

IN THE MATTER OF * **BEFORE THE MARYLAND**
EVELYN F. GARY, R.T. * **STATE BOARD OF**
Respondent. * **PHYSICIANS**
License No. R10226 * **Case No.: 2012-0560**

* * * * *

FINAL DECISION AND ORDER

INVESTIGATIVE AND PROCEDURAL HISTORY

In September 2011, Evelyn F. Gary submitted to the Maryland State Board of Physicians (“Board”) an Application for Licensure as a radiographer. The Board granted the license effective October 18, 2011.

The Board had received a complaint in August 2011 that Ms. Gary was practicing radiography without a license. An ensuing Board investigation revealed that, since November 2007, Ms. Gary was employed by a community college as an Associate Professor of Radiologic Technology and director of that program. During the Board’s investigation, Ms. Gary’s employment file was subpoenaed from the community college. The Board’s review of Ms. Gary’s employment file revealed that she may have been practicing radiography before she was licensed. For instance, in 2009, Ms. Gary’s duties included functioning as the “clinical instructor” for “RADT 122,” a radiology technology course. Course RADT 122 is described in Community College A’s catalog as follows:

RADT – 122 Clinical Radiography I (4 credits) – Under supervision, students will use energized equipment in the on-campus laboratory and clinical laboratory centers to develop competency in positioning, producing and processing radiographic images to include the vertebral column, thoracic cage, pelvic girdle, skull and body systems requiring administration of contrast material.

By letter dated October 26, 2011 and sent to Ms. Gary by first class mail to her address of record, Board staff requested that Ms. Gary provide a detailed, written description of the duties

she performed as Director of Radiologic Technology, including the academic and clinical instruction she provided. Ms. Gary failed to respond to the October 26, 2011 letter. In another letter dated November 18, 2011, and sent to Ms. Gary by first class and certified mail to her address of record, Board staff requested Ms. Gary to respond to the previous letter by November 28, 2011. A copy of the October 26, 2011 letter was enclosed. Ms. Gary was advised that if she did not respond, the Board may issue a *Subpoena Ad Testificandum* requiring her appearance at the Board.

Ms. Gary failed to respond to the Board's November 18, 2011 letter. On January 12, 2012, the Board issued to Ms. Gary by certified and first class mail to her address of record, a *Subpoena Ad Testificandum* requiring her appearance at the office of the Board to be interviewed by Board staff. Ms. Gary failed to appear at the Board on January 12, 2012, and she did not otherwise contact Board staff.

Administrative Proceedings

A formal hearing procedure was commenced before an Administrative Law Judge ("ALJ") at the Office of Administrative Hearings. The Board charged Ms. Gary with (1) unprofessional conduct in the practice of radiography; and (2) failure to cooperate with a lawful investigation conducted by the Board, in violation of the Maryland Radiation Therapy, Radiographer, Nuclear Medicine Technology and Radiology Assistant Act, Md. Code Ann., Health Occ. ("H.O.") §§ 14-5B-14(a)(3) and (26), respectively.

On June 18, 2012, the Board sent to Ms. Gary's address of record notice of the charges against her. The charges also advised Ms. Gary that a case resolution conference would be held on September 5, 2012 at the Board's offices in Baltimore, Maryland. Ms. Gary did not appear for

the case resolution conference. The charges sent to Ms. Gary were returned with the postal notation: “refused.”

On October 22, 2012, the Office of Administrative Hearings (“OAH”) sent Ms. Gary notices for an in-person prehearing conference at OAH on November 8, 2012 and a hearing on December 11, 2012. The notices also included instructions for filing a prehearing statement prior to the prehearing conference. Ms. Gary did not file a prehearing statement

On October 24, 2012, the Assistant Attorney General, by use of courier, sent a copy of the charges and the exhibits that the Board intended to introduce at the hearing to Ms. Gary at her place of business and her residence. The mail was signed for by an employee at Ms. Gary’s place of business and was left on the front step of Ms. Gary’s residence.

On November 8, 2012, the prehearing conference was convened. Ms Gary did not appear. None of the correspondence sent by OAH was returned in the mail and no postponement request was filed by Ms. Gary.

DISCUSSION

Section 14-405(b) of the Act requires notice of a hearing to be given to a respondent in accordance with the Title 10, Subtitle 2 of the State Government Article, the contested case provisions of Maryland’s Administrative Procedure Act. Those notice requirements were met in this case. See Md. Code Ann., State Gov’t. § 10-209 (2012).

