

IN THE MATTER OF	*	BEFORE THE
JIMMY R. AUGUSTIN	*	MARYLAND STATE BOARD
Applicant for Licensure	*	OF PHYSICIANS
	*	Case Number: 2218-0086B
* * * * *		

FINAL DECISION AND ORDER

On September 14, 2017, the Maryland State Board of Physicians (the "Board") received an application from Jimmy R. Augustin for a license to practice as an athletic trainer in Maryland.¹ On January 3, 2018, Board Disciplinary Panel B, with respect to Mr. Augustin's application, issued a Notice of Intent to Deny Application for Licensure under the Maryland Athletic Trainers Act. The notice was based on the following grounds:

Guilty of unprofessional or immoral conduct in the practice of athletic training, *see* Md. Code Ann., Health Occ. § 14-5D-14(a)(3);

Is disciplined by a licensing, certifying, or disciplinary authority or is convicted or disciplined by a court of any state or country . . . for an act that would be grounds for disciplinary action under this section, *see* Health Occ. § 14-5D-14(a)(17), with the underlying ground of Health Occ. § 14-5D-14(a)(3);

The applicant shall . . . [b]e of good moral character, *see* Health Occ. § 14-5D-08(b).²

The case was delegated to the Office of Administrative Hearings for an evidentiary hearing and a proposed decision. On July 24, 2018, an Administrative Law Judge ("ALJ") held the evidentiary hearing and, on September 26, 2018, issued a proposed decision, recommending that the Board

¹ The application was dated September 5, 2017.
² The notice alleged that the applicant did not meet the good moral character requirement of Health Occupations § 15-5D-08(b)(1).

deny Mr. Augustin's application. Neither the State nor Mr. Augustin filed exceptions. The case was brought before Board Disciplinary Panel A for the final decision.

FINDINGS OF FACT

Panel A adopts the Joint Stipulations of Fact (paragraphs 1 through 13 on pages three through 6 of the ALJ's Proposed Decision), Proposed Findings of Fact (paragraphs 1 through 17 on pages 6 through 8 of the ALJ's Proposed Decision), and Discussion (set forth on pages 9 through 13 of the ALJ's Proposed Decision). The findings of fact were proven by the preponderance of evidence. The Joint Stipulations of Fact, Proposed Findings of Fact, and Discussion are incorporated by reference into the body of this document as if set forth in full. The ALJ's Proposed Decision is attached as **Exhibit 1**.

CONCLUSIONS OF LAW

Panel A adopts the ALJ's Proposed Conclusions of Law that Mr. Augustin failed to prove that he qualifies for an athletic trainer's license because he lacks good moral character, *see* Health Occ. § 14-5D-08(b)(1); he is guilty of unprofessional and immoral conduct in the practice of athletic training, in violation of Health Occ. § 14-5D-14(a)(3); and he was disciplined by a licensing, certifying, or disciplinary authority or was convicted or disciplined by a court of any state for an act that would be grounds for disciplinary action under this section, in violation of Health Occ. § 14-5D-14(a)(17), with underlying grounds of § 14-5D-14(a)(3).

Sanction

Panel A agrees with the ALJ that the denial of Mr. Augustin's application for licensure to practice athletic training in Maryland is warranted.

ORDER

It is, on the affirmative vote of a majority of a quorum of Board Disciplinary Panel A, hereby

ORDERED that the application of Jimmy R. Augustin, filed with the Board on September 14, 2017, for a license to practice athletic training in Maryland is **DENIED**.

02/21/2019
Date

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

NOTICE OF RIGHT TO APPEAL

Pursuant to § 14-5D-15(b) of the Health Occupations Article, Mr. Augustin has the right to seek judicial review of this Final Decision and Order. Any petition for judicial review shall be filed within 30 days from the date this Final Decision and Order is mailed. The cover letter accompanying this Final Decision and Order indicates the date the decision and order were mailed. The petition for judicial review must be made as directed in the Maryland Administrative Procedure Act, Md. Code Ann., State Gov't § 10-222, and Maryland Rules 7-201 *et seq.*

If Mr. Augustin petitions for judicial review, the Board is a party and should be served with the court's process. In addition, Mr. Augustin should send a copy of his petition for judicial review to the Board's counsel, David Wagner, Assistant Attorney General, Office of the Attorney General, 300 W. Preston Street, Suite 302, Baltimore, Maryland 21201. The administrative prosecutor is not involved in the circuit court process and does not need to be served or copied on pleadings filed in circuit court.

