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| IN THE MATTER OF | * | BEFORE THE |
| DAVID H. DING, Radiographer | * | MARYLAND STATE |
| Respondent | * | BOARD OF PHYSICIANS |
| License Number: R04071 | * | Case Number: 2220-0208B |
| * * * * * | * | * * * * * |

CONSENT ORDER

On January 26, 2021, Disciplinary Panel B (“Panel B”) of the Maryland State Board of Physicians (the “Board”) charged David H. Ding, Radiographer (the “Respondent”) with violating the Maryland Radiation Therapy, Radiography, Nuclear Medicine Technology, and Radiology Assistance Act (the “Act”), Md. Code Ann., Health Occ. §§ 14-5B-01 *et seq.* (2014 Repl. Vol. & 2019 Supp.).

Specifically, the Respondent was charged with violating the following:

§ 14-5B-14.

(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... licensee:

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

...
 (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[.]

On April 28, 2021, Panel B was convened as a Disciplinary Committee for Case Resolution (“DCCR”) in this matter. Based on negotiations occurring as a result of this DCCR, the Respondent agreed to enter into this Consent Order, consisting of Findings of Fact, Conclusions of Law, Order, and Consent.

FINDINGS OF FACT

Panel B finds the following:

1. At all times relevant hereto, the Respondent was and is licensed to practice radiography in the State of Maryland. The Respondent was originally licensed to practice radiography in Maryland on December 16, 1994.
2. At all relevant times, the Respondent was employed as a contractual “traveler” employee by a health services staffing company (“Company”).¹ A traveler employee works temporarily at a health care facility to fill a staffing shortage.
3. The term of the Respondent’s contract with the Company was from July 15, 2019 through October 19, 2019.
4. From July 15, 2019 through October 14, 2019 the Respondent worked as a contractual radiographer at a hospital (“Hospital 1”) on the Eastern Shore of Maryland.
5. On or around December 20, 2019, the Board received a complaint from a representative of the Company (“Company representative”) regarding the Respondent.

¹ The names of facilities and individuals are confidential. .

6. The complaint alleged in pertinent part that the Company terminated the Respondent's contract effective October 14, 2019 because he had left his shift several hours early on the evening of October 10, 2019 and had a co-worker ("Radiographer 1") come to the Hospital to work the remainder of his shift.
7. The Board initiated an investigation that included providing the Respondent the opportunity to respond to the complaint, conducting under-oath interviews of the Respondent, Radiographer 1, relevant Hospital staff, the Company representative, and review of relevant records.

The Board's Investigation

8. The Respondent was assigned to the Hospital to perform patient x-rays and CT scans.
9. The Respondent was contracted to work four 10-hour evening shifts a week; the hours of the Respondent's work shift were variable.
10. In addition to his hourly wage, the Respondent was provided a monetary stipend to pay for a hotel at which to stay if his shift ended after midnight.
11. On October 10, 2019, the Respondent was scheduled to work from approximately 2:00 p.m. until 12:00 midnight.
12. For several days prior to October 10, 2019, the Respondent had requested a co-worker ("Radiographer 2") to work the last few hours of his shift so he could go home early.

13. Radiographer 2 was already scheduled to work the overnight shift from 9:00 p.m. to 7:00 a.m. the following day. The Respondent offered to pay Radiographer 2 \$40.00 per hour if she covered the last several hours of his shift.
14. Radiographer 2 declined the Respondent's offer every time he approached her. Radiographer 2 advised the Respondent that she would work the remainder of his shift only if his request to leave early was approved by the unit supervisor.
15. Radiographer 2 also advised the Respondent that it would be illegal for her to work several hours of his shift for him without supervisory approval and that she did not want to risk her job in the event that there was an adverse patient event.
16. Sometime during the day of October 10, 2019, the Respondent telephoned Radiographer 1 and asked her to work his shift from 9:00 p.m. to 12:00 midnight because he wanted to leave early.
17. Radiographer 1 agreed to come to the Hospital and work the remainder of the Respondent's shift.²
18. Radiographer 1 was authorized only to perform x-rays; she was not authorized to perform CT scans.
19. The Respondent was terminated by the Company effective October 14, 2019, prior to the end of his contract on October 19, 2019.
20. During his termination interview the Company representative, the Respondent confirmed that he had paid someone else to clock out for him on October 10, 2019.

² Panel B has charged Radiographer 1 with violating the Act.

When the company representative advised the Respondent that he would not be paid for the three hours on October 10, 2019 that he did not work, the Respondent stated that he had paid the other person and needed the money.

