

IN THE MATTER OF

DAVID M. HUSH

Respondent

License Number: R05009

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BEFORE THE

MARYLAND STATE

BOARD OF PHYSICIANS

Case Number: 2014-0177

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**ORDER FOR REVOCATION OF LICENSE TO PRACTICE RADIOGRAPHY**

On July 25, 2014, Disciplinary Panel B of the Maryland State Board of Physicians (the "Board") notified **DAVID M. HUSH** (the "Respondent"), License Number R05009, of its intent to revoke his license to practice radiography in the State of Maryland under the Maryland Radiation Therapy, Radiography, Nuclear Medicine Technology, and Radiology Act (the "Act"), codified at Md. Code Ann., Health Occ. ("Health Occ.") §§ 14-5B-101 *et seq.* (2009 Repl. Vol. and 2013 Supp.).

Specifically, Disciplinary Panel B based its action on the Respondent's violation of the following provisions of the Act under Health Occ. § 14-5B-14:

- (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 of the Board, may deny a license to any applicant, or a disciplinary panel, on the affirmative vote of a majority of the quorum of the disciplinary panel, may 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 applicant, licensed individual, holder of a temporary license, or for another;
  - (3) Is guilty of unprofessional or immoral conduct in the practice of radiography;
  - (10) Willfully makes for files a false report or record in the practice of radiography;

- (14) knowingly makes a misrepresentation while practicing radiography; and
- (26) Fails to cooperate with a lawful investigation conducted by the Board or a disciplinary panel.

The Respondent was notified that an Order for Revocation of License to Practice Radiography would be executed **THIRTY (30) DAYS** from the date of service of Disciplinary Panel B's Notice of Intent to Revoke License to Practice Radiography, unless the Respondent requested a hearing.

The Respondent was further notified that notice under Md. Code Regs. 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. Code Ann., State Gov't, § 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 or 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. Disciplinary Panel B has received no notice that the Respondent has changed his address.

In order for Disciplinary Panel B not to execute this Final Order, a written request for hearing had to be received from the Respondent on or before August 27, 2014. The Respondent failed to request a hearing on or before this date.

#### **FINDINGS OF FACT**

Disciplinary Panel B makes the following Findings of Fact:

## **BACKGROUND**

1. At all times relevant hereto, the Respondent was and is licensed to practice radiography in the State of Maryland. The Respondent was originally licensed to practice radiography in Maryland on November 19, 1997, under License Number R05009. The Respondent's license is current until April 30, 2015.

2. The Board initiated an investigation of the Respondent after receiving an anonymous complaint, dated August 16, 2013, informing the Board that the Respondent was charged with a number of criminal offenses in 2013, including: obtaining controlled dangerous substances ("CDS") by fraud; obtaining CDS by forged prescription; making false statements to an officer or state official; obstructing and hindering; misdemeanor theft; telephone misuse; and harassment. The complainant attached documents from the Maryland Judiciary Case Search confirming the existence of various criminal charges against the Respondent.

3. In a second complaint, dated September 10, 2013, the anonymous complainant further informed the Board that the Respondent was charged with drunk driving and other criminal offenses in Maryland on July 9, 2013. Similarly, the complainant attached documents from the Maryland Judiciary Case Search confirming the existence of drunk driving and other criminal charges against the Respondent.

## **BOARD INVESTIGATION**

### **Criminal History**

4. In the course of its investigation, the Board made the following discovery with respect to the Respondent's criminal history:

- a. **2013 Charges for Prescription Fraud** - On or about August 16, 2013, the Respondent was charged in the Circuit Court for Baltimore County, Maryland, Case Number 03K13004813, with: Obtaining CDS by Fraud; and Obtaining CDS by Forged Prescription. These charges were *nolle prosequi* on October 9, 2013, the same day that the Respondent pleaded guilty to charges of Harassment and Telephone Misuse in Case Numbers 03K13001610 and 03K13001611.
- b. **2013 Charges for False Statement and Obstruction and Hindering** - On or about July 28, 2013, the Respondent was charged in the District Court of Maryland for Baltimore City, Case Number 1B02223593, with: two counts of False Statement to Officer; False Statement to State Official; and Obstructing and Hindering. These charges are pending.
- c. **2013 Conviction for Theft (Less than \$1000)** - On or about May 29, 2013, the Respondent was charged in the District Court of Maryland for Montgomery County, Case Number 2D00301996, with two counts of Theft (Less than \$1,000). On or about August 19, 2013, the Respondent pleaded guilty to and was convicted of one count of Theft (Less than \$1,000). The Court sentenced the Respondent to one year incarceration, all suspended, followed by probation for two years.



