplinary Panel A ("Panel A" or the "Panel") adopts the ALJ's finding that the Respondent defaulted. Because the Respondent defaulted, the following findings of fact are adopted from the allegations of fact set forth in Charges under the Maryland Respiratory Care Practitioners Act, issued on August 3, 2022, and are deemed proven by the preponderance of evidence:

#### **I. Background**

1. At all times relevant hereto, 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 June 26, 2020, under License Number L07216. The Respondent's most recent license was scheduled to expire on May 30, 2024.

2. At all times relevant hereto, the Respondent was employed as a respiratory care therapist at a healthcare staffing agency (the "Staffing Agency") with temporary employment assignments at health care facilities in Maryland.

3. The Respondent's current employment status is unknown to the Panel.

#### **II. The Complaint**

4. On or about October 22, 2021, the Board received a complaint (the "Complaint") from a manager (the "Complainant") at the Staffing Agency.

5. The Complainant stated that the Staffing Agency required employees to receive a COVID-19 vaccination, and the Complainant suspected that the Respondent submitted a fraudulent COVID-19 vaccine card due to, among other things, the dates that vaccinations were administered and the handwriting on the vaccine card. The Complaint further stated that the Staffing Agency requested that the Respondent provide state verification of her COVID-19 vaccination, which she did not. The Respondent then became "unresponsive" to the Staffing Agency.

6. Upon receiving the Complaint, the Board initiated an investigation of the Respondent.

### **III. Board Investigation**

7. As part of its investigation, the Board subpoenaed records, including, but not limited to, the Respondent's human resources/personnel file from the Staffing Agency and the Respondent's COVID-19 vaccination records from a Maryland database.

#### **Falsification of COVID-19 Vaccination**

8. The Board received a copy of the COVID-19 vaccine card the Respondent submitted to the Staffing Agency, which stated that the Respondent received two doses of a COVID-19 vaccination: on January 19, 2021, and on February 2, 2021.

9. In or around November 19, 2021, the Board was notified that the Maryland database had no record of the Respondent receiving a COVID-19 vaccination.

#### **Failure to Cooperate**

10. By letter dated December 1, 2021 (the “December 1, 2021 Correspondence”), sent to the Respondent’s address of record with the Board<sup>2</sup> (the “Address of Record”), the Board notified the Respondent of the Complaint and informed her of the Board investigation. The Board requested that the Respondent submit a written response to the Complaint within ten business days from the date of the December 1, 2021 Correspondence.

11. The December 1, 2021 Correspondence included a subpoena duces tecum for the Respondent to provide the Board a complete copy of her Certificate of COVID-19 Vaccination from the Maryland Department of Health and COVID-19 Vaccination Record Card.

12. The Respondent failed to respond to the December 1, 2021 Correspondence within ten business days or any time thereafter, and the December 1, 2021 Correspondence was not returned as undeliverable.

13. By email dated December 16, 2021 (the “December 16, 2021 Email”), sent to the Respondent’s email address of record with the Board<sup>3</sup> (the “Email Address of Record”), the Board emailed the Respondent the December 1, 2021 Correspondence.

14. The Respondent failed to respond to the December 16, 2021 Email, and the December 16, 2021 Email was not returned as undeliverable.

15. By letter dated December 16, 2021 (the “December 16, 2021 Correspondence”), which was sent to a second address (the “Second Address”) that the Board had obtained for the

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<sup>2</sup> The Board mailed the letter to the Respondent’s non-public address that the Respondent provided on her Respiratory Care Practitioner Application for licensure in Maryland which was received by the Board on or around June 11, 2020 (the “Application”). The Application indicated that the Board would use the non-public address provided by the Respondent. The Board never received a change of address from the Respondent after she submitted the Application.

<sup>3</sup> The Board emailed the Respondent at her email address provided by the Respondent on the Application. The Board never received a change of email address from the Respondent after she submitted the Application.

Respondent, the Board notified the Respondent of the Complaint and informed her of the Board investigation. The Board requested that the Respondent submit a written response to the Complaint within ten business days from the December 16, 2021 Correspondence.

16. The December 16, 2021 Correspondence included a subpoena duces tecum for the Respondent to provide the Board a complete copy of her Certificate of COVID-19 Vaccination from the Maryland Department of Health and COVID-19 Vaccination Record Card.

17. The Respondent failed to respond to the December 16, 2021 Correspondence within ten business days or any time thereafter, and the December 16, 2021 Correspondence was not returned as undeliverable.

18. On or about January 4, 2022, the Board attempted to contact the Respondent on her cell phone and home phone numbers of record.<sup>4</sup> The Board was unable to reach the Respondent and received “call rejected” and “wrong number” messages.

