

IN THE MATTER OF
MACKENZIE MACHOVEC
Unlicensed

*** BEFORE THE MARYLAND**
*** BOARD OF DIETETIC PRACTICE**
*** Case No.: 19-004**

* * * * *

PRE-CHARGE CONSENT ORDER

On or about July 18, 2019, the Maryland Board of Dietetic Practice (the “Board”) voted to charge **Mackenzie Taylor Machovec** (the “Respondent”), an unlicensed individual, under the Maryland Licensed Dietitian-Nutritionists Act, Md. Code Ann., Health Occ. §§ 5-101 *et seq.* (2014 Repl. Vol. & 2018 Supp.). The pertinent provisions provide:

§ 5-301. Licenses.

- (a) Except as otherwise provided in this subtitle, an individual shall be licensed by the Board before the individual may practice dietetics in the State.

§ 5-401. Unauthorized Practice.

Except as otherwise provided in this title, a person may not practice, attempt to practice, or offer to practice dietetics in the State unless licensed by the Board.

§ 5-402. Misrepresentation of title.

- (a) Except as otherwise provided under this title, a person may not represent or imply to the public by use of the title “licensed dietitian-nutritionist”, by other title, by description of services, methods, or procedures that the person is authorized to practice dietetics in the State.
- (b) Unless authorized to practice dietetics under this title, a person may not use the words or terms “dietitian-nutritionist”, “licensed dietitian-nutritionist”, “LDN”, “dietitian”, “licensed dietitian”, “D”, “LD”, “nutritionist”, “licensed nutritionist”, or “LN”.

§ 5-403. Penalties for violations.

- (b) A person who violates § 5-401 or § 5-402 of this subtitle is subject to a civil fine not to exceed \$50,000 to be assessed by the Board in accordance with regulations adopted by the Board.

Prior to the issuance of a charging document, the Respondent agreed to enter into the following Consent Order, consisting of Findings of Fact, Conclusions of Law, Order and Consent.

FINDINGS OF FACT

The Board finds that:

I. Background

1. The Respondent is not, and has never been, licensed to practice dietetics or any other health profession in the State of Maryland or any other jurisdiction.
2. On or about May 24, 2018, the Board received a complaint (the “Complaint”) from the interim nursing home administrator (the “Complainant”)¹ for a nursing home in Maryland (the “Nursing Home”) alleging that the Respondent was working at the Nursing Home in the capacity of a registered dietitian without the required Maryland Board licensure.
3. Based on the Complaint, the Board initiated an investigation of the Respondent’s practice.

¹ In order to maintain confidentiality, facility, patient and employee names will not be used in this document but will be provided to the Respondent on request.

II. Board Investigation

4. According to information obtained by the Board's investigator, the Respondent was employed as a Registered Dietician for a vendor agency (the "Agency") that provides services through contracts. The Respondent was assigned to provide dietetic services at the Nursing Home.

5. A review of the Respondent's personnel records revealed that on June 5, 2017, the Respondent was offered a position with the Agency as a Registered Dietitian in the State of Maryland. The offer letter stated in part:

This offer is contingent upon you obtaining your Registered Dietician license, no later than December 31, 2017. Failure to obtain your Registered Dietician license by the above-mentioned date will result in your employment being terminated effective immediately.

6. On June 5, 2017, the Respondent signed the offer letter "agree[ing] to these terms and accept[ing] the position of Registered Dietician."

7. On June 14, 2017, the Respondent signed the Agency's Job Description, and attested that she "meets [the] essential functions and accepts [the] job responsibilities as outlined." The Job Description stated in part:

Manages the nutritional care program in a single site or multiple-site program according to policies and procedures, and **federal/state requirements**.

...

Licenses: Registered by the Commission on Dietetic Registration of the American Dietetic Association and/or **licensed in Dietetics by the applicable state**.

The Registered Dietician must possess the following:

- **Must possess a current, unencumbered active license to practice as a dietician in this state[.]** (emphasis added)

8. A review of patient Progress Notes, obtained from the Nursing Home by subpoena, revealed that the Respondent used the terms “RD” and/or “Dietician” in all of the Progress Note entries.