EXHIBIT 1

IN THE MATTER OF
JIMMY AUGUSTIN,
APPLICANT
v.
MARYLAND STATE
BOARD OF PHYSICIANS

* BEFORE MARY SHOCK,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH No.: MDH-MBP1-79B-18-15297
* MBP No.: 2218-0086B

* * * * *

PROPOSED DECISION

STATEMENT OF THE CASE
ISSUE
SUMMARY OF THE EVIDENCE
JOINT STIPULATIONS OF FACT
PROPOSED FINDINGS OF FACT
DISCUSSION
PROPOSED CONCLUSION OF LAW
PROPOSED DISPOSITION

STATEMENT OF THE CASE

On September 5, 2017, Jimmy Augustin (Applicant) filed an application for an athletic trainer's license. On January 3, 2018, the Maryland State Board of Physicians (Board) issued a Notice of Intent to Deny Application for Licensure under the Maryland Athletic Trainers Act to the Applicant based on the Applicant's August 2017 conviction for Misdemeanor Sexual Abuse of a Child or Minor and Simple Assault. Md. Code Ann., Health Occ. §§ 14-5D-01 to 14-5D-20 (2014 & Supp. 2017). On May 10, 2018, the Board delegated proposed decision-making authority to the Office of Administrative Hearings (OAH). Md. Code Ann., State Gov't § 10-205(b) (2014).

On July 24, 2018, I held a hearing at the OAH in Hunt Valley, Maryland. Emmanuel Akpan, Esquire, represented the Applicant. Kelly Cooper, Assistant Attorney General, and Robert Gilbert, Assistant Attorney General, represented the Board.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, the Rules for Hearings before the Board of Physicians, and the OAH Rules of Procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2017); COMAR 10.32.02; COMAR 28.02.01.

ISSUE

Does the Applicant qualify for an athletic trainer's license?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits into evidence for the Applicant:

- APP 1 Certificate of Completion, Stewards of Children Online Training, January 24, 2017
- APP 2 Certificate of Completion, Bystanders Protecting Children from Boundary Violations and Sexual Abuse Training, January 18, 2017
- APP 3 Certificate of Completion, Healthy Touch for Children and Youth Training, January 19, 2017
- APP 4 Certificate of Completion, Talking with Children about Safety from Sexual Abuse, Online Training, January 27, 2017
- APP 5 Ethan Cooper, CSOTP, LPC, curriculum vitae
- APP 6 Excluded
- APP 7 Excluded
- APP 8 District Court of Maryland for Prince George's County, Final Protective Order, April 20, 2018

I admitted the following exhibits into evidence for the Board:

- BD 1 Application for Licensure: Athletic Trainer, September 5, 2017, with attachments
- BD 2 Notice of administrative leave, October 25, 2016
- BD 3 Termination review form, November 1, 2016
- BD 4 Letters of termination, High School, November 3 and 4, 2016

- BD 5 Letter of resignation, November 15, 2016
- BD 6 Criminal complaint/warrant, November 29, 2016
- BD 7 Affidavit in support of arrest warrant, November 29, 2016
- BD 8 Superior Court of the District of Columbia, Sentence of the Court, August 7, 2017
- BD 9 Report of Investigation, November 30, 2017
- BD 10 Notice of Intent to Deny Application for Licensure Under the Maryland Athletic Trainers Act, January 3, 2018
- BD 11 MBP Memorandum, July 6, 2018, and District Court of Maryland for Prince George's County, Final Protective Order, April 20, 2018, and attachments
- BD 12 Maryland Business Express, Augustin Athletic Training, LLC, Filing History and General Information, June 26, 2018, and Articles of Organization, undated

Testimony

The Applicant testified in his own behalf and called Ethan Cooper, Certified Sex Offender Treatment Provider (CSOTP), and Licensed Professional Counselor (LPC). Mr. Cooper was accepted as an expert in sex offender treatment and counseling.

