

Melissa D. Harben

Date: 12/22/17

Arun Bhandari, M.D., Chair
Disciplinary Panel A
Maryland State Board of Physicians
4201 Patterson Avenue, 4th Floor
Baltimore, MD 21215-2299

Re: Surrender of License to Practice Perfusion
Melissa D. Harben License Number: Y00014
Case Number: 2017-0248

Dear Dr. Bhandari and Members of the Disciplinary Panel A,

Please be advised that I have decided to **SURRENDER** my license to practice perfusion in the State of Maryland, License Number Y00014, effective immediately. I understand that upon surrender of my license, I may not engage in the practice of perfusion, with or without compensation, in the State of Maryland as it is defined in the Maryland Perfusion Act (the "Act"), Md. Code Ann., Health Occ. §§ 14-5E-01 *et seq.* (2014 Repl. Vol.) and other applicable laws. In other words, as of the effective date of this Letter of Surrender, I understand that the surrender of my license means that I am in the same position as an unlicensed individual in the State of Maryland.

I understand that this Letter of Surrender is a **PUBLIC DOCUMENT**, and upon Disciplinary Panel A's ("Panel A") acceptance, becomes a **FINAL ORDER** of Panel A of the Maryland State Board of Physicians (the "Board").

I acknowledge that the Board initiated an investigation of my practice and on September 6, 2017, Panel A issued disciplinary charges against me under Health Occ. § 14-5E-16(a)(3) (is guilty of unprofessional or immoral conduct in the practice of perfusion; §14-5E-16(a)(4) (is professionally, physically, or mentally incompetent); and § 14-5E-16(a)(19) (fails to meet appropriate standards for the delivery of perfusion services). Specifically, Panel A alleged that I failed to adequately restock the cardiac operating room; failed to report for work in a timely manner; failed to properly operate perfusion equipment; and failed to report a patient's cardiac ischemic time to the attending surgeon in a timely manner. A copy of the charges is attached as Attachment 1. I have decided to surrender my license to practice perfusion in the State of Maryland to avoid further investigation and prosecution of these disciplinary charges and because I have no intention of practicing perfusion in Maryland in the foreseeable future.

I wish to make it clear that I have voluntarily, knowingly and freely chosen to submit this Letter of Surrender to avoid further prosecution of the disciplinary charges and

Arun Bhandari, M.D. and Members of Disciplinary Panel A

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because I have no intention of practicing perfusion in Maryland in the foreseeable future. I acknowledge that for all purposes related to perfusion licensure, the charges will be treated as if proven.

I understand that by executing this Letter of Surrender I am waiving my right to a hearing to contest the disciplinary charges. In waiving my right to contest the charges, I am also waiving the right to be represented by counsel at the hearing, to confront witnesses, to give testimony, to call witnesses on my own behalf, and all other substantive and procedural protections provided by law, including the right to appeal to circuit court.

I understand that the Board will advise the National Practitioner Data Bank of this Letter of Surrender, and in response to any inquiry, that I have surrendered my license as if it were revoked. I also understand that in the event I would apply for licensure in any form in any other state or jurisdiction that this Letter of Surrender may be released or published by the Board to the same extent as a final order that would result from disciplinary action, pursuant to Md. Code Ann., Gen. Prov. §§ 4-101 *et seq.* (2014), and that this Letter of Surrender constitutes a disciplinary action by Panel A.

I affirm that as of the date of this Letter of Surrender, I will present to the Board my Maryland perfusion license, number Y00014.

I further recognize and agree that by submitting this Letter of Surrender, my license will remain surrendered unless and until the Board grants reinstatement. In the event that I apply for reinstatement of my Maryland License, I understand that Panel A or its successor is not required to grant reinstatement; and, if I demonstrate my professional competence and fitness to practice perfusion to the satisfaction of Panel A or its successor, and it does grant reinstatement, Panel A or its successor may impose any terms and conditions the disciplinary panel considers appropriate for public safety and the protection of the integrity and reputation of the profession. I further understand that if I file a petition for reinstatement, I will approach Panel A or its successor in the same position as an individual whose license has been revoked.

I acknowledge that I may not rescind this Letter of Surrender in part or in its entirety for any reason whatsoever. Finally, I wish to make clear that I have been advised of my right to be represented by an attorney of my choice throughout proceedings before Panel A, including the right to counsel with an attorney prior to signing this Letter of Surrender. I have knowingly and willfully waived my right to be represented by an attorney before signing this letter surrendering my license to practice perfusion in Maryland. I understand both the nature of Panel A's actions and this Letter of Surrender fully. I acknowledge that I understand and comprehend the language, meaning and terms and effect of this Letter of Surrender. I make this decision knowingly and voluntarily.

