

IN THE MATTER OF	*	BEFORE THE
MICHAEL W. McCOY	*	MARYLAND STATE BOARD
Applicant	*	OF PHYSICIANS
Former License Number: L03795	*	Case Number: 2221-0112A

* * * * *

ORDER OF DEFAULT

On August 2, 2021, a disciplinary panel of the Maryland State Board of Physicians (the "Board") issued a Notice of Intent to Deny Application for Reinstatement of Licensure under the Maryland Respiratory Care Practitioners Act against Michael W. McCoy (the "Applicant"), former license number L03795, notifying him of the intent to deny his Application for Reinstatement of Licensure.

The notice of intent to deny was based upon the following provisions:

Md. Code Ann., Health Occ. § 14-205.

...

(b) 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 an applicant has failed to renew the applicant's license, refuse to renew or reinstate the applicant's license for:

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

Health Occ. § 14-5A-17.

(a) *In general.* – 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...if the applicant....

- (1) Fraudulently or deceptively obtains or attempts to obtain a license for the applicant, 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[.]

Health Occ. § 14-5A-09.

- (a) *In general.* – To qualify for a license, an applicant shall be an individual who meets the requirements of this section.
- (b) *Moral character.* – The applicant shall be of good moral character[.]

A disciplinary panel of the Board delegated the evidentiary hearing and the issuance of a proposed decision to the Maryland Office of Administrative Hearings.

OAH scheduled a Remote Scheduling Conference in this matter for March 24, 2022, at 10:00 a.m., to be conducted via Webex videoconferencing, and mailed a Notice of Remote Scheduling Conference to the Applicant at his address on record with the Board. The Notice was not returned to OAH by the United States Post Office (“USPS”). On March 24, 2022, attorney representing the State, from the Maryland Office of the Attorney General, Health Occupations Prosecution and Litigation Division (“HOPL”), appeared remotely for the Scheduling Conference, but the Applicant failed to appear. After waiting for more than fifteen minutes after 10:00 a.m., the Administrative Law Judge (“ALJ”) proceeded with the Scheduling Conference in the Applicant’s absence. *See* COMAR 28.02.01.23A. During the Scheduling Conference, a Remote Prehearing Conference was scheduled for May 10, 2022, at 10:00 a.m., to be conducted via Webex.

In addition, the merits hearing was scheduled for June 13, 2022, to be conducted in person at OAH in Hunt Valley, Maryland.

OAH mailed, using the USPS, a Notice of the May 10, 2022 Remote Prehearing Conference to each party at the parties' respective addresses of record.¹ The Notice of Remote Prehearing Conference informed the parties of the date and time of the Remote Prehearing Conference and included instructions for joining the conference via Webex. The Notice of Remote Prehearing Conference directed each party to prepare and submit a Prehearing Statement in advance of the Remote Prehearing Conference. Further, the Notice of Remote Prehearing Conference informed the parties that failure to attend the May 10, 2022 Remote Prehearing Conference could result in a decision against the party failing to appear. The Notice of the Remote Prehearing Conference was mailed to the Applicant at his address of record and was not returned to OAH by USPS.

On April 14, 2022, the attorneys for the State filed the State's Prehearing Statement. The Applicant did not file a Prehearing Statement. On May 10, 2022, the State, again represented by attorneys from the Maryland Office of the Attorney General, HOPL Division, appeared remotely for the Prehearing Conference and were ready to proceed, but neither the Applicant nor anyone representing him appeared.

After waiting more than fifteen minutes for the Applicant to appear via Webex as instructed, the ALJ commenced the Remote Prehearing Conference in the Applicant's absence. The State made an oral motion for the entry of a default order against the

¹ OAH also mailed a separate Notice of Hearing to the parties at their respective addresses of record for the June 13, 2022 hearing on the merits.

Applicant, which the ALJ took under advisement. On May 12, 2022, the State hand-delivered to OAH, and mailed to the Applicant, the exhibits the State intended to offer into evidence if the matter had proceeded to a merits hearing. The ALJ admitted those exhibits into evidence so a disciplinary panel of the Board would be able to consider them in reaching its final disposition.

