

**IN THE MATTER OF
SHANT DOUKMAJIAN**

Respondent

*** BEFORE THE
* MARYLAND STATE BOARD
* OF PHYSICIANS
* Case Number: 2222-0097A**

* * * * *

ORDER OF DEFAULT

On January 31, 2023, Disciplinary Panel A of the Maryland State Board of Physicians (the “Board”) issued Charges Under the Maryland Radiation Therapy, Radiography, Nuclear Medicine Technology, and Radiology Assistance Act (“Charges”) against Shant Doukmajian (the “Respondent”), alleging that the Respondent practiced, attempted to practice, or offered to practice radiography without a license.

The Charges were based upon the following statutory provision:

Md. Code Ann., Health Occ. § 14-5B-17.

...

(c) *Radiography.*- Except as otherwise provided in this subtitle, a person may not practice, attempt to practice, or offer to practice radiography in this State unless licensed to practice radiography by the Board.

On June 27, 2023, the matter was delegated to the Office of Administrative Hearings (“OAH”) for an evidentiary hearing and a proposed decision.

On June 28, 2023, OAH sent a Notice of Remote Scheduling Conference to both parties (the Respondent and the State) *via* mail by the United States Postal Service (“USPS”) at their respective addresses on record. COMAR 28.02.01.05C. The Notice of Remote Scheduling Conference informed the parties that the Scheduling Conference was

scheduled for Wednesday, September 6, 2023, at 9:30 a.m., and provided the login information for accessing the Webex online video-conferencing platform (Webex).

On September 6, 2023, the Administrative Law Judge (“ALJ”) held the Scheduling Conference *via* Webex as scheduled. COMAR 10.32.02.11D(6); COMAR 28.02.01.20B(1)(b). An Administrative Prosecutor from the Office of the Attorney General was present and represented the State of Maryland. Neither the Respondent nor anyone authorized to represent the Respondent participated in the Scheduling Conference.

Approximately 15 minutes past the scheduled time for the Scheduling Conference, the ALJ determined that the Respondent failed to appear after receiving proper notice and proceeded in the absence of the Respondent. The ALJ scheduled a Prehearing Conference *via* Webex for October 6, 2023, at 9:30 a.m. and indicated that a merits hearing date would be set by mutual agreement of the parties at the Prehearing Conference. On September 7, 2023, the ALJ issued a Scheduling Order advising the parties of the time and date of the Prehearing Conference.

On September 6, 2023, OAH sent a Notice of Remote Prehearing Conference (“Notice”) by first-class mail to the parties at their addresses of record. The Notice informed the parties that the Remote Prehearing Conference was scheduled for October 6, 2023, at 9:30 a.m. The Notice stated that failure to attend the Remote Prehearing Conference or failure to provide notice of the inability to attend the Prehearing Conference might result in a decision against the non-appearing party. USPS did not return the Notice as undeliverable.

On October 6, 2023, the ALJ convened the Remote Prehearing Conference as scheduled. The Administrative Prosecutor appeared on behalf of the State. The Respondent failed to log into the Webex hearing room at the scheduled start time and did not log into Webex at any point during a subsequent 15-minute grace period. The ALJ confirmed with the OAH's Clerk's Office that the Respondent had not called to request a postponement or for any other reason. OAH was given no indication that the Respondent had any difficulties logging into Webex. Neither the Respondent nor anyone authorized to represent the Respondent appeared to participate in the Remote Prehearing Conference. At that time, the Administrative Prosecutor made a motion for a proposed Default Order, which included the procedural history of the case, related cases involving other respondents, and the basis for the requested civil penalty. *See* COMAR 28.02.01.23C.

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, § 14-405 of 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.

On October 11, 2023, the ALJ issued a Proposed Default Order. The ALJ cited 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." The ALJ found that these provisions authorize defaults, requiring no evidentiary hearing on the merits. *See also* COMAR 10.28.02.01.23A.

The ALJ found that the Respondent had proper notice of the October 6, 2023, Remote Prehearing Conference and failed to attend or participate in the Remote Prehearing Conference. The ALJ thus proposed that the Respondent be found in default and further proposed that the Allegations of Fact section of the Charges be adopted as fact in the final decision. The ALJ further proposed that the Respondent be found to have violated § 14-5B-17(c) of the Health Occupations Article, which prohibits the unlicensed practice of radiography in this State. Moreover, the ALJ recommended the imposition of a civil fine of not more than \$1000. The Proposed Default Order notified the parties that they may file exceptions but must do so within 15 working days of the date of the Proposed Default Order. The Proposed Default Order was mailed and emailed to the parties at their respective addresses of record. The Proposed Default Order was not returned as undeliverable.

