

**IN THE MATTER OF
HOLY CROSS HEALTH**

*** BEFORE THE MARYLAND
* STATE BOARD
* OF PHYSICIANS**

Respondent

*** Case Number: 2220-0245**

* * * * *

CONSENT ORDER

On May 21, 2020, the Maryland State Board of Physicians (the “Board”) notified **HOLY CROSS HEALTH, INC. d/b/a HOLY CROSS HEALTH** (the “Respondent”) of its failure to comply with provisions of the Maryland Radiation Therapy, Radiography, Nuclear Medicine Technology, and Radiology Assistance Act (the “Act”), Md. Code Ann., Health Occ. (“Health Occ.”) §§ 14-5B-01 *et seq.* (2014 Repl. Vol. & 2019 Supp.) and Md. Code Regs (“COMAR”) 10.32.22.01 *et seq.* (2016).

The pertinent provisions of the Act are as follows:

Health Occ. § 14-5B-15 Report.

(a) *In general.* -- Except as provided in subsections (b) and (d) of this section, hospitals, related institutions, alternative health systems as defined in § 1-401 of this article, and employers shall file with the Board a report that the hospital, related institution, alternative health system, or employer limited, reduced, otherwise changed, or terminated any licensee for any reason that might be grounds for disciplinary action under § 14-5B-14 of this subtitle.

...

(e) *Time for filing report.* -- The hospital, related institution, alternative health system, or employer shall submit the report within 10 days of any action described in this section.

...

(g) *Penalties.* --

- (1) The Board may impose a civil penalty of up to \$1,000 for failure to report under this section.

Health Occ. § 14-5B-14 Denial of License.

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

- (3) Is guilty of unprofessional or immoral conduct in the practice of radiation therapy, radiography, nuclear medicine technology, or radiology assistance;

- (4) Is professionally, physically, or mentally incompetent;

...

- (11) Willfully fails to file or record any report as required under law, willfully impedes or obstructs the filing or recording of a report, or induces another to fail to file or record a report;

...

- (14) Knowingly makes a misrepresentation while practicing radiation therapy, radiography, nuclear medicine technology, or radiology assistance; [and/or]

...

- (18) Fails to meet appropriate standards for the delivery of quality radiation therapy, radiography, nuclear medicine technology, or radiology assistance care performed in any outpatient surgical facility, office, hospital or related institution, or any other location in this State[.]

The pertinent COMAR regulations are as follows:

COMAR 10.32.22 Mandated Reporting to the Board.

.02 Definitions.

B. Terms Defined.

...

(7) "Change" means any of the following actions by a reporting entity:

- (a) Terminating or failing to renew a health care provider's staff privileges or employment or contract with the reporting entity[.]

.03 Mandated Reports.

B. A reporting entity shall inform the Board of any change that has been made, in whole or in part, because the reporting entity had reason to believe that the health care provider:

(2) Provided patient care of questionable quality;

(3) Disrupted the workplace;

(4) Committed unethical or unprofessional conduct;

...

(14) Repeatedly violated hospital bylaws, rules, policies, or procedures after warning; or

(15) Committed any other act or suffered from any other condition which the reporting entity had reason to believe may constitute a violation of the Act.

.05 Time Frames for the Submission of Reports.

B. Allied health providers.

- (1) Except as provided in § B(2) of this regulation, a reporting entity shall file any report required under this chapter within 10 days of any change made with respect to allied health providers.

.06 Enforcement.

- O. If the Board finds after a hearing that a reporting entity failed to file any report required by this chapter, the Board shall issue a final disposition with findings of fact, conclusions of law, and civil penalty. In its final disposition, the Board may impose a civil penalty as follows:

...

- (2) With respect to reports concerning allied health providers:
 - (a) \$500 for the first occurrence in a calendar year; or
 - (b) \$1000 for any subsequent occurrence in a calendar year.

After the Board issued its Notice of Failure to File a Report, dated May 21, 2020, the Respondent agreed to enter into the following Consent Order, consisting of Findings of Fact, Conclusions of Law, Order, and Consent.

FINDINGS OF FACT

The Board finds the following facts:

1. In or around May 2019, the Board initiated an investigation of a

radiographer (the “Radiographer”)¹ after reviewing a Mandated 10-Day Report from a health care facility, which reported that it terminated the Radiographer’s employment after patients complained that he sexually harassed them while he was providing on-site radiographic services. The health care facility recounted two such incidents, occurring in 2018 and 2019, respectively. The Board’s investigation of this matter determined that the Radiographer also sexually harassed other female patients at the health care facility.

2. As part of its investigation, the Board investigated the Radiographer’s prior work and employment history, which included his employment with the Respondent. The Respondent employed the Radiographer from 1999 to 2019. The Respondent terminated the Radiographer’s employment on July 3, 2019 for failing to adhere to proper department procedures through “failing to perform the requested x-ray [of a patient], exposing the patient to unnecessary radiation, not reporting the error that happened, lying about the reason for deleting the image [and] repeatedly lying about what took place.” The Radiographer’s personnel file states that the Radiographer was previously involved in a similar incident in or around May 2019, after which the Respondent “re-educated” the Radiographer and informed him that his failure to comply with department policies could result in corrective action.²

3. After reviewing the above information, Disciplinary Panel A of the Board

¹ For confidentiality reasons, the Radiographer and any health care facilities referenced herein will not be identified by name. The Respondent is aware of the identity of the Radiographer and any health care facilities referenced herein.

