

IN THE MATTER OF * BEFORE THE MARYLAND
HEATHER E. TURNER, RCP * STATE BOARD OF
Respondent. * PHYSICIANS
License No. L005001 * Case No.: 2011-0356

* * * * *

FINAL DECISION AND ORDER

INVESTIGATIVE AND PROCEDURAL HISTORY

Heather E. Turner, RCP, License No. L005001, is a respiratory care practitioner licensed with the Maryland State Board of Physicians (“Board”) since 2008.

1. Board Investigation

In November, 2010, the Board received a Report of Disciplinary Action from a Maryland hospital where Ms. Turner was employed as a respiratory therapist. The report stated that Ms. Turner was terminated from her employment after failing a urine drug test. A subsequent Board investigation revealed that Ms. Turner purchased oxycodone and morphine pills from a co-worker at the hospital and became addicted to the narcotics. On July 28, 2010, Ms. Turner ingested oxycodone and morphine pills prior to working her night shift in the hospital’s Progressive Care Unit (“PCU”). Specifically, the details of the Board’s investigation showed the following:

Observations of Hospital Staff Members and Urine Drug Testing

1. Staff A, a registered nurse, saw Ms. Turner sitting in front of a computer terminal at the nurse’s station with one hand on the mouse and her eyes closed. Staff A observed Ms. Turner nodding in a slow motion downward towards the table, and went up to Ms. Turner and asked her if she was okay. Ms. Turner stated she was just so sleepy and drifted off again. Staff A became concerned that Ms. Turner may be under the influence and notified the charge nurse of her observations.
2. Staff B, a licensed respiratory care practitioner, had been employed with the hospital for 10 years and was the respiratory charge therapist on the evening of July 28, 2012. During

the transition from day shift to night shift, Staff B received a call from the PCU charge nurse who was concerned about Ms. Turner's behavior.

3. After receiving the call, Staff B saw Ms. Turner returning from the PCU, and observed that Ms. Turner appeared very sleepy and was drinking coffee. At one point, Staff B observed that Ms. Turner's eyes were rolling up while she spoke. Staff B also had difficulty understanding what Ms. Turner was saying.
4. Staff B then called Staff C, also a respiratory therapist, to come and assist. While Staff C stayed with Ms. Turner, Staff B took over the care of Ms. Turner's patients, and discovered that Ms. Turner had already treated two patients, but had failed to fully assess either patient.
5. Staff B tried to persuade Ms. Turner to check into the emergency department and submit to drug testing but Ms. Turner refused, stating that she was scared she might lose her job. When Staff B and Staff C were temporarily called away, Ms. Turner left the hospital. The following morning, Staff B reported the incident to the Supervisor.
6. Staff C, a licensed RCP, had been employed at the hospital for 18 years and was working on clinical duties in the intensive care unit on the evening of July 28, 2010. Upon receiving a call from Staff B for assistance with Ms. Turner, he and Staff B found Ms. Turner sitting with a cup of coffee in the PCU lounge. Staff C observed that Ms. Turner appeared tired and drowsy, had glassy and red eyes, slurred speech and delayed responses.
7. Staff C intended to contact the supervising nurse and have Ms. Turner submit to a drug test. Before he could do so, Staff C was called away to the ICU for patient care but told Ms. Turner to remain in the office till he returned. When Staff C returned from the ICU, Ms. Turner had already left the hospital. Shortly thereafter, Staff C reported the incident to the Supervisor.
8. The Supervisor, a licensed respiratory care therapist since 1992, supervised the adult respiratory care department at the hospital, and was not on duty when she received a telephone call from Staff B informing her that Ms. Turner was not doing too well and was being removed from the patient care area.
9. Over the next few days, the Supervisor called Ms. Turner's cellular phone many times but was unable to reach her or to leave a voice message.
10. On August 2, 2010, the Supervisor received a call from Ms. Turner, and they arranged to meet at the hospital that afternoon. After a meeting, Ms. Turner complied with the Supervisor's directive for drug testing by the hospital occupational health services.
11. Ms. Turner's urine drug test came back positive for opiates, specifically 2,035 ng/ml of morphine. Progress notes from the occupational health services stated that Ms. Turner

admitted to having a substance abuse problem and stated that she took oxycodone when she was able to purchase it on the street.

12. The Supervisor notified Ms. Turner that she would not be working pending further investigation. Ms. Turner's employment with the hospital was terminated effective November 6, 2010, for violating the hospital's substance abuse policy.