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

FINDINGS OF FACT

Because Panel B concludes that the Respondent has defaulted, the following findings of fact are adopted from the allegations of fact set forth in the Charges and are deemed proven by the preponderance of the evidence:

I. Background Information

1. At all times relevant, the Respondent was not and had never been licensed to practice radiography in the State of Maryland.

2. At all times relevant, the Respondent was employed at a medical practice (the "Practice"), which provided mainly urgent care with some primary care and pediatric care. The Practice has three active locations, which are in Columbia, Oxen Hill, and Lusby, Maryland. The Practice was partly owned by a physician ("Physician A"), who was licensed to practice medicine in Maryland.

3. On or about September 24, 2021, the Board received an anonymous complaint alleging that Physician A was employing the Respondent and other unlicensed individuals to operate x-ray machines at his Practice.

4. Based on the complaint, the Board initiated an investigation of the Respondent and the Practice.

II. Board Investigation

5. The Board's investigation revealed that from in or around January 2019 to in or around November 2021, the Respondent took radiographs of patients and practiced radiography mainly at the Practice's Columbia location without a license.

The Respondent

6. On or about June 29, 2022, Board investigators interviewed the Respondent under-oath. During the interview, the Respondent stated that Physician A hired him in January 2019 to serve as a radiographer for the Practice's Columbia location, even though he told Physician A that he was neither certified by the American Registry of Radiologic Technologists ("ARRT") nor licensed as a radiographer in Maryland.

7. The Respondent stated that he was the sole radiographer at the Practice's initial location in Columbia from approximately January 2019 to at least May 2020, when the Respondent required him to obtain a radiographer's license in Maryland within six months. Despite the agreement, the Respondent stated that he continued to take radiographs of patients until his resignation from the Practice in or around November 2021. The Respondent stated that he continued to take radiographs after May 2020 due to his fear that Physician A would terminate his employment if he did not do so.

8. The Respondent further stated that throughout his employment at the Practice, Physician A required him to teach other nurse practitioners, physician assistants, and unlicensed medical assistants in the Practice on how to operate radiographic machines, position patients and take radiographs.

Physician A

9. On or about July 6, 2022, and September 7, 2022, Board investigators interviewed Physician A under-oath. During the interview, Physician A admitted that he initially hired the Respondent for the purpose of taking radiographs of patients at the Practice's Columbia location. Physician A stated that the Respondent took radiographs of patients at the Practice's Columbia location from January 2019 to at least May 2020

without being licensed in Maryland. Physician A further admitted that he asked the Respondent to train unlicensed medical assistants on how to take radiographs of patients, which the Respondent did.

CONCLUSIONS OF LAW

Panel B finds the Respondent in default based upon his failure to appear for or participate in the October 6, 2023, Remote Prehearing Conference held by OAH in this matter. *See* State Gov't § 10-210(4). Panel B also concludes that the Respondent practiced radiography in Maryland without a license, in violation of Health Occ. § 14-5B-17(c). Further, under Health Occ. § 14-5B-19(b), for a violation of Health Occ. § 14-5B-17, Panel B may impose a civil fine of not more than \$5000 upon the Respondent.

ORDER

It is, by Panel B, hereby

ORDERED that, within **15 DAYS** from the date that this Order of Default goes into effect, the Respondent shall pay a civil fine of **ONE THOUSAND DOLLARS (\$1,000.00)**. The Payment shall be by money order or bank certified check made payable to the Maryland Board of Physicians and mailed to P.O. Box 37217, Baltimore, Maryland 21297; and it is further

ORDERED that this Order of Default goes into effect when it is signed by the Board's Executive Director or her Designee. The Board's Executive Director or her designee signs this Order of Default on behalf of Panel B.

ORDERED that this order is a public document.

01/22/2024
Date

Signature On File

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

NOTICE OF RIGHT TO PETITION FOR JUDICIAL REVIEW

Pursuant to Health Occ. § 14-408, the Respondent 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 order 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 the Respondent 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, 4th Floor
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