

IN THE MATTER OF
FYSAL HENSON, NMT

Respondent

License Number: N01623

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BEFORE THE
MARYLAND STATE
BOARD OF PHYSICIANS
Case Number: 7723-0014

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ORDER AFTER SHOW CAUSE HEARING

The issue in this case is whether Fysal Henson, Nuclear Medicine Technologist (“NMT”), has violated the conditions of the Order After Show Cause Hearing executed on August 23, 2022 (“August 2022 Order”) by the Maryland State Board of Physicians (the “Board”).

The August 2022 Order followed Mr. Henson’s violations of a Disposition Agreement into which he entered with the Board on August 27, 2021, and a Participant Rehabilitation Agreement he signed in September 2021 with the Maryland Professional Rehabilitation Program (“MPRP”). Following notification from MPRP in October and December 2021 that Mr. Henson had failed to comply with his Participant Rehabilitation Agreement on multiple occasions, Panel A issued a Notice of Violation of Board Order and Notice to Show Cause in March 2022 and held a show cause hearing on August 10, 2022. Mr. Henson appeared at that hearing and admitted that he violated his 2021 Disposition Agreement and his Participant Rehabilitation Agreement with MPRP. In the August 2022 Order, Panel A reprimanded Mr. Henson, suspended his license for a minimum of six months, and required him to reenroll and remain compliant with MPRP and to enter into a new Participant Rehabilitation Agreement and Rehabilitation Plan.

FINDINGS OF FACT

Panel A makes the following Findings of Fact:

Background

Mr. Henson was initially licensed as a nuclear medicine technologist in the State of Maryland in May 2016. In 2021, the Board received information that Mr. Henson was convicted of Driving While Intoxicated in 2013 and in 2019. To resolve the Board's concerns, Mr. Henson agreed to enter into a non-public Disposition Agreement with Panel A in lieu of further investigation and potential disciplinary charges for a violation of the Maryland Radiation Therapy, Radiography, Nuclear Medicine Technology, and Radiology Assistance Act.

Disposition Agreement: August 27, 2021

On August 27, 2021, Panel A and Mr. Henson agreed to a non-public Disposition Agreement wherein Mr. Henson agreed to enter into a Board-monitored Participant Rehabilitation Agreement with MPRP. Mr. Henson agreed to fulfill all conditions of the Participant Rehabilitation Agreement. The Agreement also stated:

AGREED, that if the MPRP discharges [Mr. Henson] for unsuccessful completion of the Participant Rehabilitation Agreement or rehabilitation plan, or if [Mr. Henson] fails to comply with any term or condition of this Agreement, this Agreement shall be treated as a public Consent Order, the violation of which authorizes the Board or a Board panel, after notice and an opportunity to be heard, to take any action prescribed under § 14-5B-14(a) of the Maryland [Radiation Therapy, Radiography, Nuclear Medicine Technology, and Radiology Assistance Act], including a reprimand, probation, suspension or revocation of [Mr. Henson's Nuclear Medicine Technologist] license; and/or fine.

On or about September 21, 2021, Mr. Henson enrolled in MPRP and signed a Participant Rehabilitation Agreement.

Violation of August 27, 2021 Disposition Agreement

On October 8, 2021, MPRP notified the Board that Mr. Henson had failed to return certain documentation requested by MPRP in violation of the terms of his Participant Rehabilitation Agreement. In a letter, dated October 12, 2021, the Board notified Mr. Henson that the failure to cooperate and comply with MPRP may result in disciplinary action against his license up to and

including revocation. On December 7, 2021, MPRP notified the Board that Mr. Henson violated his Participant Rehabilitation Agreement on five occasions between October 29, 2021 and December 1, 2021.¹ On December 23, 2021, MPRP notified the Board that they had still not received the requested paperwork from Mr. Henson that was due, at the latest, by October 6, 2021, and informed the Board that Mr. Henson was discharged from MPRP for cause.

