

IN THE MATTER OF	*	BEFORE THE MARYLAND
JAMAL A. TOWNES, Radiographer	*	STATE BOARD OF
Respondent	*	PHYSICIANS
License Number: R11859	*	Case Number: 2218-0237A
* * * * *	*	* * * * *

ORDER OF DEFAULT

On September 26, 2018, Disciplinary Panel A of the Maryland State Board of Physicians (“Board”) charged Jamal A. Townes, Radiographer, with unprofessional or immoral conduct in the practice of radiation therapy, radiography, nuclear medicine technology or radiology assistance and failure to cooperate with a lawful investigation conducted by the Board or a disciplinary panel. *See* Md. Code Ann., Health Occ. § 14-5B-14(a) (3) and (26). On November 30, 2018, the case was referred to the Office of Administrative Hearings (“OAH”) for an evidentiary hearing.

On December 14, 2018, OAH mailed a Notice of Scheduling Conference to Mr. Townes and the State, at their respective addresses of record, notifying the parties that a scheduling conference would be held on December 27, 2018 at 9:30 a.m. at OAH in Hunt Valley, Maryland. The notice sent to Mr. Townes was not returned to OAH by the United States Postal Service (“USPS”) as undeliverable. On the day of the scheduling conference, the administrative prosecutor was present on behalf of the State. Mr. Townes did not appear for the scheduling conference, and no one appeared on his behalf. The Administrative Law Judge (“ALJ”) held the scheduling conference in Mr. Townes’s absence. During the scheduling conference, a prehearing conference was scheduled for January 22, 2019, at 1:00 p.m., at OAH.

On January 4, 2019, OAH mailed a Notice of In-Person Prehearing Conference to each party at their respective addresses of record. The notice mailed to Mr. Townes was not returned to OAH by the USPS. The notice informed the parties of the date, time, and location of the prehearing conference and enclosed instructions directing each party to prepare and submit a prehearing statement in advance of the Prehearing Conference. Further, the notice informed the parties that failure to attend the January 22, 2019 prehearing conference could result in a decision against the party for failing to appear.

On January 15, 2019, Mr. Townes requested a postponement of all meetings and court dates. He stated that he had only recently become aware of the proceedings against him and that he was living out-of-state.¹ He explained that he wanted to hire an attorney and that he recently started a new job in New Jersey and did not have the financial means to travel to Maryland. On January 15, 2019, the ALJ denied Mr. Townes's postponement request for failure to state good cause and notified both parties.

Mr. Townes did not appear for the January 22, 2019 prehearing conference, and no one appeared on his behalf. After waiting more than fifteen minutes for Mr. Townes to appear, the ALJ commenced the prehearing conference in his absence. The State moved for a default judgment against Mr. Townes.

Under OAH's rules of procedure, "[i]f, after receiving proper notice, a party fails to attend or participate in a prehearing conference, hearing, or other stage of a proceeding, the judge may proceed in that party's absence or may, in accordance with the hearing authority delegated by the agency, issue a final or proposed default order against the defaulting party." COMAR 28.02.01.23A.

¹ Mr. Townes's address of record, where all notices were sent, is in New Jersey.

On January 24, 2019, the ALJ issued a Proposed Default Order. The ALJ found that Mr. Townes had proper notice of the January 22, 2019 prehearing conference and that he failed to attend or participate in the prehearing conference without good cause. The ALJ proposed that the Panel find Mr. Townes in default, adopt as fact the statements set out in the allegations of fact section of the charges, conclude as a matter of law that Mr. Townes violated Health Occ. § 14-5B-14(a)(3) and (26) in the manner set forth in the charges, and impose any disciplinary sanction that the Panel deemed appropriate.

The Proposed Default Order notified the parties that they may file written exceptions to the proposed order but must do so within 15 days of the date of the Proposed Default Order. The Proposed Default Order stated that any exceptions and request for a hearing must be sent to the Board with attention to the Board's Executive Director. Neither party filed exceptions. On February 11, 2019, the State submitted a Recommendation for Sanction in Lieu of Exceptions, which, recommended that the Panel revoke Mr. Townes's license to practice radiography based on his consistent lack of compliance and manifest lack of interest in responding to the disciplinary charges against him.

Thereafter, the case was forwarded to Board Disciplinary Panel B ("Panel B") for final disposition.

FINDINGS OF FACT

Because Panel B concludes that Mr. Townes has defaulted, the following findings of fact are adopted from the allegations of fact set forth in the September 26, 2018 Charges Under the Maryland Radiation Therapy, Radiography, Nuclear Medicine Technology, and Radiology Assistance Act and are deemed proven by the preponderance of the evidence.

Mr. Townes was originally licensed to practice radiography in Maryland on December 6, 2016. His license is scheduled to expire on April 30, 2019.²

From early 2014 through approximately March 26, 2018, Mr. Townes was employed as a contractual "traveler" employee by a health services staffing company ("Company"). A traveler employee works temporarily at a health care facility to fill a staffing shortage. A traveler employee is required to comply with the regulations and policies of the health care facility where he or she is assigned. From mid-February 2018, until approximately March 21, 2018, Mr. Townes was assigned as a radiographer to the cardiac catheterization laboratory of a hospital ("Hospital") in Baltimore, Maryland.