Board Interview

13. During an interview with the Board investigator on June 16, 2011, Ms. Turner stated that she started using oxycodone and morphine pills two to three months before July 28, 2010, after a knee injury. She also stated that a co-worker initially provided them to her for free, but that she purchased them from the co-worker later on.
14. Ms. Turner also informed the Board investigator that she took oxycodone before falling asleep during the day and before leaving for her night shift at the hospital. She stated that she did not bring any to work with her because it was not prescribed for her. In addition, she stated that after taking these pills for one and a half months, she became lethargic, ill and started going through withdrawal if she did not continue taking them. She acknowledged that she had taken some of the oxycodone or morphine pills before going to bed on the day of July 28, 2010, and had taken a 15 milligram oxycodone pill before going to work that night.
15. Ms. Turner also admitted that she had treated patients during her night shift on July 28, 2010. She insisted that she had completed her 8 p.m. round before being approached by Staff B and Staff C.
16. When asked about her interaction with the occupational health services staff member at the hospital, Ms. Turner said that she came clean and told the staff member that the pills were not prescribed for her, that she took the morphine one time, and that she thought she was addicted to the oxycodone. According to Ms. Turner, she told the staff member that she took it for a few months and may have said she was getting it off the street because she did not want to get her co-worker in trouble by disclosing specifics of the source.
17. During the interview, Ms. Turner also told the Board investigator that she was moving back in with her father and that all correspondence should be directed to his address as 27767 Leeward Drive, Salisbury, Maryland 21801 (address of record).

2. Administrative Proceedings

The Board charged Ms. Turner with unprofessional or immoral conduct in the practice of respiratory care; professional, physical or mental incompetence; being addicted to or habitually abusing any narcotic or controlled dangerous substance as defined in § 5-101 of the Criminal

Law Article; and providing professional services while using any narcotic or controlled dangerous substance as defined in § 5-101 of the Criminal Law Article, or any other drug that is in excess of therapeutic amounts or without valid medical indication, in violation of § 14-5A-17(a)(3), (4), (7) and (8)(ii), respectively. On October 14, 2011, the Board sent a copy of the charges to Ms. Turner's address of record by overnight and regular mail, and further advised her of her right to appear at a Case Resolution Conference ("CRC") on January 4, 2012. The overnight mail package was delivered and the regular mail was not returned. Ms. Turner did not attend her CRC.

Pursuant to of the Administrative Procedure Act, a formal hearing procedure was commenced before an Administrative Law Judge ("ALJ") at the Office of Administrative Hearings ("OAH"). Md. Code Ann., State Gov't § 10-205. On March 29, 2012, the OAH sent to Ms. Turner's address of record by first class mail a Notice of In-Person Prehearing Conference scheduled for May 15, 2012 at 9:30 a.m., and notice of a contested case hearing scheduled for June 19 and 20, 2012, at the OAH. The prehearing conference notice informed Ms. Turner that her failure to appear or give timely notice of her inability to appear for the in-person prehearing conference might result in a decision against her.

The instructions also required that each party file a prehearing statement containing information necessary for purposes of the upcoming contested case hearing with the OAH and on each other no later than 15 days before the scheduled May 15, 2011 prehearing conference. On April 30, 2012, the Administrative Prosecutor for the State timely filed a prehearing statement. Ms. Turner did not, nor did she exchange any prehearing statement with the State. The Administrative Prosecutor also sent the Board's prehearing statement along with a CD containing electronic files of the State's Exhibits in PDF format to Ms. Turner by Express

Courier and regular mail. The persons at Ms. Turner's address of record refused to accept the courier package on May 1, 2012; however, the package was left in the mailbox at the address of record and the prehearing statement and CD sent by the State by regular mail were not returned.

Ms. Turner failed to appear either in person or through counsel at the May 15, 2012 prehearing conference at the OAH. The Administrative Prosecutor appeared on behalf of the State. After waiting the requisite 15 minutes according to OAH policy, during which Ms. Turner still failed to appear, the State made a Motion for Default against Ms. Turner.

On May 30, 2012, the ALJ issued a Proposed Default Order proposing that: (1) Ms. Turner be found in default; (2) all of the Board's charges issued against Ms. Turner of violating H.O. §§ 14-5A-17(a)(3), (4), (7) and (8)(ii), were uncontested; (3) the Board revoke Ms. Turner's RCP license; (4) all further proceedings be terminated; and (5) the parties may file written exceptions to the Proposed Default Order. Neither Ms. Turner nor the Administrative Prosecutor filed exceptions, and the case came before the Board for final disposition. After considering the entire record, the Board issues this Final Decision and Order as the Board's final disposition in this case.