- d. **2013 Conviction for Harassment** - On or about March 15, 2013, the Respondent was charged in the Circuit Court for Baltimore County, Maryland, Case Number 03K13001610, with: Harassment (Course of Conduct); and Telephone Misuse (Repeat Calls) for an incident that occurred on or about December 8, 2012. On or about December 11, 2013, the Respondent pleaded guilty to and was convicted of Harassment (Course of Conduct) and was placed on supervised probation through the Division of Parole and Probation.
- e. **2013 Conviction for Telephone Misuse** - On or about March 15, 2013, the Respondent was charged in the Circuit Court for Baltimore County, Maryland, Case Number 03K13001611, with Telephone Misuse (Repeat Calls). On or about December 11, 2013, the Respondent pleaded guilty to and was convicted of the charge and was given a time-served disposition.
- f. **2010 Conviction for Theft (Less than \$500)** - On or about April 26, 2010, the Respondent was charged in the Circuit Court for Baltimore County, Maryland, Case Number 03K10002245, with: Theft (Less than \$500); and Trespass (Private Property). On or about July 30, 2010, the Respondent was convicted of Theft (Less than \$500) and placed on supervised probation for a period of 18 months.
- g. **2000 PBJ for Theft (Less than \$300)** - On or about January 11, 2000, the Respondent was charged in the District Court of

Maryland for Baltimore County, Case Number 6C00121911, with one count of Theft (Less than \$300). On or about March 13, 2000, the Respondent was found guilty of the charge and was granted probation before judgment.

- h. **1995 Conviction for Theft (Less than \$300)** - On or about September 24, 1994, the Respondent was charged in the District Court of Maryland for Baltimore County, Case Number 1C00004068, with one count of Theft (Less than \$300). On or about February 13, 1995, the Respondent was found guilty of the charge and was granted probation before judgment.

#### **Fraudulent Applications**

5. By application ("Initial Application") dated September 29, 1997, the Respondent applied to the Board for certification as a Medical Radiation Technologist. Under Section 12 in a question, which asked "Have you ever been charged with or convicted of any criminal act for which you pled nolo contendere, could receive, or did receive, probation before judgment, or were sentenced to probation or confinement?", the Respondent answered "No."

6. The Respondent failed to disclose in the Initial Application that on or about February 13, 1995, he was found guilty of and received probation before judgment for Theft (Less than \$300).

7. In a license renewal application for the 2011 renewal period ("2011 Renewal") the Respondent filed with the Board, dated March 25, 2011, he answered "No" to a Character and Fitness question, which asked "Have you been charged with or

convicted of any criminal act for which you pled nolo contendere, could receive, or did receive, probation before judgment or were sentenced to probation or confinement?"

8. The Respondent failed to disclose in the 2011 Renewal that on or about July 30, 2010, he was convicted of Theft (Less than \$500) and placed on supervised probation for 18 months in the Circuit Court for Baltimore County, Maryland.

9. In a license renewal application for the 2013 renewal period ("2013 Renewal") the Respondent filed with the Board, dated March 21, 2013, he answered "No" to a Character and Fitness question, which asked "Have you been charged with or convicted of any criminal act for which you pled nolo contendere, could receive, or did receive, probation before judgment or were sentenced to probation or confinement?"

10. The Respondent failed to disclose that as of the date he filed the 2013 Renewal, he had pending criminal charges for one count of Harassment (Course of Conduct) and two counts of Telephone Misuse (Repeated Calls) in the Circuit Court for Baltimore County, Maryland, under Case Numbers 03K13001610 and 03K13001611.

11. In the Initial Application, the 2011 Renewal and the 2013 Renewal, the Respondent either affirmed or certified that the information he provided was true and correct to the best of his knowledge.

### **Prescription Fraud**

12. The Board obtained court records and a police report concerning criminal charges that were filed on or about August 16, 2013, which alleged that the Respondent obtained CDS by fraud and/or forged prescription in Baltimore County. The documents the Board obtained revealed that on or about May 15, 2013, at approximately 3:00 a.m., the Respondent called in a prescription for Lortab 10/500 mg. (#90), a Schedule III CDS,



for himself at an area pharmacy ("Pharmacy A"). When the pharmacist contacted the physician ("Physician A"), who purportedly issued the prescription, for verification, Physician A advised that she had not issued such prescription for the Respondent. The Pharmacist immediately reported the event to the Baltimore County Police Department.

