

IN THE MATTER OF

ROBERTO D. REYNA, JR., RCP

Applicant

License Number: L03173 (Expired)

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BEFORE THE

MARYLAND STATE

BOARD OF PHYSICIANS

Case Number: 2222-0095

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**ORDER OF DEFAULT**

On October 13, 2022, Disciplinary Panel B (“Panel B”) of the Maryland State Board of Physicians (“Board”) issued a Notice of Intent to Deny Application for Reinstatement of Licensure (“Notice of Intent”) under the Maryland Respiratory Care Practitioners Act to Roberto D. Reyna, Jr. (the “Applicant”) former license number L03173, notifying him of Panel B’s intent to deny his license reinstatement application dated January 27, 2022. The Notice of Intent was based upon the following provisions:

**Md. Code Ann., Health Occ. § 14-205. Miscellaneous powers and duties.**

(b)(3) Subject to the Administrative Procedure Act and the hearing provisions of § 14-405 of this title, a disciplinary panel may deny a license to an applicant, or if the applicant has failed to renew the applicant’s license, refuse to renew or reinstate an applicant’s license for:

(i) Any of the reasons that are grounds for action under . . . § 14-5A-17 of this title [.]

**Health Occ. § 14-5A-17. Denials, reprimands, suspensions, and revocations – In general.**

(a) Subject to the hearing provisions of § 14-405 of this title, a disciplinary panel, on the affirmative vote of a majority of the 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:

(1) Fraudulently or deceptively obtains or attempts to obtain a license for the applicant or licensee or for another;

...

- (3) Is guilty of unprofessional or immoral conduct in the practice of respiratory care;  
...
- (10) Willfully makes or files a false report or record in the practice of respiratory care; and  
...
- (17) Is disciplined by a licensing or disciplinary authority 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 actions under the Board's disciplinary statutes.

**Health Occ. § 1-212. Sexual misconduct prohibited; regulations; discipline.**

- (b) For the purposes of the regulations adopted in accordance with subsection (a)<sup>1</sup> of this section, "sexual misconduct" shall be construed to include, at a minimum, behavior where a health care provider:
  - (3) Has engaged in any sexual behavior that would be considered unethical or unprofessional according to the code of ethics, professional standards of conduct, or regulations of the appropriate health occupations board under this article.
- (c) Subject to the provisions of the law governing contested cases, if an applicant, licensee, or certificate holder violates a regulation adopted under subsection (a) of this section, a board may:
  - (1) deny a license or certificate to the applicant.

**Health Occ. § 14-5A-09. Qualifications for licenses.**

- (a) To qualify for a license, an applicant shall be an individual who meets the requirements of this section.
- (b) The applicant shall be of good moral character.

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<sup>1</sup> Health Occ. §1-212(a) provides:

- (a) Each health occupations board authorized to issue a license or certificate under this article shall adopt regulations that:
  - (1) Prohibit sexual misconduct; and
  - (2) Provide for the discipline of a licensee or certificate holder found to be guilty of sexual misconduct.

On January 6, 2023, the case was referred to the Office of Administrative Hearings (“OAH”) for an evidentiary hearing and the issuance of a proposed decision by an Administrative Law Judge (“ALJ”). Md. Code Ann., State Gov’t §10-205(b)(2021).

The ALJ scheduled a remote scheduling conference for 9:30 a.m. on February 6, 2023, via the Webex video conferencing platform (Webex). *See* COMAR 28.02.01.20B. The Administrative Prosecutor represented the State at the scheduling conference. The Applicant appeared at the scheduling conference and represented himself. On February 6, 2023, the ALJ issued a Scheduling Order which included confirmation that a Prehearing Conference (“PHC”) was scheduled for March 14, 2023, at 9:30 a.m. via Webex. The Scheduling Order was also emailed to the parties at their respective email addresses.

On February 6, 2023, the OAH also sent, via first-class mail, a notice of Remote Prehearing Conference (“PHC Notice”) to the parties at their addresses of record advising that a PHC was scheduled for March 14, 2023, at 9:30 a.m. via Webex. The PHC Notice contained information regarding how to access the Webex platform. Attached to the PHC Notice was a document entitled “Remote Prehearing Conference Instructions” which directed each party to prepare and submit a prehearing conference statement in advance of the PHC. Further, the PHC Notice informed the parties that failure to attend the March 14, 2023 PHC could result in a decision against the party failing to appear. The United States Postal Service did not return the Applicant’s PHC Notice as undeliverable or for any other reason. On February 27, 2023, the Administrative Prosecutor filed the State’s Prehearing Conference Statement.

