

IN THE MATTER OF	*	BEFORE THE MARYLAND
CASSANDRA BURNS-ROSS, PA-C	*	STATE BOARD OF
Respondent	*	PHYSICIANS
License Number: C01009	*	Case Number: 2218-0132A

* * * * *

ORDER OF DEFAULT

BACKGROUND

On June 7, 2018, Disciplinary Panel A of the Maryland State Board of Physicians ("Board") charged Cassandra Burns-Ross, PA-C with fraudulently or deceptively obtaining a license, unprofessional conduct in the practice of medicine, and willfully making a false representation when seeking or making application for licensure or any other application related to the practice of medicine. *See* Md. Code Ann., Health Occ. § 15-314(a)(1), (3)(ii), and (36). The charges alleged that Ms. Burns-Ross failed to report a criminal conviction on several licensure applications she submitted to the Board. On September 14, 2018, the Board referred the case to the Office of Administrative Hearings ("OAH") for an evidentiary hearing.

After OAH sent notices for a scheduling conference to Ms. Burns-Ross and the State, at their respective addresses of record, a scheduling conference was held at OAH in Hunt Valley, Maryland on October 5, 2018, at 9:30 a.m. Ms. Burns-Ross did not appear for the scheduling conference and no one appeared on her behalf. The administrative prosecutor appeared on behalf of the State. During the scheduling conference, the prehearing conference was scheduled for October 29, 2018, and the evidentiary hearing was scheduled for November 26, 2018, both to begin at 10:00 a.m. at OAH.

On October 10, 2018, OAH mailed the Notice of In-Person Prehearing Conference (Notice of Prehearing Conference) and the Notice of Hearing to each party via regular mail at

their respective addresses of record. The Notice of Prehearing Conference and the Notice of Hearing mailed to Ms. Burns-Ross were not returned to OAH by the U.S. Postal Service. The Notice of Prehearing Conference informed the parties of the date, time, and location of the prehearing conference and enclosed instructions directing each party to prepare and submit a prehearing statement in advance of the Prehearing Conference. Both notices informed the parties that failure to attend either the prehearing conference or the hearing could result in a decision against the party for failing to appear.

On October 29, 2018, the Administrative Law Judge ("ALJ") conducted the prehearing conference at OAH. Ms. Burns-Ross appeared at the prehearing conference. The administrative prosecutor appeared on behalf of the State. At the prehearing conference, the ALJ reminded the parties that the hearing was scheduled for November 26, 2018 at 10:00 a.m. at OAH. On November 7, 2018, the ALJ issued a prehearing conference report and order, which ordered Ms. Burns-Ross to disclose to the State, no later than November 13, 2018, the names of any witnesses she intended to call and any documents she intended to submit into evidence at the November 26, 2018 hearing. Ms. Burns-Ross did not submit any documents or identify any witnesses she intended to call at any time prior to the hearing.

Ms. Burns-Ross failed to appear at the November 26, 2018 hearing, and no attorney appeared on her behalf. After waiting approximately thirty minutes for Ms. Burns-Ross to appear, the ALJ commenced the hearing in her absence. The State, represented by the administrative prosecutor, moved for a default judgment against Ms. Burns-Ross and offered the exhibits that it had planned to offer into evidence if the matter had proceeded to a hearing on the merits. The ALJ admitted those exhibits into evidence. The State requested that the ALJ enter a

proposed order of default and that the ALJ recommend to the disciplinary panel that Ms. Burns-Ross's license to practice as a physician assistant be revoked.

On December 10, 2018, the ALJ issued a Proposed Default Order based upon the OAH proceedings described above. The ALJ found that Ms. Burns-Ross had actual notice of the November 26, 2018 hearing and that she failed to appear. The ALJ acknowledged that the hearing notice in this case was sent by regular mail and not by certified mail, even though certified mail is required by section 15-314(a)(4) of the Health Occupations Article, but concluded that Ms. Burns-Ross was not prejudiced by the error because she had actual notice of the hearing when the ALJ informed the parties of the hearing at the prehearing conference, which Ms. Burns-Ross attended. The ALJ proposed that the panel find Ms. Burns-Ross in default, adopt as fact the statements set out in the allegations of fact section of the charges, conclude as a matter of law that Ms. Burns-Ross violated Health Occ. § 15-314(a)(1), (3)(ii), and (36) in the manner set forth in the charges, and revoke her license to practice as a physician assistant.