First Show Cause Hearing: May 11, 2022

On March 14, 2022, Panel A issued a Violation of Board Order and Notice to Show Cause, alleging that Mr. Henson violated the terms and conditions of the August 27, 2021 Disposition Agreement by failing to comply with the terms of the Participant Rehabilitation Agreement he entered into with MPRP. Panel A mailed the documents to Mr. Henson at his address of record on file with the Board and informed him that a Show Cause hearing was scheduled to take place on **Wednesday May 11, 2022, at 11:15 A.M.**, at the Board's office remotely via the Zoom platform. Before and on May 11, 2022, Board staff repeatedly sent a series of emails to Mr. Henson to facilitate his participation at the scheduled hearing via Zoom. Mr. Henson did not respond to any of the emails and failed to appear at his Show Cause hearing in-person or remotely via Zoom. Panel A proceeded with the Show Cause Hearing. The administrative prosecutor appeared on behalf of the State.

Second Show Cause Hearing: August 10, 2022

Following the Show Cause hearing on May 11, 2022, and prior to the issuance of an Order, Mr. Henson contacted Board staff on May 31, 2022, stating that he had just noticed the email notices sent to him. He told Board staff he moved to Virginia in October 2021 and had not received

¹ The nature of the violation is confidential.

any letters or notices sent by the Board to his Maryland address of record. Mr. Henson admitted that he did not update his address with the Board when he moved.

After verifying Mr. Henson's current mail and email addresses,² Panel A offered Mr. Henson a chance to appear for a second Show Cause hearing scheduled for **Wednesday August 10, 2022**, and gave him the opportunity to show cause why the Panel should not issue further sanctions based on his violations of the August 27, 2021 Disposition Agreement.

The second Show Cause hearing was conducted on August 10, 2022. During his presentation to Panel A, Mr. Henson admitted that he had violated the terms and conditions of his Disposition Agreement and Participation Rehabilitation Agreement. The administrative prosecutor summarized the evidence in support of Mr. Henson's violation and recommended suspension of Mr. Henson's license.

Order After Show Cause Hearing: August 23, 2022

On August 23, 2022, Panel A issued an Order After Show Cause Hearing finding that Mr. Henson violated the August 27, 2021, Disposition Agreement. Panel A terminated the Disposition Agreement, reprimanded Mr. Henson, suspended Mr. Henson's nuclear medicine technology license for a minimum of six months, required him to reenroll in and remain enrolled in MPRP, and to continue in a Participant Rehabilitation Agreement and Participant Rehabilitation Plan until MPRP found and notified the Board that Mr. Henson could safely resume the practice of nuclear medicine technology. The Order explicitly and unambiguously prohibited Mr. Henson from practicing as a nuclear medicine technologist while suspended. In the Order, Panel A:

ORDERED that during the suspension period, Mr. Henson shall **not**:

- (a) practice as a nuclear medicine technologist;

² Mr. Henson confirmed that there had been no change to his email address.

- (b) take any actions to hold himself out to the public as a current provider of nuclear medicine technology services;
- (c) authorize, allow or condone the use of Mr. Henson's name or provider number by any health care practice or any other licensee or health care provider;
- (d) function as a peer reviewer for the Board or for any hospital or other medical care facility in the State; or
- (e) perform any other act that requires an active nuclear medical technologist license.

In addition, the Order stated that:

If Mr. Henson allegedly fails to comply with any term or condition imposed by this Order, Mr. Henson 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, Mr. Henson shall be given a show cause hearing before a disciplinary panel.

Panel A further:

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

On September 20, 2022, Mr. Henson reenrolled in MPRP, and signed a new Participant Rehabilitation Agreement that was in effect from September 20, 2022 to March 20, 2023.

Current Violation

Violation of the August 2022 Order

On February 22, 2023, a representative of a health care facility (the "Facility")³ notified the Board that Mr. Henson had actively worked as a nuclear medicine technologist for the Facility

³ For confidentiality reasons, the name of the Facility will not be disclosed in this Order.

while his license was suspended, and that the Facility terminated his employment for this reason.

