

IN THE MATTER OF \* BEFORE THE MARYLAND  
 BETH RHODES-DUNCAN, M.D. \* STATE BOARD OF  
 Respondent \* PHYSICIANS  
 License Number: D47767 \* Case Number: 2017-0331  
 \*

CONSENT ORDER

BACKGROUND

The Maryland Board of Physicians (the “Maryland Board”) received information that Beth Rhodes-Duncan, M.D., (the “Respondent”) , License Number D47767, was disciplined by the Delaware Board of Medical Licensure and Discipline (the “Delaware Board”). In an Order dated July 19, 2016, the Delaware Board disciplined the Respondent by placing her on probation.

Based on the above referenced Delaware sanction, the Maryland Board has grounds to charge the Respondent with violating the following provisions of the Maryland Medical Practice Act (the “Act”), under H. O. § 14-404(a):

- (a) Subject to the hearing provisions of § 14-405 of this subtitle, 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 licensee:
  - (21) Is disciplined by a licensing or disciplinary authority or convicted or disciplined by a court of any state or country or disciplined by any branch of the United States uniformed services or the Veteran’s Administration for an act that would be grounds for disciplinary action under this section,

The Maryland Board has determined that the acts for which the Respondent was disciplined in Delaware would be grounds for disciplinary action under H.O. § 14-404(a).

The grounds for disciplinary action under H.O. § 14-404(a) are as follows:

(3)(ii). Unprofessional conduct in the practice of medicine

Based on the action taken by the Delaware Board, the Respondent agrees to enter into this Consent Order with the Maryland Board of Physicians, consisting of Procedural Background, Findings of Fact, Conclusions of Law, and Order of reciprocal action.

### **I. FINDINGS OF FACT**

The Board finds the following:

1. At all times relevant hereto, the Respondent was a physician licensed to practice medicine in the State of Maryland. The Respondent was initially licensed in Maryland on or about July 25, 1995.
2. By Order dated July 19, 2016, the Delaware Board disciplined the Respondent by placing her on probation based upon her failure to maintain safe and sanitary conditions at Delaware Otolaryngology Consultants, LLC, a facility owned and operated by the Respondent.

A copy of the Delaware Order is attached hereto.

### **II. CONCLUSIONS OF LAW**

Based on the foregoing Findings of Fact, the Maryland Board concludes as a matter of law that the disciplinary action taken by the Delaware Board against the Respondent was for an act or acts that would be grounds for disciplinary action under Health Occ. § 14-404(a)(22) had those offenses been committed in this state.

### **III. ORDER**

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby:

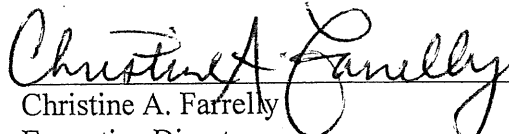
**ORDERED** that the Respondent's license to practice medicine in the State of

Maryland be and is hereby placed on **PROBATION** subject to the following terms and conditions:

- a. The Respondent shall remain in compliance with the terms and conditions of the July 19, 2016 Delaware Board Order;
- b. The Maryland Order shall remain in effect until the Respondent has satisfied the terms and conditions of the Delaware Board Order of July 19, 2016 and provides proof of termination of the Order;
- c. If the Respondent fails to comply with any of the terms of this Consent Order, that failure may constitute a violation of the Order and, after notice and hearing, the Maryland Board may suspend or revoke the Respondent's license; and be it further

**ORDERED** that this **CONSENT ORDER** is a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., Gen. Prov. §§4-101 through 4-601 (2014).

02/22/2017  
Date

  
Christine A. Farrelly  
Executive Director  
Maryland Board of Physicians

**CONSENT**

I, Beth Rhodes-Duncan, M.D., acknowledge that I have had the opportunity to consult with counsel before signing this document. By this Consent, I admit to the Findings of Fact and Conclusions of Law, and I agree and accept to be bound by this Consent Order and its conditions and restrictions. I waive any rights I may have had to contest the Findings of Fact and Conclusions of Law.

I acknowledge the validity of this Consent Order as if entered into 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 acknowledge the legal authority and the jurisdiction of the Board to initiate these proceedings and to issue and enforce this Consent Order. I also affirm that I am waiving my right to appeal any adverse ruling of the Board that might have followed any such hearing.

I sign this Consent Order after having had an opportunity to consult with counsel, without reservation, and I fully understand and comprehend the language, meaning and terms of this Consent Order. I voluntarily sign this Consent Order, and understand its meaning and effect.

2/15/17  
Date

Beth Rhodes-Duncan  
Beth Rhodes-Duncan, M.D.  
Respondent

STATE OF Delaware

CITY/COUNTY OF New Castle

I HEREBY CERTIFY that on this 15 day of February, 2017, before me, the subscriber, a Notary Public for the State and City/County aforesaid, personally appeared Beth Rhodes-Duncan, M.D., and made oath in due form of law that the execution of the foregoing Consent Agreement was her voluntary act and deed.

