



The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
Bureau of Health Professions Licensure
Board of Respiratory Care

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MARYLOU SUDDERS
Secretary

MONICA BHAREL, MD, MPH
Commissioner

June 22, 2017

Via First Class & Certified Mail No. 7015 1730 0000 7974 1233,
Return Receipt Requested

Daniel P. Duffy
4600 9th Ave., Apt 407
Brooklyn, NY 11220-2308

RE: In the Matter of Daniel P. Duffy, Docket No. REP-2014-002
License No. RT5843

Dear Mr. Duffy:

Please find enclosed the **Final Decision and Order by Default** issued by the Board of Respiratory Care on June 22, 2017 and **effective July 2, 2017**. This constitutes full and final disposition of the above-referenced complaint, as well as the final agency action of the Board. Your appeal rights are noted on page 6.

Please note that as of the effective date, your license status will change to **Revoked; Expired**. It will remain in **revocation** status until the Board notifies you of a change in license status in accordance with the terms of the order.

Please direct all questions, correspondence and documentation relating to licensure reinstatement to the attention of Lisa Ferguson at the address above. You may also contact Ms. Ferguson at (617) 973 - 0950.

You may contact Mary Strachan, Esq., Board Counsel at (617) 973 - 0950 with any questions that you may have concerning this matter.

Sincerely

Roberlyne (Ruby) Cherfils, MPA
Executive Director,
Multi-Boards

Encl.

cc: Anne F. McLaughlin, Esq., Prosecuting Counsel

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN RESPIRATORY CARE

In the Matter of
DANIEL P. DUFFY
RT License No. 5843
License expired 5/31/16

Docket No. REP-2014-002

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 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 Order². The Show Cause Order also notified Respondent of his right to request a hearing on the allegations³, and that any hearing request (“Request for Hearing”) was to be submitted within 21 days of receipt of the Show Cause Order.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 as **Exhibit 1** to this Final Decision and Order by Default and is incorporated herein by reference.

¹ Pursuant to 801 CMR 1.01(6)(a).

² In accordance with 801 CMR 1.01(6)(d)(2).

³ Pursuant to M.G.L. c. 112, s. 61.

⁴ Respondent was also notified that failure to timely submit a Request for Hearing would constitute a waiver of the right to a hearing.

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.

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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:

- a. 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.

- b. 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.
- c. 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:**

- a. 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**.
- b. 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

⁵ If Respondent wasn't employed at all during this period, submit an affidavit so attesting.

- c. 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:
 - i. 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 and
 - ii. 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.
 - iii. 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.

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.

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:

In Favor: P. Nuccio, P. Bort, J. Sage Rettig, M. DeSilva, M. Cavallaro. **Opposed:** None, **Abstained:** None, **Absent:** None

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

In Favor: P. Nuccio, P. Bort, J. Sage Rettig, M. DeSilva, M. Cavallaro. **Opposed:** None, **Abstained:** None, **Absent:** None

EFFECTIVE DATE OF ORDER

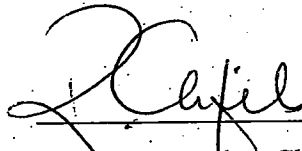
This Final Decision and Order by Default becomes effective upon the tenth (10th) day from the date it is issued (see "Date Issued" below).

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: 6/28/17



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

ATTACHMENT A

Guidelines for Licensees Participation in Random Urine Drug Screens for Evaluation by the Massachusetts Board of Respiratory Care