Under OAH's Rules of Procedure, "[i]f, after receiving proper notice, a party fails to attend or participate in a prehearing conference, hearing, or other stage of a proceeding, the judge 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.

On May 17, 2022, the ALJ issued a Proposed Default Order. The ALJ read OAH's Rules of Procedure in conjunction with § 14-405(d), which provides that the ALJ "may hear" the matter if a party fails to appear, and with § 14-405(e), which uses the language "any necessary hearing," and found that these provisions contemplate defaults where no hearing on the merits is required. *See also* COMAR 10.28.02.01.23A.

The ALJ found that the Applicant had proper notice of the May 10, 2022 Remote Prehearing Conference and failed to appear and participate in the Remote Prehearing Conference. The ALJ thus proposed that the Applicant be found in default and further proposed that the Allegations of Fact section of the Notice of Intent be adopted in the final decision. The ALJ also proposed that a disciplinary panel conclude as a matter of law that it is authorized under § 14-405 of the Health Occupations Article to deny the Applicant's Application for Reinstatement of Licensure for reasons that are grounds for denial under Health Occ. § 14-5A-17(a)(1), (3), and (10); under Health Occ. § 14-5A-09(b), and under Health Occ. § 14-5A-09(b), as set forth in the Notice of Intent to Deny the Applicant's Application for Reinstatement of Licensure Under the Maryland Respiratory Care Act. The ALJ proposed that the Applicant's Application for Reinstatement of Licensure Under the Respiratory Care Act be denied.

Neither party filed exceptions to the ALJ's Proposed Default Order.

FINDINGS OF FACT

Because Panel B concludes that the Applicant has defaulted, the following findings of fact are adopted from the allegations of fact set forth in the August 2, 2021 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:

1. The Applicant was originally licensed to practice respiratory care in the State of Maryland on July 29, 2002.
2. The Applicant's license expired on May 30, 2016.

3. On or about February 4, 2021, the Board received the Applicant's Application for Reinstatement of Respiratory Care Practitioners License.

I. The Applicant's Responses to Character and Fitness Questions

4. The Board's Application for Reinstatement, Section 12, includes a list of "Character and Fitness Questions." The Applicant answered "YES" to the following questions:

12. Since your last renewal:

...

b. Has a state licensing or disciplinary board (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.

c. 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[?]

5. The Application requires an applicant to provide a signed and dated explanation for any questions to which the applicant answered in the affirmative.

6. The Applicant attached to his Reinstatement Application explanations of his affirmative responses.

7. The Applicant responded to Questions 12(b) and (c) as follows:

Question 12(b):

I had a DWI in the 1990s and thought it was expunged (*sic*) and a misdemeanor in 1985. I had a hearing in 4/2003. I was in Idaho on

assignment and therefore let license lapse and surrender as I could not attend.

Question 12(c):

In Ohio I did not go to hearing about the years old DWI allowing it to lapse.

8. The Applicant's explanation of his YES answer to Question 12(b) is false; his response to Question (c) is inaccurate and misleading.

9. In furtherance of its investigation, the Board obtained documents from the Ohio Board of Respiratory Care (the "Ohio Board").

10. The Ohio Board documents show that on or about April 24, 2003, the Ohio Board issued to the Applicant a Notice of Opportunity for Hearing ("2003 Notice") alleging that the Applicant had made false statements on his March 1990 initial application for a license to practice respiratory care in Ohio. The 2003 Notice advised the Applicant that "[o]btaining a license by means of fraud, false or misleading representation, or concealment of material facts gives rise to the Board's authority to take disciplinary action against your license."

11. On his initial Ohio application, the Applicant responded NO to the question "[h]ave you ever been convicted of a crime offense other than a traffic offense?"

12. The 2003 Notice advised that the Applicant had failed to report the following actions:

Count I...you were convicted of Conspiracy to Commit Assault with a Deadly Weapon, a Gross Misdemeanor, on June 15, 1987 by the Clark County District Court, State of Nevada. You were sentenced to one (1) year in the Clark County Jail with credit for time served in the sum of one (1) day.

