

IN THE MATTER OF

*

BEFORE THE MARYLAND

UNIVERSITY OF MARYLAND
BALTIMORE-WASHINGTON
MEDICAL CENTER

*

STATE BOARD

*

OF PHYSICIANS

The Respondent

*

Case Number: 2221-0092 B

* * * * *

FINAL ORDER ON FAILURE TO FILE A REPORT

On or about May 24, 2021, the Maryland State Board of Physicians (the “Board”) issued a Notice of Failure to File a Report (the “Notice”) notifying the University of Maryland Baltimore-Washington Medical Center (the “Respondent”) of its failure to comply with the provisions of the Maryland Radiation Therapy, Radiography, Nuclear Medicine Technology, and Radiology Assistance Act (the “Act”), Md. Code Ann., Health Occ. (“Health Occ.”) §§ 14-5B-01 et seq. (2014 Repl. Vol. & 2020 Supp.).

The pertinent provisions of the Act are as follows:

Health Occ. § 14-5B-15 Report.

(a) In general. -- Except as provided in subsections (b) and (d) of this section, hospitals, related institutions, alternative health systems as defined in Section 1-401 of this article, and employers shall file with the Board a report that the hospital, related institution, alternative health system, or employer limited, reduced, otherwise changed, or terminated any licensee for any reason that might be grounds for disciplinary action under Section 14-5B-14 of this subtitle.

....

(e) Time for filing report. -- The hospital, related institution, alternative health system, or employer shall submit the report within 10 days of any action described in this section.

....

(g) Penalties. --

(1) The Board may impose a civil penalty of up to \$1,000 for failure to report under this section.

The pertinent regulations adopted by the Board under COMAR 10.32.22.01 et seq. (2016) are as follows:

COMAR 10.32.22.02 Definitions.

B. Terms Defined.

...

- (4) "Allied health provider" means an individual who is licensed by the Board under Health Occupations Article, Title 14, Subtitles 5A, 5B, 5C, 5E, or Title 15, Annotated Code of Maryland;

COMAR 10.32.22.03 Mandated Reports.

A. Subject to the limitations set out in §§ B, C and D of this regulation, the reporting entity shall report to the Board in writing any change made with respect to a health care provider:

- (1) Whom the reporting entity employs;
- (2) Who works with the reporting entity under contract; or
- (3) To whom the reporting entity has granted privileges.

B. A reporting entity shall inform the Board of any change that has been made, in whole or in part, because the reporting entity had reason to believe that the health care provider:

....

- (3) Disrupted the workplace;
- (4) Committed unethical or unprofessional conduct;

....

- (9) Provided care while under the influence of alcohol or while abusing or misusing any controlled dangerous substance or mood-altering substance; [and/or]

....

- (15) Committed any other act or suffered from any other condition which the reporting entity had reason to believe may constitute a violation of the Acts.

COMAR 10.32.22.06 Enforcement.

....
M. It is not a defense to the allegation of a failure to report that:

(1) An employee of the reporting entity was not aware of:

(a) The change made by the reporting entity; or

(b) The obligation to report[.]

....
O. If the Board finds after a hearing that a reporting entity failed to file any report required by this chapter, the Board shall issue a final disposition with findings of fact, conclusions of law, and civil penalty. In its final disposition, the Board may impose a civil penalty as follows:

....
(2) With respect to reports concerning allied health providers:

(a) \$500 for the first occurrence in a calendar year

The Notice informed the Respondent that if the Respondent did not request a hearing on the Notice within 30 days, the Board would issue a Final Order imposing a fine of up to \$500. On or about June 24, 2021, the Board was notified that the Respondent was not going to contest the Notice.

More than 30 days have passed since the Notice was mailed, and the Respondent has not requested a hearing. Therefore, as indicated in the Notice, the Board issues this Final Order consisting of Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

The Board finds the following facts:

1. On or about September 24, 2020, the Board received an anonymous complaint (the "Complaint") regarding a Maryland licensed radiographer (the

“Radiographer”).¹ The Complaint was dated September 20, 2020, from an individual (the “Complainant”) who worked for the Respondent.

