

IN THE MATTER OF
LIUCHUAN CHEN, RCP

Respondent

License Number: L06578

* BEFORE THE
* MARYLAND STATE
* BOARD OF PHYSICIANS
* Case Number: 2220-0081B

* * * * *

FINAL DECISION AND ORDER

On July 9, 2020, Disciplinary Panel B of the Maryland State Board of Physicians (the "Board") issued Charges under the Maryland Respiratory Care Practitioners Act ("Charges") against the Respondent Liuchuan Chen, R.C.P. The Charges alleged that the Respondent violated the following grounds of the Health Occupations Article:

Health Occ. § 14-5A-17. Denials, suspensions, or revocation of licensee

(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 suspend or revoke a license, if the applicant or licensee:

(1) Fraudulently or deceptively obtains or attempts to obtain a license for the applicant or licensee or for another;

...

(3) Is guilty of unprofessional or immoral conduct in the practice of respiratory care;

...

(10) Willfully makes or files a false report or record in the practice of respiratory care;

...

(26) Fails to cooperate with a lawful investigation conducted by the Board or a disciplinary panel; [and]

...

(28) Fails to complete a criminal history records check under § 14-308.1 of this title^[1]

Health Occ. § 14-308.1. Criminal history records check.

- (a) In this section, "Central Repository" means the Criminal Justice Information System Central Repository of the Department of Public Safety and Correctional Services.
- (b) An applicant, a licensee, or a certificate holder shall apply to the Central Repository for a State and national criminal history records check.
- (c) As part of the application required under subsection (b) of this section, an individual shall submit to the Central Repository:
 - (1) Two complete sets of legible fingerprints taken on forms approved by the Director of the Central Repository and the Director of the Federal Bureau of Investigation;
 - (2) The fee authorized under § 10-221(b)(7) of the Criminal Procedure Article for access to State criminal history records; and
 - (3) The mandatory processing fee required by the Federal Bureau of Investigation for a national criminal history records check.

On September 4, 2020, the case was transmitted to the Office of Administrative Hearings ("OAH") for an evidentiary hearing. In its September 4, 2020, letter to the Respondent, the Board informed her that, if she failed to appear for the prehearing conference, the Administrative Law Judge ("ALJ") could enter a proposed default against her.

On September 21, 2020, OAH sent the parties a Notice of Telephonic Scheduling Conference ("TSC") for this case. The TSC was scheduled for September 28, 2020, at 9:30 a.m. The notices were sent to the parties at their addresses of record and were not returned undeliverable by the United States Postal Service ("USPS").

¹ This Charges contain a typographical error by citing Health Occ. § 14-5A-17(a)(42) instead of Health Occ. § 14-5A-17(a)(28).

On September 28, 2020, at 9:30 a.m., the ALJ called the telephone number supplied by the Board for the Respondent, which came from the Respondent's renewal application. The ALJ reached an answering machine and the ALJ left her name, said that she was calling from OAH, and asked the Respondent to call her assistant. The ALJ then called a second telephone number provided to OAH by the Administrative Prosecutor. The Administrative Prosecutor said that this second telephone number was given to him by the Respondent when he spoke with her several months previous. When the ALJ called this second telephone number, the telephone was picked up, no one answered, and then the call was disconnected by the recipient. The ALJ called again with the same results.

After contacting the OAH Docket Specialist, as well as the ALJ's assistant, to make sure that the Respondent had not contacted them, the ALJ began the TSC on the record. The State was represented by the Administrative Prosecutor from the Health Occupations and Litigation Division of the Maryland Office of the Attorney General, who appeared for the TSC. The Administrative Prosecutor noted that the Respondent told him that she would not participate in the proceedings. The Administrative Prosecutor moved for default because the Respondent failed to appear. The ALJ orally granted the motion for default.

However, after the TSC, in re-reading the Notice of TSC, the ALJ noted that the required language that an absent party could be held in default was missing from the Notice of TSC. The Code of Maryland Regulations ("COMAR") 28.02.01.23A provides, "If, after receiving proper notice, a party fails to attend or participate, either personally or through a representative, in a prehearing conference, hearing, or other stage of a proceeding, the [ALJ] 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." But COMAR 28.02.01.05B(6)

provides that for a notice to be “proper,” it must contain “[a] statement that failure to appear for the scheduled hearing may result in an adverse action against the party.” Therefore, on September 30, 2020, the ALJ wrote to the parties, explaining that she could not grant the Motion for Default at that time. The ALJ further informed the parties to contact her assistant by Friday, October 9, 2020, to confirm receipt of the letter, provide/confirm contact information, and advise as to availability for a Telephone Pre-Hearing Conference (“TPHC”) on specified dates and times. The ALJ also informed the parties that a separate notice of the TPHC would be issued by the OAH and it would contain the information that failure of any party to appear for the scheduled TPHC might result in an adverse action against that party. The September 30, 2020, letter was sent to the parties at their addresses of record and was not returned by USPS.

The Administrative Prosecutor promptly replied to the September 30, 2020, letter. The Respondent did not reply.

On October 9, 2020, OAH mailed a Notice of Telephone Prehearing Conference by first class mail to the parties at their addresses of record, scheduling the TPHC for October 14, 2020, at 9:30 a.m. It noted that failure to attend the TPHC might result in the entry of an Order of Default against any party who failed to appear. The Notice of the TPHC to the Respondent was not returned by USPS and she did not contact OAH to request postponement or to note any difficulty with attending the TPHC.

On October 14, 2020, the ALJ convened the TPHC at 9:30 a.m., the date and time indicated on the TPHC notice. The ALJ called the Respondent at the same phone numbers as she did for the TSC with no answer. The Administrative Prosecutor represented the State. After waiting more than 15 minutes, during which time the Respondent failed to appear, the Administrative Prosecutor moved for an Order of Default. The ALJ found that the Respondent

had adequate notice of the TPHC and that she failed to attend. Board Disciplinary Panel A ("Panel A") adopts these ALJ findings.

