

**IN THE MATTER OF
TIMOTHY P. SANNA, N.H.A.**

Respondent

License Number: R1619

*** BEFORE THE MARYLAND
* STATE BOARD OF
* EXAMINERS OF NURSING
* HOME ADMINISTRATORS
* Case Number: 2012-002**

* * * * *

CONSENT ORDER

On January 22, 2013, the Maryland State Board of Examiners of Nursing Home Administrators (the "Board") charged **TIMOTHY P. SANNA, N.H.A.**, (the "Respondent"), License Number R1619, with violating the Maryland Nursing Home Administrators Licensing Act (the "Act"), Md. Code Ann., Health Occ. ("Health Occ.") §§ 9-101 *et seq.* (2009 Repl. Vol.).

Specifically, the Board charged the Respondent with violating the following provisions of the Act under Health Occ. § 9-314:

(b) *Grounds for reprimands, suspensions, and revocations.* – Subject to the hearing provisions of § 9-315 of this subtitle, the Board may deny a license or limited license to any applicant, reprimand any licensee or holder of a limited license, place any licensee or holder of a limited license on probation, suspend or revoke a license or limited license, or impose a civil fine if the applicant, holder, or licensee:

(3) Otherwise fails to meet substantially the standards of practice adopted by the Board under § 9-205 of this title[.]

The Board charged the Respondent with violating the following standards of practice adopted by the Board under § 9-205, specifically, Code Md. Regs. ("COMAR"), tit. 10 § 33.01.15:

- A. Pursuant to Health Occupations Article, § 9-314(b)(3), Annotated Code of Maryland, the Board may... suspend or revoke a license of a nursing home administrator, or reprimand or otherwise discipline... a licensee after due notice and an opportunity to be heard at a formal hearing, upon evidence that the... licensee:
 - (2) has violated any of the provisions of the law or regulations of the licensing or supervising authority or agency of the State or political subdivision of it having jurisdiction of the operation and licensing of nursing facilities[.]

The pertinent law or regulations of the State agency having jurisdiction of the operation and licensing of nursing facilities are set forth in:

COMAR 10.07.02.08-1 – Resident’s Representative.

- A. A comprehensive or extended care facility shall recognize the authority of:
 - (3) An advanced directive that meets the requirements of Health-General Article, § 5-602, Annotated Code of Maryland[.]
- B. A facility shall require documentation or other appropriate verification of the authority of a resident’s representative. A facility may not recognize the authority of a resident’s representative if the representative attempts to exceed the authority:
 - (1) Stated in the instrument that grants the representative authority[.]

COMAR 10.07.02.07 – Administration and Resident Care.

- A. Responsibility.
 - (2) The administrator shall be responsible for the implementation and enforcement of all provisions of the Patient’s Bill of Rights Regulations under COMAR 10.07.09.

COMAR 10.07.09.08 – Resident’s Rights and Services.

- C. A resident has the right to:

(11) Consent to or refuse treatment, including the right to accept or reject artificially administered sustenance in accordance with State law[.]

On March 13, 2013, a Case Resolution Conference was held before a panel of the Board. As a result of negotiations, the Respondent agreed to enter into this public Consent Order consisting of Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

The Board makes the following Findings of Fact:

BACKGROUND

1. At all times relevant to hereto, the Respondent was and is licensed to practice as a nursing home administrator (the "Administrator") in the State of Maryland. The Respondent was originally licensed by the Board on November 21, 2003, under License Number R1619. The Respondent's license is scheduled to expire on November 20, 2013.

2. At all times relevant hereto, the Respondent was the Administrator at a nursing, comprehensive and extended-care facility in Maryland ("Facility A").¹

3. The Board initiated an investigation of the Respondent after receiving a complaint, on or about August 17, 2011, from the chief nurse at the Maryland Office of Health Care Quality alleging that during an inspection of Facility A in or around December 2010, he discovered that the Respondent had failed to honor a patient's ("Patient A") advance directive in a timely manner.

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.

BOARD INVESTIGATION

4. Patient A, a female in her late-eighties, was initially admitted to Facility A on or about February 4, 2005, with a history of dementia and hypothyroidism.

5. At or around the time of Patient A's admission, Facility A was provided a copy of a duly executed written advance directive (the "Advance Directive"), dated November 4, 2002, by Patient A, which provided in relevant part the following:

If I am not able to make an informed decision regarding my health care, I direct my health care providers to follow my instructions as set forth below. *(Initial those statements you wish to be included in the document and cross through those statements that do not apply.)*

* * *

3. If I have an end-stage condition, that is, a condition caused by injury, disease or illness, as a result of which I have suffered severe and permanent deterioration indicated by incompetency and physical dependence and for which, to a reasonable degree of medical certainty, treatment of the irreversible condition would be medically ineffective:

I direct that my life not be extended by life-sustaining procedures, including the administration of nutrition and hydration artificially.

