

IN THE MATTER OF * BEFORE THE MARYLAND
MELISSA D. HARBEN, Perfusionist * STATE BOARD OF
Applicant for Reinstatement * PHYSICIANS
after Surrender *
Case No.: 8823-0004

License No.: Y00014

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**ORDER ON APPLICATION FOR REINSTATEMENT OF PERFUSIONIST LICENSE
AFTER SURRENDER**

I. INTRODUCTION

On January 9, 2018, Disciplinary Panel A (“Panel A”) of the Maryland State Board of Physicians (“the Board”) accepted the surrender of the Maryland perfusionist license of Melissa D. Harben, Perfusionist. On January 10, 2023, the Board received Ms. Harben’s application for the reinstatement of her license. On April 12, 2023, Panel A convened as a Reinstatement Inquiry Panel with Ms. Harben, her counsel, and an Administrative Prosecutor for the State via video conference to consider her application. The Panel reviewed Ms. Harben’s reinstatement application, her written responses to questions from the Board, a written response from the Administrative Prosecutor for the State, the 2018 Letter of Surrender and a Consent Order dated February 17, 2016. Panel A also heard oral presentations from Ms. Harben, her counsel, and the Administrative Prosecutor.

II. PROCEDURAL AND FACTUAL HISTORY

Ms. Harben was originally licensed to practice as a perfusionist in Maryland on October 1, 2013. On August 12, 2015, Panel A voted to charge Ms. Harben with violations of the Maryland Perfusion Act (“Act”), Md. Code Ann., §§ 14-5E-01 *et seq.* (2014 Repl. Vol.). Prior to the issuance of formal charges, Ms. Harben entered into a Consent Order on February 17, 2016 (“2016 Consent Order”) with Panel A, in which the Panel concluded that Ms. Harben was

guilty of unprofessional conduct in the practice of perfusion, in violation of Health Occ. § 14-5E-16(a)(3), and was habitually intoxicated, in violation of Health Occ. § 14-5E-16(a)(6). The Panel's conclusions were based on a Board investigation that revealed Ms. Harben tested positive for alcohol when she reported for her shift at a hospital and also revealed her history of alcohol-related driving offenses.

In the 2016 Consent Order, Panel A reprimanded Ms. Harben, required her to enroll in the Maryland Professional Rehabilitation Program ("MPRP"), and to enter into and satisfactorily cooperate and comply with the terms and conditions of a Participant Rehabilitation Agreement and Participant Rehabilitation Plan with MPRP. Ms. Harben did enroll in MPRP, and fully cooperated and complied with MPRP's referrals and the recommendations of its agents from 2016 to 2017 aimed at preventing a recurrence of her conduct.

In October 2016, MPRP notified the Board that a health care facility had terminated Ms. Harben's employment as a perfusionist due in part to her habitual lateness for work and making mistakes that could have endangered patient safety. During a subsequent investigation, the Board obtained and assessed Ms. Harben's personnel file from the facility. An expert review by a Maryland-licensed perfusionist included determinations that Ms. Harben failed to timely communicate the cardiac ischemic time to the operating physician, failed to set up the Cell Saver machine correctly, and on several occasions, failed to report for work on time, and failed to set up the cardioplegia correctly. On September 6, 2017, Panel A charged Ms. Harben with being guilty of immoral or unprofessional conduct in the practice of perfusion, being professionally, physically, or mentally incompetent, and failure to meet appropriate standards for the delivery of perfusion services, in violation of Health Occ. §§ 14-5E-16(a)(3), (4), and (19), respectively. To avoid further investigation and prosecution of the disciplinary charges and based on her stated

intention not to practice perfusion in Maryland in the foreseeable future, Ms. Harben offered to voluntarily surrender her perfusionist license through a public Letter of Surrender, which Panel A accepted on January 9, 2018. In the Letter of Surrender, Ms. Harben understood and agreed that her license would remain suspended unless and until Panel A granted reinstatement. The Letter of Surrender also provided that if she demonstrated competence and fitness to practice perfusion to the satisfaction of Panel A, and the Panel granted reinstatement, that the Panel may impose any terms and conditions the Panel considers appropriate for public safety and the protection of the integrity and reputation of the profession.

III. APPLICATION FOR REINSTATEMENT

On January 10, 2023, the Board received Ms. Harben's application for the reinstatement of her Maryland perfusionist license. On January 27, 2023, Board staff sent a letter to Ms. Harben informing her of the post-disciplinary reinstatement process and requesting her written response to certain questions including the following:

1. What is your understanding of the nature and circumstances of your conduct which resulted in surrendering your Maryland license?
2. What is your understanding of the Board's concerns with respect to your conduct? Please specifically address the conduct related to the February 17, 2016 Consent Order which required you to enroll in the Maryland Professional Rehabilitation Program and the conduct related to the September 6, 2017 charges (attached to your Letter of Surrender) alleging that you failed to meet appropriate standards for the delivery of perfusion services and that you are professionally, physically, or mentally incompetent.
3. Have you accepted responsibility for the action(s) resulting in the surrender of your license?
4. What steps have you taken to lessen the likelihood of recurrence?
5. What efforts have you made to maintain your competency to practice in your area of specialty (i.e. continuing education credits)? Please provide specific documentation that demonstrates your professional competence and fitness to practice as a perfusionist.

