

IN THE MATTER OF	*	BEFORE THE
PHILIP OPOKU, R.C.P.	*	MARYLAND STATE
Respondent	*	BOARD OF PHYSICIANS
License Number: L02034	*	Case Number: 2017-0349A
* * * * *	*	* * * * *

**ORDER FOR SUMMARY SUSPENSION OF LICENSE TO PRACTICE
RESPIRATORY CARE**

Disciplinary Panel A ("Panel A") of the Maryland State Board of Physicians (the "Board") hereby **SUMMARILY SUSPENDS** the license of **PHILIP OPOKU, R.C.P.** (the "Respondent"), License Number L02034, to practice respiratory care in the State of Maryland.

Panel A takes such action pursuant to its authority under Md. Code Ann., State Gov't II ("State Gov't II") § 10-226(c)(2) (2014 Repl. Vol. and 2016 Supp.) and Md. Code Regs. ("COMAR") 10.32.02.08B(7), concluding that the public health, safety or welfare imperatively requires emergency action.

INVESTIGATIVE FINDINGS

Based on information received by, and made known to Panel A, and the investigatory information obtained by, received by and made known to and available to Panel A, including the instances described below, Panel A has reason to believe that the following facts are true:¹

¹ The statements regarding the Respondent's conduct are intended to provide the Respondent with notice of the basis of the summary suspension. They are not intended as, and do not necessarily represent a complete description of the evidence, either documentary or testimonial, to be offered against the Respondent in connection with this matter.

I. INTRODUCTION

1. At all times relevant hereto, the Respondent was licensed as a respiratory care practitioner in the State of Maryland. The Respondent was initially licensed as a respiratory care practitioner in Maryland on December 20, 1994, under License Number L02034. The Respondent's latest Maryland respiratory care practitioner's license has an expiration date of May 30, 2018.

2. The Board initiated an investigation of the Respondent after receiving a complaint in 2016 alleging that the Respondent sexually assaulted a female co-worker ("Health Care Worker A")² at a Maryland health care facility ("Health Care Facility A") where he was practicing respiratory care therapy. During this investigation, the Board revisited a prior investigation involving allegations that the Respondent sexually assaulted a female co-worker ("Health Care Worker B") in 2008 at another Maryland health care facility ("Health Care Facility B") where he was practicing respiratory care therapy.

3. The Board's investigation determined that the Respondent sexually assaulted Health Care Workers A and B at health care facilities in Maryland while working in his capacity as a respiratory care practitioner at the facilities. In both incidents, the Respondent pleaded guilty to and/or was convicted of criminal offenses in connection with these assaults. In addition, the Respondent made material misrepresentations to the Board in his licensure renewal applications and in response to Board inquiry regarding his criminal history.

² For confidentiality reasons, the names of health care workers, complainants, other individuals or health care facilities will not be identified by name in this Order for Summary Suspension. The Respondent may obtain the identity of any individual or entity referenced herein by contacting the assigned administrative prosecutor.

II. THE COMPLAINT

Health Care Worker A

4. On or about November 17, 2016, the Board received a complaint from a manager (the "Complainant") of a respiratory care staffing company who reported that the Respondent, a respiratory care practitioner the company employed, sexually harassed and assaulted Health Care Worker A, a respiratory care practitioner and co-worker, at Health Care Facility A, where they were assigned. Health Care Facility A is located in Maryland.

5. The Complainant reported that Health Care Worker A submitted a written statement to him in which she reported that the Respondent sexual assaulted her at Health Care Facility A on November 13, 2016. The Complainant also interviewed Health Care Worker A about the incident. The Complainant reported that on this date, the Respondent "forced himself" on Health Care Worker A while they were in a patient's room, restrained her from getting away, expressed his attraction for her and then sexually assaulted her. The Complainant reported that Health Care Worker A attempted to resist the Respondent's assault, after which she was able to leave the patient's room and avoided him during the remainder of her shift. The Complainant reported that after the Respondent sexually assaulted her, he apologized, stated it would not happen again and asked her not to tell anyone about what he had done.