6. In the Advance Directive, Patient A initialed the provision directing that her life not be extended by life-sustaining procedures in case of end-stage condition and expressly crossed out provisions, which would allow her to receive nutrition and hydration artificially or to be given all available medical treatment.

7. Patient A further appointed one of her family members (the "Health Care Agent") as her health care agent with the authority to make health care decisions on her behalf, including the authority to "consent to the provision, withholding, or withdrawal of

health care, including, in appropriate circumstance, life-sustaining procedures” in the Advance Directive. However, the Advance Directive specifically stated, “My agent is to make health care decisions for me based on the health care instructions I give in this document or in any advance directive for health care instructions, and on my wishes as otherwise known to my agent.”

8. On or about January 12, 2008, Patient A was admitted to an area hospital for a suspected stroke. She underwent a computed axial tomography scan, which showed a left-sided cortical infarct in the left mid cerebral artery territory left parietal lobe with no hemorrhage. Throughout the hospital stay, Patient A was unable to provide meaningful response either by speech or by recognition but was able to squeeze staff members’ hands on occasion but not consistently.

9. During the hospital stay, Patient A’s attending physician (“Physician A”) discussed Patient A’s Advance Directive with the Health Care Agent and determined that Patient A’s acute stroke did not qualify as her being in a persistent vegetative state, a terminal condition, or an end-stage condition. Consequently, Physician A ordered that a percutaneous endoscopic gastronomy (“PEG”) tube be inserted in Patient A to provide artificial nutrition and hydration with a plan that it be continued for three weeks if Patient A improves but discontinued if there was no improvement. Patient A was transferred back to Facility A on or about January 19, 2008.

10. From January 2008 to December 2010, Patient A continued to receive artificial nutrition and hydration through a PEG tube. According to Physician A, Patient A remained totally dependent on staff members for activities of daily living and was unable to ingest enough calories or fluids to meet her nutritional and hydration needs.

Her clinical status showed no improvement with standard medical therapy, physical therapy, occupational therapy and speech therapy.

11. On or about December 16, 2010, Facility A convened a Resident Care Advisory Committee (the "Committee") meeting and invited the Health Care Agent to discuss Patient A's condition and her Advance Directive. During the meeting, the Health Care Agent asserted that Patient A did not understand the Advance Directive when she signed it and that the Health Care Agent did not believe that Patient A was in an end-stage condition. After a discussion outside the presence of the Health Care Agent, the Committee concluded that continued use of the PEG tube was in violation of Patient A's Advance Directive.

12. The Respondent was not present at the meeting on December 16, 2010, but admittedly was fully apprised of the details of the Committee's discussions and conclusions on or about December 17, 2010.

13. On or about December 20 and 22, 2010, respectively, Physician A and the medical director of Facility A ("Physician B") each issued written certification that Patient A was in an end-stage condition.

14. In anticipation of legal action by the Health Care Agent, the Respondent immediately consulted in-house counsel upon his return on or about December 17, 2010, and further retained outside counsel on or about December 22, 2010.

15. In written statements dated February 8, 2011, and February 26, 2011, respectively, Physician A and Physician B reiterated their position that Patient A was in an end-stage condition. Physician A further stated that "We, the medical staff caring for

[Patient A], feel that we are in violation of her advance directives by continuing her PEG feedings.”

16. Approximately four and one-half months after Physician A and Physician B certified that Patient A was in an end-stage condition, during which time the Respondent continued the investigation regarding Patient A’s capacity to knowingly execute the Advance Directive and her end stage-condition, as well as discussions with the Health Care Agent, who continued to challenge the end-stage condition of Patient A and the capacity issue throughout the time frame, the Respondent, by letter dated May 5, 2011, advised the Health Care Agent that continuation of artificial nutrition and hydration for Patient A was in violation of her Advance Directive and that Patient A’s feeding tube would be discontinued on May 20, 2011. The letter further advised the Health Care Agent of her option to petition a court for an injunction or to request for a transfer of Patient A.