- I. Licensees who are required by a Board Agreement or Order to have random, supervised urine drug screens are expected to remain abstinent from all substances of abuse, including alcohol. It is a Licensee's responsibility not to ingest any substance(s) that may produce a positive drug screen, including over-the-counter medications. Unless otherwise stated in a Licensee's Board Agreement or Order, all Licensees shall be randomly tested a minimum of fifteen (15) times per year.
- II. The Board designates one Drug Testing Management Company (DTMC).⁷ The Board will accept only the results of urine drug screens that are performed under the auspices of the DTMC and reported directly to the Board.
- III. All costs related to a Licensee's participation in the DTMC urine drug screening program are the responsibility of the participating Licensee.
- IV. A Licensee is expected to sign an agreement with the DTMC and to comply with all of the conditions and requirements of the agreement with the DTMC and any related policies, including without limitation, any requirements related to supervision of urine collection and/or temperature checks.
- V. No vacations from calling to test or from testing shall be approved. This does not mean that a Licensee cannot take a vacation while participating in random urine screens; arrangements can be made through the DTMC to have urine screens done at approved laboratories throughout the continental U.S.
- VI. Failure to call the DTMC or failure to test when selected shall be considered non-compliance with the Licensee's Board agreement or Order. Calls to the DTMC must be made between the hours of 5:00 a.m. and 1:00 p.m.
- VII. Failure to test when selected, and/or a positive drug screen that is confirmed by the Medical Review Officer (MRO) and that is not supported by appropriate documentation of medical necessity and a valid prescription shall be considered as a relapse in the Licensee's abstinence. All prescriptions for any medication (including renewal prescriptions) must be submitted to the DTMC within five (5) days.

⁷ The current DTMC is First Lab. To contact First Lab call (800) 732-3784.
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- VIII. Urine drug screen reports that show a low creatinine (<20 mg/dl) may be an indication of an adulterated or diluted specimen; further testing may be required.
- IX. Licensees who do not have a current MA license and who are enrolled in urine drug screening with the DTMC for the purpose of documenting to the Board that they are in stable and sustained recovery from substance abuse, must provide written authorization to the DTMC to release to the Board a complete record of their participation in the drug screening program, including documentation of missed calls, no shows, test results and a full history report at the completion of their DTMC participation. During their DTMC participation, Licensees who do not have a current MA license for whatever reason (surrender, suspension, lapse, revocation) are expected to designate a monitor of their choosing (e.g. friend, family member, health care provider, AA sponsor) who will be authorized to receive test results from the DTMC. The Board does not monitor the testing of unlicensed individuals and will evaluate a Licensee's participation in the DTMC only when the DTMC testing is completed and the Licensee applies for license reinstatement. Unlicensed Licensees should identify themselves as such to the DTMC and sign an individual agreement with the DTMC.
- X. Random supervised urine tests are done in panels which shall include, but are not limited to, each of the following substances:
- Ethanol and all ethanol products
 - Amphetamines
 - Barbiturates
 - Benzodiazepines
 - Buprenorphine
 - Cannabinoids
 - Cocaine (metabolite)
 - Opiates:
 - Codeine
 - Morphine
 - Hydromorphone
 - Hydrocodone
 - Oxycodone
 - Phencyclidine
 - Methadone
 - Propoxyphene
 - Meperidine
 - Tramadol
 - Suboxone

ATTACHMENT B 1

Minimum requirements for medical evaluations to be submitted to the Board of Respiratory Care

Medical evaluation

A medical evaluation of the Licensee conducted by a licensed, board certified physician written on the physician's letterhead, sent directly to the Board by the physician and completed within thirty (30) days before submission of the petition for reinstatement or other submission to the Board. The evaluation shall state that the physician has reviewed this document and any Board Consent Agreement, Order, and/or other relevant documents, and that he or she has reviewed the specific details of the Licensee's underlying conduct alleged or otherwise described.

The evaluation shall provide a detailed, clinically based assessment of the Licensee and shall be completed in accordance with all accepted standards for such an evaluation. The purpose of the evaluation is to provide the Board with the physician's analysis of the following materials and his or her opinion as to whether the Licensee is able to practice in a safe and competent manner. To be most useful to the Board, the evaluation should include, but not be limited to, the following:

- a. Record Review. A review of the Licensee's written or electronic medical and mental health records (for at least the preceding two years);
- b. Conversation(s) with Provider(s). Follow up conversations with any currently or recently treating primary care physicians or advanced practice nurses and any mental health providers;
- c. Review of Prescriptions. A list of all of the Licensee's prescribed medications with the medical necessity for each prescription; if there are or may be other prescribers than the evaluating physician then the evaluation should include a review of all of the Licensee's pharmacy records for the preceding two years;
- d. In-Person Interview(s). Medical (and mental health if pertinent) history obtained by the physician through in-person interviews with the Licensee, which are as extensive as needed for the physician to reach a clinical judgment;
- e. Detailed Statement of History. A detailed statement of the Licensee's medical (and mental health if pertinent) history including diagnoses, treatments and prognoses;