The Board did not call any witnesses.

JOINT STIPULATIONS OF FACT

The parties stipulated to the following facts:

1. The Applicant submitted an Application for Licensure (Application) to the Board, dated September 5, 2017, which the Board received on or about September 14, 2017. In the section of the Application entitled, *Character and Fitness Questions*, the Applicant was instructed to respond "YES" or "NO" to a series of questions.

2. The Applicant answered "YES" to Question 14(g), which states:

Have you ever pleaded guilty or nolo contendere to any criminal charge, been convicted of a crime, or received probation before judgment because of a criminal charge?

3. The Applicant answered "YES" to Question 14(o), which states:

Have you ever voluntarily resigned or terminated a contract with any hospital, HMO, other health care facility, health care provider institution, armed services or the Veterans Administration while under investigation by the institution for disciplinary reasons?

4. The Application instructed the Applicant to provide a detailed explanation on a separate sheet for every "YES" response.

5. The Applicant provided a written attachment to his Application that addressed his affirmative response to Question 14(g). The Applicant stated that on August 4, 2017, he was found guilty of "misdemeanor sexual abuse of a minor and misdemeanor sexual assault" in the District of Columbia for which he was sentenced to "20 weekend days in DC jail." The Applicant admitted that he was found guilty of the above criminal offenses after engaging in unlawful sexual contact with a minor female student during the course of his employment as an athletic trainer at a high school in the District of Columbia. The Applicant further disclosed that based on his criminal convictions, he is prohibited from working with anyone under 18 years of age for the duration of his probation.

6. The Applicant provided a written attachment to his Application that addressed his affirmative response to Question 14(o). The Applicant stated that he "either voluntarily resigned or terminated" his employment contract while under investigation "for possible inappropriate contact with a student." The Applicant provided supporting documentation of his termination from employment.

7. At the conclusion of the Application, the Applicant certified that he personally reviewed all the responses he made in the Application and that all the information he provided therein was true and correct. The Application notified the Applicant that any false information he provided may be cause for the denial of his Application.

8. The Board initiated an investigation of the Applicant based on the affirmative responses and disclosures the Applicant provided in his Application.

9. The Board's investigation determined that on or about December 2, 2016, the Applicant, under Case Number 2016 CF1 019807, was charged in the Superior Court of the District of Columbia with a variety of criminal offenses, including Sexual Abuse of a Minor and Simple Assault, occurring between on or about September 1, 2016, and on or about October 31, 2016, based on allegations that he had unlawful sexual contact with a minor female student while he was employed as an athletic trainer at a high school in the District of Columbia.

10. On or about August 4, 2017, the Applicant, after a court trial, was found guilty in the Superior Court of the District of Columbia of Misdemeanor Sexual Abuse of a Child or Minor, in violation of 22 D.C. Code § 3010.01 (2001 ed.), and Simple Assault.

11. As to his conviction on the charge of misdemeanor Sexual Abuse of a Child or Minor, the Applicant was sentenced to incarceration for 180 days, which was suspended for all but 20 days, to be served on weekends. The Applicant was placed on supervised probation for two years, subject to the following special conditions: prohibition from working with anyone under the age of 18 years in his profession; sex offender counselling (individual) and treatment; registration as a sex offender; and no contact with the victim.

12. As to his conviction on the charge of Simple Assault, the Applicant was sentenced to incarceration for 180 days, which was suspended in its entirety, to be served consecutively to the sentence imposed for his conviction for misdemeanor Sexual Child Abuse of a Child or Minor. The Applicant was placed on supervised probation for two years, to be served concurrently with the two-year probationary period that was imposed for his conviction for misdemeanor Sexual Abuse of a Child or Minor.

13. The Board's investigation further determined that the high school in the District of Columbia where the Applicant was employed as an athletic trainer conducted an investigation of the above allegation after which it terminated the Applicant's employment for gross misconduct with a female student.

PROPOSED FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. The Appellant was born in 1983 and was thirty-three years old in the fall of 2016.

2. The Appellant was employed at a high school in Washington, D.C. as an athletic trainer beginning in the 2011-2012 school year and continued to be employed in that position in the fall of 2016.

