

IN THE MATTER OF * BEFORE THE MARYLAND
MELISSA D. HARBEN, Perfusionist * STATE BOARD OF PHYSICIANS
License No.: Y00014 * Case No.: 7723-0086

* * * * *

ORDER TERMINATING SUSPENSION AND IMPOSING PROBATION

I. INTRODUCTION

On January 9, 2018, Disciplinary Panel A (“Panel A” or the “Panel”) of the Maryland State Board of Physicians (“the Board”) accepted the surrender of the Maryland perfusionist license of Melissa D. Harben, Perfusionist. On May 25, 2023, the Board reinstated Ms. Harben’s license but immediately suspended her license and referred her to the Maryland Professional Rehabilitation Program to determine her fitness to practice perfusion safely. In August and September 2023, the Panel received reports regarding Ms. Harben’s fitness to practice perfusion. On September 14, 2023, Ms. Harben filed a petition to terminate her suspension. On December 6, 2023, Panel A convened as a Reinstatement Inquiry Panel with Ms. Harben, her counsel, and an Administrative Prosecutor for the State to consider her petition to terminate the suspension of her license.

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.* 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).

In the 2016 Consent Order, Panel A reprimanded Ms. Harben, required her to enroll in the Maryland Professional Rehabilitation Program (“MPRP”), 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 enrolled in MPRP and fully cooperated and complied with MPRP’s referrals and the recommendations of its agents from 2016 to 2017.

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 and practice mistakes, which could have endangered patient safety. On September 6, 2017, Panel A charged Ms. Harben with immoral or unprofessional conduct in the practice of perfusion; professional, physical, or mental incompetence, 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.

On January 10, 2023, Ms. Harben applied for the reinstatement of her license. On May 25, 2023, the Board reinstated Ms. Harben's license but suspended her license and ordered her to undergo a comprehensive evaluation by the Maryland Professional Rehabilitation Program (MPRP) to determine her fitness to practice perfusion safely. The Reinstatement Order further required that Panel A review the evaluation results. Under the Order, if the Panel determined that Ms. Harben was fit to practice, then her suspension would be terminated and the Panel could impose appropriate terms and conditions, such as probation and continuation in MPRP.

III. PETITION FOR TERMINATION OF SUSPENSION

On September 14, 2023, Ms. Harben petitioned the Board for a termination of her suspension. The Board received, as part of her Petition, a report from a physician, who specializes in the pertinent field, who concluded that she was "fit for duty." MPRP also sent a letter regarding Ms. Harben on September 15, 2023, that stated that "[b]ased on the assessment and the opinion of the full clinical team including the medical director, we have determined that a minimum of 1 year of monitoring in the MPRP would be appropriate. On October 13, 2023, the Administrative Prosecutor filed a response, recommending terminating the suspension and imposing probation for a minimum of one year with the condition that she continue her enrollment and participation in MPRP. Ms. Harben appeared before Panel A for consideration of her Petition on December 6, 2023.

IV. CONSIDERATION OF PETITION

Panel A finds that Ms. Harben has complied with the terms of the Reinstatement Order and, based on the recommendations and evaluations presented, is safe to return to the practice of perfusion. In a letter, dated September 15, 2023, MPRP recommended that Ms. Harben remain in MPRP for a minimum of one year. The Panel believes that Ms. Harben should remain in

MPRP for at least one year from the date of MPRP's recommendation, which is approximately nine months from the date of this Order.

V. ORDER

It is, thus, by Panel A, hereby

ORDERED that the suspension imposed, under the May 25, 2023 Order on Application for Reinstatement of Perfusion License After Surrender, is **TERMINATED**; and it is further

ORDERED that Ms. Harben is placed on **PROBATION** for a minimum period of **NINE MONTHS**.¹ During the probationary period, Ms. Harben shall comply with the following probationary terms and conditions:

1. Ms. Harben shall remain enrolled in the Maryland Professional Rehabilitation Program (MPRP) and shall:
 - (a) continue her Participant Rehabilitation Agreement and Participant Rehabilitation Plan with MPRP or be entered into an amended Participant Rehabilitation Agreement and Participant Rehabilitation Plan as determined by MPRP;
 - (b) 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 and Participant Rehabilitation Plan entered with MPRP, and shall fully participate and comply with all therapy, treatment, evaluations, and screenings as directed by MPRP;
 - (c) 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 her release/consent;
 - (d) sign and update the written release/consent forms as requested by the Board and MPRP. Ms. Harben shall sign the release/consent forms to authorize MPRP to make verbal and written disclosures to the Board, including disclosure of any and all MPRP records and files possessed by MPRP. 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 all of Ms. Harben's

¹ If Ms. Harben's license expires while she is on probation, the probationary period and any probationary conditions will be tolled.

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 treatment records. Ms. Harben shall not withdraw her release/consent;

AND IT IS FURTHER ORDERED that if, upon the authorization of MPRP, the Respondent transfers to a rehabilitation program in another state, the Respondent's failure to comply with any term or condition of the out-of-state's rehabilitation program, constitutes a violation of this Consent Order. The Respondent 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 the Respondent, and to ensure that the Board 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 the release/consent; and it is further

ORDERED that, after a minimum period of **NINE MONTHS**, if the Respondent has complied with all terms and conditions of probation, and upon MPRP's determination that the Respondent can safely practice without additional monitoring, Ms. Harben may submit a written petition to the Board requesting termination of probation. After consideration of the petition, the probation may be terminated through an order of Panel A. Ms. Harben may be required to appear before Panel A to discuss her petition for termination of probation or the Panel may choose to administratively terminate the probation. Panel A will grant the petition to terminate the probation if Ms. Harben has complied with all of the probationary terms and conditions, MPRP determines that Ms. Harben can safely practice without additional monitoring, and there are no pending complaints related to the charges; and it is further

ORDERED that, if Ms. Harben allegedly fails to comply with any term or condition of probation or this Order Terminating Suspension and Imposing Probation, Ms. Harben shall be given notice and an opportunity for a hearing. If 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 and, if there is no genuine dispute as to a material fact, Ms. Harben shall be given a show cause hearing before Panel A; and it is further

ORDERED that, after the appropriate hearing, if Panel A determines that Ms. Harben has failed to comply with any term or condition of probation or this Order, Panel A may reprimand Ms. Harben, place Ms. Harben on probation with appropriate terms and conditions, or suspend with appropriate conditions or revoke Ms. Harben's license to practice perfusion in Maryland. Panel A 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 there shall be no early termination of probation; and it is further

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

ORDERED that, unless stated otherwise in the order, any time period prescribed in this order begins when this Order goes into effect. This Order goes into effect upon the signature of the Board's Executive Director, who signs on behalf of Panel A; and it is further

ORDERED that this Order is a public document pursuant to Md. Code Ann., Health Occ. §§ 1-607, 14-411.1(b)(2) and Gen. Prov. § 4-333(b)(6).

12/15/2023
Date

Signature On File

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