

IN THE MATTER OF * BEFORE THE
DONNA M. SMITH, R.T. * MARYLAND STATE BOARD
Respondent * OF PHYSICIANS

License Number: R0002581 * Case Number: 2011-0408
* * * * *

FINAL ORDER OF REVOCATION OF RADIOGRAPHER LICENSE

On February 8, 2013, the Maryland Office of the Attorney General notified Donna M. Smith (the "Respondent") (D.O.B. 09/17/1964), License Number R0002581, of the Maryland State Board of Physicians' (the "Board") intent to REVOKE her radiographer license under the Maryland Radiation Therapy, Radiography, Nuclear Medicine Technology and Radiology Assistance Act (the "Act"), Md. Health Occ. Code Ann. ("H.O.") §§ 14-5B-01 *et seq.* (2009 Repl. Vol. & 2012 Supp.). The pertinent provisions of the Act are:

§ 14-5B-14. Denial of License

- (a) *In general* – Subject to the hearing provisions of § 14-405 of this title, the Board, on the affirmative vote of a majority of the quorum may deny a license or temporary license to any Respondent, reprimand any licensee..., place any licensee...on probation, or suspend or revoke a license if the...licensee...:
- ...
- (1) Fraudulently or deceptively obtains or attempts to obtain a license or temporary license for the ...licensed individual...;
 - (3) Is guilty of unprofessional or immoral conduct in the practice of radiation therapy, radiography, nuclear medicine technology, or radiology assistance;
 - (22) Sells, prescribes, gives away or administers drugs for illegal or illegitimate medical purposes;
 - (26) Fails to cooperate with a lawful investigation conducted by the Board[.]

The Respondent was informed that a Final Order of Revocation of Medical License would be executed **THIRTY (30) DAYS** from date of receipt of the Board's notice, unless the Respondent requested a hearing.

The Respondent was further informed that notice under Code Md. Regs. tit. 10, § 32.02.03 is sufficient when the charges are served by regular mail or hand delivery at the address the Respondent maintains for purposes of licensure notice. Md. State Gov't Code Ann. § 10-209(c) provides that a person holding a license shall be deemed to have had reasonable opportunity to know of the fact of service if: 1) the person is required by law to notify the agency of a change of address within a specified period of time; 2) the person failed to notify the agency in accordance with the law; 3) the agency of the Office mailed the notice to the address of record; and 4) the agency did not have actual notice of the change of address prior to service. The Board has received no notice that the Respondent has changed his address.

In order for the Board not to execute this Final Order, a written request for hearing had to be received from the Respondent on or before March 13, 2013. The Respondent failed to request a hearing on or before this date.

FINDINGS OF FACT

1. The Respondent was originally licensed to practice as a radiographer on February 2, 1993. Her license is currently active and expires on April 30, 2013.

A. Findings of Fact Pertaining to Unlawful Prescriptions

2. On or about November 22, 2010, the Board received a written complaint regarding the Respondent from the Practice Administrator ("Complainant") of an orthopedic medicine office ("Office 1").¹
3. The Complainant complained that the Respondent had been writing prescriptions unlawfully at Office 1. The Complainant also reported that she had learned that the Respondent had engaged in this conduct at her previous employer, "Office 2."
4. Upon receipt of the complaint, the Board initiated an investigation which included, *inter alia*, interviewing the Complainant and physicians under whose names the Respondent wrote prescriptions, subpoenaing drug surveys of prescriptions written by the Respondent and attempting to interview the Respondent. The results of the Board investigation are summarized below.
5. The Respondent was employed at Office 1 on or about March 2009. She had stated that she had left her former employer to spend more time with her child.
6. On or about September 9, 2010, the Complainant received a telephone call from a physician ("Physician 1") at Office 2. Physician 1 told the Complainant that the Respondent was ruining his reputation by telling patients that she had left the employ of Office 2 because she had caught him being intimate with one of the female employees.
7. On September 10, 2010, the Complainant met with the Respondent to discuss Physician 1's telephone call. During the meeting, the Respondent admitted that she had been allowed to resign at Office 2 because she had written prescriptions

¹Names of facilities and individuals are confidential.

for pain medication for her mother. The Respondent was unable to recall what comments she had made about Physician 1 to patients but that she was still "mad and upset" about having to leave Office 2 because she had worked there so long.

8. The Respondent admitted that she had written prescriptions for her mother while employed at Office 2 for about eight months. The Respondent stated that she had not written any prescriptions while working at Office 1.
9. The Respondent was terminated by Office 1 effective September 15, 2010, for making inappropriate comments to patients.
10. Approximately one week later, Office 1 staff was notified by a health care insurance company of concerns of an excessive number of prescriptions written or called in for the Respondent by multiple physicians at Office 1. Most of the prescriptions were for hydrocodone/APAP, a Schedule III Controlled Dangerous Substances ("CDS").
11. The Complainant reported to the health insurance company that at least two of the physicians on the prescription survey had not written or called in any prescriptions to the Respondent.
12. The Board's investigation revealed that the Respondent had engaged in similar conduct during her prior employment at Office 2. Specifically, in December 2008, the Office 2 office manager was informed by a pharmacist that the Respondent had been calling in prescriptions for 30 – 35 tablets of hydrocodone/APAP under Physician 1's name every week for almost three months.