On or about April 2, 2018, the Board received a complaint from the Company in which it reported that on March 20, 2018, the Hospital had communicated its concerns that Mr. Townes's conduct had changed dramatically, raising concerns that he was working while impaired. Upon receipt of the complaint, the Board initiated an investigation that included issuing to the Company and the Hospital subpoenas for Mr. Townes's employment file, interviewing under oath relevant Hospital and Company staff, requesting from Mr. Townes a response to the complaint and subpoenaing him to be interviewed by Board staff.

On March 20, 2018, the Hospital notified the Company that it was requesting Mr. Townes to undergo a fitness for duty evaluation, including drug screening. The Hospital made the request because Mr. Townes's supervisor had observed a significant change in Mr. Townes's conduct during the previous week that caused her concern. On March 20, 2018, the Company clinical manager ("clinical manager") telephoned Mr. Townes to advise him that he was required

² Mr. Townes's license expired on April 30, 2019. Pursuant to section 14-403 of the Health Occupations Article, the license of an individual regulated by the Board may not "lapse by operation of law while the individual is under investigation or while charges are pending." The Board's investigation and issuance of charges occurred before the expiration of Mr. Townes's license. Therefore, by operation of law, Mr. Townes's license did not expire during these proceedings.

to undergo a fitness for duty evaluation and drug screening. Mr. Townes was reportedly shocked at the request and told the clinical manager that he was currently taking a non-opioid medication that was prescribed by his physician. Mr. Townes agreed to report for drug screening on March 21, 2018. On March 21, 2018, Mr. Townes failed to return a call from the clinical manager regarding the status of the drug screen. On March 22, 2018, the clinical manager confirmed that Mr. Townes had failed to report for drug screening on March 21, 2018. On March 23, 2018, Mr. Townes failed to return a call from the clinical manager. On March 26, 2018, the clinical manager left a telephone message for Mr. Townes that if he continued not to respond to the clinical manager's inquiries, he would be placed in inactive status and the Hospital's concerns would be reported to the Board. Mr. Townes failed to respond to the clinical manager's message.

By letter and email dated June 19, 2018, Board staff requested Mr. Townes to respond to the complaint within 10 business days. On June 19, 2018, Board staff also mailed and emailed to Mr. Townes a Subpoena Ad Testificandum that directed him to appear at the Board on July 18, 2018 to be interviewed by Board staff. On June 26, 2018, Mr. Townes contacted Board staff and stated that he had some questions. Mr. Townes stated that he was surprised that he had been reported to the Board because he had told the Hospital that he had been taking a prescribed medication. Mr. Townes further stated that Board staff "may not believe this" but he "had a situation that was criminal." Mr. Townes explained that he had been unable to appear for the March 21, 2018 drug screening because his apartment had been "surrounded by criminals" who would have attacked him if he had left his apartment. When Board staff inquired whether Mr. Townes had filed a police report to corroborate his account, Mr. Townes replied that he had not because a crime was not actually committed. Mr. Townes further stated that he wanted to say

“screw” the license process and just walk away but thought that he was just “acting on his emotions.”

Mr. Townes told Board staff that he would be in Europe for family-related reasons on July 18, 2018, the date of his Board interview. Board staff advised Mr. Townes that his interview date would not change unless an extension was approved by the Board’s Executive Director. When Board staff requested documentation of his trip, Mr. Townes replied that he had not had a chance to buy his airline ticket but was going to do so that day. Mr. Townes failed to submit documentation of his trip and failed to request a postponement of his Board interview. Mr. Townes failed to appear at the Board on July 18, 2018 to be interviewed by Board staff.

CONCLUSIONS OF LAW

Panel B finds Mr. Townes in default based upon his failure to appear at the Office of Administrative Hearings for the prehearing conference scheduled for January 22, 2019. *See* State Gov’t § 10-210(4). Based upon the foregoing findings of fact, Panel B concludes that Mr. Townes 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 failure to cooperate with a lawful investigation conducted by the Board or a disciplinary panel, in violation of Health Occ. § 14-5B-14(a)(26).

ORDER

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

ORDERED that Jamal A. Townes's license to practice radiography in Maryland

(License No. R11859) is **REVOKED**; and it is further

ORDERED that this is a public document.

Signature on File

06/19/2019
Date

Christine A. Farrelly, Executive Director
Maryland Board of Physicians

NOTICE OF RIGHT TO PETITION FOR JUDICIAL REVIEW

Pursuant to Md. Code Ann., Health Occ. § 14-5B-14.1, Mr. Townes has the right to seek judicial review of this Order of Default. Any petition for judicial review shall be filed within thirty (30) days from the date of mailing of this Order of Default. The cover letter accompanying this 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. Townes files a petition for judicial review, the Board is a party and should be served with the court's process at the following address:

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

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

Stacey Darin
Assistant Attorney General
Maryland Department of Health
300 West Preston Street, Suite 302
Baltimore, Maryland 21201