

IN THE MATTER OF	*	BEFORE THE
ERIN DARNELL SWANK, Radiographer	*	MARYLAND STATE
Respondent	*	BOARD OF PHYSICIANS
License Number: R09928	*	Case Number: 2217-0006 B

* * * * *

CONSENT ORDER

On June 28, 2017, Disciplinary Panel B (“Panel B”) of the Maryland State Board of Physicians (the “Board”) voted to charge Erin Darnell Swank, Radiographer (the “Respondent”), License Number R09928, under the Maryland Radiation Therapy, Radiography, Nuclear Medicine Technology, and Radiology Assistance Act (the “Act”), Md. Code Ann., Health Occ. II (“Health Occ. II”) §§ 14-5B-01 *et seq.* (2014 Repl. Vol. and 2016 Supp.).

The pertinent provisions of the Act under Health Occ. II § 14-5B-14(a) provide the following:

(a) *In general.* – Subject to the hearing provisions of § 14-405 of this title, the Board, on the affirmative vote of a majority of a quorum of the Board, may deny a license to any applicant, or a disciplinary panel, on the affirmative vote of a majority of a quorum of the disciplinary panel, may reprimand any licensee, place any licensee on probation, or suspend or revoke a license, if the applicant or licensee:

...

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

...

(23) Practices or attempts to practice beyond the authorized scope of practice; [or]

...

(27) Fails to practice under the supervision of a physician or violates a supervisory order of a supervising physician.

Prior to the issuance of formal disciplinary charges, the Respondent agreed to enter into the following public Consent Order, consisting of Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

Panel B makes the following findings of fact:

I. Background

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 10, 2010. The Respondent last renewed her license in or about March 2017, which will expire on April 30, 2019.

2. From in or about September 2014 to on or about February 1, 2017, the Respondent was employed at a hospital in Montgomery County, Maryland ("Hospital A") as an Angio-Technologist in the Interventional Radiology Department. The Respondent was placed on administrative leave by Hospital A on January 31, 2017, in light of the circumstances surrounding these charges. Shortly thereafter, on February 1, 2017, the Respondent voluntarily resigned from her position at Hospital A.

3. From in or about December 2015 to on or about February 1, 2017, the Respondent was also employed "PRN" (as needed) as a radiographer at another hospital in Montgomery County, Maryland ("Hospital B").¹ Since on or about February 2, 2017, the Respondent has been employed full-time as a radiographer at Hospital B.

¹ In order to maintain confidentiality, facility, and employee names are not used in this document. Respondent is aware of the identity of the facilities and employees.

II. Complaint

4. On February 6, 2017, the Board received a "Mandated 10-day Report" (the "Report")² from the Director of Surgical Services (the "Director") at Hospital A. According to the Report:

On January 31, 2017, it was brought to my attention that Erin Swank (IR technician) performed fluoroscopy³ on another employee without a physician's order. The staff member asked that this procedure be completed in order to find a kidney stone. This procedure was unauthorized and exposed the colleague to radiation. This violates the requirement to practice under the supervision of a physician.

5. Following receipt of the Report, the Board initiated an investigation into the Respondent's conduct. In furtherance of its investigation, the Board subpoenaed the Respondent's personnel file from Hospital A and interviewed the Respondent, as well as several employees of Hospital A.

III. Investigation of Complaint

6. On or about March 30, 2017, pursuant to a request for a response to allegations sent by the Board, the Board received a response from the Respondent regarding her performing an unsupervised and unauthorized fluoroscopy procedure conducted on or about January 31, 2017. The Respondent:

- a. Admitted to performing a fluoroscopy on a fellow hospital employee (Employee A) because she asked "to see if she had a kidney stone";
- b. Admitted to not receiving a physician's order or having a physician present for the procedure;
- c. Admitted that she "immediately regretted [her] decision and knew what [she] did was wrong" and "out of [her] scope of practice"; and

² Pursuant to Health Occ. II § 14-5B-15(a), a hospital is required to report to the Board if the hospital limited, reduced or otherwise changed, or terminated any licensee for any reason that might be grounds for disciplinary action under §14-5B-14. The hospital shall submit the report within 10 days of the action.

³ A fluoroscopy is a type of medical imaging that shows a continuous X-ray image on a monitor, much like an X-ray movie. During a fluoroscopy procedure, an X-ray beam is passed through the body.

d. Voluntarily resigned from her position of employment at Hospital A.

7. On or about May 11, 2017, Employee A was interviewed, under oath, by the Board investigator. Employee A:

- a. Worked at Hospital A as a surgical technician;
- b. Admitted to asking the Respondent to perform a fluoroscopy to search for kidney stones because Employee A's insurance did not cover the procedure;
- c. Was not aware of any orders given to the Respondent to perform the fluoroscopy; and
- d. Stated that during the procedure, the clinical supervisor for surgical services at Hospital A (Employee B) entered the Interventional Radiology (IR) room and indicated that the Respondent and Employee A should stop the procedure.