- f. Detailed Description(s) of Current Conditions. Detailed descriptions of the Licensee's existing medical conditions with the corresponding status, treatments and prognosis including, but not limited to, each condition, if any, which gave rise to the conduct which is the subject of the Board's interest;
- g. Any Existing Limitations. A detailed description of any and all corresponding existing or continuing limitations of any kind;
- h. Ongoing Treatment Plan. Recommendations for the Licensee's ongoing treatment and specific treatment plan, if any;
- i. Evaluating Physician's Opinion as to Safety and Competence. The physician's opinion as to whether the Licensee is presently able to practice in a safe and competent manner (in light of all of the above); and
- j. Physician's C.V. A copy of the physician's curriculum vitae should be attached.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN RESPIRATORY CARE

In the Matter of)
DANIEL P. DUFFY)
License No. RT5843)
License expiration date 5/31/16)

Docket No. REP-2014-002

ORDER TO SHOW CAUSE

Daniel P. Duffy, you are hereby ordered to appear and show cause why the Massachusetts Board of Registration in Respiratory Care ("Board") should not suspend, revoke or otherwise take action against your license to practice as a Respiratory Therapist in the Commonwealth of Massachusetts, License No. 5843, or your right to renew such license pursuant to Massachusetts General Laws (G. L.) Chapter 112, § 23X and Massachusetts regulations at 244 CMR 261 et seq., based upon the following facts and allegations.

1. On or about November 16, 2007, the Board issued a license to you to engage in the practice of respiratory therapy as a Respiratory Therapist, License No. 5843. Your license expired on May 31, 2016, and has not been renewed to date.
2. On or about October 9, 2013, you were a contract employee for Aureus Medical Radiology ("Aureus") located in Omaha, Nebraska. On October 9, 2013, you were scheduled to begin working as a Respiratory Therapist at St. Elizabeth Medical Center ("St. Elizabeth") in Brighton, MA.
3. Pursuant to starting your employment with St. Elizabeth, you were required to submit to a pre-employment drug test, which you failed. On October 8, 2013, the test results indicated a positive result for the drug methamphetamine.
4. On January 27, 2014, the Board Investigator received your written response concerning this complaint in which you admitted to participating in recreational drug use in 2013.
5. On March 6, 2014, in an interview with the Board Investigator concerning this complaint, you admitted to using crystal methamphetamine approximately five times in the summer of 2013.

6. On July 7, 2008 in the Boston Municipal Court, Roxbury Division, of the Trial Court of Massachusetts, you admitted to sufficient facts on two counts of Drug Possession of a Class B Substance. The drugs were crystal methamphetamine and GHB. You were placed on probation to January 1, 2009, with court ordered conditions that you submit to random drug testing, a substance abuse evaluation and treatment, as deemed necessary.

Grounds for Discipline

7. Your conduct as alleged warrants disciplinary action by the Board against your license to practice as a Respiratory Therapist pursuant to Board regulation 261 CMR 4.00, Disciplinary Actions.
8. Your conduct as alleged warrants disciplinary action by the Board against your license to practice as a Respiratory Therapist pursuant to Board regulation 261 CMR 4.04(5)(a), for conduct which places into question your competence to practice respiratory care.
9. Your conduct as alleged warrants disciplinary action by the Board against your license to practice as a Respiratory Therapist pursuant to G. L. c. 112, § 23X for acting in a manner which is professionally unethical according to ethical standards of the profession of respiratory care.
10. Your conduct as alleged constitutes unprofessional conduct and conduct which undermines public confidence in the integrity of the profession. *Sugarman v. Board of Registration in Medicine*, 422 Mass. 338, 342 (1996); see also *Kvitka v. Board of Registration in Medicine*, 407 Mass. 140, cert. denied, 498 U.S. 823 (1990); *Raymond v. Board of Registration in Medicine*, 387 Mass. 708, 713 (1982).

You have a right to an adjudicatory hearing ("hearing") on the allegations contained in the Order to Show Cause before the Board determines whether to suspend, revoke, or impose any other discipline against your license. G.L. c. 112, § 61. Your right to a hearing may be claimed by submitting a written request for a hearing *within twenty-one (21) days of receipt of this Order to Show Cause*. You must also submit an Answer to this Order to Show Cause in accordance with 801 CMR 1.01(6)(d) *within twenty-one (21) days of receipt of this Order to Show Cause*. The Board will give you prior written notice of the time and place of the hearing following receipt of a written request for a hearing.

