

IN THE MATTER OF	*	BEFORE THE
KIESA J. SMITH,	*	MARYLAND STATE
Applicant for Reinstatement	*	BOARD OF PHYSICIANS
License #L05115 (expired)	*	CASE NUMBER: 2221-0114A

* * * * *

CONSENT ORDER

On August 16, 2021, Disciplinary Panel A (“Panel A”) of the Maryland State Board of Physicians (the “Board”) issued a notice to **KIESA J. SMITH** (the “Applicant”) of Panel A’s intent to deny her Application for Reinstatement of Respiratory Care Practitioner licensure under the Maryland Respiratory Care Practitioners Act (the “Act”), Md. Code Ann., Health Occ. §§ 14-5A-01 *et seq.* (2014 Repl. Vol. and 2020 Supp.).

The pertinent provisions of the Act provide:

Health Occ. § 14-205. Miscellaneous powers and duties.

- ...
 - (b) *Additional powers.*
 - ...
 - (3) Subject to the Administrative Procedure Act and the hearing provisions of § 14-405 of this title, a disciplinary panel may deny a license to an application for...
 - (i) Any of the reasons that are grounds for action under § 14-5A-17 of this title[.]

Health Occ. § 14-5A-17. Denial, suspension, or revocations of license.

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

- ...
- (17) Is disciplined by a licensing or disciplinary authority or is convicted or disciplined by a court of any state or country or is disciplined by any branch of the United States uniformed services or the Veterans' Administration for an act that would be grounds for disciplinary action under the Board's disciplinary statutes[.]

Grounds for disciplinary action under Health Occ. § 14-5A-17(a)(17), include the following grounds under Health Occ. § 14-5A-17(a):

- ...
- (3) is guilty of unprofessional or immoral conduct in the practice of respiratory care[.]

On December 1, 2021, Panel A was convened as a Disciplinary Committee for Case Resolution ("DCCR") in this matter. Based on negotiations occurring as a result of the DCCR, the Applicant agreed to enter this Consent Order, consisting of the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

Panel A finds:

I. Background

1. On or about December 17, 2008, the Board initially licensed the Applicant to practice respiratory care in the State of Maryland. The Applicant allowed her license to expire on May 30, 2012, without filing for a renewal.

2. On or about October 21, 2019, the Applicant submitted a reinstatement application to the Board. The Board closed the reinstatement application because the Applicant failed to provide documentary evidence that she had retaken and passed the

required National Board for Respiratory Care (“NBRC”) examination prior to October 2019. The Applicant subsequently passed the NBRC examination on or about February 12, 2021.

II. The Application

3. On or about February 19, 2021, the Applicant submitted to the Board an Application for Reinstatement of Respiratory Care Practitioner Licensure (the “Application”).

4. The Applicant answered “YES” to “Character and Fitness” questions 12a, 12b, and 12n, which state:

12a. Has a state licensing or disciplinary board (including Maryland), a comparable body in the armed services or the Veterans’ Administration, denied your application for licensure, reinstatement, or renewal?

12b. Has a state licensing or disciplinary board (including Maryland), a comparable body in the armed services or the Veterans’ Administration, take action against your license? Such actions include, but are not limited to, limitations of practice, required education admonishment or reprimand, suspension, probation or revocation.

12n. Has your employment or contractual relationship with any hospital, HMO, other health care facility, health care provider, institution, armed services or the Veterans’ Administration been terminated for disciplinary reasons?

5. Based on the Applicant’s affirmative responses in her Application, the Board initiated an investigation of the Applicant.

II. The Investigation

6. The Board's investigation determined that the Applicant was subject to prior disciplinary actions by the Virginia Board of Medicine (the "Virginia Board"), and the Delaware Board of Medical Licensure and Discipline (the "Delaware Board").

7. As part of its investigation, Board staff obtained the Applicant's written explanation, verification of certification with the NBRC, the Applicant's National Practitioner Data Bank report, as well as orders from the Virginia Board and the Delaware Board.

8. In her written explanation, the Applicant stated the Board "denied [her 2019 application] for lack of work history." The Applicant further stated that the Virginia Board "reviewed me but my license was not suspended or revoked."