8. On or about April 28, 2017, Employee B, a Registered Nurse, was interviewed, under oath, by the Board investigator. Employee B:

- a. Is the clinical supervisor for surgical services at Hospital A;
- b. Was asked by the Director to "just go and check and see what's going on in IR";
- c. Witnessed Employee A sitting up or laying down on the procedure table;
- d. Reported what she saw to the Director; and
- e. Did not see the Respondent in the IR room with Employee A because her view was blocked by the equipment; but, was later told by the Director that the Respondent was the employee conducting the fluoroscopy.

9. On or about May 22, 2017, the Respondent was interviewed, under oath, by the Board investigator. The Respondent did not dispute any of the statements she made in her written response to the Board. The Respondent:

- a. Admitted to being approached by Employee A and asked to perform a fluoroscopy on Employee A;
- b. Admitted to centering the tube of the imaging machine, pressing the “fluoro pedal” to create the x-ray image of Employee A, and looking at the image; and
- c. Admitted she did not have the requisite order from a physician to perform the fluoroscopy.

IV. Summary

10. The Respondent engaged in unprofessional conduct in the practice of radiography, practiced beyond the authorized scope of practice, and failed to practice under the supervision of a physician by performing a fluoroscopy on a fellow employee without the requisite physician order ordering the performance of the procedure.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, Disciplinary Panel B of the Board concludes as a matter of law that the Respondent violated Health Occ. II § 14-5B-14(a)(3) (unprofessional conduct in the practice of radiography), (a)(23) (practices or attempts to practice beyond the authorized scope of practice, and (a)(27) (fails to practice under the supervision of a physician or violates a supervisory order of a supervising physician).

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is, by a majority of the quorum of Disciplinary Panel B, hereby:

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

ORDERED that within six (6) months, the Respondent shall successfully complete a Board disciplinary panel-approved course in ethics for medical imaging

professionals. The course may not be used to fulfill the continuing education credits required for license renewal. The Respondent must provide documentation to the Board that the Respondent has successfully completed the course; and be it further

ORDERED that if Respondent allegedly failed to comply with any term of this Consent Order, Respondent shall be given notice and an opportunity for a hearing. If 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 and if there is no genuine dispute as to a material fact, the Respondent shall be given a show cause hearing before the Board or Panel B; and it is further

ORDERED that, after the appropriate hearing, if the Board or Panel B determines that the Respondent has failed to comply with any term or condition of this Consent Order, the Board or Panel B may reprimand the Respondent, place the Respondent on probation with appropriate terms and conditions, or suspend or revoke the Respondent's license to practice radiography in Maryland. The Board or Panel B may, in addition to one or more of the sanctions set forth above, impose a civil monetary fine upon the Respondent; 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, unless stated otherwise in the order, any time period prescribed in this order begins when the Consent Order goes into effect. The Consent Order goes into effect upon the signature of the Board's Executive Director, who signs on behalf of Panel B; and it is further

ORDERED that the Consent Order is a public document pursuant to Md. Code Ann., Gen. Prov. §§ 4-101 *et seq.* (2014 & 2015 Supp.).

August 15, 2017
Date

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

CONSENT

I, Erin Darnell Swank, License No. R09928, by affixing my signature hereto, acknowledge that:

1. I knowingly and voluntarily elected not to consult with counsel prior to entering into this Consent Order. By this Consent and for the purpose of resolving the issues raised by the Board, I agree and accept to be bound by the foregoing Consent Order and its conditions.
2. I am aware that I am entitled to a formal evidentiary hearing, pursuant to Md. Code Ann., Health Occ. II § 14-405 (2014 Repl. Vol.) and Md. Code Ann., State Gov't II §§ 10-201 *et seq.* (2014 Repl. Vol.).
3. I acknowledge the validity and enforceability of this Consent Order as if entered into after the conclusion of a formal evidentiary hearing in which I would have the right to counsel, to confront witnesses, to give testimony, to call witnesses on my own behalf, and to all other substantive and procedural protections as provided by law. I am waiving those procedural and substantive protections.
4. I voluntarily enter into and agree to abide by the terms and conditions set forth herein as a resolution of the Charges against me. I waive any right to contest the Findings of Fact and Conclusions of Law and I waive my right to a full evidentiary hearing, as set forth above, and my right to appeal any adverse ruling of a disciplinary panel of the Board that might have followed any such hearing, and any right to appeal this Consent Order.
5. I sign this Consent Order voluntarily, without reservation, and I fully understand and comprehend the language, meaning and terms of this Consent Order.

8-9-17
Date

Erin Darnell Swank
Erin Darnell Swank, Respondent

NOTARY

STATE OF Maryland

CITY/COUNTY OF Washington

I HEREBY CERTIFY that on this 9th day of August, 2017
before me, a Notary Public of the State and County aforesaid, personally appeared Erin
Darnell Swank, License number R09928, and gave oath in due form of law that the
foregoing Consent Order was her voluntary act and deed.

AS WITNESS, my hand and Notary Seal.

Alaina McCurdy
Notary Public

My commission expires 07/08/2021