The facts in this case show that the notice of charges, prehearing conference and hearing were mailed to Ms. Gary as required by statute. The charges and exhibits for the hearing were sent by courier and mail to the place of employment and were signed for by an employee. The charges were also sent to Ms. Gary’s residence and left on the front step. Ms Gary failed to

respond to the charges. She also failed to attend the Board's resolution conference and OAH's prehearing conference.

On November 9, 2012, the ALJ issued a Proposed Default Order proposing that: (1) Ms. Gary be found in default; (2) all of the Board's June 18, 2012 charges be upheld; (3) the hearing for December 11, 2012 be cancelled; (4) all further proceedings be terminated; (5) the Board revoke Ms. Gary's license; and (6) in accordance with COMAR 28.02.01.20C and COMAR 10.32.02.03F, Ms. Gary or her authorized representative may file exceptions with the Board within 15 days.

Ms. Gary did not file exceptions. On January 4, 2013, Ms. Gary sent an email to Board staff referencing her employment, a radiologic technology program, and x-ray equipment. 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 decision on this case.

FINDINGS OF FACT

The Board adopts the ALJ's findings of fact and discussion as set forth in the ALJ's November 9, 2012 Proposed Default Order. (The Proposed Default Order is incorporated into this decision and appended as Attachment A). The Board duly notified Ms. Gary 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 this case. The Board also adopts as findings of fact all of the Allegations of Fact, numbered 1-13 in the Board's June 18, 2012 charging document issued in this case. (The Board's charging document dated June 18, 2012 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. Gary's

default. The Board also adopts the ALJ's decision to proceed to a revocation of Ms. Gary's radiographer license on the basis of her default.

CONCLUSIONS OF LAW

The Board concludes that Ms. Gary **(1)** engaged in unprofessional conduct in the practice of radiography, in violation of Md. Code Ann. Health Occ. § 14-5B-14(a)(3); and **(2)** failed to cooperate with a lawful Board investigation, in violation of § 14-5b-14(a)(26). Ms. Gary was in default with respect to answering the charges, thus she has lost the right to contest them.

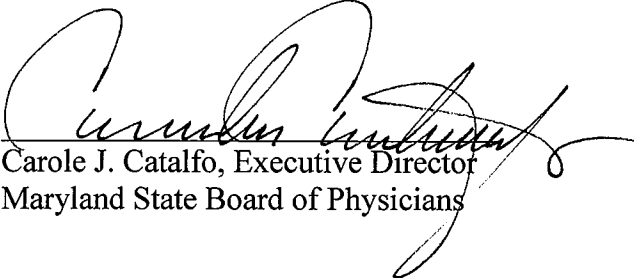
ORDER

It is hereby **ORDERED** that the Board's June 18, 2012 charges filed against Evelyn F. Gary, R.T., License No. R10226, be **UPHELD**; and it is further

ORDERED that the license of Evelyn F. Gary, License No. R10226, to practice radiography in the State of Maryland be **REVOKED**; and it is further

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

5-6-13
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. § 14-5B-14.1, Ms. Gary 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. Gary 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, Deputy Director, Compliance and Licensure
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.

EVELYN F. GARY, R.T.

* BEFORE JAMES W. POWER,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH No.: DHMH-SBP-75-12-41572

* * * * *

PROPOSED DEFAULT ORDER

**STATEMENT OF THE CASE
FINDINGS OF FACT
DISCUSSION
PROPOSED ORDER**

STATEMENT OF THE CASE

On November 8, 2012, I convened a prehearing conference in the above-referenced matter at 9:30 am at the Office of Administrative Hearings, 11101 Gilroy Road, Hunt Valley, MD (OAH). Victoria Pepper, Assistant Attorney General, appeared on behalf of the State Board of Physicians (Board). By 9:50 am, Evelyn Gary, Radiographer (R.T.), certificate number 0010226 (Respondent), had not appeared and the Assistant Attorney General offered a Motion for Proposed Default. In support of the motion, the Assistant Attorney General offered two documents into evidence and requested that those documents be incorporated into the proposed default order. Those documents, which were both copies of e-mails, were accepted into the record and are incorporated herein by reference.

In consideration of the Motion for Proposed Default, I find the following:

1. On June 18, 2012, the Board sent the Respondent charges for her alleged violations of the Maryland Radiation Therapy, Radiographer, Nuclear Medicine Technology and Radiology

Assistant Act. Md. Code Ann., Health Occ. § 14-5B-14 (2012) (Act). The charges involved the Respondent's alleged failure to respond to correspondence and a subpoena from the Board.