On December 10, 2018, the ALJ mailed copies of the Proposed Default Order to Ms. Burns-Ross, the administrative prosecutor, and the Board, at the parties' respective addresses of record. The proposed decision notified the parties that they may file written exceptions to the proposed decision but must do so within 15 days of the date of the Proposed Default Order. The Proposed Default Order stated that any exceptions and request for a hearing must be sent to the Board with attention to the Board's Executive Director. Neither party filed exceptions. On February 27, 2019, this case came before Disciplinary Panel B of the Board for final disposition.

FINDINGS OF FACT

Panel B adopts the ALJ's discussion regarding the notice requirements and the notice provided to Ms. Burns-Ross set forth on pages 3-4 of the Proposed Default Order. The

discussion is incorporated by reference into the body of this document as if set forth in full. *See* ALJ Proposed Default Order, attached as **Exhibit 1**.

Because Panel B concludes that Ms. Burns-Ross has defaulted, the following findings of fact are adopted from the allegations of fact set forth in the June 7, 2018 Charges Under the Maryland Physician Assistants Act and are deemed proven by the preponderance of the evidence:

At all times relevant, Ms. Burns-Ross was licensed as a physician assistant in the State of Maryland. Ms. Burns-Ross was initially licensed in Maryland on December 18, 1986.

On May 27, 1971, in the Supreme Court of New York County of the Bronx Criminal Division, Ms. Burns-Ross pleaded guilty to, and was found guilty of, Attempted Manslaughter in the Second Degree (Case No. 3836-70). Ms. Burns-Ross was sentenced to three years of probation.

The Board discovered, through the Criminal History Records Check Ms. Burns-Ross submitted to as a requirement for the 2017 renewal of her license, that Ms. Burns-Ross had the above-referenced conviction, which she had not previously disclosed to the Board.¹ Ms. Burns-Ross initially applied for licensure as a physician assistant in 1986 and applied for the renewal of her license in 1991, after which time Ms. Burns-Ross allowed her license to lapse. Ms. Burns-Ross applied for reinstatement of her license in 2008 and was 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 judgement, or were sentenced to probation or confinement?" Ms. Burns-Ross answered "no." Ms. Burns-Ross applied for the renewal of her license in 1991, 2009, 2011, 2013, 2015, and 2017 and was asked, "Have you ever pleaded guilty or nolo

¹ In 2015, the General Assembly added the requirement for Board licensees seeking the renewal of their licenses to submit to a Criminal History Records Check. Health Occ. § 15-307(g). The 2017 renewal was the first time Ms. Burns-Ross was required to submit to a Criminal History Records Check for the Board.

contendere to any criminal charge, or have you ever been convicted of a crime or placed on probation before judgement because of a criminal charge?" Ms. Burns-Ross answered "no" on each of these applications.²

CONCLUSIONS OF LAW

Panel B finds Ms. Burns-Ross in default based upon her failure to appear at the Office of Administrative Hearings for the November 26, 2018 evidentiary hearing. *See* State Gov't § 10-210(4). Based upon the foregoing findings of fact, Panel B concludes that Ms. Burns-Ross fraudulently or deceptively obtained a license, is guilty of unprofessional conduct in the practice of medicine, and willfully made a false representation when seeking or making application for licensure or any other application related to the practice of medicine, in violation of Health Occ. § 15-314(a)(1), (3)(ii), and (36).

SANCTION

Panel B adopts the sanction recommended by the ALJ, which is to revoke Ms. Burns-Ross's license to practice as a physician assistant.

ORDER

Based upon the findings of fact and conclusions of law, it is, on the affirmative vote of a majority of the quorum of Board Disciplinary Panel B, hereby

ORDERED that Cassandra Burns-Ross's license to practice as a physician assistant in Maryland (License No. C01009) is **REVOKED**; and it is further

ORDERED that this is a public document.

