

IN THE MATTER OF	*	BEFORE THE
TAMMY J. ASHBY, Radiographer	*	MARYLAND STATE
Respondent	*	BOARD OF PHYSICIANS
License Number: R06402	*	Case Number: 2220-0063

\* \* \* \* \*

### FINAL DECISION AND ORDER

#### PROCEDURAL HISTORY

Tammy J. Ashby, Radiographer, was originally licensed to practice radiography in the State of Maryland, on June 21, 2002, under license number R06402. On January 17, 2018, in the District Court of Maryland for Garrett County, Case Number 3X00025259, Ms. Ashby entered an Alford Plea to, and was convicted of, one count of Theft-Scheme: \$10,000 to \$100,000, in violation of Md. Code Ann., Criminal Law Article § 7-104. The Court sentenced Ms. Ashby to eighteen months of incarceration, with all eighteen months suspended, and three years of supervised probation with conditions that included payment of restitution to her former employer in the amount of \$34,433.90.

On April 14, 2020, the Office of the Attorney General filed with the Maryland Board of Physicians (the "Board") a petition to revoke Ms. Ashby's license to practice radiography ("the Petition") pursuant to Md. Code Ann., Health Occupations Article, § 14-5B-14(c)(2). The statute provides:

- (1) On the filing of certified docket entries with the Board by the Office of the Attorney General, a disciplinary panel shall order the suspension of a license if the licensee is convicted of or pleads guilty or nolo contendere with respect to a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside.
- (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.

Md. Code Ann., Health Occupations Article § 14-5B-14. Attached to the Petition were certified copies of the case summary, criminal information, docket entries, trial summary, judgment of restitution, and unauthorized charge list. On May 15, 2020, Ms. Ashby filed a response to the Petition and show cause order.

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

### FINDINGS OF FACT

Panel A finds the following:

1. On August 28, 2017, a criminal information was filed in the District Court of Maryland for Garrett County, charging Ms. Ashby with two counts of Theft-Scheme: \$10,000 to \$100,000 and one count of Embezzlement, in case number 3X00025259.
2. On January 17, 2018, Ms. Ashby entered an Alford Plea to one count of Theft-Scheme: \$10,000 to \$100,000, in violation of Md. Code Ann., Criminal Law Article § 7-104.<sup>1</sup> In exchange for her plea, the remaining charges were *nol prossed*.
3. The facts read into the record at the plea agreement hearing in support of the Alford Plea were as follows:

Your Honor, the State would have called Captain Jeff – former Captain Jeff Murphy from the Sheriff's Office, now retired.

His testimony would have been that on February 10<sup>th</sup> of last year he received a referral from the Oakland City Police Department. It had been reported that Eric Lynn, who would also have been called, Mr. Lynn is the Chief Operating Officer of Allegheny Imaging, which has a location at 259 North Fourth Street in Oakland, here in Garrett County. And that report being that an employee, who would have

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<sup>1</sup> Section 7-104 of the Criminal Law Article provides, in pertinent part:

(a) A person may not willfully or knowingly obtain or exert unauthorized control over property, if the person:

- (1) intends to deprive the owner of the property;
- (2) willfully or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or
- (3) uses, conceals, or abandons the property knowing the use, concealment, or abandonment probably will deprive the owner of the property.

been identified as Tammy Jean Ashby, the Defendant in Court before Your Honor today, had embezzled a significant amount of money utilizing a credit card that she had been authorized to use for work-related expenses through the MRI Center.

Mr. Lynn advised that Ms. Ashby was suspended as of January 26<sup>th</sup>, until a formal investigation had been completed. It had been reported that while being removed from the business on that day, Ms. Ashby had made various admissions to Mr. Lynn and others, having apologized and offered to pay the money back and so forth.

The preliminary figure at that time was \$24,000. The victim in the case is the Oakland MRI Center, which involves personnel from both Allegheny Imaging, as well as the hospital, Garrett Regional Medical Center here.

The case was initiated by way of a confidential report to a hospital administrator that a person, who would have been identified as Ms. Ashby's significant other, had been using a credit card from the MRI Center to purchase alcohol at a local business.

Mr. Lynn and others, in that January 26<sup>th</sup> to February 10<sup>th</sup> time period, began reviewing years and years of records and receipts to determine the misuse of credit cards, to try to sort through things related to the MRI Center, going back to November 2010 and continuing to just before her discharge from employment.

In addition to a Bank of America credit card, monies were also taken by way of a Sam's Club Mastercard and direct withdrawals from bank accounts at First United Bank here in town.

There is a spreadsheet attached here that's been provided to the Court. Note that Mr. Lynn was conservative, as he should have been, in placing items on this spreadsheet. In fact, he didn't include any of the numerous charges at Walmart, Walgreens, Lowe's, places like that, as items that could have been purchased at those locations could conceivably have been for use at the MRI Center.