On March 14, 2023, the ALJ convened the PHC as scheduled. The Administrative Prosecutor appeared remotely on behalf of the State. The Applicant did not appear, either personally or through an attorney. He did not request a postponement of the PHC, nor did he submit

a prehearing conference statement as instructed in advance of the PHC date. After waiting fifteen minutes, the Applicant still failed to appear via Webex, and the ALJ proceeded with the PHC in his absence. The Administrative Prosecutor, on behalf of the State, moved for default against the Applicant.

The file reflects that on February 27, 2023, the Applicant represented in an email to the Administrative Prosecutor and OAH that he had decided to stop pursuing licensure reinstatement. The Administrative Prosecutor represented that on March 1, 2023, she had spoken with the Applicant and explained that he himself could not withdraw the Board's delegation to OAH for an evidentiary hearing. The Administrative Prosecutor further proffered that during that conversation she had advised the Applicant that he could either accept the Consent Order proposed by the disciplinary panel, or if the Applicant failed to appear at the PHC, a default order would likely be issued that would conclude the matter.

Under OAH's rules of procedure, "[i]f, after receiving proper notice as provided in Regulation .05C of this chapter, a party fails to attend or participate, either personally or through a representative, in a prehearing conference, hearing, or other stage of a proceeding, the ALJ may proceed in that party's absence or may, in accordance with the hearing authority delegated by the agency, issue a final or proposed default order against the defaulting party." COMAR 28.02.01.23A. Similarly, the Health Occupations Article provides, in pertinent part:

(d) If after due notice the individual against whom the action is contemplated fails or refuses to appear, nevertheless the hearing officer may hear and refer the matter to the Board or a disciplinary panel for disposition.

(e) After performing any necessary hearing under this section, the hearing officer shall refer proposed factual findings to the Board or a disciplinary panel for the Board's or disciplinary panel's disposition.

Health Occ. § 14-405 (2021).

On March 15, 2023, the ALJ issued a Proposed Default Order. The ALJ read §14-405(d) and (e) in conjunction with each other and with OAH's Rules of Procedure. She determined that subsection §14-405(d) provides that the ALJ "may hear"<sup>2</sup> the matter if the individual fails to appear, and subsection §14-405(e), which uses the language "any *necessary* hearing," clearly contemplates situations such as defaults where no hearing on the merits is required. *See also* COMAR 28.02.01.23A.

Upon consideration of the record, the ALJ found that the Applicant had proper notice of the March 14, 2023 remote PHC and failed to attend and participate without good cause. Accordingly, the ALJ proposed that Panel A find the Applicant in default and adopt as Findings of Fact the statements set out in the Allegations of Fact section of the October 13, 2022 Notice of Intent. The ALJ also proposed that Panel A conclude as a matter of law that the Applicant lacks the good moral character required for licensure pursuant to § 14-5A-09(b) of the Maryland Respiratory Care Practitioners Act and that the Panel should deny his reinstatement application under Health Occ. §14-5A-17 (a)(1), (3), (10), and (17).

Neither party filed exceptions to the ALJ's Proposed Default Order. On May 10, 2023, the case came before Panel A for final disposition.

#### **FINDINGS OF FACT**

Because Panel A concludes that the Applicant has defaulted and has not filed exceptions to the ALJ's Proposed Default Order, the following Findings of Fact are adopted from the Allegations of Fact in the October 13, 2022 Notice of Intent to Deny Application for Reinstatement of Licensure under the Maryland Respiratory Care Practitioners Act and are deemed proven by the preponderance of the evidence:

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<sup>2</sup> The word "may" is generally considered to be permissive, as opposed to mandatory, language. *Board of Physician Quality Assurance v. Mullan*, 381 Md. 157, 166-67 (2004).

**I. Background**

1. The Applicant was originally licensed to practice respiratory care in the State of Maryland on or about June 15, 1999, under License Number L03173. On or about May 30, 2004, the Applicant's license expired.
2. On or about January 27, 2022, the Board received the Applicant's Reinstatement Application (the "Application").

**II. The Application**

3. In the Application, when asked to list reasons for allowing the Maryland respiratory care practitioner license to expire, the Applicant stated, "I moved to Texas at the time with my family with no intention of returning to Maryland."
4. In the Application under section 12, which is entitled "Character and Fitness Questions," the Board required the Applicant to answer "YES" or "NO" to a series of questions and to provide written explanation for all "YES" responses.
5. The Applicant answered "YES" to the following questions:

Question 12a. Has a state licensing or disciplinary board (including Maryland), a comparable body in the armed services or the Veterans Administration, denied your application for licensure, reinstatement, or renewal?