13. At around 9:00 a.m. that same day, detectives from the Baltimore County Police Department waited at Pharmacy A parking lot anticipating that the Respondent would appear in person to pick up the prescription. The detectives observed the Respondent pull into Pharmacy A in a black Hummer and proceeded to the drive-thru window. The Respondent asked a pharmacy technician whether his prescription was ready, at which time the pharmacy technician stated that it was. When the pharmacy technician told the Respondent that she needed to inform the pharmacist, he quickly drove away. The detectives did not pursue the Respondent's vehicle, but instead obtained video footage of the Respondent from the pharmacy's security camera. The Respondent later called the pharmacy and stated that he would pick up his prescription next week.

14. Later that same day, the detectives made contact with the Respondent for an interview. During the interview, the Respondent admitted orally and in writing that he had called in the prescription for Lortab without Physician A's authorization and that he knew it was a crime to do so.

### **Failure to Cooperate**

15. In furtherance of its lawful investigation of the Respondent, the Board issued a Subpoena *Ad Testificandum* to him on or about November 5, 2013, ordering him to appear at the Board's offices on November 21, 2013, to give testimony in the



form of an interview. The Respondent failed to appear or otherwise respond to the Board's subpoena, dated November 5, 2013.

16. The Board reissued the subpoena to the Respondent on or about November 21, 2013, for an interview scheduled to take place on December 12, 2013, and on or about December 12, 2013, for an interview scheduled to take place on December 26, 2013. The Respondent failed to appear or otherwise respond to the Board's subpoenas, dated November 5, November 21 and December 12, 2013.

### **CONCLUSIONS OF LAW**

Based on the foregoing Findings of Fact, Disciplinary Panel B concludes as a matter of law that the Respondent's failure to disclose: in his Initial Application that he was granted probation before judgment for Theft (Less than \$300) on or about February 13, 1995; in his 2011 Renewal that he was convicted of Theft (Less than \$500) on or about March 25, 2011; and in his 2013 Renewal that he had pending charges for Harassment and Telephone Misuse, constitutes: fraudulently or deceptively obtaining or attempting to obtain a license or temporary license for the applicant, licensed individual, holder of a temporary license, or for another, in violation of Health Occ. § 14-5B-14(a)(1); being guilty of unprofessional or immoral conduct in the practice of radiography, in violation of Health Occ. § 14-5B-14(a)(3); willfully making or filing a false report or record in the practice of radiography, in violation of Health Occ. § 14-5B-14(a)(10); and knowingly making a misrepresentation while practicing radiography, in violation of Health Occ. § 14-5B-14(a)(14).

Disciplinary Panel B further concludes that the Respondent's admitted attempt to obtain a Schedule III CDS by fraud on or about May 15, 2013, constitutes being guilty of

unprofessional or immoral conduct in the practice of radiography, in violation of Health Occ. § 14-5B-14(a)(3).

Finally, Disciplinary Panel B concludes that the Respondent's failure to comply with the Board's subpoenas, dated November 5, November 21, and December 12, 2013, constitutes: being guilty of unprofessional or immoral conduct in the practice of radiography, in violation of Health Occ. § 14-5B-14(a)(3); and failing to cooperate with a lawful investigation conducted by the Board or disciplinary panel, in violation of Health Occ. § 14-5B-14(a)(26).

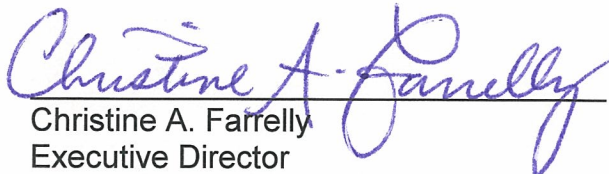
### **ORDER**

Based on the foregoing Findings of Fact and Conclusions of Law, it is, by a majority of the quorum of Disciplinary Panel B 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. Code Ann., State Gov't, § 10-611 *et seq.* (2009 Repl. Vol. and 2013 Supp.).

11/17/2014  
Date

  
Christine A. Farrelly  
Executive Director  
Maryland State Board of Physicians

### **NOTICE OF RIGHT TO APPEAL**

Pursuant to Md. Code Ann., Health Occ. § 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, Disciplinary Panel B is a party and should be served with the court's process. In addition, the Respondent should send a copy to Disciplinary Panel A's counsel, Noreen Rubin, 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.