9. The Progress Notes revealed that the Respondent completed approximately:
(emphasis added)

- a. 179 Significant Weight Change Notes (e.g., “11/29/2017 09:31 – WEIGHT WARNING: Value 164.0, Vital Date: 2017-11-27 10:17:00.0; +5.0% change [6.5%, 10.0] Weight trigger noted by **RD**. Weight variance noted. Will continue to monitor weights to establish baseline weight for resident. Author: Mackenzie Machovec – **Dietitian**”)
- b. 38 Care Plan Notes (e.g., “3/15/2018 14:40 – Care Plan Note: **RD** attended [Patient A’s] care plan meeting on 3/14/18... Author: Mackenzie Machovec – **Dietitian**”)
- c. 15 RD Consult Notes (e.g., “8/21/2017 15:31 - **RD** consult for weight loss. Reference 8/21/17 Quarterly Nutrition Assessment for new TF/flush recommendations addressing weight loss. Author: Mackenzie Machovec – **Dietitian**”)
- d. 8 MDS Quarterly Assessments (e.g., “7/31/2017 13:01; MDS Quarterly assessment (ARD date 7/28/17); Full nutrition assessment was completed on 6/13/17. Weight has been stable since last assessment. Current wt: 210#, BMI: 31.9; PO intake remains excellent (76-100%) No diet change. No new labs... Full nutrition assessment not warranted at this time. Will continue to monitor and follow-up as needed. Author: Mackenzie Machovec – **Dietitian**”)
- e. 3 Timed Reviews (e.g., “7/26/2017 13:54 – 14 day review: ... Recommendations: d/c CCD diet and change to CCD NAS. Will continue to monitor intake and weight changes. Follow-up as needed. Author: Mackenzie Machovec – **Dietitian**”)

- f. 7 Miscellaneous Notes (e.g., “2/21/2018 15:53 – Fluid Restriction breakdown: Dietary – Breakfast – 300ml; Lunch – 240ml; Dinner – 240ml; Nursing 240ml water bottle Q shift; Total ml = 1500ml. Author: Mackenzie Machovec – **Dietitian**”)
10. By letter dated May 16, 2018, the Respondent resigned from her “position as [a] Registered Dietician Nutritionist at [Agency]. My resignation will be effective two weeks from today, May 30, 2018.”
11. In an interview with the Board’s investigator, under oath, on April 5, 2019, the Respondent reported the following:
- a. In June 2017, the Respondent was hired by the Agency as a Registered Dietician and was assigned to work primarily at the Nursing Home.
 - b. The Respondent noted that she had two (2) supervisors who were also employed by the Agency: Dietician 1, who was the Regional Registered Dietician, and Dietician 2 whose title was District Registered Dietician.
 - c. The Respondent admits that while she was working for the Agency at the Nursing Home, she was not a licensed dietician. The Respondent stated she was “considered RD Eligible... between the time of your internship and when you take the exam.”
 - d. The Respondent stated that she was up front with both the Agency and her supervisors that she was not licensed in Maryland.
 - e. The Respondent admitted that for the majority of the time, she was the only Dietician in the Nursing Home. Her supervisors did not have direct day-to-day oversight of her work.

- f. The Respondent “assumed that [my supervisors] knew I was RD eligible and that [Dietician 1] or [Dietician 2] both, one, were going to kind of going behind me and overseeing my work until I got licensed.”
- g. The Respondent admitted that while working for the Agency, she completed assessments, developed nutrition plans, recorded notes in the patient’s medical file – all duties that are within the practice of dietetics.
- h. The Respondent admitted that around February 2018, her supervisors placed her on a performance improvement plan to address concerns regarding the timeliness of her assessments and notes.

CONCLUSIONS OF LAW

Based on the foregoing findings of fact, the Board concludes as a matter of law that the Respondent violated Md. Code Ann., Health Occ.:

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ORDER

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

ORDERED that no later than **ONE (1) YEAR** from the effective date of this Order, the Respondent shall pay to the Board a civil fine of **FIVE THOUSAND DOLLARS (\$5,000.00)**. Failure to pay this monetary penalty in full to the Board within **ONE (1) YEAR** from the effective date of this Order shall constitute a violation of this Order; and be it further

ORDERED that the effective date of the Consent Order is the date the Consent Order is signed by the Chair of the Board; and it is further

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

11/21/19
Date

Nancy H. Ferrone
Nancy H. Ferrone, RD, LDN, Board Chair
Maryland Board of Dietetic Practice

CONSENT

I, Mackenzie Machovec, unlicensed, assert that I am aware of my right to consult with and be represented by counsel in considering this Consent Order and in any proceedings that would otherwise result from the charges currently pending. I have chosen to proceed without counsel, and I acknowledge that the decision to proceed without counsel is freely and voluntarily made.

By this Consent, I accept, to be bound by this Consent Order and its conditions and restrictions. I waive any rights I may have had to contest the Findings of Fact and Conclusions of Law.

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 behalf and to all other substantive and procedural protections as provided by law.

I acknowledge the legal authority and the jurisdiction of the Board to initiate these proceedings and to issue and enforce this Consent Order. I also affirm that I am waiving my right to appeal any adverse ruling of the Board that might have followed any such hearing.

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

11/15/19
Date

Mackenzie Machovec
Mackenzie Machovec

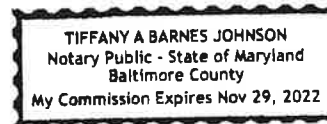
NOTARY

STATE OF Maryland

COUNTY OF Baltimore

I **HEREBY CERTIFY** that on this 18th day of NOVember, 2019, before me, a Notary Public of the State and County aforesaid, personally appeared Mackenzie Machovec, unlicensed, and gave oath in due form of law that the foregoing Pre-Charge Consent Order was her voluntary act and deed.

AS WITNESS, my hand and Notary Seal.



Notary Public

My Commission Expires: Nov 29, 2022