

IN THE MATTER OF * **BEFORE THE MARYLAND**
UNIVERSITY OF MARYLAND * **STATE BOARD**
MEDICAL SYSTEM * **OF PHYSICIANS**

Respondent * **Case Number: 2020-0398B**

* * * * *

PRE-NOTICE CONSENT ORDER

On February 26, 2020, the Maryland State Board of Physicians (the “Board”) voted to notify the University of Maryland Medical System (the “Respondent”) of its failure to comply with 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. & 2019 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 § 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 § 14-5B-14 of this subtitle.
- ...
- (b) A hospital, related institution, alternative health system, or employer that has reason to know that a licensee has committed an action or has a condition that might be grounds for reprimand or probation of the licensee or suspension or revocation of the licensure because the licensee is alcohol impaired or drug impaired is not required to report the licensee to the Board if:
 - (1) The hospital, related institution, alternative health system, or

employer knows that the licensee is:

- (i) In an alcohol or drug treatment program that is accredited by the Joint Commission on Accreditation of Healthcare Organizations or is certified by the Department; or
 - (ii) Under the care of a health care practitioner who is competent and capable of dealing with alcoholism and drug abuse;
- (2) (i) The hospital, related institution, alternative health system, or employer is able to verify that the licensee remains in the treatment program until discharge; and
- (ii) The action or condition of the licensee has not caused injury to any person while the licensee is practicing.

(c)(1) If the licensee enters, or is considering entering, an alcohol or drug treatment program that is accredited by the Joint Commission on Accreditation of Healthcare Organizations or that is certified by the Department, the licensee shall notify the hospital, related institution, alternative health system, or employer of the licensee's decision to enter the treatment program.

(2) If the licensee fails to provide the notice required under paragraph (1) of this subsection, and the hospital, related institution, alternative health system, or employer learns that the licensee has entered a treatment program, the hospital, related institution, alternative health system, or employer shall report to the Board that the licensee has entered a treatment program and has failed to provide the required notice.

(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;

...

- (7) “Change” means any of the following actions by a reporting entity;

- (a) Terminating or failing to renew a health care provider’s staff privileges or employment or contract with the reporting entity;

...

- (8) “Failure to report” means the failure of a reporting entity to file a report with the Board as mandated by this chapter;

...

- (20) “Mandated report” means any report required under the Acts or this chapter;

...

- (24) “Reporting entity” means:
(a) A hospital, a related institution, or an alternative health system, as these terms are defined in this regulation[.]

COMAR 10.32.22.03 Mandated Reports.

- 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:

- (4) Committed unethical or unprofessional conduct; [and/or]
- ...
- (9) Provided care while under the influence of alcohol or while abusing or misusing any controlled dangerous substance or mood-altering substance; [and/or]
- ...
- (11) With respect to allied health providers, failed to notify the reporting entity of the health care provider's decision to enter into an alcohol or drug treatment program[.]

C. Specific Changes Not Reportable. The following changes do not require reporting by a reporting entity:

- ...
- (8) With respect to allied health providers and subject to the requirements of §D(1) and (2) of this regulation, entrance into an alcohol or a drug treatment program:
 - (a) That is accredited by the Joint Commission;
 - (b) That is certified by the Maryland Department of Health;
 - (c) To which the allied health provider is referred by the Maryland Physician Health Program or the Maryland Healthcare Professionals Program; or
 - (d) Provided by a health care practitioner who is competent and capable of dealing with alcoholism and drug abuse[.]
- ...

D. Exceptions to § C(8) and (9) of This Regulation.

- (1) Section C(8) of this regulation applies only where:
 - (a) The allied health provider notified the reporting entity at the time the allied health provider decided to enter the program[.]
 - ...
- (2) Section C(8) of this regulation does not apply to:
 - ...
 - (c) Any change made by the reporting entity based on events set out in Regulation .03B which occurred subsequent to the provider's entrance into the alcohol or drug treatment program[.]

COMAR 10.32.22.06 Enforcement.

- 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; or
 - (b) \$1000 for any subsequent occurrence in a calendar year.