In addition, (1) on or about November 2, 1988, you were found guilty of Drug Abuse, a misdemeanor, in the Zanesville Ohio Municipal Court and; (2) on or about November 8, 1988, you were found guilty of Drug Abuse, a third-degree misdemeanor, in Zanesville Ohio Municipal Court.

Count II: On or about August 7, 2002, you were a respondent in an administrative hearing before the Ohio Respiratory Care Board concerning two unreported convictions:² Disorderly Conduct and Operating a Motor Vehicle While Intoxicated. During the course of this hearing you were asked on multiple occasions if you had been convicted of any other misdemeanors or felonies, other than the convictions already at issue at that administrative hearing. In response to the inquiries, and while under oath, you chose to disclose no additional convictions to the Board, including the three convictions noted in Count I, above, including one conviction for Conspiracy to Commit Assault with a Deadly Weapon and two convictions for Drug Abuse.

13. On August 4, 2003, the Applicant signed a Permanent Voluntary Surrender of License to Practice Respiratory Care in Ohio.

II. The Applicant's Responses Regarding His Employment History

14. The Application requires applicants to describe their employment history since their license expired.

15. The Applicant reported that from June 2020 to January 2021, his activity/position was "respiratory," he listed himself as his supervisor and as the name of his employer. The Applicant provided the non-public address in York, Pennsylvania that he had filed with the Board as his employment address.

² The August 2002 hearing pertained to the Ohio Board's allegation that the Applicant had made false statements on his 1995 license renewal application. Specifically, the Applicant failed to report his 1995 guilty plea to and conviction of Disorderly Conduct, a fourth-degree misdemeanor. The Applicant was present at the hearing. By Adjudication Order dated January 14, 2003, the Ohio Board suspended the Applicant's license for one (1) year, then immediately stayed the suspension and placed the Applicant on probation with terms and conditions that included the condition that the Applicant remain alcohol and drug-free for a period of two (2) years and submit to unannounced drug screens.

16. On May 5, 2004, the Pennsylvania State Board of Medicine denied the Applicant's Initial Application for licensure based on disciplinary action taken by the Ohio Board.

17. During the Board's review of the Application, Board staff asked the Applicant to explain how he practiced in Pennsylvania without a Pennsylvania license. The Applicant responded: "[t]o answer on the practice in state of PA I did not practice respiratory therapy the home care was for my mother here that pass away late 2019 (*sic*)."

III. The Applicant's Initial Application for Licensure in Maryland

18. Based on the Applicant's false responses on his 2021 Reinstatement Application, the Board examined other Maryland licensure applications completed by the Applicant.

19. The Applicant failed to report his criminal convictions on his 2002 Initial Application to practice respiratory care in Maryland.

CONCLUSIONS OF LAW

Panel B finds the Applicant in default based upon his failure to appear at the Office of Administrative Hearings for the prehearing conference scheduled for May 10, 2021. *See* State Gov't § 10-210(4). Panel B 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); and willfully made a false report or record in the practice of respiratory care, in violation of Health Occ. § 14-5A-17(a)(10). Based

upon these violations, Panel B is authorized to deny the Applicant's application for the reinstatement of his Maryland respiratory care practitioner license. *See* Health Occ. § 14-205(b)(3)(i). Panel B further concludes that the Applicant's conduct demonstrates that he is not of good moral character, in violation of H.O. § 14-5A-09.

ORDER

It is, thus, on the affirmative vote of a majority of the quorum of Panel B, hereby **ORDERED** that Applicant Michael W. McCoy's application for the reinstatement of his license to practice respiratory care in Maryland, received by the Board on or about February 4, 2021, is **DENIED**; and it is further

ORDERED that this order is a public document.

02/06/2023
Date

Signature On File

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

NOTICE OF RIGHT TO PETITION FOR JUDICIAL REVIEW

Pursuant to Md. Code Ann., Health Occ. § 14-408(a), Mr. McCoy 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 the 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. McCoy 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:

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