13. When confronted with this information by the office manager, the Respondent admitted that she had called in the prescriptions. The Respondent stated that the prescriptions were for a family member. The Respondent further stated that the family member had not been treated by Physician 1.
14. The Respondent resigned from Office 2 in lieu of having a complaint filed with the Baltimore County Police Department.
15. In furtherance of its investigation, Board staff attempted to elicit a written response from the Respondent and to interview her.
16. By letter dated August 1, 2011, sent by certified mail to the Respondent's address of record, Board staff provided to the Respondent a copy of the complaint and requested her written response within fifteen days. The Respondent was also requested to complete and return an Information Sheet upon which her current address and past and current employers were requested.
17. On August 10, 2011, Board staff received from the Respondent the Information Sheet, which she had completed and signed. The Respondent's stated home address was the same as that on file with the Board.
18. By letter dated October 5, 2011, sent to the Respondent's address of record by certified mail, Board staff notified the Respondent that her completed Information had been received but that she had not provided a written response to the complaint. The Respondent was requested to provide her written response within five business days.
19. The Board's letter was returned as "unclaimed."
20. The Respondent failed to provide a written response.

21. On April 20, 2012, the Board issued to the Respondent at her address of record a *Subpoena Ad Testificandum* and ordered her to appear at the Board's office on May 14, 2012 at 9:00 a.m. to be interviewed.
22. The subpoena, which was sent to the Respondent by regular mail, was not returned as undeliverable.
23. The Respondent failed to appear at the Board on May 14, 2012, nor did she notify Board staff of the reason for her absence.
24. On June 21, 2012, the Board issued to the Respondent at her address of record a second *Subpoena Ad Testificandum* and ordered her to appear at the Board's office on July 2, 2012 at 9:00 a.m. to be interviewed.
25. The subpoena, which was sent to the Respondent by regular mail, was not returned as undeliverable.
26. The Respondent failed to appear at the Board on July 2, 2012, nor did she notify Board staff of the reason for her absence.

B. Findings of Fact Pertaining to Renewal Application

27. On April 20, 2011, the Respondent electronically transmitted to the Board a License Renewal Application ("Renewal Application"). Included on the Renewal Application is a series of Character and Fitness Questions that pertained to the period commencing May 31, 2010.
28. The Respondent answered "NO" to Character and Fitness Question (d) which states:

Has your employment by any health care employer been affected by disciplinary actions including probation, suspension, loss or limitation of privileges, reprimand, transfers to other duties or termination of employment or contact (*sic*)?

29. The Respondent electronically signed an attestation on the Renewal Application that states:

I certify that I have personally reviewed all responses to the items in this application and that the information I have given is true and correct to the best of my knowledge and that any false information provided as part of my application may be cause for the denial of my application.

30. The Respondent failed to answer Question (d) in an accurate and truthful manner. She failed to report that she had been terminated from Office 1 on September 15, 2010.

CONCLUSION OF LAW

The Respondent's conduct as set forth above constitutes in whole or in part: fraudulently or deceptively obtaining or attempting to obtain a license; in violation of H.O § 14-5B-14(a)(1); engaging in unprofessional or immoral conduct in the practice of radiation therapy, radiography, nuclear medicine technology, or radiology assistance; in violation of H.O. § 14-5B-14(a)(3); selling prescribing, giving away or administering drugs for illegal or illegitimate medical purposes; in violation of H.O. § 14-5B-14(a)(22) and failing to cooperate with a lawful investigation conducted by the Board, in violation of H.O. § 14-5B-14(a)(26).

ORDER

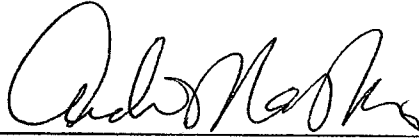
It is this 17th day of April, 2013, by a majority of a quorum of the Board considering this case:

ORDERED that the Respondent's license to practice radiography in the State of Maryland is hereby **REVOKED**; and it is further

ORDERED that this Final Order is a public document pursuant to Md. State Gov't Code Ann. § 10-611 *et seq.* (2010 Repl. Vol.).

April 17, 2013

Date



Andrea L. Mathias, M.D., M.P.H.
Chair
Maryland State Board of Physicians

NOTICE OF RIGHT TO APPEAL

Pursuant to Md. Health Occ. Code Ann. § 14-408(b), the Respondent has the right to take a direct judicial appeal. Any appeal shall be filed within 30 days from the date of mailing of this Final Order and shall be made as provided for judicial review of a final decision in the Maryland Administrative Procedure Act, State Gov't Article § 10-222 and Title 7, Chapter 200 of the Maryland Rules of Procedure. The cover letter shows the date on which the Final Order was mailed.

If the Respondent files an appeal, the Board is a party and should be served with the court's process. In addition, the Respondent should send a copy to the Board's counsel, Thomas W. Keech, Assistant Attorney General, at the Office of the Attorney General, 300 West Preston Street, Suite 302, Baltimore, Maryland 21201. The Administrative Prosecutor is not involved in the circuit court process and need not be served or copied on pleadings filed in that court.