Prior to the issuance of a Notice of Failure to File a Report, the Respondent agreed to enter into the following Pre-Notice Consent Order, consisting of Findings of Fact, Conclusions of Law, Order, and Consent.

FINDINGS OF FACT

The Board finds the following facts:

1. The Respondent is a “reporting entity” as defined in COMAR 10.32.22.02.
2. In or around April 2019, the Board initiated an investigation of a radiation therapist (the “Radiation Therapist”)¹ after reviewing the Radiation Therapist’s application (the “Application”) for renewal of her license to practice radiation therapy.
3. The Radiation Therapist is an “Allied health provider” as defined in COMAR

¹ For confidentiality reasons, the Radiation Therapist and any health care facilities referenced herein will not be identified by name.

10.32.22.02.

4. In the Application, the Radiation Therapist answered “yes” to character and fitness questions (f)² and (n)³, stating that she was terminated by the Respondent for “personal reasons.”

5. As part of its investigation, the Board investigated the Radiation Therapist’s prior work and employment history, which included her employment with the Respondent. The Respondent hired the Radiation Therapist in or around May 2016.

6. On or about March 26, 2019, the Radiation Therapist’s supervisor (the “Supervisor”) was informed by another staff member that the Respondent was “nodding off at the treatment console and slurring her words.” The Supervisor then sent the Radiation Therapist to have a Fitness-for-Duty (“FFD”) evaluation based on these observations as well as previous instances of similar conduct. The Supervisor noted that the Radiation Therapist also nodded off during a staff meeting one day during the previous month, and on another occasion had been observed “stumbling around and being clumsy and dropping things.”

7. The FFD evaluation included laboratory testing which confirmed the presence of a controlled dangerous substance in the Radiation Therapist’s system.

² Question (f): Has a hospital, related health care facility, HMO, or alternative health care system denied your application for privileges, or failed to renew your privileges, including your privileges as a resident; or limited, restricted, or revoked your privileges in any way?

³ Question (n): Has your employment or contractual relationship with any hospital, HMO, other health care facility, health care provider, or institution, armed services or the Veterans Administration been terminated for disciplinary reasons?

8. On or about April 8, 2019, the Respondent terminated the Radiation Therapist's employment. This information was not reported to the Board.

9. On or about December 12, 2019, Board staff sent a letter to the Respondent regarding its failure to report the Radiation Therapist's termination to the Board and requesting a written response.

10. On January 6, 2020, the Respondent provided a written response to the Board and acknowledged its "legal duty to report to the Board any changes in the employment status of its licensees for reasons that may be grounds for disciplinary action." The Respondent stated that it believed that the Radiation Therapist's termination was excepted from reporting requirements under the provisions of Health Occ. § 14-5B-15(b). The Respondent stated that when the Radiation Therapist reported for the FFD evaluation on March 26, 2019, she informed the Respondent that she had been participating in a drug treatment program for several years. The Respondent then confirmed the Radiation Therapist's attendance and compliance with her drug treatment program and noted that her conduct did not cause harm to any person or patient while she was practicing. Therefore, it was the Respondent's belief that it "met all three of the elements of the exception to its reporting requirement in Md. Code Ann., Health Occ. §14-5B-15(b).

11. The Respondent's rationale as outlined in its response does not acknowledge the provisions of Health Occ. §14-5B-15(c)(1), which require that a licensee entering, or considering entering into a treatment program, provide notice of this to the licensee's employer. Health Occ. § 14-5B-15(c)(2) requires that if a licensee fails to provide notice as required under subsection (c)(1), and the employer subsequently learns of the licensee's

participation in a treatment program, the employer must notify the Board of the licensee's participation in the program, as well as the licensee's failure to notify the employer of such participation.