FINDINGS OF FACT

The Board adopts as findings of fact all of the Allegations of Fact, numbered 1-30, in the Board's October 14, 2011 charging document issued in this case. (The Board's charging document dated October 14, 2011 is incorporated into this Final Decision and Order and appended as Attachment B). The Board finds that these factual allegations and charges are unrefuted due to Ms. Turner's default. The Board also adopts as factual findings the ALJ's discussion of Ms. Turner's failure to respond to the Board's charges and her failure to appear at the OAH as set forth on pages 1-3 of the ALJ's Proposed Default Order. (The ALJ's May 30,

2012 Proposed Default Order is incorporated into this decision and appended as Attachment A).¹ Ms. Turner was duly notified of the Board's charges, of the prehearing conference, and of the evidentiary hearing, but she failed to respond or to appear in person or through counsel at any of the conferences scheduled in his case. The Board also adopts the ALJ's decision to proceed to a revocation of Ms. Turner's respiratory care practitioner license on the basis of her default.

CONCLUSIONS OF LAW

The Board concludes that Ms. Turner (1) engaged in unprofessional conduct in the practice of respiratory care, in violation of Md. Code Ann., Health Occ. ("H.O.") § 14-5A-17a)(3); (2) was professionally, physically or mentally incompetent, in violation of H.O. § 14-5A-17a)(4); was addicted to or habitually abused any narcotic or controlled dangerous substance as defined in § 5-101 of the Criminal Law Article, in violation of H.O. § 14-5A-17(a)(7); and provided professional services while using any narcotic or controlled dangerous substance as defined in § 5-101 of the Criminal Law Article, or any other drug that is in excess of therapeutic amounts or without valid medical indication, in violation of H.O. § 14-5A-17(a)(8)(ii). Further, the Board concludes that Ms. Turner was in default with respect to answering the charges, thus she has lost the right to contest them.

ORDER

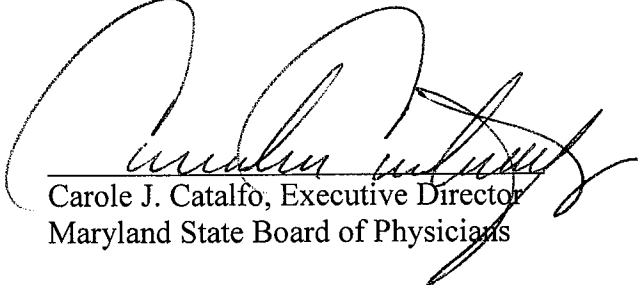
It is hereby **ORDERED** that the Board's October 14, 2011 charges filed against Heather E. Turner, License No. L005001, be **UPHELD**; and it is further

ORDERED that the license of Heather E. Turner, License No. L005001, to practice respiratory care in the State of Maryland be **REVOKED**; and it is further

¹ Pursuant to the Administrative Procedure Act, the Board modifies the ALJ's Proposed Default Order on page 2, Footnote 1, to reflect that the contested case hearing in this case was scheduled for June 19 and 20, 2012. See Md. Code Ann., State Gov't § 10-216(b).

ORDERED that this is a Final Decision and Order of the Board, and as such, is a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., State Gov't § 10-611 *et seq.* (Repl. Vol. 2009).

9-28-12
Date


Carole J. Catalfo, Executive Director
Maryland State Board of Physicians

NOTICE OF RIGHT TO PETITION FOR JUDICIAL REVIEW

Pursuant to Md. Code Ann., Health Occ. § 14-5A-17.1, Ms. Turner has the right to seek judicial review of this Final Decision and Order. Any petition for judicial review shall be filed within thirty (30) days from the date of mailing of this Final Decision and Order. The cover letter accompanying this final decision and 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 Ms. Turner 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 Farrelly, Deputy Director, Compliance & Licensure
Administration
4201 Patterson Avenue
Baltimore, Maryland 21215**

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

**Noreen M. Rubin
Assistant Attorney General
Department of Health and Mental Hygiene
300 West Preston Street, Suite 302
Baltimore, Maryland 21201**

**IN THE MATTER OF THE STATE
BOARD OF PHYSICIANS**

v.