So the spreadsheet contains purchases for a Rainbow vacuum, which was determined not to be at the MRI Center; Ms. Ashby's Direct TV account; the gift shop at the hospital; liquor stores in Virginia Beach, Virginia; payment of her electric bill; at vapor stores at the Chesapeake Bay; (indiscernible) Auction; Game Stop, and various other places at which it would be difficult to imagine a connection to the Oakland MRI Center. Ms. Ashby's supervisors, including Dr. Stanley Lambert, would testify that none of those were approved expenses.

The list also includes significant charges for fuel. The policy of the MRI Center is to reimburse for the mileage, not pay for fuel.

The total of the embezzled funds is \$34,433.90.

While reviewing those records, Mr. Lynn would testify he found the following: That she had reported the card missing or stolen on a number of occasions and had had a number of transactions reversed by Bank of America. At least one of those coincided with another employee helping with filing and making remarks about some of the charges seen on a credit card statement.

When the payments were made on the credit card account, Ms. Ashby would randomly break down the credit card payments into a number of purportedly legitimate business expense categories that really had no relation to the items charged.

There would have also been testimony that there had never been an attempt to reimburse for any of the personal expenses.

The State's Attorney's Office was involved in the investigation, issued subpoenas to verify information, such as the Sam's Mastercard that had been used for fuel, the Vapor Hut, the liquor store, et cetera. The person who was employed by the MRI Center and who embezzled all those monies was identified as Tammy Ashby, the Defendant before Your Honor.

5. Thereafter, the Court sentenced Ms. Ashby to eighteen months of incarceration, with all eighteen months suspended, and three years of supervised probation with conditions that included payment of restitution to her former employer in the amount of \$34,433.90.
6. Ms. Ashby did not appeal her conviction within the time prescribed by law and the Alford Plea and conviction have not been set aside.

### **DISCUSSION**

Ms. Ashby does not dispute that the crime she was convicted of is a crime involving moral turpitude and admits that she was convicted of a "financially driven felony". Rather, Ms. Ashby states that she did not realize she was required to disclose her conviction to the Board and that her conviction was unrelated to patient care. 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." The

panel has no discretion to consider mitigation and the only issue to decide is whether Ms. Ashby's conviction for Theft-Scheme is a crime involving moral turpitude.

In the licensure context, "[t]he term 'moral turpitude' has been defined generally as importing 'an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men, or to society in general, contrary to the accepted and customary rule of right and duty between man and man.'" *Attorney Grievance Comm'n of Md. v. Walman*, 280 Md. 453, 459 (1977) (quoting *Braverman v. Bar Ass'n of Balt. City*, 209 Md. 328, 344, *cert. denied*, 352 U.S. 830 (1956)). "[I]t is settled that whatever else [moral turpitude] may mean . . . a crime in which an intent to defraud is an essential element is a crime involving moral turpitude. It is also settled that the related group of offenses involving intentional dishonesty for purposes of personal gain are crimes involving moral turpitude[.]" *Id.* at 459-60. When a conviction does not, on its face, establish moral turpitude, the determination of moral turpitude "hinges on the facts present in the individual case at hand." *Id.* at 462. It is well established that "in the context of a licensing board's review of the conduct of its licensee, the concept of moral turpitude is rather broad." *Oltman v. Maryland State Bd. of Physicians*, 162 Md. App. 457, 483 (2005).

Ms. Ashby's conviction for Theft-Scheme: \$10,000 to \$100,000 falls into the category of offenses involving intentional dishonesty for purposes of personal gain. Ms. Ashby used a company credit card to make purchases for her personal use that were not authorized by anyone at the company. The conservative amount of estimated purchases totaled \$34,433.90. Ms. Ashby's actions were deliberate, willful, and with the intent to deceive her employer from whom she embezzled the funds. Ms. Ashby then tried to conceal her actions and the credit card charges to avoid being caught. Ms. Ashby's actions were "intentional, or not innocent in [their] purpose, or not accidental." *Board of Dental Exam'rs v. Lazzell*, 172 Md. 314, 322 (1937).

### CONCLUSION OF LAW

Panel A concludes that Ms. Ashby's conviction for Theft-Scheme: \$10,000 to \$100,000, in violation of Crim. Law § 7-104, is a crime involving moral turpitude. Ms. Ashby did not file an appeal of the conviction and the time for filing an appeal has passed. As a result, the revocation of Ms. Ashby's license to practice radiography is required under Health Occ. § 14-5B-14(c)(2).

### ORDER

It is, by Board Disciplinary Panel A, hereby:

**ORDERED** that the license of Tammy J. Ashby, license number R06402, to practice radiography in Maryland is **REVOKED**, as mandated by Health Occ. § 14-5B-14(c)(2); and it is further

**ORDERED** that this is a **PUBLIC DOCUMENT**. See Md. Code Ann., Health Occ. §§ 1-607, 14-411.1(b)(2) and Gen. Prov. § 4-333(b)(6).

08/24/2020  
Date

***Signature on File***

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. § 14-5B-14.1, Ms. Ashby 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 Ms. Ashby 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 Darin, Assistant Attorney General  
Office of the Attorney General  
Maryland Department of Health  
300 West Preston Street, Suite 302  
Baltimore, Maryland 21201**