AS WITNESSETH my hand and my notarial seal

Madison A Cragg  
Notary Public

MY COMMISSION EXPIRES: 06/01/2020

**MADISON A. CRAGG**  
NOTARY PUBLIC  
STATE OF DELAWARE  
My Commission Expires June 1, 2020

Certified True Copy

*Sharon Sawyer*  
Delaware Division of Professional Regulation

**BEFORE THE DELAWARE BOARD OF MEDICAL LICENSURE & DISCIPLINE**

IN RE: BETH R. DUNCAN )  
 ) Case Nos.: 10-35-15  
LICENSE NO.: C1-0009167 ) 10-81-15

**CONSENT AGREEMENT**

A written Complaint ("Complaint") has been filed with the Delaware Board of Medical Licensure and Discipline ("Board") alleging that Beth R. Duncan, M.D., MBA-HC, Ph.D. ("Respondent"), a licensed physician in the State of Delaware, engaged in conduct that constitutes grounds for discipline pursuant to Delaware's *Medical Practice Act* (24 Del. C. Ch. 17).

The State of Delaware, by the undersigned Deputy Attorney General, and Respondent submit this Consent Agreement for approval by the Board to resolve the pending administrative prosecution against Respondent pursuant to 24 Del. C. Ch. 17 and 29 Del. C. Ch. 101.

**IT IS UNDERSTOOD AND AGREED THAT:**

1. Respondent's license, number C1-0009167, was issued in September 2009 and is active.
2. At all times relevant, Respondent owned and operated Delaware Otolaryngology Consultants, LLC ("DOC") located at 17316 Coastal Highway, Lewes, Delaware 19958.
3. In March of 2015, multiple employees of DOC filed complaints with Delaware's Division of Public Health ("DPH") and the Delaware Division of Professional Regulation ("DPR") regarding what they alleged to be unsafe and unsanitary conditions at DOC.
4. On April 1, 2015, DPH determined, based upon treatment of a patient, that DOC was subject to Delaware Department of Health and Social Services' regulations for Facilities that Perform Invasive Medical Procedures. DPH completed a survey of DOC and ordered the closure of DOC based upon non-compliance with the DHSS regulations, which establish standards for safe and sanitary conditions.

5. The survey identified non-compliance with the following regulations for Facilities that Perform Invasive Medical Procedures:

- a. 3.5.1 requiring the facility to maintain certain equipment and supplies. Respondent was required to have certain equipment including a crash cart and did not. However, the survey reported no instance where Respondent needed to use such equipment;
- b. 3.5.2 requiring appropriate sterilization of equipment. The survey concluded that noncompliance was based on the absence of 1) logs indicating that instruments were sterilized by using an autoclave, 2) logs indicating that sterilization was effective, and 3) autoclave manufacturer's guidelines; as well as statements from staff regarding use and maintenance of the autoclave;
- c. 4.7 requiring services to be provided in a safe and effective manner in accordance with standards of practice. The survey concluded that a DPH representative observed in the examination of a patient that Respondent did not follow Centers for Disease Control and Prevention Hand Hygiene Guidelines. The survey also concluded there were expired supplies in the office;
- d. 4.10 requiring that all equipment be maintained and functional to ensure patient safety. The survey concluded that noncompliance was based on the absence of 1) logs indicating that instruments were sterilized by using an autoclave, 2) logs indicating that sterilization was effective, and 3) autoclave manufacturer's guidelines; as well as statements from staff regarding use and maintenance of the autoclave;
- e. 5.1 requiring the facility to provide and maintain a functional and sanitary environment to avoid sources and transmissions of infections and communicable diseases. Noncompliance was found based upon the same reasons outlined in

subsection 5(b) – (d) above. There were no separate findings of noncompliance in regard to regulation 5.1;

- f. 9.1.1 requiring that all facilities register with the DHSS; and
- g. 9.1.2 requiring that all facilities obtain accreditation from an approved accrediting organization.

6. In regard to regulations 9.1.1 and 9.1.2, Respondent states that she did not recognize that DOC was a Facility that Performs Invasive Medical Procedures and, as such, did not register with the DHSS or obtain accreditation.

7. The survey offered no evidence of patient harm.

8. Respondent states that DOC had no intention of performing invasive medical procedures, and on or about April 24, 2015, DOC was re-opened after the office submitted a plan of correction to DPH including an attestation that no invasive medical procedures as defined in the DHSS regulations for Facilities that Perform Invasive Medical Procedures would be performed at DOC.

9. Respondent violated 24 *Del. C.* § 1731(b)(17) and 24 *Del. C.* § 1741(a) by maintaining a facility in an unsanitary or unsafe condition by virtue of noncompliance with the regulations discussed in subsection 5(a)-(g).