17. Upon conclusion of the legal and medical investigation and with the advice of counsel, an Emergency Petition for Temporary Restraining Order, Preliminary and Permanent Injunction, was filed by the Health Care Agent in the Circuit Court for Baltimore County. The Court, on June 1, 2011, issued a temporary restraining order enjoining Facility A from discontinuing the use of artificial nutrition and hydration on Patient A pending a full hearing on the merits scheduled for June 21, 2011. By negotiation and mediation prior to the scheduled hearing date, the Health Care Agent agreed to the removal of Patient A’s PEG tube and to place her in a hospice program.

18. On or about June 20, 2011, Patient A was admitted to a professional hospice, and her PEG tube was removed on or about June 21, 2011.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent's failure to order a discontinuation of artificial nutrition and hydration of Patient A and prompt removal of her PEG tube after Physician A and Physician B had certified that Patient A was in an end stage condition in accordance with her Advance Directive constitutes: otherwise failing to meet substantially the standards of practice adopted by the Board under § 9-205 of this title, in violation of Health Occ. § 9-314(b)(3); having violated any of the provisions of the law or regulations of the licensing or supervising authority or agency of the State or political subdivision of it having jurisdiction of the operation and licensing of nursing facilities, in violation of COMAR 10.33.01.15A(2); failing to recognize the authority of an advance directive that meets the requirements of Health-General Article, § 5-602, Annotated Code of Maryland, in violation of COMAR 10.7.02.08-1A(3); failing to recognize that a resident's representative was attempting to exceed the authority stated in the instrument that grants the representative authority, in violation of COMAR 10.07.02.08-1B(1); and failing to enforce all provisions of the Patient's Bill of Rights Regulations under COMAR 10.07.09, including a resident's right to consent to or refuse treatment, including the right to accept or reject artificially administered sustenance in accordance with State law, in violation of COMAR 10.07.02.07A(2) and COMAR 10.07.09.08.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 10th day of April, 2013, by a majority of the Board considering this case:

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

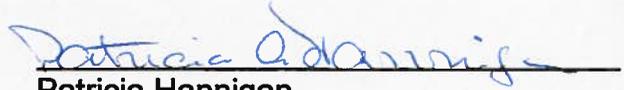
ORDERED that within **THIRTY (30) DAYS** of the execution of the Consent Order, the Respondent shall pay a fine of one thousand dollars (\$1,000) by certified check or money order to the Maryland Board of Examiners of Nursing Home Administrators, 4201 Patterson Avenue, Baltimore, Maryland 21215; and it is further

ORDERED that within **SIX (6) MONTHS** of the execution of the Consent Order, the Respondent shall successfully complete an in-person, Board-approved course focusing on advance directives and Medical Orders for Life-Sustaining Treatment (MOLST). The course may not be used to fulfill the Board's continuing educational requirements for licensure renewal; and it is further

ORDERED that if the Respondent violates any of the terms and conditions of this Consent Order, 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 Board otherwise, may impose any sanction which the Board may have imposed in this case, including probationary terms and conditions, a reprimand, suspension, revocation and/or a monetary penalty; and be it further

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

ORDERED that this Consent Order shall be a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., State Gov't, §§ 10-611 *et seq.* (2009 Repl. Vol.).



Patricia Hannigan
Executive Director
Maryland State Board of Examiners of
Nursing Home Administrators

CONSENT

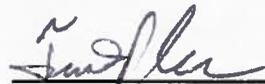
I, Timothy P. Sanna, N.H.A., acknowledge that I am represented by counsel and have consulted with counsel before entering into this Consent Order. By this Consent and for the purpose of resolving the issues raised by the Board, I agree and accept to be bound by the foregoing Consent Order and its conditions.

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 the Board 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 Board that might have followed after any such hearing.

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

3-20-2013

Date



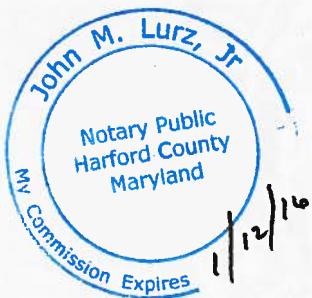
Timothy P. Sanna, N.H.A.

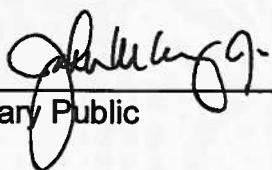
NOTARY

STATE OF MARYLAND
CITY/COUNTY OF BALTIMORE

I HEREBY CERTIFY that on this 20th day of March,
2013, before me, a Notary Public of the foregoing State and City/County personally
appear Timothy P. Sanna, N.H.A., and made oath in due form of law that signing the
foregoing Consent Order was his voluntary act and deed.

AS WITNESSETH my hand and notary seal.





Notary Public

My commission expires: 1/12/16