6. The Complainant stated that after receiving this report, he confronted the Respondent about Health Care Worker A's allegations. The Complainant stated that the Respondent acknowledged the truth of the allegations Health Care Worker A made in her report. The Complainant reported that the Respondent stated he was "very sorry"

for his actions and offered to apologize to Health Care Worker A but was instructed not to contact her. The Complainant stated that he informed the Respondent that his actions were against company policy and terminated his employment immediately.

7. On or about March 2, 2017, Board investigators interviewed Health Care Worker A, who confirmed the allegations she made in her report to the Complainant. Health Care Worker A stated that on November 13, 2016, she went into a patient's room at Health Care Facility A, after which the Respondent followed her into the room and sexually assaulted her. A patient was in the room at the time. The Respondent came up behind her, hugged her, stated that he wanted to touch her and restrained her against her will. The Respondent attempted to kiss her and grinded himself on her in a sexual manner. Health Care Worker A asked him to stop and after a time broke free from him. Health Care Worker A went into another room and hid there until the end of the Respondent's shift due to her fear of him. Health Care Worker A stated that at the end of his shift, the Respondent told her that he was sorry for his actions and asked her not to repeat anything that he had done to her earlier. Health Care Worker A stated that the Respondent's sexual assault of her caused her to experience continuing emotional upset. Health Care Worker A reported this incident to the police.

8. Law enforcement authorities charged the Respondent in the Circuit Court for Frederick County with sexually assaulting Health Care Worker A.

9. On May 5, 2017, the Respondent pleaded guilty in the Circuit Court for Frederick County to Sexual Offense in the Fourth Degree, in violation of Md. Code Ann., Crim. Law § 3-308(b)(1), for the incident involving Health Care Worker A, occurring on November 13, 2016.

10. On May 19, 2017, the Court sentenced the Respondent to incarceration for 180 days, which it suspended in its entirety, and placed him on supervised probation for two years. Pursuant to the sentencing, the Respondent was directed to abide by a series of probationary conditions, including: registering as a Tier 1 Sex Offender; submitting to a psycho-sexual evaluation; undergoing and successfully completing any recommended treatment; obeying all laws; paying court costs; and obtaining permission prior to leaving the State. The Court also permitted the transfer of the Respondent's probation to Howard County, Maryland.

11. On or about June 1, 2017, the Respondent was charged in the District Court for Howard County with violating Md. Code Ann., Crim. Procedure § 11-721.³ These charges are scheduled for trial on September 27, 2017.

12. On or about June 2, 2017, a criminal summons and warrant were issued against the Respondent in the Circuit Court for Frederick County for failing to comply with the above conditions. These charges are scheduled for trial on October 13, 2017.

Health Care Worker B

13. While investigating the matter involving Health Care Worker A, Board investigators reviewed prior allegations that on November 9, 2008, the Respondent assaulted another co-worker, Health Care Worker B. At the time of the prior investigation, the Board did not charge the Respondent as the Board had inaccurate information on the matter provided to it by the Respondent (see ¶ 17-21, *infra*).

³ Md. Code Ann., Crim. Procedure § 11-721 provides, in pertinent part:

(a) a registrant may not knowingly fail to register, knowingly fail to provide the written notice required under § 11-705(d), (e) or (f) of this subtitle, or knowingly provide false information of a material fact as required by this subtitle;

(b) a person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 3 years or a fine not exceeding \$5,000 or both[.]

14. On or about June 21, 2017, Board investigators interviewed Health Care Worker B, a certified nursing assistant. Health Care Worker B reported that on November 9, 2008, she was working in the triage area of the emergency department of Health Care Facility B. Health Care Facility B is located in Maryland. While Health Care Worker B was sitting in a rolling chair, the Respondent "threw himself" on her and pushed her back against a wall. The Respondent forcefully grabbed Health Care Worker B and then sexually assaulted her. Health Care Worker B attempted to repulse the Respondent, who asked her not to tell anyone about the sexual assault. Health Care Worker B reported that she suffered extreme emotional upset as a result of the Respondent's assault of her and filed a police report against the Respondent.

15. Law enforcement authorities charged the Respondent with criminally assaulting Health Care Worker B, and on June 16, 2009, the Respondent appeared in the Circuit Court for Baltimore City and pleaded guilty to Assault in the Second Degree, in violation of Md. Code Ann., Crim. Law § 3-203, for the incident involving Health Care Worker B, occurring on November 9, 2008. The Court sentenced the Respondent to incarceration for two days.