In addition, Ms. Harben was asked to state her understanding of the rehabilitation plan and agreement she entered into with MPRP pursuant to the 2016 Consent Order and what steps she had taken since her surrender to avoid a recurrence of the conduct that led to that Order. The Board also asked Ms. Harben for information on where she has been employed and her job duties since her surrender, and whether she had any employment prospects lined up if her license is reinstated.

On February 13, 2023, the Board received a written response from Ms. Harben. She discussed her conduct that resulted in the 2016 Consent Order. She acknowledged that she had made bad choices and that such conduct in the workplace and while driving is completely unacceptable. Ms. Harben emphasized her compliance with MPRP and MPRP's directives to prevent recurrence of her conduct. She asserted that she has learned very difficult lessons from her challenges and past mistakes. Regarding the termination of her employment by a health care facility in 2016 and the subsequent Board investigation of her practice and disciplinary charges issued in 2017, she stated her belief that she was not incompetent or negligent but may have made "human errors" because she was stressed and subject to a "hostile work environment" where others made the same or similar mistakes without consequences.

Ms. Harben also informed the Board that she worked random jobs after her employment termination and worked as a Locums Perfusionist in Rhode Island where certification by the American Board of Cardiovascular Perfusion was needed but no license was required. At the end of her contract in Rhode Island, she moved to Indiana and has practiced full-time as a Staff Perfusionist in Indianapolis since 2018, where her position also does not require a license. Ms. Harben submitted a letter of endorsement verifying her employment since 2018 at SpecialtyCare Community Heart and Vascular Indianapolis from the Chief Perfusionist who described her as

dependable, hardworking, and an asset to the organization. She stated that she has no current plans to leave that job or to work in Maryland but hopes to correct her status in the National Practitioner Data Bank by obtaining license reinstatement in Maryland which would enable her to pursue professional opportunities and successfully apply in other states with perfusionist licensure requirements in the event she decides to move or travel to another state.

With respect to steps she has taken to prevent recurrence of the conduct that led to the 2016 Consent Order, Ms. Harben answered that she moved back home to Indiana where her parents live. She stated that in addition to her full-time job as a perfusionist there, she has “a strong support system and spiritual community,” and attends church and recovery group meetings often at her church. Since her surrender, she has continuously submitted the requisite Continuous Education and Clinical hours to the American Board of Cardiovascular Perfusion to remain certified.

On March 27, 2023, the State responded to Ms. Harben’s application for reinstatement, and summarized her disciplinary and employment history prior to the surrender of her Maryland license. The State noted that Ms. Harben did not make excuses for the conduct that led to her 2016 Consent Order and commended her for her successful continuation and completion of MPRP’s referrals and recommendations in 2016 and 2017. Nevertheless, the State pointed out that except for Ms. Harben’s reference to a strong support system and spiritual community in Indiana, there was no documented record of her continued progress in that regard since 2018.

IV. CONSIDERATION OF APPLICATION

The reinstatement of an individual’s license after surrender is discretionary. *See* Md. Code Ann., Health Occ. § 14-409; *Oltman v. Maryland State Board of Physicians*, 182 Md. App. 65, 78 (2008). Panel A must consider whether post-disciplinary reinstatement is in the interest of

the health and welfare of the general public and consistent with the best interest of the profession. COMAR 10.32.02.06B(7). Critical issues for the Panel's consideration include Ms. Harben's understanding of the nature of her violations, and her acceptance of responsibility for these violations.

The Panel lauds Ms. Harben's full compliance with MPRP's recommendations from 2016 to 2017. Her written responses indicate that in 2016 and 2017, she was fully engaged in and committed to her recovery to properly address the issues that led to her violations of Health Occ. §§ 14-5E-16(a)(3) and 14-5E-16(a)(6). In response to questions from Board members at her Reinstatement Inquiry Panel meeting with Panel A, Ms. Harben acknowledged, however, that she has not participated in any formal programs since 2017 and clarified that her primary goal in seeking reinstatement in Maryland is to obtain an unencumbered license to practice perfusion.

The Panel also has concerns about Ms. Harben's understanding of the conduct that led to the termination of her employment and ultimate surrender of her license in 2018. Ms. Harben did not deny or address the specific details of her failure to report for work on time, her failure to correctly set up equipment and adequately restock the cardiac operating room, or her failure to timely communicate the cardiac ischemic time to the attending surgeon, actions that could have endangered patient safety. Her statements that her errors were caused by a hostile work environment essentially minimized the seriousness of her actions. Her written responses do not reassure the Panel that she has accepted responsibility for the conduct that resulted in her 2018 Letter of Surrender.