**HEATHER E. TURNER, RCP
RESPONDENT**

*** BEFORE MARINA L. SABETT,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH No.: DHMH-SBP-69-12-12823**

* * * * *

PROPOSED DEFAULT ORDER

On June 16, 2011, Respondent Heather E. Turner, Respiratory Care Practitioner (RCP) (L05001) appeared at the offices of the State Board of Physicians (Board) pursuant to a Board subpoena. At that time, the Respondent advised that she was moving back in with her father and that all correspondence should be directed to his address at: 27767 Leeward Drive, Salisbury, Maryland 21801 (address of record). On October 14, 2011, the Board sent to the Respondent via overnight and regular mail a copy of the charges against her under the Maryland Respiratory Care Practitioners Act and further advised her of her right to appear at her Case Resolution Conference (CRC) on January 4, 2012. The overnight mail package was delivered and the regular mail was not returned. Nonetheless, the Respondent did not attend her CRC.

On March 27, 2012, the Board sent a Memorandum to the Office of Administrative Hearings (OAH) requesting that the matter be assigned to an Administrative Law Judge (ALJ) for a hearing in accordance with section 10-205 of the State Government Article of the Maryland Annotated Code.. In accordance with OAH procedure, on March 29, 2012, a Notice of In-Person Prehearing Conference was sent to the Respondent at her address of record and to other persons

ATTACHMENT A

of record scheduling the conference for May 15, 2012, at 9:30 a.m., at OAH.¹ The Notice of In-Person Prehearing Conference sent by first class mail informed the Respondent that her failure to appear or give timely notice of her inability to appear for the in-person prehearing conference might result in a decision against her. No notices sent by the OAH to the Respondent were returned.

The Notice of In-Person Prehearing Conference also required that each party file with the OAH and on each other at least fifteen days in advance of the May 15, 2012 conference a statement containing various information necessary for purposes of the upcoming contested case hearing scheduled for June 19 and 20, 2012. No prehearing statements were filed or exchanged by the Respondent. The Board timely filed and sent its statement along with a CD containing electronic files of the State's Exhibits in PDF format to the Respondent by Express Courier and regular mail on April 30, 2012. The persons at the address of record refused to accept the courier package on May 1, 2012; however, the package was left in the mailbox at the address of record and the statement and CD sent by the State via regular mail were not returned.

On May 15, 2012, an in-person prehearing conference was convened as scheduled, at which time neither the Respondent nor anyone authorized to represent the Respondent appeared. No postponement had been requested by the Respondent. The Administrative Prosecutor, K.F. Michael Kao, was present and ready to proceed on behalf of the State.² After waiting the requisite fifteen minutes according to OAH policy, during which time the Respondent still failed to appear, the State made a Motion for Default against the Respondent.

¹ On March 29, 2012, notice of the August 16, 2011 contested case hearing in the above-captioned matter was sent to the Respondent and other persons of record.

² Since the State Board of Physicians is the reviewing entity, the Administrative Prosecutor is said to be representing "the State" in these proceedings.

IT IS THEREFORE PROPOSED that the Respondent Heather E, Turner, RCP be found in default in OAH case number DHMH-SBP-69-12-12823;

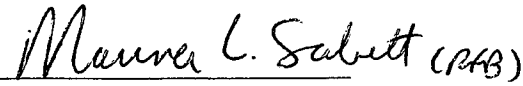
IT IS PROPOSED that the charges that the Board issued against Respondent for violating various provisions of the Maryland Respiratory Care Practitioners Act, sections 14-5A-01 *et seq.* of the Maryland Annotated Code, Health Occupations Article (2009 Repl. Vol. & 2011 Supp.) are uncontested; and

IT IS PROPOSED that pursuant to the applicable sections 14-5A-01 *et seq.* of the Maryland Annotated Code, Health Occupations Article, the Respondent's RCP license be **REVOKED**;

IT IS PROPOSED that all further proceedings in this matter are **TERMINATED**; and

IT IS PROPOSED that in accordance with Code of Maryland Regulations 28.02.01.23 and 10.32.02.03F: (1) the parties may file written exceptions to this Proposed Default Order and request a hearing with the Board (4201 Patterson Avenue, Baltimore, Maryland 21215-2299, ATTN: Geneva Goode, Administrative Aide to Supervisor, Compliance Administration) within fifteen (15) working days of the date of this Proposed Default Order; (2) any such written exceptions and/or request for hearing must be copied to the opposing party; and (3) the opposing party will have fifteen (15) days from the date of any written exceptions to file exceptions in response.

May 30, 2012
Date Mailed


Marina L. Sabett
Administrative Law Judge

MLS/lh
#135207