21. In furtherance of the Board's investigation, Board staff requested the Respondent to respond to the complaint. In his response, the Respondent denied that he paid anyone to work for him. The Respondent further denied that he had been terminated by the Company, stating that he had "completed this contract to the end."
22. In furtherance of the Board's investigation, Board staff interviewed Radiographer 1 under oath on June 15, 2020. Radiographer 1 stated that while working the last three hours of the Respondent's shift on October 10, 2019, she performed "very few" x-rays.³ Radiographer 1 further stated that at midnight on October 10, 2019, she used the time clock to "punch out" the Respondent, thereby signifying that the Respondent had completed his shift. Radiographer 1 denied that the Respondent had paid or offered to pay her to work the remainder of his shift.
23. Board staff interviewed the Respondent under oath on June 16, 2020. The Respondent confirmed that he had asked Radiographer 2 to work several hours of his shift on October 10, 2019 because he wanted to go home early.
24. The Respondent denied paying "anyone at the hospital any time for any reason."

³ On March 3, 2020, the Board issued a subpoena to the Hospital for "a list of any and all imaging studies performed by [the Respondent] and/or [Radiographer 1] from October 10, 2019 at 8:30 p.m. to October 11, 12:30 a.m...." Hospital staff responded that there was no documentation that either the Respondent or Radiographer 1 had performed patient examinations or imaging studies during the requested time period. Radiographer 1 was listed as a supporting staff on two studies. Supporting staff transport and move patients.

25. The Respondent stated that when he left the Hospital, he thought he had punched out on the time clock, but:

I guess I didn't punch out twice or whatever. Then while I was driving I called [Radiographer 2]. I say when you have time can you come to the time clock to check to see if I did it right or not? And she say [*sic*], sure. I can do that when I have time. What's your employee ID number? I gave her my employee ID number.

CONCLUSIONS OF LAW

Based upon the findings of fact, Panel B concludes that the Respondent is guilty of unprofessional or immoral conduct in the practice of radiation therapy, radiography, nuclear medicine technology, or radiology assistance, in violation of Health Occ. § 14-5B-14(a)(3); and willfully failed to file or record any report as required under law, willfully impeded or obstructed the filing or recording of a report, or induced another to fail to file or record a report, in violation of Health Occ. § 14-5B-14(a)(11).

ORDER

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

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

ORDERED that the Respondent is placed on **PROBATION** for a minimum of **ONE YEAR**.⁴ During probation, the Respondent shall comply with the following terms and conditions of probation:

⁴ If the Respondent's license expires during the period of probation, the probation and any conditions will be tolled.

1. Within **ONE YEAR**, the Respondent shall pay a civil fine of **\$1,000.00**. 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 the Respondent's license if the Respondent fails to timely pay the fine to the Board; and it is further

2. Within **six months**, the Respondent is required to take and successfully complete a course in ethics. The following terms apply:

(a) it is the Respondent's responsibility to locate, enroll in and obtain the disciplinary panel's approval of the course before the course begins;

(b) the disciplinary panel will accept a course taken in person or over the internet during the state of emergency;

(c) the Respondent must provide documentation to the disciplinary panel that the Respondent has successfully completed the course;

(d) the course may not be used to fulfill the continuing medical education credits required for license renewal;

(e) the Respondent is responsible for the cost of the course; and it is further

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

ORDERED that the Respondent shall not apply for early termination of probation.

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, after the Respondent has complied with all terms and conditions and the minimum period of probation imposed by the Consent Order has passed, the Respondent may submit a written petition for termination of probation. The Respondent may be required to appear before the disciplinary panel to discuss the petition for termination of probation. After consideration of the petition, the Respondent's probation may be administratively terminated through an order of the disciplinary panel if the Respondent has complied with all probationary terms and conditions and there are no pending complaints related to the charges; and it is further

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

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

appropriate terms and conditions, or revoke the Respondent's license to practice radiography 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 Respondent; 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

May 18, 2021
Date

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

CONSENT

I, David H. Ding, Radiographer, 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

5/11/2021
Date

David H. Ding, Radiographer

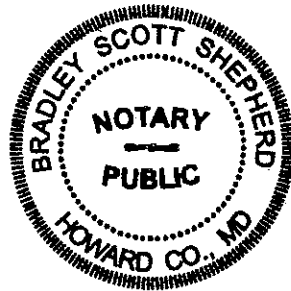
NOTARY

STATE OF: Maryland

CITY/COUNTY OF: Baltimore

I HEREBY CERTIFY that on this 11th day of May, 2021, before me, a Notary Public of the State and City/County aforesaid, personally appeared David H. Ding and made oath in due form of law that the foregoing Consent Order was his voluntary act and deed.

AS WITNESS, my hand and Notary Seal.



[Signature]
Notary Public

My commission expires: 8/22/2021