10. Respondent admits that the allegations set forth in paragraphs one (1) through nine (9) above are true and correct.

11. Respondent has taken several actions to improve documentation and improve safety and sanitation at DOC including the following:

- a. New autoclave logs were obtained which document when the autoclave is used to sterilize instruments, and Respondent monitors the completion of the logs;
- b. A new autoclave maintenance log was obtained and arrangements were made with Autoclave Testing Services, Inc. for email notification of spore test results;

- c. Respondent implemented policies and procedures on autoclave operation and maintenance and conducted training with employees;
- d. Respondent reviewed a CDC hand hygiene course, adopted a formal hand washing policy and trained all staff members on appropriate hand hygiene; and
- e. Respondent and an employed nurse completed a thorough inventory and disposed of expired supplies that remained in the office from the former practitioner/owner of the practice.

12. Respondent and the State propose that the Board impose the following as an appropriate administrative sanction for this conduct:

- a. Respondent shall be placed on probation for a period of eighteen (18) months from the effective date of the Board's Order accepting this Consent Agreement;
- b. After one year of probation, Respondent may file with the Board a report from an independent party selected with Board approval indicating that DOC continues to follow its practices, policies, and procedures regarding safety and sanitation at DOC, as discussed at Paragraph 11.
- c. After one year of probation and submission of the report contemplated by Paragraph 12.b, Respondent may petition the Board to lift the probation if the Board, in its sole discretion, is satisfied that Respondent is ensuring a safe and sanitary environment at DOC and if Respondent has otherwise complied with this Order.
- d. Within 60 days of the Board's Order, Respondent shall complete 6 additional hours of continuing education, 3 hours shall be in the record keeping and 3 shall be in sanitation and hygiene. The 6 hours shall be in addition to the continuing education hours required for licensure renewal.



- e. Within 60 days of the Board's Order, Respondent shall pay a fine in the amount of \$3,000.00 payable to the State of Delaware and mailed to the Division of Professional Regulation, Delaware Board of Medical Licensure and Discipline, Cannon Building, Suite 203, 861 Silver Lake Boulevard, Dover, Delaware 19904.

13. The parties to this Consent Agreement are the State of Delaware and Respondent. The parties agree and acknowledge that nothing contained in this Consent Agreement shall affect any rights or interests of any person not a party to this Agreement.

14. Respondent acknowledges that she is waiving her rights under 24 *Del. C.* Ch. 17 and 29 *Del. C.* Ch. 101 to a hearing before the Board prior to the imposition of disciplinary sanctions.

15. Respondent hereby acknowledges and agrees that she has carefully read and understands this Consent Agreement, and is entering into this Consent Agreement freely, knowingly, voluntarily, and after having received or having been afforded the opportunity to receive the advice of counsel.

16. Respondent acknowledges that this Consent Agreement is a public record within the meaning of 29 *Del. C.* § 10002 and will be available for public inspection and copying as provided for by 29 *Del. C.* § 10003.

17. The parties acknowledge and agree that this Consent Agreement is subject to approval by the Board.

18. The parties acknowledge and agree that if the Board does not accept this Consent Agreement, it shall have no force or effect, except as follows:

- a. Neither Respondent, nor anyone on her behalf, will in any way or in any forum challenge the ability of the Board or any of its members to conduct an evidentiary hearing relating to the allegations in the subject Complaint;

- b. The Consent Agreement, or conduct or statements made in negotiating the Consent Agreement, will be inadmissible at any administrative, civil or criminal legal proceeding; and
- c. No provision contained in the Agreement shall constitute or have the effect of an admission by Respondent as to any fact alleged in the Complaint in this matter or in this Agreement.

19. If the Board accepts the Consent Agreement and enters it as an Order, the Consent Agreement shall be admissible as evidence at any future proceedings before the Board.

20. Respondent acknowledges and agrees that the Board will report this Consent Agreement to the licensing authority of any other state in which she is licensed to practice.

21. The parties acknowledge and agree that this Consent Agreement, along with any exhibits, addendums, or amendments hereto, encompasses the entire agreement of the parties and supersedes all previous understandings and agreements between the parties, whether oral or written. There are no other terms, obligations, covenants, representations, statements or conditions, or otherwise, of any kind whatsoever concerning this agreement.

22. This Consent Agreement, and any disciplinary sanctions contained herein, shall be effective upon acceptance by the Board and entry of the Board's Order.

[signatures on next page]

Beth R. Duncan, M.D.  
Respondent

Dated: 6/30/16

Stacey X. Stewart  
Stacey X. Stewart (I.D. No. 4667)  
Deputy Attorney General

Dated: 7/1/16

Marina Sawyer for  
Devashree Brittingham, Executive Director  
Delaware Board of Medical Licensure and Discipline

Dated: 7/19/16

DELAWARE BOARD OF MEDICAL LICENSURE AND DISCIPLINE

IN RE: BETH DUNCAN, M.D.                    )  
  )     Case Nos.: 10-35-15  
Medical License No.: C1-0009167         )  
  )     10-81-15

ORDER

WHEREAS, the Board of Medical Licensure and Discipline has reviewed this matter;  
and

WHEREAS, the Board of Medical Licensure and Discipline approves the Consent  
Agreement of the parties and intends to enter it as an Order of the Board;

IT IS HEREBY ORDERED this 19<sup>th</sup> day of July, 2016.