3. On October 15, 2016, the Applicant exchanged the following text messages with a seventeen year old female student at the school:

Applicant: You want more from me.

Student: Yep.

Applicant: You want me to show you it's worth it to feel the.

Student: Show me how.

Applicant: I'm gonna do that I'll figure it out. Well I'm gonna start kissing you again and again and a.

Applicant: BFF keeping her feelings to herself yeah lol.

Student: Yeah I am.

Applicant: Dang too bad Sharing your feelings turns me on.

Student: Well.

Applicant: Might get me a little extra aggressive next time I.

Student: Do what you have to do.

4. On October 16, 2016, the Applicant sent the following text message to the student:

Applicant: I just want to see you again So I can stroke your.

5. On October 21, 2016, the Applicant and student exchanged text messages as follows:

Applicant: Where should I get food by your way later I want y.

Student: Lmaq your going come alllll the way where I live.

Applicant: Far from me. I'm coming to get what's mine. All that brown sugar.

6. On October 24, 2016, the Applicant exchanged the following text messages with the student:

Student: Don't touch my clothes, my shoes, NOTHING that I l...

Applicant: Not before I sex you like it's my last meal. Now I take you seriously.

Student: All I want is to feel your hands all over me but...

Applicant: It will be worth it Lls.

Applicant: You never told me though...

Student: I want you to f*** me...There I told you.

Applicant: Its on!

Applicant: Wear a skirt again and boyyyy Nite..

7. On several occasions during the fall semester of 2016, the Applicant hugged the student, touched the student on the shoulders and low back, and kissed the student.

8. On November 4, 2016, the high school terminated the Applicant for gross misconduct. The school advised the Applicant that their records would reflect his last day of work as November 15, 2016.

9. On November 15, 2016, after his termination, the Applicant submitted a letter of resignation to the high school.

10. In his application for an athletic trainer's license, the Appellant indicated he had voluntarily resigned from an institution for disciplinary reasons.

11. In his application for an athletic trainer's license, at Question 14(n), the Appellant indicated he had never had an employment relationship or a contract with an institution terminated for disciplinary reasons.

12. In his application for an athletic trainer's license, the Applicant wrote the student was a female athlete, seventeen years and ten months old. She had informed him she had romantic feelings for him. He stated he kissed the student cheek-to-cheek in a European fashion and made contact near her mandible or neck area. He also wrote this was an attempt to deescalate the situation.

13. The Applicant completed online training in January 2017 in sexual abuse, protecting children from boundary violations, healthy touch for children, and talking with children about safety from sexual abuse.

14. The Applicant received individual sexual abuse counseling.

15. From November 28, 2014 to October 11, 2016, the Applicant had a limited liability company registered in Maryland, Augustin Athletic Training, LLC.

16. On April 20, 2018, the District Court of Maryland for Prince George's County issued a Final Protective Order against the Applicant directing him not to abuse, threaten to abuse, or harass his spouse, and not to contact his spouse.

17. On April 20, 2018, the District Court of Maryland for Prince George's County issued a Final Protective Order against the Applicant's spouse directing her not to abuse, threaten to abuse, or harass her spouse, and not to contact her spouse.

DISCUSSION

Governing Law

Maryland law provides the Board is authorized to deny an athletic trainer's license under the following circumstances:

§ 14-5D-15. Denial of license, reprimand, probation, or suspension or revocation of license.

(a) Grounds. - Subject to the hearing provisions of § 14-405 of this title, a disciplinary panel, on the affirmative vote of a majority of a quorum of the disciplinary panel, may deny a license to any applicant, reprimand any licensee, place any licensee on probation, or suspend or revoke a license, if the applicant or licensee:

...
(3) Is guilty of unprofessional or immoral conduct in the practice of athletic training;
....

(17) Is disciplined by a licensing, certifying, or disciplinary authority or is convicted or disciplined by a court of any state or country or is disciplined by any branch of the United States uniformed services or the Veterans Administration for an act that would be grounds for disciplinary action under this section. . . .

Md. Code Ann., Health Occ. § 14-5D-14(a)(3) and (17) (Supp. 2017).