2. The charges also advised the Respondent that a case resolution conference would be held on September 5, 2012 at the Board's offices in Baltimore, Maryland. The Respondent did not appear for the case resolution conference.

3. The charges sent to the Respondent were returned with the postal notation , "refused."

4. On October 22, 2012, the OAH sent the Respondent hearing notices for an in person prehearing conference at OAH on November 8, 2012 at 9:30 a.m. and the hearing on December 11, 2012 at 9:30 a.m. The notices also included instructions for filing a prehearing statement prior to the prehearing conference.

5. The Respondent did not file a prehearing statement.

6. On October 24, 2012, the Assistant Attorney General, by use of a courier, sent a copy of the charges and the exhibits that the Board intended to introduce at the hearing to the Respondent at her place of business and her residence. The mail was signed for by an employee at the Respondent's place of business and was left on the front step of the Respondent's residence.

7. On November 8, 2012, the prehearing conference was convened. The Respondent did not appear. None of the correspondence sent by OAH was returned in the mail and no postponement request was filed by the Respondent.

DISCUSSION

Section 14-405(b) of the Act requires notice of a hearing be given to a respondent in accordance with the Title 10, Subtitle 2 of the State Government Article, the contested case provisions of Maryland's Administrative Procedure Act (APA). Those notice requirements were met in this case. *See*, Md. Code Ann., State Gov't. § 10-209 (2012).

The facts in this case show that the notice of charges, prehearing conference and hearing were mailed to the Respondent as required by statute. The charges and exhibits for the hearing were sent by courier and mail to the place of employment and were signed for by an employee. The charges were also sent to the Respondent's residence and left on the front step. The Respondent has not responded to the charges, appeared at the case resolution conference, prehearing conference or indicated any intent to participate in these proceedings. Thus, I conclude the Respondent was properly notified of the instant proceeding. The Respondent failed to appear after proper notice and is subject to default. COMAR 28.02.01.20A.

PROPOSED ORDER

IT IS PROPOSED that the Respondent, Evelyn Gary R.T, be found in **DEFAULT**,

IT IS FURTHER PROPOSED that the June 18, 2012 charges be **UPHELD**;

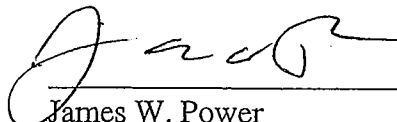
IT IS FURTHER PROPOSED, that the Respondent's license, R0010226, be **REVOKED**;

IT IS FURTHER PROPOSED that the hearing for December 11, 2012 be canceled;

IT IS FURTHER PROPOSED that all further proceedings in the captioned matter be **TERMINATED**; and

FURTHER, in accordance with Code of Maryland Regulations (COMAR) 28.02.01.20C and COMAR 10.32.02.03F, the Respondent or her authorized representative may file exceptions with the Board within fifteen days.

November 9, 2012
Date Proposed Order Mailed



James W. Power
Administrative Law Judge

JWP/kkc
#138553

IN THE MATTER OF * BEFORE THE
 EVELYN P. GARY, R.T. * MARYLAND STATE BOARD OF
 Respondent * PHYSICIANS

License Number: R10266 * Case Number: 2012-0560
 * * * * *

**CHARGES UNDER THE MARYLAND RADIATION THERAPY, RADIOGRAPHER,
 NUCLEAR MEDICINE TECHNOLOGY AND
 RADIOLOGY ASSISTANCE ACT**

The Maryland State Board of Physicians (the "Board") hereby charges Evelyn P. Gary, R.T. (the "Respondent") (D.O.B. 02/11/1952), License Number R10226, under the Maryland Radiation Therapy, Radiographer, Nuclear Medicine Technology and Radiology Assistant Act (the "Act"), Md. Health Occ. Code Ann. ("H.O.") §§ 14-5B-01 *et seq.* (2009 Repl. Vol.)

The pertinent provisions of the Act provide as follows:

§ 14-5B-14. Denial of license.

(a) *In general.* – Subject to the hearing provisions of § 14-405 of this subtitle, the Board, on the affirmative vote of a majority of the quorum, may deny a license or temporary license, reprimand any licensee or holder of a temporary license, place any licensee or holder of a temporary license on probation, or suspend or revoke a license if the applicant licensee or holder of a temporary license:

- ...
 (3) Is guilty of unprofessional or immoral conduct in the practice of radiation therapy, radiography, nuclear medicine technology or radiology assistance;
- ...
 (26) Fails to cooperate with a lawful investigation conducted by the Board[.]