On October 26, 2020, the ALJ issued a Proposed Default Order, based upon the OAH proceedings described above, which the ALJ recounted in the proposed order. The ALJ proposed, pursuant to § 10-214(4) of the State Government Article and COMAR 28.02.01.23:

1. that the Respondent be found in default;
2. that the factual allegations be found as factual findings;
3. that the Respondent be found to have violated Health Occ. § 14-5A-17(a)(1), (3), (10), (26), and (28)²; and
4. that the Respondent's license to practice respiratory care in Maryland be revoked.

Copies of the ALJ's Proposed Default Order were mailed to the Respondent, the Administrative Prosecutor, and the Board. The proposed order notified the parties that they may file written exceptions to the proposed decision but must do so within 15 working days of the date of the proposed order. Neither party filed exceptions.

The case came before Panel A for the final disposition.

FINDINGS OF FACT

Because Panel A concludes that the Respondent defaulted, the following findings of fact are adopted from the Allegations of Fact in the Charges and are deemed proven by the preponderance of the evidence:

1. At all times relevant to these charges, the Respondent was licensed to practice respiratory care in the State of Maryland. The Respondent was initially licensed to practice

² The ALJ mistakenly cited Health Occ. § 14-5A-17(a)(42) instead of (28).

respiratory care in Maryland on April 20, 2016, under License Number L06578. The expiration date on the Respondent's license is May 30, 2020.^{3]}

2. On or about April 5, 2018, the Respondent submitted an online application (the "Application") for the renewal of the Respondent's license using the Board's online renewal application process.

3. When a licensee applies online to renew his or her license, the licensee checks a box attesting that he or she has completed a Criminal History Records Check ("CHRC") and acknowledges on the same application that a licensee faces disciplinary action if the licensee fails to comply with the CHRC requirement.

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 his or her fingerprints to the Criminal Justice Information Services ("CJIS") before attempting to proceed with the renewal application. The pop-up notice also notifies the licensee that failure to submit to a CHRC may result in disciplinary action. The Respondent checked the box attesting that she completed the CHRC, when she in fact had not, before proceeding with the Application.

5. The Respondent's signed Application contains two acknowledgements/affirmations by the Respondent that the Respondent had completed a CHRC.

6. By e-mail dated on or about December 13, 2018, Board staff informed the Respondent that the Board had not received the CHRC.⁴ Board staff further informed the

³ By COVID Executive Order, the expiration date was extended until 30 days after the State of Emergency ends. In any case, a license does not lapse while the individual is under investigation or the charges are pending. Health Occ. § 14-403(a).

⁴ Board staff used the e-mail address provided by the Respondent on the Application as the "Official Email Address . . . the board will use for official correspondence."

Respondent that the Respondent had ten business days to submit the CHRC.

7. The Respondent did not reply to the e-mail.

8. By letter dated March 15, 2019, sent to the Respondent's address of record, the Board informed the Respondent that it opened a preliminary investigation based upon the failure to obtain a CHRC for license renewal and the attestation that that the Respondent submitted to a CHRC. The letter notified the Respondent that she was subject to potential disciplinary action and requested that the Respondent submit documentation to the Board to support that the Respondent obtained a CHRC within ten business days.

9. The Respondent did not reply to the letter.

10. By letter dated July 10, 2019, sent to the Respondent's address of record, the Board again notified the Respondent that she was subject to potential disciplinary action and instructed the Respondent to contact the Board and submit evidence that the Respondent obtained a CHRC.

11. The Respondent did not reply to the letter and did not provide documentation to the Board that the Respondent obtained a CHRC before Panel B voted to issue charges.

12. The Respondent defaulted in her proceeding before the ALJ concerning the Charges by failing to participate in the Telephone Pre-Hearing Conference scheduled for October 14, 2020.

CONCLUSIONS OF LAW

Pursuant to the Respondent's default, *see* State Gov't § 10-210(4), Panel A concludes that the Respondent: 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); failed to cooperate with a lawful investigation conducted by the Board, in violation of Health Occ. § 14-5A-17(a)(26); and failed to submit to a criminal history records check under § 14-308.1 of [the Health Occupations Article], in violation of Health Occ. § 14-5A-17(a)(28).

SANCTION

The ALJ proposed that the Respondent's license to practice respiratory care in Maryland be revoked. No exceptions to the ALJ's proposed default order were filed. The Panel finds that revocation is warranted.

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 A, hereby

ORDERED that the license of Liuchuan Chen, R.C.P to practice respiratory care in Maryland is **REVOKED**; and it is further

ORDERED that this is a public document.

Signature on File

12/22/2020
Date

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

NOTICE OF RIGHT TO APPEAL

Pursuant to § 14-5A-17.1(a) of the Health Occupations Article, the Respondent has the right to seek judicial review of this Final Decision and Order. Any petition for judicial review shall be filed within 30 days from the date this Final Decision and Order is mailed. The date of

the cover letter accompanying this Final Decision and Order is the date the decision is mailed. The petition for judicial review shall be made as directed in the Maryland Administrative Procedure Act, Md. Code Ann., State Gov't § 10-222, and Maryland Rules 7-201 *et seq.*

If the Respondent petitions for judicial review, the Board is a party and should be served with the court's process. In addition, the Respondent should send a copy of her petition for judicial review to the Board's counsel, David Wagner, Assistant Attorney General, Office of the Attorney General, 300 W. Preston Street, Suite 302, Baltimore, Maryland 21201. The administrative prosecutor is not involved in the circuit court process and does not need to be served or copied on pleadings filed in circuit court.