Additionally, in order to qualify for a license, an applicant shall be of good moral character. Md. Code Ann., Health Occ. § 14-5D-08(b)(1) (Supp. 2017).

The Applicant bears the burden of proof. He asserts the affirmative of the issue, namely, that he qualifies for an athletic trainer's license. *Commissioner of Labor & Industry v. Bethlehem Steel*, 344 Md. 17 (1996). The standard of proof is by a preponderance of the evidence. Md. Code Ann., State Gov't. §10-217 (2014). I conclude the Applicant failed to show he qualifies for an athletic trainer's license.

Board's Position

The Board argues the Applicant does not qualify for a license based on his conviction for sexual abuse of a minor and because the criminal conduct for which he was convicted occurred

while the Applicant was practicing athletic training. The Board also maintains the Applicant was less than forthright on his application, especially with regard to his representation that he attempted to deescalate his involvement with the student. The Board also argues that the Applicant indicated on his application that he had resigned from his position with the high school when he was actually terminated for gross misconduct. The Board further argued the Applicant also lacks good moral character based on an April 20, 2018 Final Protective Order issued by the District Court of Maryland for Prince George's County, directing the Applicant not to abuse or have contact with his wife. Finally, the Board argued that the Applicant operated an athletic training limited liability company in Maryland from 2014 to 2016, when he was not a licensed athletic trainer in the State.

Applicant's Position

Addressing the Board's final issues first, the Applicant concedes he has been experiencing marital difficulties, but maintains he initially applied for a protective order and, in retaliation, his wife filed for a protective order. The Applicant presented an April 20, 2018 Final Protective Order issued by the District Court of Maryland for Prince George's County, directing his wife not to abuse or have contact with him. The Applicant further stated he did not work as an athletic trainer in Maryland, only in Washington, D.C. He registered the business in Maryland because he resides in the State and the address of the business is his residence address.

Moving to the primary issue in this case, the Applicant argues that one conviction for misdemeanor sexual abuse of a minor does not completely destroy a person's moral character. He asks the Board to consider the rehabilitative steps he has taken since his August 2017 conviction. He offered into evidence several Certificates of Completion of online training courses in the areas of sexual abuse, protecting children from boundary violations, and talking with children about safety from sexual abuse. The Applicant stated he aims to work as an athletic trainer in Maryland, but only with adults. He maintains the Board has broad powers and is able

to fashion a remedy, such as restricting the Applicant's license to working with those over eighteen years old.

The Applicant further maintains he qualifies for a license because he does not pose a risk of reoffending. He testified the student's October 24, 2017 text, "Don't touch my clothes, my shoes, NOTHING that I l..." concerned athletic clothing and shoes she had left at the school. He also testified the student pushed a bet on him related to a football game and insisted if the Redskins lost (or won, he does not recall), the Applicant would owe the student a kiss. He kissed her to stop her insistent advances. He stated he understands his conduct was wrong whatever the student's behavior.

The Applicant presented the testimony of Ethan Cooper, CSOTP, LPC. Mr. Cooper has been a certified sex offender treatment provider since 2007 and a licensed professional counselor since 2008. He was accepted as an expert in these areas. Mr. Cooper testified he met with the Applicant one time for approximately three hours. They discussed the offense and the Applicant provided details about the incidents. Mr. Cooper administered the Static-99 and the Vermont Assessment of Sex Offender Risk to the Applicant and offered his opinion that the Applicant presented a low risk for reoffending. On cross-examination, Mr. Cooper acknowledged he used outdated assessments, although he stated the tests and results were still valid. He also acknowledged he did not know the Applicant had sent certain texts, including the message, "Not before I sex you like it's my last meal."

Analysis

The evidence concerning the protective orders does not prove the Applicant lacks good moral character. I do not know the full facts and circumstances of those cases. On the matter of the Maryland business, registering the company in Maryland when not licensed tends to show the Applicant lacks judgment, but by itself does not prove he lacks good moral character. I do not

know what the Applicant understood about the licensing requirements and if he knew or should have known he was required to be licensed in Maryland to register a business in the State.

