### COMMONWEALTH OF MASSACHUSETTS

# SUFFOLK COUNTY BOARD OF REGISTRATION

 IN RESPIRATORY CARE

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In the Matter of )

**DANIEL P. DUFFY**  ) Docket No. REP-2014-002

RT License No. 5843 )
License expired 5/31/16 )

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**PROPOSED FINAL DECISION AND ORDER BY DEFAULT**

On September 12, 2016, the Board of Registration in Respiratory Care (“Board”) issued and duly served on Daniel P. Duffy, (“Respondent”) an Order to Show Cause (“Show Cause Order”) [[1]](#footnote-1) related to a complaint filed regarding Respondent’s license. In addition to stating the allegations against Respondent, the Show Cause Order notified Respondent that an Answer to the Show Cause Order (“Answer”) was to be submitted within 21 days of receipt of the Show Cause Order[[2]](#footnote-2). The Show Cause Order also notified Respondent of his right to request a hearing on the allegations[[3]](#footnote-3), and that any hearing request (“Request for Hearing”) was to be submitted within 21 days of receipt of the Show Cause Order.[[4]](#footnote-4) Respondent was further notified that failure to submit an Answer within 21 days “shall result in the entry of default in the captioned matter” and, if defaulted, “the Board may enter a Final Decision and Order that assumes the truth of the allegations in the Show Cause Order and may revoke, suspend, or take other disciplinary action against Respondent’s license…including any right to renew Respondent’s license.” A copy of the Show Cause Order is attached to this Final Decision and Order by Default and is incorporated herein by reference.

On October 14, 2016, Prosecuting Counsel sent notice to Respondent to file an Answer and a Request for Hearing by February 22, 2016. The notice again advised Respondent that if defaulted, the Board may enter a Final Decision and Order that assumes the truth of the allegations stated in the Show Cause Order and impose license discipline, including discipline on any right to renew.

As of the date of this Final Decision and Order by Default, Respondent has failed to file either an Answer or a Request for Hearing.

 The Board has afforded Respondent an opportunity for a full and fair hearing on the allegations in the Show Cause Order as required by M.G.L. c. 30A, s. 10, and sufficient notice of the issues involved to afford Respondent reasonable opportunity to prepare and present evidence and argument as required by M.G.L. c. 30A, s. 11(1). The Board has also notified Respondent of the obligation under 801 CMR 1.01(6)(d) to file an Answer to the Show Cause Order within 21 days of its receipt and of the consequences of failing to file an Answer or otherwise respond.

As authorized by M.G.L. c. 30A, s. 10(2), the Board may make informal disposition of any adjudicatory proceeding by default. Upon default, the allegations of the complaint against Respondent are accepted as true. *Danca Corp. v. Raytheon Co.*, 28 Mass. App. Ct. 942, 943 (1990).

 Based on the foregoing, the Board enters a default in the above-captioned matter and, consequently, the allegations in the Order to Show Cause are deemed to be true and Respondent has waived the right to be heard. In accordance with the Board’s authority and statutory mandate, the Board orders as follows:

**ORDER**

Based on its Final Decision and Order by Default, the Board Revokes the Respondent’s Right to Renew his license to practice as a Respiratory Therapist in Massachusetts, RT License No. 5843.

If Respondent renews his license to practice as a Respiratory Therapist in Massachusetts before the Effective Date of this Final Decision and Order by Default, the Board Revokes said license, RT License No. 5843

Respondent is hereby ordered to return any respiratory therapist license issued to him by the Board, whether current or expired, to the Board’s office at 239 Causeway Street, Boston, Massachusetts 02114, by hand or by certified mail, within five (5) days of the Effective Date set forth below.

Respondent shall not practice as a Respiratory Therapist in Massachusetts on or after the Effective Date of this Order. “Practice as a Respiratory Therapist” includes, but is not limited to, seeking and accepting a paid or voluntary position as a Respiratory Therapist or in any way representing himself as a Respiratory Therapist in Massachusetts. The Board shall refer any evidence of unlicensed practice to appropriate law enforcement authorities for prosecution as provided by G.L. c. 112, §§ 65 and 23Y

 Respondent may petition the Board in writing for relicensure when he can provide documentation **satisfactory to the Board** demonstrating his ability to practice respiratory care in a safe and competent manner. The Licensee shall submit the following documentation of the Licensee’s stable and fully sustained recovery from substance abuse, dependency and/or addiction for three (3) years immediately prior to the petition date, all to the Board’s satisfaction:

1. The results of random supervised urine tests for substances of abuse sent directly to the Board and collected from the Licensee according to the conditions and procedures outlined in **Attachment A**, no less than fifteen (15) times per year during the two (2) years immediately preceding the petition date. All such results are required to be negative.
2. Documentation that the Licensee has obtained a sponsor and has regularly attended Alcoholics Anonymous (AA) and/or Narcotics Anonymous (NA) meetings at least three (3) times per week during the two (2) years immediately preceding the petition date. This documentation must include a letter of support from the Licensee’s sponsor and signatures verifying the required attendance.
3. Documentation prepared within thirty (30) days of the petition date and sent directly to the Board from a licensed mental health provider verifying that the Licensee has regularly attended group or individual counseling or therapy, or both, conducted by the mental health provider. Such documentation shall specify the frequency and length of the therapy and/or counseling and shall include a summary of the Licensee’s progress in therapy and specific treatment recommendations for the Licensee’s sustained recovery from substance abuse, dependency and addiction.

In addition, the Respondent shall, with any petition for relicensure, have submitted **directly to the Board**:

 1) reports from Respondent’s primary care provider and any specialist(s) whom Respondent may have consulted verifying that Respondent is medically able to resume the safe and competent practice of respiratory care which meets the requirements set forth in **Attachment B 1.**

2) if employed during the year immediately preceding Respondent’s petition for relicensure, have each employer from said year submit on official letterhead an evaluation reviewing Respondent’s attendance, general reliability, and overall job performance;[[5]](#footnote-5)

 3) certified Court and/or Agency documentation that there are no pending actions or obligations, criminal or administrative, against the Respondent before any court or Administrative Agency including, but not limited to:

a. Documentation that *at least one (1) year prior to any petition for reinstatement* the Respondent satisfactorily completed all court requirements (including probation) imposed on him in connection with any criminal matter and a description of those completed requirements and/or the disposition of such matters;[[6]](#footnote-6) and

1. Certified documentation from the state board of respiratory care of each

jurisdiction in which the Respondent has ever been licensed to practice as a respiratory therapist, sent directly to the Massachusetts Board identifying his license status and discipline history, and verifying that his respiratory therapist license is, or is eligible to be, in good standing and free of any restrictions or conditions.

4) documentation satisfactory to the Board of his successful completion of all

continuing education equivalent to the continuing education required by Board regulations for the two (2) license renewal cycles immediately preceding any petition for relicensure.

The Board’s approval of Respondent’s petition for license reinstatement may be conditioned upon, and immediately followed by, probation of Respondent’s respiratory therapist license for a period, as well as other restrictions and requirements that the Board may then determine are reasonably necessary in the best interests of the public health, safety, and welfare.

The Board may choose to relicense Respondent if the Board determines that relicensure is in the best interests of the public at large.

The Board voted to adopt the within Final Decision by Default at its meeting held on March 21, 2017 by the following vote:

The Board voted to adopt the within Final Order by Default at its meeting held on, March 21, 2017, by the following vote

EFFECTIVE DATE OF ORDER

 This Final Decision and Order by Default becomes effective upon the tenth (10th) day from the date it is issued (see “Date Issued” below).

 RIGHT TO APPEAL

Respondent is hereby notified of the right to appeal this Final Decision and Order by Default to the Supreme Judicial Court within thirty (30) days of receipt of notice of this Final Decision pursuant to M.G.L. c. 112, § 64 and M.G.L.c. 30A §§ 14 and 15.

Board of Respiratory Care

Date Issued: 6/22/17

 Roberlyne (Ruby) Cherfils, MPA

Executive Director, Multi-Boards

Notified:

VIA FIRST CLASS AND CERTIFIED MAIL RETURN

Daniel P. Duffy

4600 9th Avenue

Apt. 407

Brooklyn, NY 11220-2308

Anne F. Mclaughlin, Esq. (by hand)

Prosecuting Counsel

Department of Public Health

Division of Health Professions Licensure

239 Causeway Street

Boston, MA 02114

1. Pursuant to 801 CMR 1.01(6)(a). [↑](#footnote-ref-1)
2. In accordance with 801 CMR 1.01(6)(d)(2). [↑](#footnote-ref-2)
3. Pursuant to M.G.L. c. 112, s. 61. [↑](#footnote-ref-3)
4. Respondent was also notified that failure to timely submit a Request for Hearing would constitute a

waiver of the right to a hearing. [↑](#footnote-ref-4)
5. If Respondent wasn’t employed at all during this period, submit an affidavit so attesting. [↑](#footnote-ref-5)
6. The Respondent shall also provide, if requested, an authorization for the Board to obtain a Criminal Offender Record Information (CORI) Report of the Respondent conducted by the Massachusetts Criminal History Systems Board and a sworn written statement that there are no pending actions or obligations, criminal or administrative, against the Respondent before any court or administrative body in any other jurisdiction. [↑](#footnote-ref-6)