

IN THE MATTER OF	*	BEFORE THE MARYLAND
Russell A. Milner, Radiographer	*	STATE BOARD OF
Respondent	*	PHYSICIANS
License Number: R04115	*	Case Number: 2217-0100B
* * * * *		* * * * *

FINAL DECISION AND ORDER

PROCEDURAL HISTORY

Russell A. Milner was originally licensed to practice radiography in the State of Maryland, on January 17, 1995. On November 6, 2012, Mr. Milner pled guilty to Second Degree Felony Fraud, in the Superior Court of the District of Columbia, in violation of 22 D.C. Code Sections 3221(b) and 3222(b)(1). On January 25, 2013, Mr. Milner was sentenced to a suspended sentence of twelve months, supervised probation for five years, and ordered to pay \$16,473.00 in restitution. Mr. Milner did not file an appeal and the time for filing an appeal has passed.

On May 2, 2018, the Office of the Attorney General filed with the Board a Petition to Revoke Mr. Milner's license to practice radiography, pursuant to Health Occupations Article § 14-5B-14(c)(2), which provides:

- (2) After completion of the appellate process if the conviction has not been reversed or the plea has not been set aside with respect to a crime involving moral turpitude, a disciplinary panel shall order the revocation of a license on the certification by the Office of the Attorney General.

Attached to the Petition were certified copies of the criminal docket entries, complaint, the judgment entered accepting the plea of guilty, sentencing hearing transcript, and a show cause order mandating that Mr. Milner show cause in writing by June 6, 2018 if there were any reasons why his license to practice radiography should not be revoked.

On June 22, 2018, Mr. Milner, through counsel, filed a response to the Petition and show cause order and requested a hearing.¹ Board Disciplinary Panel B (“Panel B”) declined to grant Mr. Milner’s request for a hearing pursuant to COMAR 10.32.02.07 E(3).

Having reviewed and considered the entire record in this case, Panel B issues this Final Decision and Order.

FINDINGS OF FACT

1. Mr. Milner was originally licensed to practice radiography in the State of Maryland on January 17, 1995.² Mr. Milner’s license is currently active through April 30, 2019.

2. On June 13, 2012, the Assistant United States Attorney, in the Superior Court of the District of Columbia, filed a Complaint charging Mr. Milner with First Degree Felony Fraud in violation of 22 D.C. Code Sections 3221(a) and 3222(a)(1) (Case No. 2012 CF2 017888). The complaint alleged the following:

Commencing on or about June 27, 2009 and continuing thereafter to on or about June 19, 2010, within the District of Columbia, Russell Andre Milner engaged in a scheme and systematic course of conduct with intent to defraud and obtain property of District of Columbia Office of Employment Services by means of false or fraudulent pretense, representation, and promise and thereby obtain property of a value \$1000 or more belonging to District of Columbia Office of Employment Services, consisting of \$16,698 in UI benefits.

According to the Affidavit in Support of An Arrest Warrant, the Affiant, a Special Agent with the D.C. Office of the Inspector General, attested that Mr. Milner was employed full-time as an

¹ Mr. Miller’s counsel requested an extension to file a response, which was granted.

² Mr. Miller allowed his license to expire two times since he was initially licensed on January 17, 1995. He applied for reinstatement of his license on June 17, 2014 and on May 10, 2017. On both reinstatement applications he answered “No” to the question: “Have you ever been charged with or convicted of any criminal act or which you pled nolo contendere, could receive, or did receive, probation before judgment, or were sentenced to probation or confinement?” The Board received notification of Mr. Milner’s criminal convictions through the criminal history records check that Mr. Milner was required to complete as part of his May 10, 2017 reinstatement application. Effective October 1, 2016, pursuant to Health Occupations Article § 14-5B-12(g)(1)(ii), each former licensee who files for reinstatement is required to submit to a criminal history records check.

x-ray technician from June 27, 2009 through June 19, 2010, and therefore he was not entitled to unemployment compensation.

3. On November 6, 2012, Mr. Milner pled guilty to Second Degree Felony Fraud, in violation of 22 D.C. Code Sections 3221(b) and 3222(b)(1).³

4. On January 25, 2013, Mr. Milner was sentenced to twelve months incarceration and three years of supervised release, with the execution of the sentence suspended as to all, supervised probation for five years, and ordered to pay \$16,473.00 in restitution.

5. Mr. Milner did not appeal his conviction, and the guilty plea and conviction have not been set aside.

DISCUSSION

Pursuant to COMAR 10.32.02.07 E(2), a response to a show cause order must be limited to the following issues: “(a) Lack of conviction or plea; (b) Whether the crime is one involving moral turpitude; (c) Misidentity of the respondent with the defendant in the criminal matter; and (d) Other relevant issues, if any, other than mitigation.” Mr. Milner does not deny that he pled guilty to Second Degree Felony Fraud and does not argue that he was misidentified as the defendant in the criminal case. Rather, Mr. Milner asks the panel to conclude that his conviction for Second Degree Felony Fraud was not a crime involving moral turpitude because he committed a fraudulent act by omission and not by an affirmative action. Mr. Milner urges the panel to take disciplinary action on other grounds, such as lying on his reinstatement