Question 12b. Has any licensing or disciplinary board in any jurisdiction (including Maryland), a comparable body in the armed services or the Veterans Administration, taken an action against your license? Such actions include, but are not limited to, limitations of practice, required education, admonishment or reprimand, suspension, probation, or revocation.

Question 12c. Has any licensing or disciplinary board, in any jurisdiction (including Maryland), a comparable body in the armed services or the Veterans

Administration, filed any complaints or charges against you or investigated you for any reason?

Question 12g. Have you pleaded guilty or nolo contendere to any criminal charge, been convicted of a crime, or received probation before judgment because of a criminal charge?

Question 12n. Has your employment or contractual relationship with any hospital, HMO, other health care facility, health care provider, institution, armed services, or the Veterans Administration been terminated for disciplinary reasons?

Question 12o. Have you 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 for disciplinary reasons?

12p. Have you surrendered your license or allowed it to lapse while you were under investigation by any licensing or disciplinary board of any jurisdiction, any entity of the armed services or the Veterans Administration?

6. The Applicant provided the Board with a written explanation for his lapse in employment between June 2011 and September 2013 but did not include explanations for his affirmative responses to Question 12(a), (b), (c), (g), (n), (o), and (p).
7. On or around January 20, 2022, the Applicant sent a letter to the Board which stated that he completed "sex offender counseling." The Applicant further stated, "the time spent in the sessions was beneficial as it confirmed to me that the crime was an isolated event . . . [.]" The Applicant did not provide further explanation and did not disclose his criminal convictions: a 2012 conviction on three (3) counts of Indecent Assault and Battery in Massachusetts and a 2021 conviction for Assault-Second Degree in Maryland.

8. Based on the Applicant's affirmative response in the Application, the Board initiated an investigation of the Applicant.

### **III. Board Investigation**

9. The Board investigated and confirmed the disciplinary actions the Applicant alluded to in the Application.
10. As a part of its investigation, the Board obtained the following documentation: *Consent Agreement for Voluntary Surrender* from the Board of Registration in Nursing in Massachusetts, dated October 31, 2011; *Consent Agreement for License Surrender* from the Board of Respiratory Care in Massachusetts, dated October 31, 2011; *Formal Charges and Order of the Board* from the Eligibility and Disciplinary Committee of the Texas Board of Nursing, dated March 13, 2012, and May 10, 2012, respectively.
11. The criminal history records check ("CHRC") revealed another criminal conviction in Howard County, Maryland. The Board then obtained the Statement of Probable Cause, Indictment, Case Summary, and plea hearing transcript for *State of Maryland v. Roberto Doublis Reyna, Jr.*, criminal case number C-13-CR-21-000224, from the Howard County Circuit Court.

### **IV. Prior Disciplinary Actions**

#### **Massachusetts Criminal Conviction & Consent Order**

12. On or about October 31, 2011, the Applicant entered into two consent orders (the "Massachusetts Consent Orders"), one with the Massachusetts Board of Registration in Nursing, and a second with the Massachusetts Board of Respiratory Care.
13. The Massachusetts Consent Orders contained findings of facts regarding the Applicant's sexual contact with a minor, on or about October 16-17, 2011. The Applicant admitted that while employed as a Registered Nurse in Massachusetts and



while providing in-home nursing services, he engaged in sexual contact with a minor who was in the patient's home.

14. As part of the Massachusetts Consent Orders, the Applicant surrendered his license to practice as a Registered Nurse and his license to practice as a Respiratory Therapist.
15. On or about January 5, 2012, the Applicant entered a guilty plea to three (3) counts of Indecent Assault and Battery and was sentenced to one (1) year of probation. The Applicant's conditions of probation included no contact with the victim; no unsupervised contact with children under the age of sixteen (16) years old, except his own children; GPS monitoring; and sex offender treatment. He was also prohibited from working as a personal care attendant and he was required to register as a level two (2) sex offender. The Applicant provided additional documentation, dated September 20, 2021, stating that after preliminary review of his motion for reclassification /termination, the Sex Offender Register Board reclassified the Applicant as a level one (1) offender<sup>3</sup>.