2. The Complainant stated that he/she witnessed the Radiographer “under the influence” at work several weeks prior and called security due to the Radiographer’s erratic and concerning behavior. The Complainant stated that he/she believed the Respondent terminated the Radiographer’s employment and the Complainant had “significant concerns that [the Radiographer] will seek employment elsewhere and exhibit the same behavior, possibly endangering patients and staff.”

3. Based on the information in the Complaint, the Board initiated an investigation.

4. In furtherance of the investigation, Board investigators subpoenaed the Radiographer’s records from the Respondent, conducted under-oath interviews of employees of the Respondent, reviewed surveillance footage of the Radiographer and obtained the Radiographer’s medical records. The investigation revealed the following:

- a. On August 18, 2020, employees for the Respondent found the Radiographer to “not appear to be himself” and observed that the Radiographer had “glassy eyes,” “slurred speech” and a “lack of concentration.”
- b. Multiple employees assisted the Radiographer and tried to determine the cause of the Radiographer’s condition.
- c. The Radiographer was captured on the Respondent’s security camera falling over, stumbling and bumping into a wall on the Mother Baby Unit.

¹ To ensure privacy, the names of certain individuals involved in this case are not disclosed in this document.

- d. On August 18, 2020, the Radiographer was sent for a Fitness for Duty Evaluation and underwent testing.²
- e. The Radiographer tested positive for controlled dangerous substances and, based the results of the testing, the Respondent terminated the Radiographer's employment on or around September 3, 2020.

5. The Respondent failed to report to the Board that it had terminated the Radiographer's employment.

6. On or about January 12, 2021, Board investigators notified the Respondent of its investigation of the Radiographer's termination and requested that the Respondent provide a written response.

7. On or about February 2, 2021, the Board received a written response, received by email, from the Respondent's counsel, stating that "After a thorough and diligent investigation, we have concluded that no 10-day report was filed following [the Radiographer's] termination" due to "inexperience and miscommunication."

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent failed to report to the Board within ten (10) days that, effective September 3, 2020, it had terminated an employee, the Radiographer, at least in part because it had reason to believe that the Radiographer: (3) Disrupted the workplace; (4) Committed unethical or unprofessional conduct; (9) Provided care while under the influence of alcohol or while abusing or misusing any controlled dangerous substance or mood-altering substance; and (15) Committed any other act or suffered from any other

² In order to maintain confidentiality, the test results will not be disclosed in this document.

condition which the reporting entity had reason to believe may constitute a violation of the Act, to wit the following provisions of Health Occ. § 14-5B-14(a): (3) Is guilty of unprofessional or immoral conduct in the practice of radiography; (7) Is addicted to or habitually abuses any narcotic or controlled dangerous substance as defined in § 5-101 of the Criminal Law Article; and (8)(ii) Provides professional services while using any narcotic or controlled dangerous substance as defined in § 5-101 of the Criminal Law Article or any other drug that is in excess of therapeutic amounts or without valid medical indication.

The Respondent's failure to timely report the termination of the Radiographer to the Board, as described above, constitutes a violation of Health Occ. § 14-5B-15.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is, by the Board, hereby:

ORDERED that within **THIRTY (30) DAYS** of the effective date of this Consent Order, the Respondent shall pay to the Board a civil penalty of **FIVE HUNDRED DOLLARS (\$500.00)**. 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; and it is further

ORDERED that the effective date of this Final Order is the date that the Final Order is signed by the Executive Director of the Board or her designee. The Executive Director or her designee signs the Final Order on behalf of the Board which as imposed the terms and conditions of this Final Order; and it is further

ORDERED that this Final 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

06/30/2021
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, the Respondent has the right to seek judicial review of this Final Order. Any petition for judicial review shall be filed within thirty (30) days from the date of mailing of this Final Order. The cover letter accompanying this final 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 the Respondent files a petition for judicial review, the Board is a part 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:

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