Misrepresentations to the Board

16. The Respondent made material misrepresentations to the Board when applying for renewal of his respiratory care practitioner's license and in response to Board inquiry with respect to his criminal conduct toward Health Care Workers A and B.

17. The Respondent applied for renewal of his respiratory care practitioner license in 2010, 2012 and 2014. In the Character and Fitness section of those applications, the Respondent responded affirmatively to whether he was either charged

with, or was convicted of, a criminal act. In those applications, the Board required the Respondent to provide brief explanations for any affirmative responses.

18. In his 2010 renewal application, the Respondent provided the following explanation: "a misunderstanding incident between me and a coworker."

19. In his 2012 renewal application, the Respondent provided the following explanation: "misunderstanding."

20. In his 2014 renewal application, the Respondent provided the following explanation: "misdemeanor." A Board representative then contacted the Respondent and requested that he provide a more detailed explanation regarding this affirmative response. The Respondent responded by electronic mail, stating, "The charges were for sexual harassment where I was found not guilty at the hospital. I was also found not guilty on the same charges at the State level but charged with second degree assault."

21. The Respondent made material representations in his 2010 and 2012 licensure renewal applications. In these applications, the Respondent failed to disclose his 2009 conviction for second degree assault against Health Care Worker B. In addition, the Respondent, in response to Board inquiry, made one or more material misrepresentations regarding the facts and circumstances involving his 2009 conviction.

22. The Respondent made material misrepresentations to Board investigators during his under-oath interview on January 5, 2017, with respect to his criminal assault of Health Care Worker A and Health Care Worker B. For instance, with respect to Health Care Worker B, the Respondent stated, "They didn't find me guilty."

23. Based on the above investigative facts, the Respondent presents a substantial likelihood of a risk of serious harm to the public health, safety and welfare.

The Respondent sexually assaulted two female health care providers while practicing respiratory care therapy and pleaded guilty to and/or was convicted of criminal charges in connection with these assaults. The Respondent made numerous material misrepresentations to the Board in his renewal applications and in response to Board inquiry regarding his criminal assaults of Health Care Worker A and Health Care Worker B.

CONCLUSIONS OF LAW

Based upon the foregoing Investigative Findings, Panel A of the Board concludes that the public health, safety, or welfare imperatively requires emergency action, and that pursuant to State Gov't II § 10-226(c)(2) and COMAR 10.32.02.08B(7), the Respondent's license is immediately suspended.

ORDER

IT IS thus by a vote of Panel A of the Board, hereby:

ORDERED that pursuant to the authority vested in Panel A by State Govt. II § 10-226(c)(2)(2014 Repl. Vol. and 2016 Supp.) and COMAR 10.32.02.08B(7), the Respondent's license to practice respiratory care in the State of Maryland is hereby **SUMMARILY SUSPENDED**; and it is further

ORDERED that in accordance with Md. Code Regs. 10.32.02.08B(7) and E, a post-deprivation initial hearing on the summary suspension will be held on **Wednesday, September 13, 2017, at 1:00 p.m.** at the Board's offices, located at 4201 Patterson Avenue, Baltimore, Maryland, 21215-0095; and it is further

ORDERED that after the **SUMMARY SUSPENSION** hearing before Panel A, the Respondent, if dissatisfied with the result of the hearing, may request, within ten

(10) days, an evidentiary hearing, such hearing to be set within thirty (30) days of the request, before an Administrative Law Judge at the Office of Administrative Hearings, Administrative Law Building, 11101 Gilroy Road, Hunt Valley, Maryland 21031-1301; and it is further

ORDERED that upon receipt of this Order, the Respondent **SHALL SURRENDER** to Board staff the following items:

- (1) his original Maryland license L02034; and
- (2) Any renewal, wallet card or wall certificate.

AND IT IS FURTHER ORDERED that a copy of the Order for Summary Suspension shall be filed with Panel A immediately in accordance with Health Occ. II § 14-407 (2014 Repl. Vol.); and it is further

ORDERED that this is an Order of Panel A, and as such, is a **PUBLIC DOCUMENT** pursuant to Md. Code Ann. Gen Prov. §§ 4-101 *et seq.* (2014).

August 31, 2017
Date

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