GENERAL ALLEGATIONS OF FACT¹

The Board bases its charges on the following facts that the Board has reason to believe are true:

1. On August 30, 2011, the Board received a complaint alleging that the Respondent was practicing radiography without a license.
2. Effective November 5, 2007, the Respondent was employed by Community College A² as an Associate Professor of Radiologic Technology and director of that program.
3. On or about September 9, 2011, the Respondent submitted to the Board an Application for Licensure as a radiographer.
4. On or about October 18, 2011, the Respondent was licensed by the Board to practice radiography.
5. In furtherance of its investigation of the complaint that the Respondent had practiced radiography without a license, Board staff subpoenaed the Respondent's employment file from Community College A.
6. Review of the Respondent's employment file revealed that the Respondent may have been performing radiography prior to being licensed. For instance, in 2009, the Respondent's duties included functioning as the "clinical instructor" for "RADT 122," a radiology technology course. Course RADT 122 is described in Community College

¹ The statements of the Respondent's conduct with respect to the patients identified herein are intended to provide the Respondent with notice of the alleged charges. They are not intended as, and do not necessarily represent, a complete description of the evidence, either documentary or testimonial, to be offered against the Respondent.

² Names of individuals and facilities are confidential. The Respondent may obtain the names from the Administrative Prosecutor.

A's catalog as follows:

RADT – 122 Clinical Radiography I (4 credits) – Under supervision, students will use energized equipment in the on-campus laboratory and clinical laboratory centers to develop competency in positioning, producing and processing radiographic images to include the vertebral column, thoracic cage, pelvic girdle, skull and body systems requiring administration of contrast material.

7. By letter dated October 26, 2011, sent to the Respondent by first class mail to her address of record, Board staff requested the Respondent to provide a detailed, written description of the duties she performed as Director of Radiologic Technology including the academic and clinical instruction she provided.
8. The Respondent failed to respond to the October 26, 2011 letter.
9. By letter dated November 18, 2011, sent to the Respondent by first class and certified mail to her address of record, Board staff requested the Respondent to respond to the October 26, 2011 letter, a copy of which was enclosed, by November 28, 2011. The Respondent was advised that if she did not respond, the Board may issue a *Subpoena Ad Testificandum* requiring her appearance at the Board.
10. The Respondent failed to respond to the Board's November 18, 2011 letter.
11. On January 12, 2012, the Board issued to the Respondent by certified and first class mail to her address of record a *Subpoena Ad Testificandum*. The subpoena summoned the Respondent to appear at the office of the Board to be interviewed by Board staff.

12. The Respondent failed to appear at the Board on January 12, 2012, nor did she otherwise contact Board staff.³
13. The Respondent's conduct, in whole or in part, constitutes unprofessional conduct in the practice of radiology, in violation of H.O. §14-5B-14(a)(3), and failure to cooperate with a lawful investigation conducted by the Board, in violation of H.O. § 14-5B-14(a)(26).

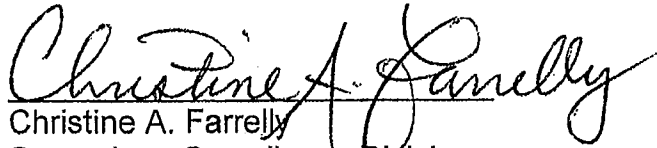
NOTICE OF POSSIBLE SANCTIONS

If, after a hearing, the Board finds that there are grounds for action under H.O. § 14-5B-14(a)(3) and/or (26), the Board may impose disciplinary sanctions against the Respondent's license including revocation, suspension, or reprimand and may place the Respondent on probation, and/or may impose a monetary fine.

NOTICE OF CASE RESOLUTION CONFERENCE

A Case Resolution Conference has been rescheduled for **Wednesday, September 5, 2012, at 10:00 a.m.** at the offices of the Board, 4201 Patterson Avenue, Baltimore, Maryland, 21215. The nature and purpose of the Case Resolution Conference and Pre-Hearing Conference are described in the attached letter to the Respondent.

06/18/2012
Date


Christine A. Farrelly
Supervisor, Compliance Division
For
Carole J. Catalfo
Executive Director
Maryland State Board of Physicians

³ None of the letters sent by first class mail to the Respondent were returned by the U.S. Postal Service as undeliverable. The letters sent by certified mail were delivered to the Respondent's address were unclaimed.