Arun Bhandari, M.D. and Members of Disciplinary Panel A

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Very truly yours,



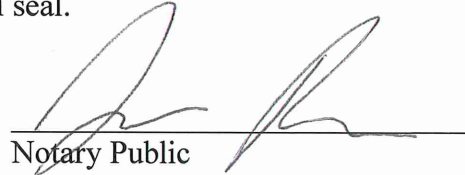
Melissa D. Harben, Perfusionist

NOTARY

STATE OF Massachusetts
CITY/COUNTY OF Bristol

I HEREBY CERTIFY that on this 22 day of December, 2017 before me, a Notary Public of the City/County aforesaid, personally appeared Melissa, and declared and affirmed under the penalties of perjury that the signing of this Letter of Surrender was his voluntary act and deed.

AS WITNESS my hand and Notarial seal.


Notary Public

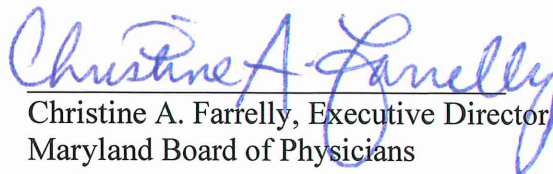
My commission expires: July 26, 2024



DANIELLE ROBILLARD
Notary Public
Commonwealth of Massachusetts
My Commission Expires July 26, 2024

ACCEPTANCE

On behalf of Disciplinary Panel A, on this 9th day of January, 2018, I, Christine A. Farrelly, accept Melissa D. Harben's **PUBLIC SURRENDER** of her license to practice perfusion in the State of Maryland.


Christine A. Farrelly, Executive Director
Maryland Board of Physicians

ATTACHMENT A

IN THE MATTER OF
MELISSA D. HARBEN, L.P.

Respondent

License Number: Y00014

* BEFORE THE
* MARYLAND STATE
* BOARD OF PHYSICIANS
* Case Number: 2017-0248

* * * * *

CHARGES UNDER THE MARYLAND PERFUSION ACT

Disciplinary Panel A of the Maryland State Board of Physicians (the "Board") hereby charges **MELISSA D. HARBEN, L.P.** (Licensed Perfusionist) (the "Respondent"), License Number Y00014, under the Maryland Perfusion Act (the "Act"), codified at Md. Code Ann., Health Occ. II ("Health Occ. II") §§ 14-5E-01 *et seq.* (2014 Repl. Vol.).

Specifically, Disciplinary Panel A charges the Respondent with violating the following provisions of the Act under Health Occ. II § 14-5E-16:

- (a) *In general.* -- Subject to the hearing provisions of § 14-405 of this title, the Board, on the affirmative vote of a majority of the quorum of the Board, may deny a license to any applicant, or a disciplinary panel, 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 applicant or licensee:
 - (3) Is guilty of unprofessional or immoral conduct in the practice of perfusion;
 - (4) Is professionally, physically, or mentally incompetent; [and]
 - (19) Fails to meet appropriate standards for the delivery of perfusion services[.]

ALLEGATIONS OF FACT¹

Disciplinary Panel A bases its charges on the following facts that it has reason to believe are true:

I. BACKGROUND

1. At all times relevant, the Respondent was and is licensed to practice perfusion in the State of Maryland. The Respondent was originally licensed to practice perfusion in Maryland on October 1, 2013, under License Number Y00014. The Respondent's license is current through January 31, 2018.

2. At times relevant, the Respondent was employed as a perfusionist at a health care facility (the "Facility")² in Maryland. The Facility terminated the Respondent's employment on or about October 6, 2016.

II. DISCIPLINARY HISTORY

3. On or about August 12, 2015, Disciplinary Panel A of the Board charged the Respondent with violating various provisions of the Act. Disciplinary Panel A's charges stemmed from the Respondent's self-report to the Board that she was terminated from her employment as a perfusionist at a health care facility in Maryland after testing positive for alcohol while at work.

4. The Respondent resolved Disciplinary Panel A's charges by entering into a Consent Order, dated February 17, 2016, in which Disciplinary Panel A found as a

¹ The allegations set forth in these charges are intended to provide the Respondent with notice of the Board disciplinary panel's action. 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 these charges.

² To ensure confidentiality, the names of individuals, hospitals and healthcare facilities involved in this case are not disclosed in this document. The Respondent may obtain the identity of the referenced individuals or entities in this document by contacting the administrative prosecutor.

matter of law that the Respondent: was guilty of unprofessional or immoral conduct in the practice of perfusion, in violation of Health Occ. II § 14-5E-16(a)(3); and was habitually intoxicated, in violation of § 14-5E-16(a)(6).

5. Pursuant to the Consent Order, Disciplinary Panel A reprimanded the Respondent and ordered her to enroll in and successfully complete the Maryland Professional Rehabilitation Program ("MPRP").

III. CURRENT INVESTIGATION

6. On or about October 13, 2016, MPRP notified the Board that the Facility terminated the Respondent's employment as a perfusionist for habitually being late and making "mistakes" that could have endangered patient safety. The Board initiated an investigation of the Respondent after receiving MPRP's report.