#### **2012 Reciprocal Action Taken by the Texas Board of Nursing**

16. On or about March 13, 2012, formal charges were filed before the Texas Board of Nursing alleging that on or about October 31, 2011, the *Consent Agreement for Voluntary Surrender* of the Applicant's license to practice nursing in the State of Massachusetts was accepted by the Massachusetts Board of Nursing.
17. On or about May 8, 2012, the Eligibility and Disciplinary Committee of the Texas Board of Nursing held an open meeting based on the Applicant's failure to appear.

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<sup>3</sup> As a result of the sex offense conviction and registry requirement in Massachusetts, the Board reviewed the status of the Applicant's registry requirements in Maryland. The Maryland Sex Offender Registry lists the Applicant as a Tier III offender, and he is required to register as a sex offender for life.

18. On or about May 10, 2012, the Texas Board of Nursing revoked the Applicant's license based on the Massachusetts Consent Orders.

**2021 Maryland Criminal Conviction**

19. On or about January 21, 2021, the Applicant was charged in the Circuit Court of Maryland in Howard County (Criminal Case Number: C-13-CR-21-000224) with Armed Robbery, Assault-First Degree, Assault-Second Degree, and Theft: \$100 to under \$1,500.

20. On August 24, 2021, the Applicant entered a guilty plea to one (1) count of Assault-Second Degree. The guilty plea included the following statement:

[The Applicant] advised that he grabbed a piece of wood from his car and hit [the juvenile victim] with it approximately three times and threatened [the juvenile victim] with a machete. [He then] took the [juvenile victim's] bike, placed it in his car and drove off, leaving the piece of wood somewhere. . . [.]

21. The Applicant was sentenced to ten (10) years of incarceration suspending all but thirty (30) days, to be served on weekends, beginning May 20, 2022.

**CONCLUSIONS OF LAW**

Panel A finds the Applicant in default based upon his failure to appear at OAH for the remote Prehearing Conference scheduled on March 14, 2023. *See* State Gov't § 10-210(4). Based upon the foregoing findings of fact, Panel A also concludes that the Applicant: fraudulently or deceptively attempted to obtain a license, in violation of Health Occ. § 14-5A-17(a)(1); is guilty of unprofessional conduct in the practice of respiratory care, in violation of Health Occ. § 14-5A-17(a)(3); willfully made or filed a false report or record in the practice of respiratory care, in violation of Health Occ. § 14-5A-17(a)(10); and was disciplined by the licensing or disciplinary authorities of Massachusetts and Texas because of his conviction on three (3) counts of Indecent Assault and Battery in Massachusetts for sexual misconduct, based on his engagement in sexual

contact with a minor in a patient's home – an act that would be grounds for disciplinary action under the Board's disciplinary statutes, in violation of Health Occ. § 14-5A-17(a)(17). Based on these violations, Panel A is authorized to deny the Applicant's application for reinstatement of his Maryland respiratory care practitioner license. *See* Health Occ. § 14-205(b)(3)(i). Panel A further concludes that the Applicant's conduct demonstrates that he does not meet the requirement of good moral character, as set forth in and required by § 14-5A-09(b).

**ORDER**

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

**ORDERED** that Applicant Roberto D. Reyna Jr.'s Application for Reinstatement of Licensure to practice respiratory care in Maryland, received by the Board on or about January 27, 2022, is **DENIED**; and it is further

**ORDERED** that this is a public document.

***Signature On File***

6/30/2023  
Date

\_\_\_\_\_  
Ellen Douglas Smith, Deputy Director  
Maryland Board of Physicians

**NOTICE OF RIGHT TO PETITION FOR JUDICIAL REVIEW**

Pursuant to Md. Code Ann., Health Occ. § 14-5A-17.1, Mr. Reyna has the right to seek judicial review of this Order of Default. Any petition for judicial review shall be filed within thirty (30) days from the date of mailing of this Order of Default. The cover letter accompanying this Order indicates the date the decision is mailed. Any petition for judicial review shall be made as

provided for in the Administrative Procedure Act, Md. Code Ann., State Gov't § 10-222 and Title 7, Chapter 200 of the Maryland Rules of Procedure.

If Mr. Reyna files a petition for judicial review, the Board is a party and should be served with the court's process at the following address:

**Maryland State Board of Physicians  
Christine A. Farrelly, Executive Director  
4201 Patterson Avenue  
Baltimore, Maryland 21215**

Notice of any petition should also be sent to the Board's counsel at the following address:

**Noreen Rubin  
Assistant Attorney General  
Maryland Department of Health  
300 West Preston Street, Suite 302  
Baltimore, Maryland 21201**