The notification stated in part:

I am writing to report a concern. Fysal Henson was hired by [the Facility] as a Nuclear Medicine Technologist on 8/23/2021. At the time of hire and background screening, his license appeared active and without restriction or reprimand. Since hire, the attached occurred in which it appears that he violated orders from MBOP and subsequently had his license suspended effective 8/23/22. In the order it states that he is not allowed to work in a nuclear medicine technologist capacity for a minimum of six months and until remediation of the deficiencies in the order. He did not notify our organization of this action or the suspension and subsequently continued to work actively as a Nuclear Medicine Technologist at our facility until Monday, 2/20/23 when the suspension was discovered. Upon discovery, he was immediately removed from the schedule and suspended, and subsequently terminated today for working with a suspended license.

On February 22, 2023, Mr. Henson telephoned a Board staff person for instructions on reinstating his license. During the conversation, Mr. Henson stated that during his license suspension, he was employed at a gas station and had not been working as a nuclear medicine technologist during the suspension period.

As part of its ensuing investigation into Mr. Henson's compliance with the August 2022 Order, the Board obtained the Facility's human resources file on Mr. Henson. The file documented that from or about August 23, 2022, through on or about February 22, 2023, Mr. Henson worked as a nuclear medicine technologist, either on an on-call basis or at the Facility itself while suspended under the August 2022 Order. The file further documented that the Facility terminated Mr. Henson's employment on or about February 22, 2023.

In a letter dated March 3, 2022, the Board informed Mr. Henson that it had received information he had been actively working as a nuclear medicine technologist at the Facility from August 23, 2022 until February 22, 2023, during the time his license was suspended. The Board requested that Mr. Henson address the matter in a written response. On March 8, 2023, Mr. Henson

responded by acknowledging that he worked as a nuclear medicine technologist at the facility while suspended, claiming that “[d]uring my suspension I was only there a hand full of times.”

On March 20, 2023, MPRP reported to the Board that Mr. Henson was reminded by MPRP during his enrollment process that he was unable to work in Maryland as a nuclear medicine technologist based on the August 2022 Order suspending his license. MPRP also informed the Board that Mr. Henson indicated his understanding of the suspension and that part of his enrollment with MPRP was complying with all aspects of his Order. Because Mr. Henson continued to work as a nuclear medicine technologist during his suspension without disclosing this fact, MPRP informed Mr. Henson that he was not in compliance with his rehabilitation plan and closed his case for cause effective March 20, 2023.

On April 19, 2023, Panel A issued a Violation of Board Order and Notice to Show Cause charging Mr. Henson with violating the August 2022 Order and his Participation Agreement with MPRP. The charges were based on the Board’s investigation revealing that he practiced as a nuclear medicine technologist, held himself out to the public as a current provider of nuclear medicine technology services, and/or performed acts that required an active nuclear medicine technology license, from August 23, 2022, through February 22, 2023, while his license was suspended.

Third Show Cause Hearing: July 12, 2023

On July 12, 2023, Panel A held a show cause hearing at which Mr. Henson appeared. He stated he did not know that his work at the Facility and being on-call as a nuclear medicine technologist from August 23, 2022, through February 22, 2023, were actions that violated the August 2022 Order.

In response, the State summarized and expressed concerns about Mr. Henson's disciplinary history since 2021 and the evidence of his prohibited practice as a nuclear medicine technologist at the Facility throughout his six-month suspension. The State noted that despite Panel A's forbearance regarding Mr. Henson's previous violations of his 2021 Disposition Agreement and rehabilitation agreement with MPRP, Mr. Henson was again before Panel A based on yet another violation of a disciplinary order and MPRP rehabilitation agreement, this time for ignoring the clear prohibition on practicing while suspended. The State further argued that Mr. Henson's non-compliance with Panel A's August 2022 Order warranted a progressive sanction in the hope of deterring any future violations.

Based upon the reports from the Facility and MPRP, and the information presented at the Show Cause hearing, Panel A finds that Mr. Henson failed to comply with the conditions of his August 22, 2022 Order and Rehabilitation Agreement with MPRP.

CONCLUSION OF LAW

Panel A concludes that Mr. Henson violated the August 2022 Order by continuing to practice as a nuclear medicine technologist from August 23, 2022, through February 22, 2023, despite his license being suspended.