The convictions for sexual abuse of a minor and simple assault, however, are a sufficient basis to find the Applicant does not qualify for a license. As stated above, in his testimony and application for licensure, the Applicant contends he tried to deescalate the situation with the student. For example, he wrote in his application that the student was seventeen years and ten months old and had informed him she had romantic feelings for him. These statements suggest because the student was nearly an adult and interested in him, the Applicant believes he is less culpable. He also indicated in his application that he resigned from the high school when he was actually terminated for gross misconduct. Resignation suggests to the reader that the Applicant had a choice and that his crimes were not severe enough to warrant termination. The Board contends these statements tend to show the Applicant is not of good moral character. I agree.

The evidence of the Applicant mischaracterization of events also calls into question the basis for Mr. Cooper's opinion that the Applicant is at low risk of reoffending. The Applicant's attempt to downplay his role in the sexual abuse of a child and the consequences of his crime indicates the Applicant was also less than forthright in his statements to Mr. Cooper. As a result, I cannot be certain the Applicant accurately and completely disclosed to Mr. Cooper his involvement with the student. Although a certified sex offender treatment provider might account for a perpetrator's reluctance to fully describe his or her wrongdoing, Mr. Cooper did not say so in his testimony and, if he did consider the possible lack of disclosure, he did not explain how it affected his analysis and conclusion. Because Mr. Cooper did not know all the salient facts involved in the Applicant's convictions, including at least some of the sexually explicit text messages, and because of the Appellant has attempted to minimize or mischaracterize his actions, I find Mr. Cooper's opinion that the Applicant presents a low risk of re-offence unreliable and

insufficient to prove the Applicant qualifies for an athletic trainer's license because he is at low risk of committing another sex abuse offense.

The Applicant committed serious criminal offenses against a child while working as an athletic trainer. He was convicted in August 2017 of child sexual abuse. He is guilty of unprofessional and immoral conduct in the practice of athletic training. With regard to the Applicant's rehabilitation, on the one hand the Applicant states he takes responsibility for his actions, but on the other hand he insists part of the blame rests with the student. The Applicant failed to show he understands the severity of his behavior and failed to show he has been rehabilitated. The Applicant's completion of several online training courses in child sexual abuse and his expression of responsibility for his criminal conduct are insufficient to prove the Applicant possesses the requisite moral character to qualify for an athletic trainer's license, even a restricted license.

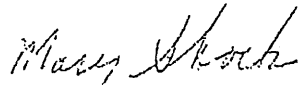
PROPOSED CONCLUSION OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude as a matter of law the Appellant failed to prove he qualifies for an athletic trainer's license. Md. Code Ann., Health Occ. §§ 14-5D-08(b)(1), 14-5D-14(a)(3) and (17).

PROPOSED DISPOSITION

I PROPOSE the Maryland State Board of Physicians' January 3, 2018 Intent to Deny Application for Licensure be AFFIRMED, and that the Maryland State Board of Physicians DENY the Applicant's September 5, 2017 application for a license to practice athletic training.

September 26, 2018
Date Decision Issued



Mary Shock
Administrative Law Judge

Copies Mailed To:

Jimmy R. Augustin

Emmanuel Akpan, Esquire
8630 Fenton Street, Suite 716
Silver Spring, MD 20910

Kelly Cooper, Assistant Attorney General
Administrative Prosecutor
Health Occupations Prosecution and Litigation Division
Office of the Attorney General
300 West Preston Street, Room 201
Baltimore, MD 21201

Robert Gilbert, Assistant Attorney General
Administrative Prosecutor
Health Occupations Prosecution and Litigation Division
Office of the Attorney General
300 West Preston Street, Room 201
Baltimore, MD 21201

Christine A. Farrelly, Executive Director
Compliance Administration
Maryland Board of Physicians
4201 Patterson Avenue
Baltimore, MD 21215

Rosalind Spellman, Administrative Officer
Health Occupations Prosecution and Litigation Division
Office of the Attorney General
300 West Preston Street, Room 201
Baltimore, MD 21201

Nicholas Johansson, Principal Counsel
Health Occupations Prosecution and Litigation Division
Office of the Attorney General
300 West Preston Street, Room 201
Baltimore, MD 21201