

IN THE MATTER OF

MELISSA D. HARBEN, L.P.

Respondent

License Number: Y00014

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BEFORE THE

MARYLAND STATE

BOARD OF PHYSICIANS

Case Number: 2015-0425 A

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CONSENT ORDER

On August 12, 2015, Disciplinary Panel A of the Maryland State Board of Physicians (the "Board") voted to charge **MELISSA D. HARBEN, L.P.**, License Number Y00014 (the "Respondent"), with violating the Maryland Perfusion Act (the "Act"), Md. Code Ann., Health Occ. II ("Health Occ. II") §§ 14-5E-01 *et seq.* (2014 Repl. Vol.).

Specifically, the Panel voted to charge the Respondent with violating the following provision 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; [and]
 - (6) Is habitually intoxicated[.]

Prior to the Panel's issuance of formal charges, the Respondent agreed to enter into the following Consent Order, consisting Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

Disciplinary Panel A of the Board makes the following Findings of Fact:

BACKGROUND

1. At all times relevant hereto, the Respondent was and is licensed to practice perfusion in the State of Maryland. The Respondent was originally licensed to practice perfusion in the State of Maryland on or about October 1, 2013, under License Number Y00014.

2. At all times relevant hereto, the Respondent was employed by a hospital ("Hospital A")¹ located in Baltimore, Maryland.

3. The Respondent was employed as a perfusionist at Hospital A from September 9, 2013, until on or about January 29, 2015, when she tendered her resignation.

4. On or about December 10, 2014, the Respondent contacted the Board to self-report her admission to Hospital A's Employee Assistance Program ("EAP") for testing positive at work for alcohol.

5. Based on the report, the Board opened an investigation of the Respondent.

INVESTIGATION

6. Board investigation determined that on or about November 22, 2014, the Respondent's supervisor at Hospital A ("Supervisor A") telephoned the Respondent after she failed to arrive for her shift. Supervisor A reported that during their conversation, the Respondent's speech was disjointed and incoherent.

7. Shortly thereafter, the Respondent arrived at Hospital A. A co-worker complained to Supervisor A that the Respondent smelled of alcohol.

¹ To ensure confidentiality, the names of individuals, hospitals and healthcare facilities involved in this case, other than the Respondent, are not disclosed in this document.

8. As a result of the co-worker's observation, Supervisor A pulled the Respondent off her shift and requested that she submit to a Fitness for Duty Evaluation. As part of the Fitness for Duty Evaluation, the Respondent was subjected to a urine drug screen. The Respondent's urine drug screen tested positive for alcohol.

9. On or about November 25, 2014, the Respondent was admitted to the EAP for testing positive for alcohol.

10. On or about April 23, 2015, a Board investigator interviewed the Respondent at the Board's offices. During the interview, the Respondent admitted to consuming liquor with her friends the night before being called to Hospital A on November 22, 2014. The Respondent further disclosed that she had a history of alcohol-related driving offenses in Virginia.

11. Board investigation revealed that the Respondent was charged with Driving While Intoxicated in New Kent General District Court on or about October 25, 2010. On or about February 22, 2011, the Respondent pleaded guilty to the charge of Driving While Intoxicated and was given a 90 day suspended sentence followed by 3 years of unsupervised probation.

12. Moreover, on or about September 26, 2014, the Respondent was again charged with Driving While Intoxicated (2nd Offense Within Five Years) and Refusing Blood/Breath Testing in Prince Williams General District Court. On or about January 30, 2015, the Respondent pleaded nolo contendere to a reduced charge of Reckless Driving and guilty to Refusing Blood/Breath Testing. For the Reckless Driving, the Respondent was sentenced to 180 days of incarceration with all but 170 days suspended, followed by 6 months of supervised probation. For Refusing Blood/Breath

Testing, the Respondent was given a 90-day suspended sentence, followed by 1 year of unsupervised probation.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, Disciplinary Panel A concludes as a matter of law that the Respondent is guilty of unprofessional conduct in the practice of perfusion, in violation of Health Occ. II § 14-5E-16(a)(3), in that she tested positive for alcohol while coming on to her shift at Hospital A on or about November 22, 2014; and is habitually intoxicated, in violation of § 14-5E-16(a)(6), based on her history of alcohol-related driving offenses and convictions in Virginia. .