04/12/2019
Date

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

² The Board granted each licensure application Ms. Burns-Ross submitted to the Board.

NOTICE OF RIGHT TO PETITION FOR JUDICIAL REVIEW

Pursuant to Md. Code Ann., Health Occ. § 15-315(b), Ms. Burns-Ross 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 mailing of this Order of Default. The cover letter accompanying this 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. Burns-Ross 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
Baltimore, Maryland 21215**

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

**Stacey M. Darin
Assistant Attorney General
Maryland Department of Health
300 West Preston Street, Suite 302
Baltimore, Maryland 21201**

Exhibit 1

MARYLAND BOARD OF
PHYSICIANS

V.

CAASANDRA BURNS-ROSS, PA-C,
RESPONDENT,
LICENSE NO.: C01009

* BEFORE ROBERT F. BARRY,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH NO.: MDH-MBP1-74-18-29590
*

* * * * *

PROPOSED DEFAULT ORDER

On June 7, 2018, Disciplinary Panel A of the Maryland Board of Physicians (Board) issued Charges under the Maryland Physician Assistants Act against Cassandra Burns-Ross, PA-C (Respondent), License No. C01009. Md. Code Ann., Health Occ. §§ 15-101 through 15-502 (2014 & Supp. 2018): Specifically, the Board charged the Respondent with violating three sections of the Act: § 15-314(a)(1) (fraudulently or deceptively obtaining a license); § 15-314(a)(3) (unprofessional conduct in the practice of medicine); and § 15-314(a)(36) (willfully making a false representation when making an application for licensure). The charges stem from the Respondent's alleged failure to disclose on various license applications, including her initial application for licensure in 1986, her 1971 conviction in New York for attempted manslaughter in the second degree.

On September 14, 2018, the Board delegated this matter to the Office of Administrative Hearings (OAH) to conduct a hearing and to issue proposed findings of fact and conclusions of law and a proposed disposition.

On October 5, 2018, I conducted a scheduling conference at the OAH in Hunt Valley, Maryland. Kara Wilcox-Mundy, Assistant Attorney General and Administrative Prosecutor,

represented the State. The Respondent did not appear. I scheduled a pre-hearing conference for October 29, 2018 and a hearing for November 26, 2018, both to begin at 10:00 a.m. at the OAH.

On October 10, 2018, the OAH sent a Notice of Pre-hearing Conference and a Notice of Hearing to the Respondent at her address of record with the Board. The notices provided the dates, times, and locations for the pre-hearing conference and the hearing. The notices explained the consequences of a failure to appear. The Notice of Hearing advised the Respondent that her "failure to appear may result in dismissal of your case or a decision against you." The United States Postal Service did not return either of the notices to the OAH as undeliverable.

On October 29, 2018, I conducted a pre-hearing conference at the OAH. Ms. Wilcox-Mundy again represented the State. The Respondent represented herself. During the pre-hearing conference, I reminded the Respondent of the hearing date.

On November 7, 2018, I issued a pre-hearing conference report and order, in which I again advised the Respondent that the hearing was scheduled for November 26, 2018, at 10:00 a.m. at the OAH.

On November 26, 2018, I convened a hearing as scheduled. Ms. Wilcox-Mundy again represented the State. Lily Schmulowitz, a Compliance Analyst Associate with the Board, appeared as a potential witness for the State. The Respondent did not appear. After waiting approximately thirty minutes, and with the Respondent still not having appeared, I went on the record. The State asked that I issue a proposed default order against the Respondent, with a proposed revocation of the Respondent's license to practice as a physician assistant. The State submitted thirteen exhibits that it had planned to offer into evidence at a hearing. I admitted those exhibits, which are contained in a binder, into evidence so that the Board or a disciplinary panel of the Board would be able to consider them in reaching its final disposition.