³ 22 D.C. Code Section 3221(b) provides: “Fraud in the second degree. — A person commits the offense of fraud in the second degree if that person engages in a scheme or systematic course of conduct with intent to defraud or to obtain property of another by means of a false or fraudulent pretense, representation, or promise.” 22 D.C. Code Section 3222(b)(1) provides: “Fraud in the second degree. — (1) Any person convicted of fraud in the second degree shall be fined not more than the amount set forth in § 22-3571.01 or twice the value of the property which was the object of the scheme or systematic course of conduct, whichever is greater, or imprisoned for not more than 3 years, or both, if the value of the property which was the object of the scheme or systematic course of conduct is \$1,000 or more[.]”

applications, and impose a less severe sanction, which would allow him to continue practicing radiography.

“Although the problem of defining moral turpitude is not without difficulty (citations omitted), it is settled that whatever else it may mean, it includes fraud and that a crime in which an intent to defraud is an essential element is a crime involving moral turpitude. (Citations omitted).” *Attorney Grievance Comm’n of Md. v. Walman*, 280 Md. 453, 459-60 (1977) (quoting *In re Hallinan*, 43 Cal.2d 243, 272 P.2d 768, 771 (1954), appeal after remand, 48 Cal.2d 52, 307 P.2d 1 (1957)). Maryland appellate courts have held that if dishonesty, fraud, or intent to deceive is an essential element of a statute under which a defendant is convicted, the crime involves moral turpitude as a matter of law. *See Board of Physician Quality Assurance v. Felsenberg*, 351 Md. 288, 295 (1998); *Attorney Grievance Comm’n v. Klauber*, 289 Md. 446, 457-59, *cert. denied*, 451 U.S. 1018 (1981); *Walman*, 280 Md. at 459-60; *Oltman v. Maryland State Bd. of Physicians*, 162 Md. App. 453, 485-87, *cert. denied*, 389 Md. 125 (2005).

The Court of Appeals in *Walman* explained that the “inquiry into whether respondent stands convicted of a crime involving moral turpitude necessarily begins with an examination of the criminal statute itself[.]” 280 Md. at 460. Mr. Milner pled guilty to Second Degree Felony Fraud, in violation of 22 D.C. Code Section 3221(b), which provides: “A person commits the offense of fraud in the second degree if that person engages in a scheme or systematic course of conduct with intent to defraud or to obtain property of another by means of a false or fraudulent pretense, representation, or promise.” The essential elements of the crime include the intent to defraud or obtain property under a false or fraudulent pretense, representation, or promise. Because fraud is an explicit element of the crime, Second Degree Felony Fraud is a crime of

moral turpitude *per se* and no further analysis of the facts is required. *See Walman*, 280 Md. at 462.

The Court of Appeals has established that “[a] guilty plea is an admission of conduct that constitutes all the elements of a formal criminal charge” and that “[b]y entering a plea of guilty, the accused is not simply stating that he did the discrete acts described in the indictment; he is admitting guilt of a substantive crime.” *Metheny v. State*, 359 Md. 576, 599 (2000) (internal citations and quotation marks omitted). In pleading guilty, Mr. Milner admitted that his conduct constituted all the elements of the criminal charge.

CONCLUSION OF LAW

Panel B concludes that Mr. Milner’s conviction for Second Degree Felony Fraud is a crime involving moral turpitude. Mr. Milner did not file an appeal of the conviction and the time for filing an appeal has passed. As a result, the revocation of Mr. Milner’s license to practice radiography is required under Health Occ. § 14-5B-14(c)(2).

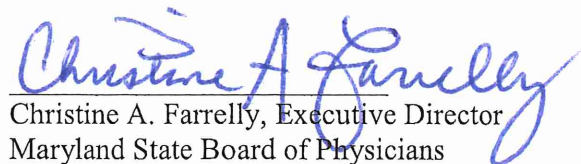
ORDER

It is, thus, by Board Disciplinary Panel B, hereby:

ORDERED that the license of Russell A. Milner, Radiographer, license number R04115, is **REVOKED**; and it is further

ORDERED that this is a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., Gen. Prov. § 4-101 *et seq.* (2014).

08/06/2018
Date


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

NOTICE OF RIGHT TO PETITION FOR JUDICIAL REVIEW

Pursuant to Md. Code Ann., Health Occ. § 14-408, Mr. Milner has the right to seek judicial review of this Final Decision and Order. Any petition for judicial review shall be filed within thirty (30) days from the date of mailing of this Final Decision and Order. The cover letter accompanying this final decision and 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. Milner files a petition for judicial review, the Board is a party and should be served with the court's process at the following address:

**Christine A. Farrelly, Executive Director
Maryland State Board of Physicians
4201 Patterson Avenue
Baltimore, Maryland 21215**

Notice of any petition for judicial review should also be sent to the Board's counsel at the following address:

**Stacey M. Darin, Assistant Attorney General
Office of the Attorney General
Maryland department of health
300 West Preston Street, Suite 302
Baltimore, Maryland 21201**