SANCTION

The issue of imposing an appropriate sanction requires that the panel consider the specific facts in the entire record, and tailor a sanction accordingly. While Panel A commends Mr. Henson for his rehabilitation efforts since September 2022 while reenrolled in the MPRP rehabilitation plan, Mr. Henson's continued practice during the suspension of his license is of serious concern to Panel A, especially given the previous opportunities granted to him by the panel. Equally disturbing to the panel are Mr. Henson's failure to notify the Facility of his suspension, his

statements to Board staff that he had not been working as a nuclear medicine technologist during his suspension, and his subsequent attempts to trivialize the seriousness of his continued prohibited practice in his written response to Board staff and in his presentation at the Show Cause hearing. Since 2021, Mr. Henson has been given multiple chances to prove to Panel A, by undergoing rehabilitation with MPRP, that he is committed to remediating his conduct. He failed to do so. The panel will not ignore its deterrent function. Neither the public nor the nuclear medicine technology profession would be served if Panel A ignores Mr. Henson's unwillingness or inability to abide by the panel's directives. Accordingly, Panel A will reprimand Mr. Henson and suspend his nuclear medicine technology license for an additional six-month period.

ORDER

It is, on an affirmative vote of a majority of a quorum of Disciplinary Panel A, hereby

ORDERED that the August 23, 2022 Order is terminated; and it is further

ORDERED that Fysal Henson, NMT, is **REPRIMANDED**; and it is further

ORDERED that the nuclear medicine technologist license of Mr. Henson, license number N01623, is **SUSPENDED⁴** for an additional minimum of **SIX (6) MONTHS**; and it is further

ORDERED that during the suspension period, Mr. Henson shall not at any time:

- (a) practice as a nuclear medicine technologist;**
- (b) take any actions to hold himself out to the public as a current provider of nuclear medicine technology services;**
- (c) authorize, allow or condone the use of Mr. Henson's name or provider number by any health care practice or any other licensee or health care provider;**

⁴ Mr. Henson's nuclear medicine technologist license expired on April 30, 2023. The time period of the suspension and the conditions of suspension are tolled until Mr. Henson applies for reinstatement and administratively reinstates his nuclear medicine technologist license under the relevant provisions of COMAR 10.32.10.13B. The additional suspension period and any conditions imposed by this Order will go into effect if and when Mr. Henson's license is administratively reinstated. COMAR 10.32.02.05C(3)(a).

- (d) function as a peer reviewer for the Board or for any hospital or other medical care facility in the State; or
- (e) perform any other act that requires an active nuclear medical technologist license; and it is further

ORDERED that Mr. Henson shall not apply for early termination of suspension; and it is further

ORDERED that a violation of suspension constitutes a violation of this Order; and it is further

ORDERED that, after a minimum of six months has passed and Mr. Henson has fully and satisfactorily complied with all terms and conditions of the suspension, Mr. Henson may submit a written petition to the Board requesting termination of the suspension. Mr. Henson may be required to appear before the disciplinary panel to discuss his petition for termination. After a determination that Mr. Henson has fully and satisfactorily complied with the relevant terms and conditions of the suspension, the disciplinary panel may administratively terminate Mr. Henson's suspension through an order of the disciplinary panel; and it is further

ORDERED that, if Mr. Henson allegedly fails to comply with any term or condition imposed by this Order, Mr. Henson 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, Mr. Henson 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 Mr. Henson has failed to comply with any term or condition imposed by this Order, the disciplinary panel may reprimand Mr. Henson, place Mr. Henson on probation with appropriate terms and

conditions, or suspend or revoke Mr. Henson's license to practice respiratory care in Maryland. The disciplinary panel may, in addition to one or more of the sanctions set forth above, impose a civil monetary fine upon Mr. Henson; and it is further

ORDERED that Mr. Henson is responsible for any costs incurred in fulfilling the terms and conditions of this Order; and it is further

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

ORDERED that this is a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., Health Occ. §§ 1-607 and 14-411.1, and Gen. Prov. § 4-333(b) (2021 Repl. Vol.).

Signature On File

Date

8/10/2023

Ellen Douglas Smith, Deputy Director
Maryland State Board of Physicians