Section 15-315(a) of the Health Occupations Article provides that before a disciplinary panel takes any action under section 15-314(a) if that article, the disciplinary panel shall give the individual against whom the action is contemplated an opportunity for a hearing before a hearing officer, or, in this case, an administrative law judge. The administrative law judge shall give notice of "the hearing in accordance with Title 10, Subtitle 2 of the State Government Article [Administrative Procedure Act]." Md. Code Ann., Health Occ. § 15-315(a)(2) (Supp. 2018). The statute, however, provides that "[a]t least 14 days before the hearing, the hearing notice required under this subtitle shall be sent by certified mail to the last known address of the individual." *Id.* § 15-315(a)(4). The Administrative Procedure Act provides that the OAH "shall give all parties in a contested case reasonable written notice of the hearing," and does not require the OAH to send hearing notices by certified mail. Md. Code Ann., State Gov't § 10-208(a) (2014).

The specific requirement in the Health Occupations Article for notice by certified mail controls procedure in this case, so the OAH erred by not sending the Notice of Hearing to the Respondent by certified mail. The Respondent, however, was not prejudiced by the OAH's mistake because the Respondent had actual notice of the hearing by the Notice of Hearing sent by first class mail, by my telling the Respondent about the hearing during the pre-hearing conference, and by my pre-hearing conference report date and order. It would exalt form over substance under these circumstances to excuse the Respondent's failure to appear for the hearing when she clearly knew of the date, time, and location of the hearing. As noted by the Court of Special Appeals in *Maryland State Bd. Of Nursing v. Sesay*, 224 Md. App. 432, 447 (2015), the primary purpose for providing notice is to apprise the interested parties of the hearing and afford them an opportunity to be heard. That purpose was served in this case by means other than notice by certified mail to the Respondent.

The OAH Rules of Procedure provide, in pertinent part, as follows:

.23 Failure to Attend or Participate in a Hearing, Conference, or Other Proceeding; Default.

A. If, 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.

C. Proposed Default Orders. A proposed default order is reviewable in accordance with the delegating agency's regulations governing review of proposed decisions.

COMAR 28.02.01.23A, C.

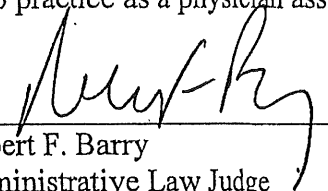
I find that the OAH provided proper, actual notice of the hearing to the Respondent on several occasions and the Respondent failed to appear for the hearing. Accordingly, I

PROPOSE:

1. The State's motion for default be **GRANTED**.
2. The Respondent be found in **DEFAULT**.
3. The Board adopt as fact the statements set out in the Allegations of Fact section of the State's Charges;
4. The Board conclude as a matter of law that the Respondent violated sections 15-314(a)(1); 15-314(a)(3); and 15-314(a)(36) of the Maryland Physician Assistants Act in the manner set forth in the State's Charges; and
5. The Board revoke the Respondent's license to practice as a physician assistant.

December 10, 2018
Date Report Mailed

RFB/kdp
#177008


Robert F. Barry
Administrative Law Judge


NOTICE OF RIGHT TO FILE EXCEPTIONS

Any party may file written exceptions to this Proposed Default Order with the disciplinary panel of the Board of Physicians and request a hearing on the exceptions. Md. Code Ann., State Gov't § 10-216 (2014); COMAR 28.02.01.23C; COMAR 10.32.02.05B(1). Exceptions must be filed within fifteen (15) days of the date of this Proposed Default Order. COMAR 10.32.02.05B(1)(a). The exceptions and request for hearing must be addressed to the disciplinary panel of the Board of Physicians, 4201 Patterson Avenue, Baltimore, MD, 21215-2299, Attn: Christine A. Farrelly, Executive Director.

A copy of any exceptions must be mailed to the opposing attorney, and the opposing party will have fifteen (15) days from the filing of the exceptions to file a written response. *Id.* The response must be addressed as above. *Id.* The Office of Administrative Hearings is not a party to any review process.

Copies Mailed To:

Kara Wilcox-Mundy, Assistant Attorney General
and Administrative Prosecutor
Office of the Attorney General
Health Occupations Prosecution and Litigation Division
300 West Preston Street, Suite 207
Baltimore, MD 21201

Cassandra Burns Ross, PA-C


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