7. By letter to the Board, dated October 31, 2016, the Respondent provided an explanation for her termination. The Respondent admitted that she made a "technical error" in setting up the heart/lung machine, but asserted that she was being "singled out" by her co-workers because she was being monitored by MPRP.

8. As part of its investigation, the Board obtained the Respondent's personnel file from the Facility. A review of the Respondent's personnel file showed the following:

- a) On or about October 12, 2015, the Respondent received an oral warning for failing to adequately restock the cardiac operating room and correctly set up the pump in room two for emergency use.

- b) On or about February 2, 2016, the Respondent failed to report to work by 8:30 a.m. as required. Perfusion services were needed at 9:00 a.m.
- c) On or about February 5, 2016, the Respondent failed to report to work at 7:00 a.m. as required. Perfusion services were needed at 7:05 a.m.
- d) On or about February 9, 2016, the Respondent failed to timely communicate to the operating physician the cardiac ischemic time.
- e) On or about February 10, 2016, the Respondent left the Forane vaporizer on overnight resulting in the vaporizer not being in optimal-use for patient care the next day. The Respondent also failed to set up the cardioplegia correctly.
- f) On or about August 16, 2016, the Respondent failed to set up the Cell Saver machine correctly causing the machine not to be in ready condition for use during an emergency that same day.
- g) On or about September 9, 2016, the Respondent failed to set up the cardioplegia correctly. The Respondent attached the cardioplegia purge line's one-way valve the wrong way creating negative pressure in the delivery system going back to the oxygenator.

9. On or about March 1, 2017, the Board referred its investigative materials to a Maryland-licensed perfusionist (the "Expert") for an expert review. In a written report, dated April 10, 2017, the Expert found that the Respondent was professionally

incompetent, failed to meet appropriate standards for the delivery of perfusion services and was guilty of unprofessional or immoral conduct in the practice of perfusion.

10. With respect to the Respondent's failure to report the cardiac ischemic time in a timely manner, the Expert found that the protocol was to inform the surgeon of the cardiac ischemic time at 30 minutes, and if no cardioplegia was given, at 60 minutes. The Respondent's failure to report the cardiac ischemic time until 90 minutes later was untimely and constituted a failure to meet appropriate standards for the delivery of perfusion services.

11. The Expert further found that the Respondent's failure to report on time for work on at least two occasions, which resulted in delays in patient care, constituted unprofessional or immoral conduct in the practice of perfusion.

12. Finally, the Respondent's failure to set up equipment correctly and her failure to appropriately restock operating rooms constituted professional incompetence.

IV. GROUNDS FOR DISCIPLINE

13. The Respondent's failure to adequately restock the cardiac operating room and to report for work in a timely manner on at least two occasions during which time patient procedures were scheduled constitutes engaging in unprofessional or immoral conduct in the practice of perfusion, in violation of Health Occ. II § 14-5E-16(a)(3).

14. The Respondent's failure to properly turn off the Forane vaporizer, set up the Cell Saver machine correctly and attach the cardioplegia purge line correctly constitutes being professionally incompetent, in violation of Health Occ. II § 14-5E-16(a)(4).

15. The Respondent's failure to report the patient's cardiac ischemic time to the attending surgeon in a timely manner constitutes failing to meet appropriate standards for the delivery of perfusion services, in violation of Health Occ. II § 14-5E-16(a)(19).

NOTICE OF POSSIBLE SANCTIONS


If, after a hearing, a disciplinary panel of the Board (Disciplinary Panel B) finds that there are grounds for action under Health Occ. II § 14-5E-16(a)(3), (4) and/or (19), Disciplinary Panel B may impose disciplinary sanctions in accordance with the Board's regulations under Md. Code Regs. 10.32.02.10, including reprimanding the Respondent, placing the Respondent on probation, or suspending or revoking the Respondent's license, and/or may impose a monetary penalty.

NOTICE OF DISCIPLINARY COMMITTEE FOR CASE RESOLUTION

The Respondent may appear before Disciplinary Panel A, serving as the Disciplinary Committee for Case Resolution ("DCCR") in this matter, on **WEDNESDAY, DECEMBER 6, 2017, 9:00 A.M.**, at the Board's offices, 4201 Patterson Avenue, Baltimore, Maryland 21215. The nature and purpose of the DCCR is described in the attached letter to the Respondent. If this matter is not resolved before the DCCR, a prehearing conference and hearing will be scheduled before an Administrative Law Judge at the Office of Administrative Hearings, 11101 Gilroy Road, Hunt Valley, Maryland 21031. The hearing will be conducted in accordance with the Administrative Procedure Act, Md. Code Ann., State Gov't II §§ 10-201 *et seq.* (2014 Repl. Vol.).

9/6/17
Date

BRIAN E. FROSH
ATTORNEY GENERAL



K. F. Michael Kao
Assistant Attorney General
Office of the Attorney General
Health Occ. Prosecution & Litigation Div
300 West Preston Street, Suite 201
Baltimore, Maryland 21201