At this point, Ms. Harben has not provided any documentation or information from a relevant official or objective source to confirm that she has no current impairing conditions that would adversely impact her ability to practice safely as a licensed perfusionist in Maryland or in

any state where a license is required to practice her profession. Reinstatement with suspension until the Panel obtains such confirmation is within the interest of the health and welfare of the public and is consistent with the best interest of the profession. The Panel, therefore, grants Ms. Harben's application for reinstatement subject to a suspension and an evaluation by MPRP.

IV. ORDER

It is thus, by Disciplinary Panel A, hereby

ORDERED that pursuant to Health Occ. § 14-409, the license of Melissa D. Harben to practice as a perfusionist in Maryland is **REINSTATED**; and it is further

ORDERED that Ms. Harben's perfusionist license is **SUSPENDED**.¹ During the suspension, Ms. Harben shall comply with the following terms and conditions of suspension:

(1) During the suspension, Ms. Harben shall not:

- (a) practice perfusion in Maryland;
- (b) take any actions after the effective date of this Order of Reinstatement to hold herself out to the public as a current provider of perfusion services in Maryland;
- (c) authorize, allow or condone the use of her name or provider number by any health care practice or any other licensee or health care provider in Maryland;
- (d) perform any other act that requires an active perfusion license in Maryland.

(2) Ms. Harben shall undergo a comprehensive evaluation by the Maryland Professional Rehabilitation Program ("MPRP") and/or its agents to determine her fitness to practice perfusion safely. The following conditions apply:

- (a) Within **5 BUSINESS DAYS** of the effective date of this Order, Ms. Harben shall contact MPRP to make arrangements for the evaluation;

¹ If Ms. Harben's license expires while her license is suspended, the suspension and any conditions will be tolled. COMAR 10.32.02.05C(3).

- (b) Ms. Harben shall fully and timely cooperate and comply with all MPRP's referrals and directives for the evaluation and shall fully participate and comply with the evaluation as directed by MPRP and its agents;
- (c) Ms. Harben 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. Ms. Harben shall not withdraw the release/consent;
- (d) Ms. Harben shall also sign any written release/consent forms to authorize MPRP to exchange with (i.e., disclose to and receive from) outside entities (including any and all of Ms. Harben's current therapists and treatment providers) verbal and written information concerning Ms. Harben and to ensure that MPRP is authorized to receive the medical records of Ms. Harben, including, but not limited to, mental health and drug or alcohol evaluation and treatment records. Ms. Harben shall not withdraw the release/consent; and
- (e) Ms. Harben's failure to comply with any of the above terms or conditions constitutes a violation of this Order; and

(3) After the evaluation by MPRP and/or its agents is complete, Panel A shall review the evaluation results. The parties may be required to appear before Panel A to discuss whether Ms. Harben is fit to practice perfusion safely, and if so, whether probationary conditions are necessary in the event that Ms. Harben returns to the practice of perfusion in Maryland. If Panel A determines that it is safe for Ms. Harben to return to the practice of perfusion, the suspension will be terminated through an order of Panel A and Panel A may impose any terms and conditions it deems appropriate on Ms. Harben's return to practice, including, but not limited to, probation and Ms. Harben's enrollment in MPRP. If Panel A determines that it is not safe for Ms. Harben to return to the practice of perfusion, Panel A may issue any order appropriate to the circumstances in this matter; and it is further

ORDERED that if, upon the authorization of MPRP, Ms. Harben transfers to a rehabilitation program in another state, Ms. Harben's failure to comply with any term or condition of that state's rehabilitation program, constitutes a violation of this Order. Ms. Harben shall also sign any out-of-state written release/consent forms to authorize the Board to exchange with (i.e., disclose to and receive from) the out-of-state program verbal and written information concerning Ms. Harben, and to ensure that the Board is authorized to receive the medical records of Ms. Harben, including, but not limited to, mental health and drug or alcohol evaluation and treatment records. Ms. Harben shall not withdraw the release/consent; and it is further

ORDERED that a violation of suspension constitutes a violation of this Order; and it is further

ORDERED that if Ms. Harben allegedly fails to comply with any term or condition imposed by this Order, Ms. Harben 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, Ms. Harben 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 Ms. Harben has failed to comply with any term or condition imposed by this Order, the disciplinary panel may reprimand Ms. Harben, place Ms. Harben on probation with appropriate terms and conditions, or suspend or revoke Ms. Harben's license to practice as a perfusionist in Maryland. The disciplinary panel may, in addition to one or more of the sanctions set forth above, impose a civil monetary fine upon Ms. Harben; and it is further

ORDERED that Ms. Harben is responsible for all costs incurred in fulfilling the terms and conditions of this Order of Reinstatement; 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).

05/25/2023
Date

Signature On File

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