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is, by a majority of the quorum of Disciplinary Panel A considering this case:

ORDERED that the Respondent is hereby **REPRIMANDED**; and it is further

ORDERED that the Respondent shall fully and satisfactorily comply with the following terms and conditions:

1. Within fifteen (15) days of the date of this Consent Order, the Respondent must enroll in the Maryland Professional Rehabilitation Program ("MPRP") for evaluation and treatment. The Respondent shall enter into a Participation Rehabilitation Agreement and Participant Rehabilitation Plan, and successfully complete the MPRP program;
2. The Respondent shall fully, timely, and satisfactorily cooperate and comply with all MPRP directives, referrals, rules and requirements,

including but not limited to, the terms and conditions of any Rehabilitation Agreements and Rehabilitation Plans entered into with the MPRP;

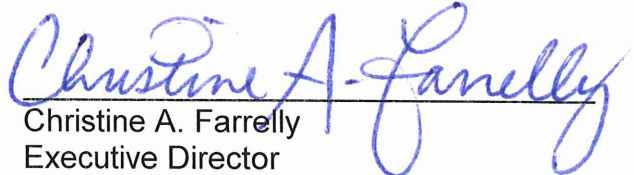
3. The Respondent shall sign any written release/consent forms, and update them, as required by the Board or the MPRP. Specifically, the Respondent shall sign any written release/consent forms as required by the Board to authorize the MPRP to make verbal and written disclosures to the Board, including disclosures of any and all MPRP records and files about the Respondent. The Respondent shall also sign any written release/consent forms required by the MPRP to authorize MPRP to exchange with (i.e., disclose to and receive from) outside entities (including all of the Respondent's current therapists and treatment providers, if any) verbal and written information about her; and
4. The Respondent shall comply with the Maryland Perfusion Act and all laws, statutes and regulations pertaining thereof.

IT IS FURTHER ORDERED that if the Respondent violates any of the terms and conditions of this Consent Order, Disciplinary Panel A or the Board, in its discretion, after notice and an opportunity for an evidentiary hearing before the Office of Administrative Hearings if there is a genuine dispute as to the underlying facts, or an opportunity for a show cause hearing before the Panel or the Board otherwise, may impose any sanction which the Panel may have imposed in this case, including probationary terms and conditions, a reprimand, suspension, revocation and/or a monetary penalty; and it is further

ORDERED that the Respondent shall be responsible for all costs incurred in fulfilling the terms and conditions of this Consent Order; and it is further

ORDERED that this Consent Order is a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., Gen. Provisions §§ 4-101 *et seq.* (2014).

02/17/2016
Date


Christine A. Farrelly
Executive Director
Maryland State Board of Physicians

CONSENT

I, Melissa D. Harben, L.P., acknowledge that I had the opportunity to be represented by counsel but elected not to have counsel before entering into this Consent Order. By this Consent and for the purpose of resolving the issues raised by the Panel, I agree and accept to be bound by the foregoing Consent Order and its conditions.

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 own behalf, and to all other substantive and procedural protections provided by the law. I agree to forego my opportunity to challenge these allegations. I acknowledge the legal authority and jurisdiction of Disciplinary Panel A to initiate these proceedings and to issue and enforce this Consent Order. I affirm that I am waiving my right to appeal any adverse ruling of the disciplinary panel that might have followed after any such hearing.

I sign this Consent Order voluntarily and without reservation, and I fully understand and comprehend the language, meaning and terms of this Consent Order.

2/8/16
Date

Melissa D. Harben
Melissa D. Harben, L.P.

NOTARY

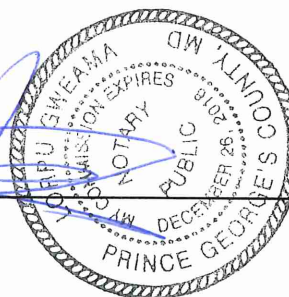
STATE OF MARYLAND

CITY/COUNTY OF Howard

I HEREBY CERTIFY that on this 08 day of Feb¹⁶,
2016
2015, before me, a Notary Public of the foregoing State and City/County, personally
appeared Melissa D. Harben, L.P., and made oath in due form of law that signing the
foregoing Consent Order was her voluntary act and deed.

AS WITNESSETH my hand and notary seal.

[Signature]
Notary Public



My commission expires: 12/28/16