

IN THE MATTER OF * **BEFORE THE**
JAMES LEE, JR., RCP * **MARYLAND STATE**
Respondent * **BOARD OF PHYSICIANS**
License Number: L05215 * **Case Number: 2220-0097**

* * * * *

ORDER OF DEFAULT

On June 22, 2020, Disciplinary Panel A of the Maryland State Board of Physicians (“Board”) charged James Lee, Jr., RCP, with fraudulently or deceptively obtaining or attempting to obtain a license, unprofessional or immoral conduct in the practice of respiratory care, willfully making or filing a false report or record in the practice of respiratory care, and failure to cooperate with a lawful investigation conducted by the Board or a disciplinary panel. *See* Md. Code Ann., Health Occ. § 14-5A-17(a)(1), (3), (10), and (26) (2014 Repl. Vol. & 2019 Supp.). On October 7, 2020, the case was referred to the Office of Administrative Hearings (“OAH”) for an evidentiary hearing.

On October 15, 2020, OAH mailed a Notice of Telephone Scheduling Conference to Mr. Lee and the State, at their respective addresses of record, notifying the parties that a telephone scheduling conference would be held on November 6, 2020, at 9:30 a.m. The Notice mailed to Mr. Lee was not returned as undeliverable. On November 6, 2020, at 9:30 a.m., the ALJ called Mr. Lee five times using the telephone number listed on Mr. Lee’s renewal application, but Mr. Lee did not answer the phone and the voicemail stated that the voice mailbox was full and could not accept any messages. After waiting approximately twenty minutes past the scheduled time for the conference, the ALJ held the scheduling conference in the absence of Mr. Lee. The administrative prosecutor appeared on behalf of the State.

On November 9, 2020, a scheduling order was issued, notifying the parties of the date, time, and location of the prehearing conference, among other things. The scheduling order was mailed to both parties at their addresses of record and the copy mailed to Mr. Lee was not returned as undeliverable. The scheduling order informed the parties that the ALJ would contact Mr. Lee at the same telephone number that was used at the scheduling conference unless he informed OAH that another telephone number was preferred. Mr. Lee never contacted the OAH with a different telephone number.

On November 6, 2020, the notice of telephone prehearing conference was mailed to the parties at their addresses of record informing the parties that the prehearing conference was scheduled for December 4, 2020 at 9:30 a.m. The notice mailed to Mr. Lee was not returned to the OAH as undeliverable. The notice stated that the failure to attend the December 4, 2020 prehearing conference could result in the entry of an Order of Default against any party who failed to appear.

On December 3, 2020, the ALJ notified the parties via email of a family emergency that required postponing the prehearing conference. The administrative prosecutor responded to the email and agreed to postponing the prehearing conference to December 7, 2020 at 9:00 a.m. Mr. Lee did not respond to the email. On December 4, 2020, after the time of the originally scheduled prehearing conference, Mr. Lee called OAH and spoke to a Docket Specialist. The Docket Specialist informed Mr. Lee about the postponement and provided Mr. Lee with the new date and time of the prehearing conference.

On December 7, 2020, the ALJ convened the telephone prehearing conference and called Mr. Lee at the telephone number Mr. Lee provided on his renewal application. The ALJ called Mr. Lee five times and on each occasion the ALJ left a message informing Mr. Lee of the ALJ's

name, the purpose of the call, and that the ALJ would continue to call until 9:15 a.m. Mr. Lee did not answer the phone on any one of the phone calls and after waiting fifteen minutes, the administrative prosecutor moved for an Order of Default.

After the telephone prehearing conference concluded, the Docket Specialist informed the ALJ that Mr. Lee had called and stated that he was still awaiting the telephone call. Mr. Lee did not ask for a postponement or provide a different telephone number where he could be reached. The ALJ found that Mr. Lee had ample opportunity to answer the calls between 9:00 a.m. and 9:15 a.m. and that he failed to attend the prehearing conference.

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.

On December 9, 2020, the ALJ issued a Proposed Default Order. The ALJ found that Mr. Lee had proper notice of the December 7, 2020 prehearing conference and that he failed to appear or participate in the prehearing conference. The ALJ proposed that the Panel find Mr. Lee in default, adopt as findings of fact the statements set out in the allegations of fact section of the charges and conclude as a matter of law that Mr. Lee violated Health Occ. § 14-5A-17(a)(1), (3), (10), and (26) in the manner set forth in the charges. The ALJ proposed that Mr. Lee be reprimanded, ordered to pay a \$500 civil penalty, required to complete his State and Federal CHRC within 45 days to avoid further disciplinary action, and subject to any other disciplinary action that the Board determines is appropriate.

The ALJ mailed copies of the Proposed Default Order to Mr. Lee, the administrative prosecutor, and the Board at the parties' respective addresses of record. The Proposed Default Order notified the parties that they may file written exceptions to the proposed order 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 a copy provided to the opposing party. Neither party filed exceptions. On January 27, 2021, this case came before Disciplinary Panel B ("Panel B") of the Board for final disposition.