19. By email dated January 4, 2022 (the “January 4, 2022 Email”), sent to the Email Address of Record, the Board emailed the Respondent the December 1, 2021 Correspondence and the December 16, 2021 Correspondence.

20. The Respondent failed to respond to the January 4, 2022 Email and the January 4, 2022 Email was not returned as undeliverable.

21. On or about January 13, 2022, the Board attempted to contact the Respondent based on an additional phone number the Board obtained for the Respondent. The Board left a voicemail for the Respondent, and the Board never received a call back.

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<sup>4</sup> The Board contacted the Respondent at the telephone numbers the Respondent provided on the Application. The Board never received a change of telephone number from the Respondent after she submitted the Application.



22. The Board obtained a second email address (the Second Email Address”) for the Respondent.

23. On or about February 2, 2022, the Board emailed the Respondent, at the Email Address of Record and the Second Email Address, and mailed the Respondent, at the Address of Record and the Second Address, a subpoena ad testificandum (the “February 17, 2022 Subpoena”) requiring the Respondent to appear for an interview at the Board’s office on February 17, 2022.

24. On February 17, 2022, the Respondent failed to comply with or respond to the February 17, 2022 Subpoena, and the February 17, 2022, Subpoena was not returned as undeliverable.

25. On or about February 17, 2022, the Board emailed the Respondent, at the Email Address of Record, and mailed the Respondent, at the Address of Record and the Second Address, a subpoena ad testificandum (the “February 28, 2022 Subpoena”) requiring the Respondent to appear for an interview at the Board’s office on February 28, 2022.

26. On or about February 25, 2022, the Board emailed all previous Board correspondence to the Respondent to date (the February 25, 2022 Correspondence”) to a third email address (the “Third Email Address”) the Board obtained for the Respondent.

27. On February 28, 2022, the Respondent failed to comply with or respond to the February 28, 2022 Subpoena and the February 25, 2022 Correspondence and February 28, 2022 Subpoena were not returned as undeliverable.

28. On or about March 2, 2022, the Board emailed all previous Board correspondence to the Respondent to date (the “March 2, 2022 Correspondence) and a subpoena ad testificandum (the “March 7, 2022 Subpoena”) requiring the Respondent to appear for an interview at the Board’s

office on March 7, 2022 to the Email Address of Record, the Second Email Address and the Third Email Address.

29. The March 2, 2022 Correspondence and the March 7, 2022 Subpoena were also mailed to a third address (the "Third Address") the Board obtained for the Respondent.

30. On March 7, 2022, the Respondent failed to comply with or respond to the March 7, 2022 Subpoena. The March 2, 2022 Correspondence and March 7, 2022 Subpoena were not returned as undeliverable.

### **CONCLUSIONS OF LAW**

Panel A finds the Respondent defaulted on the August 3, 2022 charges based upon her failure to appear for the February 23, 2023 Prehearing Conference held before an ALJ from OAH. *See* Md. Code Ann., State Gov't § 10-210(4). And based upon the 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); and failed to cooperate with a lawful investigation conducted by the Board or a disciplinary panel.

### **Sanction**

The ALJ recommended that the Respondent's license to practice respiratory care in Maryland be revoked. Panel A finds that the ALJ's recommended sanction is appropriate and adopts it.

### **ORDER**

It is, thus, on the affirmative vote of a majority of a quorum of Panel A, hereby

**ORDERED** that the Respondent Netosha L. Wilson, RCP's license to practice respiratory care in Maryland (License No. L07216) is **REVOKED**; and it is further

**ORDERED** that this Final Decision and Order of Default is a public document.

## *Signature On File*

06/02/2023  
Date

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

### **NOTICE OF RIGHT TO APPEAL**

Pursuant to § 14-408(a) of the Health Occupations Article, the Respondent has the right to seek judicial review of this final decision and order. Any petition for judicial review must be filed in court within 30 days from the date this final decision and order was sent to the Respondent. The final decision and order was sent on the date that it was issued. The petition for judicial review must be made as directed in the Maryland Administrative Procedure Act, Md. Code Ann., State Gov't § 10-222, and Maryland Rules 7-201 *et seq.*

If the Respondent petitions for judicial review of this final decision and order, the Board is a party and should be served with the court's process. Also, a copy of the petition for judicial review should be sent to the Maryland Board of Physicians, 4201 Patterson Avenue, Baltimore, Maryland 21215. In addition, the Respondent should send a copy of the petition for judicial review to the Board's counsel, David Wagner, Assistant Attorney General, Office of the Attorney General, 300 W. Preston Street, Suite 302, Baltimore, Maryland 21201 and by email at david.wagner@maryland.gov. The administrative prosecutors are not involved in the circuit court process and does not need to be served or copied on pleadings filed in circuit court.