² The Respondent was not aware of the sexual harassment allegations to which the Radiographer was subject at the health care facility referenced in ¶ 1 above.

issued an *Order for Summary Suspension* in which it summarily suspended the Radiographer's radiography license, effective January 28, 2020, which the Radiographer did not contest. Panel A also issued disciplinary charges against the Radiographer, dated January 30, 2020. The Radiographer resolved these charges through entering into a Consent Order, dated June 3, 2020, in which he agreed to the revocation of his radiography license.

4. By letter dated January 14, 2020, the Board requested that the Respondent respond to allegations that on or about July 3, 2019, it terminated the Radiographer's employment for failing to adhere to departmental procedures, but failed to report it to the Board as mandated under Health Occ. § 14-5B-15.

5. By letter dated February 28, 2020, the Respondent acknowledged that it terminated the Radiographer's employment but failed to file a report of its action with the Board.

6. The Board's investigation determined that on or about July 3, 2019, the Respondent terminated an employee, the Radiographer, for reasons that might be grounds for disciplinary action under Health Occ. § 14-5B-14 but failed to report this action to the Board within ten (10) days.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent failed to notify the Board within ten (10) days that it terminated the Radiographer's employment for reasons that might be grounds for disciplinary action under the following provisions of Health Occ. § 14-5B-14(a): (3) Is guilty of

unprofessional or immoral conduct in the practice of radiation therapy, radiography, nuclear medicine technology, or radiology assistance; (4) Is professionally, physically, or mentally incompetent; (11) Willfully fails to file or record any report as required under law, willfully impedes or obstructs the filing or recording of a report, or induces another to fail to file or record a report; (14) Knowingly makes a misrepresentation while practicing radiation therapy, radiography, nuclear medicine technology, or radiology assistance; and (18) Fails to meet appropriate standards for the delivery of quality radiation therapy, radiography, nuclear medicine technology, or radiology assistance care performed in any outpatient surgical facility, office, hospital or related institution, or any other location in this State. The Respondent's failure to report the Radiographer's involuntary resignation to the Board within ten (10) days for reasons that might be grounds for disciplinary action under Health Occ. § 14-5B-14, as described above, constitutes a violation of Health Occ. § 14-5B-15.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is, by the Board, hereby:

ORDERED that within **THIRTY (30) DAYS** of the effective date of this Consent Order, the Respondent shall pay to the Board a civil penalty of **FIVE HUNDRED DOLLARS (\$500.00)**. 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 Consent Order is a **PUBLIC DOCUMENT**. See Md. Code Ann., Gen. Prov. §§ 4-101 through 4-601 (2019 Repl. Vol.).

Signature on File

07/13/2020
Date

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

CONSENT

I, Elizabeth Simpson [Agent for the Respondent],
acknowledge that the Respondent has had the opportunity to consult with counsel before signing this document.

By this Consent, the Respondent agrees to be bound by this Consent Order and all its terms and conditions and understand that the Board will not entertain any request for amendments or modifications to any condition.

The Respondent is aware of the right to a hearing before the Board pursuant to COMAR 10.32.22.06 concerning the Notice issued against the Respondent. The Respondent waives this right and has elected to sign this Consent Order instead.

The Respondent acknowledges the validity and enforceability of this Consent Order as if entered after the conclusion of a formal evidentiary hearing in which the Respondent would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on the Respondent's behalf, and to all other substantive and procedural protections as provided by law. The Respondent waives those substantive and procedural

protections. The Respondent acknowledges the legal authority and the jurisdiction of the Board to initiate these proceedings and to issue and enforce this Consent Order.

The Respondent voluntarily enters into and agrees to comply with the terms and conditions set forth in this Consent Order as a resolution of the Notice issued against the Respondent in this case. The Respondent waives any right to contest the Findings of Fact and the Conclusions of Law set out in this Consent Order. The Respondent waives all rights to appeal this Consent Order.

On behalf of the Respondent, I sign this Consent Order without reservation, and I fully understand and comprehend the language and meaning of its terms.

7/1/20
Date

Elizabeth Simpson, General Counsel
Agent for the Respondent (printed name)

Signature on File

Agent for the Respondent (signature)

NOTARY

STATE OF Maryland

CITY / COUNTY OF Montgomery

I HEREBY CERTIFY that on this 1st day of July 2020, before me, a Notary Public of the foregoing State and City/County, personally appeared Elizabeth Simpson [Agent for the Respondent] and made oath in due form of law that signing the foregoing Consent Order was his/her voluntary act and deed.

AS WITNESSETH my hand and notarial seal.



Sandra Nelson-Webber
Notary Public