FINDINGS OF FACT

Because Panel B concludes that Mr. Lee has defaulted and has not filed exceptions to the ALJ's Proposed Default Order, the following findings of fact are adopted from the ALJ's Proposed Default Order and are deemed proven by the preponderance of the evidence:

1. Mr. Lee was originally licensed to practice respiratory care in the State of Maryland on June 30, 2009, under License Number L05215.
2. On or about May 29, 2018, Mr. Lee submitted an online renewal application using the Board's online renewal application process.
3. When a licensee completed the online application renewal process, he must check a box stating that he has completed a Criminal History Record Check ("CHRC") prior to completing the online application renewal process. The licensee acknowledges in the application that if he fails to complete the CHRC, he or she will face disciplinary action.
4. Prior to proceeding with the application, a pop-up screen appears that informs the licensee that the Board may not renew a license if the Board has not received the licensee's CHRC information, which includes the licensee's submission of the licensee's fingerprints to the Criminal Justice Information Services ("CJIS") before

attempting to proceed with the renewal application. The pop-up notice also informs the licensee that failure to submit CHRC information may result in disciplinary action.

5. Mr. Lee's signed application contains two acknowledgments/affirmations by Mr. Lee that he had completed a CHRC.
6. On May 30, 2018, Board staff received Mr. Lee's State CHRC. It did not receive the Federal CHRC. A representative from CJIS informed Board staff that Mr. Lee had not submitted the necessary fingerprints to initiate the federal CHRC.
7. By e-mail dated March 29, 2019, Board staff informed Mr. Lee that it had not received his CHRC because he had not submitted fingerprints necessary to initiate the federal background check. Board staff attached the fingerprinting instructions to the email and asked Mr. Lee to complete the federal background check. Mr. Lee did not reply to the March 29, 2019 email.
8. By email dated April 5, 2019, Board staff again informed Mr. Lee that the Board did not have his complete CHRC and to contact Board staff as soon as possible to avoid disciplinary action against his license.
9. By letter dated July 29, 2019, Board staff informed Mr. Lee that he has not completed a CHRC and that he was subject to potential disciplinary action. The letter requested that Mr. Lee contact the Board within ten business days. Mr. Lee did not reply to the letter.
10. By letter dated January 2, 2020, sent to Mr. Lee's address of record, Board staff informed Mr. Lee that it has opened a preliminary investigation based upon his lack of response to previous Board communications.
11. Mr. Lee did not respond to the Board's January 2, 2020 letter and has not provided documentation to the Board to establish that he completed the CHRC.

CONCLUSIONS OF LAW

Panel B finds Mr. Lee in default based upon his failure to appear at the OAH for the prehearing conference scheduled for December 7, 2020. *See* State Gov't § 10-210(4). Based upon the foregoing findings of fact, Panel B concludes that Mr. Lee fraudulently or deceptively obtained or attempted to obtain a license, in violation of Health Occ. § 14-5A-17(a)(1); is guilty of unprofessional or immoral conduct in the practice of respiratory care, in violation of Health Occ. § 14-5A-17(a)(3); willfully made or filed a false report or record in the practice of respiratory care, in violation of Health Occ. § 14-5A-17(a)(10); and failed to cooperate with a lawful investigation conducted by the Board or a disciplinary panel, in violation of Health Occ. § 14-5A-17(a)(26).

SANCTION

Panel B adopts the sanction recommended by the ALJ to impose a reprimand and a \$500 fine. The Panel, however, is very concerned that Mr. Lee did not respond to the Board for almost one year prior to the issuance of charges, and still has not completed the CHRC. Accordingly, Panel B will suspend Mr. Lee's license to practice respiratory care until the time when the Board receives Mr. Lee's completed federal and state CHRC.

ORDER

It is, on the affirmative vote of a majority of the quorum of Panel B, hereby

ORDERED that James Lee, Jr., RCP, is **REPRIMANDED**; and it is further

ORDERED that, within **six (6) months**, Mr. Lee shall pay a civil fine of **\$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. The Board will not renew or reinstate Mr. Lee's license if Mr. Lee fails to timely pay the fine to the Board; and it is further

ORDERED that Mr. Lee's license to practice respiratory care in Maryland is **SUSPENDED** until the time when the Board receives Mr. Lee's completed federal and state CHRC; and it is further

ORDERED that upon the Board's receipt of the completed CHRC and payment of the \$500 fine, the disciplinary panel may administratively terminate Mr. Lee's suspension through an order of the disciplinary panel; and it is further

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

Signature on File

04/09/2021
Date

Christine A. Farrelly, Executive Director
Maryland Board of Physicians

NOTICE OF RIGHT TO PETITION FOR JUDICIAL REVIEW

Pursuant to Md. Code Ann., Health Occ. § 14-5A-17.1, Mr. Lee 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 Mr. Lee 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 Darin
Assistant Attorney General
Maryland Department of Health
300 West Preston Street, Suite 302
Baltimore, Maryland 21201**