Reprimand, Virginia Board (2014)

9. On or about February 7, 2007, the Virginia Board initially licensed the Applicant to practice respiratory care in the Commonwealth of Virginia.

10. On or about October 16, 2014, the Virginia Board summarily suspended the Applicant's license to practice respiratory care in the Commonwealth of Virginia. This action was taken by the Virginia Board following allegations that the Applicant was "unsafe to practice with safety to her patients and the public due to her use of unprescribed benzodiazepines."

11. A formal administrative hearing was convened before the Virginia Board on or about December 5, 2014. At the hearing, the Virginia Board made the following findings of fact *inter alia*:

- ...
2. After being found asleep while on duty on July 13, 2014, at the facility where she was employed as a respiratory care practitioner, [the Applicant] underwent a “fit for duty” Urine Drug Screen (“UDS”), and the result of the UDS, reported on July 23, 2014, was positive for benzodiazepine. [The Applicant] was asked to produce a legitimate prescription for benzodiazepine by the end of the day, and she failed to do so. As a result, [the Applicant’s] employment at the facility was terminated on July 24, 2014, for violation of the substance abuse policy.
 3. At her hearing, [the Applicant] presented a prescription for lorazepam, originally dated July 1, 2014, and a history of prescriptions filled for clonazepam for March 2013 through May 2013 to the Board.
 - ...
 5. [The Applicant] fully accepted responsibility for her actions and expressed remorse for those actions. The Board heard testimony that there had been no previous episodes of disciplinary actions regarding either misuse of medications or patient care[.]

12. On or about December 10, 2014, the Virginia Board issued an Order reinstating the Applicant’s license to practice respiratory care in the State of Virginia and reprimanded the Applicant.

Suspension, Delaware Board (2019)

13. On or about February 10, 2011, the Delaware Board initially licensed the Applicant to practice respiratory care in the State of Delaware.

14. On or about February 5, 2019, the Delaware Board suspended the Applicant’s license to practice respiratory care in the State of Delaware. This action resulted from a finding by the Delaware Board that the Applicant was required to have completed twenty hours of continuing education (“CE”) during her renewal period, per the applicable Delaware statutes and regulations, but failed to supply proof of having done so pursuant to the Delaware Board’s audit.

15. A hearing was held for which the Applicant failed to appear. The Delaware Board subsequently adopted the Hearing Officer's recommendation that the Applicant's license be suspended until she furnishes proof of having completed the CE hours in addition to a monetary penalty.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, Panel A concludes as a matter of law that the Applicant violated Health Occ. §14-5A-17(a)(17), by being disciplined by a licensing or disciplinary authority...for an act that would be grounds for disciplinary action under the Board's disciplinary statutes.

The underlying grounds for action under Health Occ. §14-5A-17(a)(17) that would be grounds for disciplinary action if committed in Maryland was Health Occ. §14-5A-17(a)(3), guilty of unprofessional or immoral conduct in the practice of respiratory care.

ORDER

It is thus by Disciplinary Panel A of the Board, hereby:

ORDERED that Ms. Smith's reinstatement of her license to practice respiratory care is **GRANTED**; it is further

ORDERED that the Applicant is **REPRIMANDED**; and it is further

ORDERED that the Applicant is placed on **PROBATION** for a minimum of **ONE YEAR**.¹ During probation, the Applicant shall comply with the following terms and conditions of probation:

¹ If the Respondent's license expires during the period of probation, the probation and any conditions will be tolled.

The Applicant shall enroll in the Maryland Professional Rehabilitation Program (MPRP) as follows:

- (a) Within 5 business days, the Applicant shall contact MPRP to schedule an initial consultation for enrollment;
- (b) Within 15 business days, the Applicant shall enter into a Participant Rehabilitation Agreement and Participant Rehabilitation Plan with MPRP;
- (c) the Applicant shall fully and timely cooperate and comply with all MPRP's referrals, rules, and requirements, including, but not limited to, the terms and conditions of the Participant Rehabilitation Agreement(s) and Participant Rehabilitation Plan(s) entered with MPRP, and shall fully participate and comply with all therapy, treatment, evaluations, and screenings as directed by MPRP;
- (d) the Applicant shall sign and update the written release/consent forms requested by the Board and MPRP, including release/consent forms to authorize MPRP to make verbal and written disclosures to the Board and to authorize the Board to disclose relevant information from MPRP records and files in a public order. The Applicant shall not withdraw his/her release/consent;
- (e) the Applicant shall also sign any written release/consent forms to authorize MPRP to exchange with (i.e., disclose to and receive from) outside entities (including all of the Applicant's current therapists and treatment providers) verbal and written information concerning the Applicant and to ensure that MPRP is authorized to receive the medical records of the Applicant, including, but not

limited to, mental health and drug or alcohol evaluation and treatment records.

The Applicant shall not withdraw his/her release/consent;

(f) the Applicant's failure to comply with any of the above terms or conditions including terms or conditions of the Participant Rehabilitation Agreement(s) or Participant Rehabilitation Plan(s) constitutes a violation of this Consent Order; and it is further

ORDERED that a violation of probation constitutes a violation of the Consent Order; and it is further

ORDERED that the effective date of the Consent Order is the date the Consent Order is signed by the Executive Director of the Board or her designee. The Executive Director or her designee signs the Consent Order on behalf of the disciplinary panel which has imposed the terms and conditions of this Consent Order; and it is further

ORDERED that the Applicant is responsible for all costs incurred in fulfilling the terms and conditions of this Consent Order; and it is further

ORDERED that, if the Applicant allegedly fails to comply with any term or condition imposed by this Consent Order, the Applicant shall be given notice and an opportunity for a hearing. If the disciplinary panel determines there is a genuine dispute as to a material fact, the hearing shall be before an Administrative Law Judge of the Office of Administrative Hearings followed by an exceptions process before a disciplinary panel; and if the disciplinary panel determines there is no genuine dispute as to a material fact, the Applicant shall be given a show cause hearing before a disciplinary panel; and it is further

ORDERED that after the appropriate hearing, if the disciplinary panel determines that the Applicant has failed to comply with any term or condition imposed by this Consent Order, the disciplinary panel may reprimand the Applicant, place the Applicant on probation with appropriate terms and conditions, or suspend with appropriate terms and conditions, or revoke the Applicant's license to practice medicine in Maryland. The disciplinary panel may, in addition to one or more of the sanctions set forth above, impose a civil monetary fine on the Applicant; and it is further

ORDERED that this Consent Order is a public document. *See* Health Occ. §§ 1-607, 14-411.1(b)(2) and Gen. Prov. § 4-333(b)(6).

Signature on File

01/06/2022
Date

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

CONSENT

I, Kiesa J. Smith, acknowledge that I have consulted with counsel before signing this document.

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

I assert that I am aware of my right to a formal evidentiary hearing, pursuant to Md. Code Ann., Health Occ. § 14-405 and Md. Code Ann., State Gov't §§ 10-201 *et seq.* concerning the pending charges. I waive this right and have elected to sign this Consent Order instead.

I acknowledge the validity and enforceability of this Consent Order as if entered after the conclusion of a formal evidentiary hearing in which I would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on my behalf, and to all other substantive and procedural protections as provided by law. I waive those procedural and substantive protections. I acknowledge the legal authority and the jurisdiction of the disciplinary panel to initiate these proceedings and to issue and enforce this Consent Order.

I voluntarily enter into and agree to comply with the terms and conditions set forth in the Consent Order as a resolution of the charges. I waive any right to contest the Findings of Fact and Conclusions of Law and Order set out in the Consent Order. I waive all rights to appeal this Consent Order.

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

Signature on File

12-28-2021
Date

Kiesa J. Smith

NOTARY

STATE OF VIRGINIA

CITY/COUNTY OF VIRGINIA Beach

I HEREBY CERTIFY that on this 28th day of December, 2021, before me, a Notary Public of the State and County aforesaid, personally appeared Kiesa J. Smith, and gave oath in due form of law that the foregoing Consent Order was her voluntary act and deed.

AS WITNESS, my hand and Notary Seal.

Vanya Montaner

Notary Public

My Commission Expires: 11/30/2025