12. The licensee's employer in this case – the Respondent - provided no notice to the Board.

13. The Respondent's rationale for its claim of exception also fails to acknowledge the Mandated Reporting requirements as stated in COMAR 10.32.22.03(B)(9), which explicitly requires that the Board be notified of any change made because the Respondent had reason to believe that a health care provider provided care while under the influence of alcohol or while abusing or misusing any controlled dangerous substance. COMAR 10.32.22.03(C)(8) outlines specific changes which are not reportable, including with respect to allied health providers entering into alcohol or drug treatment programs, as the Respondent asserts in its written response. However, COMAR 10.32.22.03(D) outlines exceptions to §C(8), stating that Section C(8) applies only where the health provider notified the hospital at the time they entered the program, which did not occur in this case, according to the Respondent's written statement. COMAR 10.32.22.03(D)(2) states that Section C(8) does not apply to "any change made by the reporting entity based on events set out in Regulation .03B which occurred subsequent to the provider's entrance into the alcohol or drug treatment program." The Respondent's termination of the Radiation Therapist occurred subsequent to the Radiation Therapist's entry into the drug treatment program according to the Respondent's written statement.

14. The Board's investigation determined that in March 2019, the Respondent

investigated an employee, the Radiation Therapist, for reasons involving providing patient care while under the influence of a controlled dangerous substance, and unprofessional conduct. The Respondent learned of the Radiation Therapist's participation in a drug treatment program after her entry into that program. The Respondent failed to report this information to the Board within ten (10) days. The Respondent terminated the Radiation Therapist, effective April 8, 2019. The Respondent failed to report this action to the Board within ten (10) days.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent failed to notify the Board within ten (10) days that it limited, reduced, otherwise changed, or terminated the Radiation Therapist's employment for reasons that might be grounds for disciplinary action under the following provisions of Health Occ. § 14-5B-14(a): (3) Is guilty of unprofessional or immoral conduct in the practice of radiation therapy, radiography, nuclear medicine technology, or radiology assistance; (8) Provides professional services while: (ii) 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 report the Radiation Therapist's participation in drug treatment, as well as the termination of the Radiation Therapist, to the Board within ten (10) days for reasons that might be grounds for disciplinary action under Health Occ. § 14-5B-14, 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 **ONE THOUSAND DOLLARS (\$1,000.00)**. 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 this Consent Order is a **PUBLIC DOCUMENT**. *See* Md. Code Ann., Gen. Prov. §§ 4-101 through 4-601 (2019 Repl. Vol.).

Signature on File

07/27/2020
Date

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

CONSENT

I, Alison G. Brown [Agent for the Respondent],
acknowledge that the Respondent has had the opportunity to consult with counsel before signing this document.

By this Consent, the Respondent agrees to be bound by this Consent Order and all its terms and conditions and understand that the Board will not entertain any request for amendments or modifications to any condition.

The Respondent is aware of the right to a hearing before the Board pursuant to COMAR 10.32.22.06 concerning the Notice issued against the Respondent. The Respondent waives this right and has elected to sign this Consent Order instead.

The Respondent acknowledges the validity and enforceability of this Consent Order as if entered after the conclusion of a formal evidentiary hearing in which the Respondent would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on the Respondent's behalf, and to all other substantive and procedural protections as provided by law. The Respondent waives those substantive and procedural protections. The Respondent acknowledges the legal authority and the jurisdiction of the Board to initiate these proceedings and to issue and enforce this Consent Order.

The Respondent voluntarily enters into and agrees to comply with the terms and conditions set forth in this Consent Order as a resolution of the Notice issued against the Respondent in this case. The Respondent waives any right to contest the Findings of Fact and the Conclusions of Law set out in this Consent Order. The Respondent waives all rights to appeal this Consent Order.

On behalf of the Respondent, I sign this Consent Order without reservation, and I fully understand and comprehend the language and meaning of its terms.

Date

07.23.20

ALISON G. BARLOW
Agent for the Respondent (printed name)

Signature on File

Agent for the Respondent (signature)

NOTARY

STATE OF MARYLAND

CITY / COUNTY OF BALTIMORE CITY

I HEREBY CERTIFY that on this 23 day of July 2020,
before me, a Notary Public of the foregoing State and City/County, personally appeared
Alison Brown [Agent for the Respondent] and made oath in due
form of law that signing the foregoing Consent Order was his/her voluntary act and deed.

AS WITNESSETH my hand and notarial seal.


Notary Public