Hearings shall be conducted in accordance with the State Administrative Procedure Act, G.L. c. 30A, §§ 10 and 11, and the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.01 and 1.03, under which you are granted certain rights including, but not limited to, the rights: to a hearing, to secure legal counsel or

another representative to represent your interests, to call and examine witnesses, to cross-examine witnesses who testify against you, to testify on your own behalf, to introduce evidence, and to make arguments in support of your position.

The Board will make an audio recording of any hearing conducted in the captioned matter. In the event that you wish to appeal a final decision of the Board, it is incumbent on you to supply a reviewing court with a "proper record" of the proceeding, which may include a written transcript. *New Bedford Gas and Light Co. v. Board of Assessors of Dartmouth*, 368 Mass. 745, 749-750 (1975). Upon request, the Board will make available a copy of the audio recording of the proceeding at your own expense. Pursuant to 801 CMR 1.01 (10) (i)(1), upon motion, you "may be allowed to provide a public stenographer to transcribe the proceedings at [your] own expense upon terms ordered by the Presiding Officer." Those terms may include a requirement that any copy of the transcript produced must be sent immediately upon completion, and on an ongoing basis, directly to the Presiding Officer by the stenographer or transcription service. The transcript will be made available to the Prosecutor representing the Board. Please note that the administrative record of the proceedings, including but not limited to, the written transcript of the hearing is a public record and subject to the provisions of G.L. c. 4, § 7 and G.L. c. 66, § 10.

Your failure to submit an Answer to the Order to Show Cause within twenty-one (21) days of receipt of the Order to Show Cause *shall result in the entry of default* in the captioned matter. Your failure to submit a written request for a hearing within twenty-one (21) days of receipt of this Order to Show Cause *shall constitute a waiver of the right to a hearing* on the allegations herein and on any Board disciplinary action.

Notwithstanding the earlier filing of an Answer and/or request for a hearing, your failure to respond to notices or correspondence, your failure to appear for any scheduled status conference, pre-hearing conference or hearing dates, or your failure to otherwise defend this action shall result in the entry of default.

If you are defaulted, the Board may enter a Final Decision and Order that assumes the truth of the allegations in this Order to Show Cause, and may revoke, suspend, or take other disciplinary action against your license to practice respiratory care in the Commonwealth of Massachusetts, including any right to renew your license.

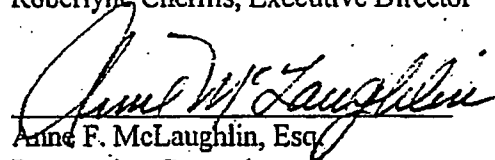
Your Answer to the Order to Show Cause and your written request for a hearing must be filed with Anne F. McLaughlin, Prosecuting Counsel, at the following address:

Anne F. McLaughlin, Esq.
Prosecuting Counsel
Department of Public Health
239 Causeway Street, 5th floor
Boston, MA 02114

You or your representative may examine Board records relative to this case prior to the date of the hearing during regular business hours at the office of the Prosecuting Counsel. If you elect to undertake such an examination, then please contact Prosecuting Counsel in advance at (617) 973-0840 to schedule a time that is mutually convenient.

Board of Registration in Respiratory Care
Roberlyne Cherfils, Executive Director

By:


Anne F. McLaughlin, Esq.
Prosecuting Counsel
Department of Public Health

Dated: September 12, 2016

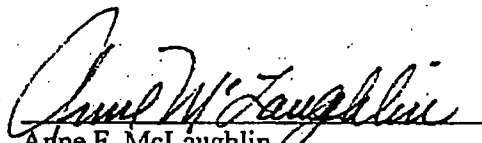
CERTIFICATE OF SERVICE

I, Anne F. McLaughlin, hereby certify that a copy of the foregoing Order to Show Cause was served on the Respondent at the following address:

Daniel P. Duffy
4600 9th Avenue, Apt. 407
Brooklyn, NY 11220-2308

by first class mail, postage prepaid, and certified mail no. 7016 1370 0001 4117 6087

This 12th day of September, 2016.


Anne F. McLaughlin
Prosecuting Counsel