

<p>IN THE MATTER OF</p> <p>PHILIP OPOKU, RCP</p> <p>Respondent.</p> <p>License Number L02034</p>	<p>*</p> <p>*</p> <p>*</p> <p>*</p>	<p>BEFORE THE MARYLAND</p> <p>STATE BOARD OF PHYSICIANS</p> <p>Case Number 2017-0349A</p>
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FINAL DECISION AND ORDER

PROCEDURAL HISTORY

Philip Opoku, RCP (“Mr. Opoku”) has held a license to practice as a respiratory care practitioner in the State of Maryland since December of 1994.¹ On May 5, 2017, in the Circuit Court for Frederick County, Maryland, Mr. Opoku pled guilty to Sex Offense in the Fourth Degree, in violation of Md. Code Ann., Crim. Law § 3-308(b)(1).² (Case No. 10-K-17-059694). On May 19, 2017, the Court sentenced Mr. Opoku to a suspended sentence of 180 days and supervised probation for two years, which included conditions such as registering as a Tier 1 sex offender, submitting to a psycho-sexual evaluation, and having no contact with the victim. Mr. Opoku has not filed an appeal of his conviction and the time for filing an appeal has passed.

On September 14, 2017, the Office of the Attorney General filed with the Maryland Board of Physicians (the “Board”) a petition to revoke Mr. Opoku’s license to practice as a respiratory care practitioner (“the Petition”) pursuant to section 14-5A-17(c) of the Health Occupations Article, which 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

¹ Mr. Opoku’s license was summarily suspended on August 31, 2017. Panel A upheld the summary suspension on September 14, 2017.

² Md. Code Ann., Crim. Law § 3-308 states as follows:

- (b) A person may not engage in:

- (1) Sexual contact with another without the consent of the other[.]

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.

Attached to the Petition were certified copies of the docket entries, the statement of charges, case history, transcript of the guilty plea and sentencing hearings, verdict/sentencing forms, and show cause order mandating that Mr. Opoku show cause in writing by October 17, 2017 if there were any reasons why his license to practice respiratory care should not be revoked. To date, the Board has not received a response from Mr. Opoku.

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 facts by a preponderance of the evidence:

1. Mr. Opoku was originally licensed to practice respiratory care in the State of Maryland on December 20, 1994, under License Number L02034, and at all times relevant to the charges in this case, held a license to practice respiratory care in the State of Maryland.
2. On or about November 16, 2016, Mr. Opoku was charged in the District Court of Maryland for Frederick County with one (1) count of Sex Offense in the Fourth Degree, in violation of Md. Code Ann., Crim. Law § 3-308(b)(1); and one (1) count of Assault in the Second Degree, in violation of Md. Code Ann., Crim. Law § 3-203. The charges alleged that on or about November 13, 2016, Mr. Opoku sexually assaulted a female co-worker (“Health Care Worker A”) at a health care facility (“Health Care Facility A”) while he was on duty there as a respiratory care therapist. Mr. Opoku prayed a jury trial on these charges and the case was transferred to the Circuit Court for Frederick County, Maryland.
3. On or about May 5, 2017, Mr. Opoku appeared in the Circuit Court for Frederick County, Maryland, and pleaded guilty to one (1) count of Sex Offense in the Fourth Degree, under Case Number 10K17059694. Pursuant to a plea bargain, the State entered a *nolle prosequi* to the charge of Assault in the Second Degree.
4. At the guilty plea hearing, the following colloquy transpired:

[Prosecutor]: Had the matter proceeded to trial State would have called the victim [Health Care Worker A], several employees of [Health Care Facility A], and Officer Kevin Long of the Frederick County Police Department. The testimony would have established that on November 15th of 2016 at 5:30 p.m. Officer Long responded to [Health Care Facility A] at [address redacted]. The victim, [Health Care Worker A], had reported a sexual assault that occurred against her at her place of employment at [Health Care Facility A]. That assault occurred on November 13th of 2016. So police were called two days later. [Health Care Worker A] said that she was grabbed by Mr. Philip Opoku, Defendant seated before Your Honor today. That she was inside a resident's room on November 13th of 2016, that he grabbed her and pulled her against him and attempted to kiss her and refused to let her go. The supervisors were made aware, Mr. Opoku was subsequently terminated from his employment. [Health Care Worker A] came and spoke to police. She would say that on the 13th of November she was in a patient's room as stated. She was joined in that room by Mr. Opoku, who grabbed her and attempted to hug her. She tried to pull away but he pulled her close to him against his body and tried to kiss her mouth. She stated that she turned her head to the side in an attempt to resist his advances telling him to please stop. She, she said that he told her I've always had a strong attraction to you. She reminded him that she was married to which he said that he and his wife were having issues. [Health Care Worker A] said she continued to pull away from Mr. Opoku. He would not let her go . . . eventually began whispering into her ear, she was unable to hear exactly what he was saying. She shifted her position. She, he began to push against her buttocks with his groin. She could feel an erection against her buttocks through Mr. Opoku's pants. She eventually was able to get out of his grip and left the room. He approached her later. He did say that he was sorry, that he wouldn't do it again, and told her to not tell anyone about the incident. He was interviewed by police and he was also interviewed by [name redacted] of [Health Care Facility A] and he did admit to the allegations against him made by [Health Care Worker A] and said that he wanted to apologize to her. That is the State's case for purposes of the plea.

[The Court]: Any additions or corrections?

[Defense counsel]: No, Your Honor. For purpose of the plea we agree.

[The Court]: You agree the State could prove those facts if they presented their live testimony?

[Defense counsel]: Yes.

[The Court]: Then based upon that I find the Defendant's plea to be knowingly, voluntarily, and intelligently made. I further find Defendant's waiver of his right to a trial by jury is knowingly, voluntarily, and

intelligently made, and I find those facts sufficient to find the Defendant guilty beyond a reasonable doubt to a violation of Criminal Article 3-308(b)(1), a fourth degree sexual offense.

5. On or about May 19, 2017, Mr. Opoku appeared for sentencing in the Circuit Court for Frederick County, Maryland. Mr. Opoku was sentenced to the following: incarceration for 180 days, which was suspended in its entirety; supervised probation for two years, subject to the following probationary conditions: registering as a Tier 1 Sex Offender; submitting to a psycho-sexual evaluation; undergoing and successfully completing any recommended treatment; obeying all laws; paying court costs; no contact with the victim; and obtaining permission prior to leaving the State.
6. Mr. Opoku did not appeal his conviction within the time prescribed by law and the guilty plea and conviction have not been set aside.

DISCUSSION

Mr. Opoku does not dispute that he pled guilty and was convicted of a crime involving moral turpitude, and he has not filed a response to the petition to revoke his license or the order to show cause.

“The 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 M. 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).

Health Occ. § 14-5A-17(c) grants a disciplinary panel of the Board the authority and, at the same time, gives the panel discretion to determine whether a crime involves moral turpitude for licensing and disciplinary purposes. In Mr. Opoku's case, the crime of fourth degree sex offense does not, on its face, establish that the crime involves moral turpitude. In determining whether this crime involves moral turpitude, Panel A must consider “the facts present in the individual case at hand.” *Walman*, 280 Md. at 462.

The Court of Appeals has established that “[a] guilty plea is an admission of conduct that constitutes all the elements of a formal criminal charge” and that “[b]y entering a plea of guilty, the accused is not simply stating that he did the discrete acts described in the indictment; he is admitting guilt of a substantive crime.” *Metheny v. State*, 359 Md. 576, 599 (2000) (internal citations and quotation marks omitted). A guilty plea “also serves as a stipulation that no proof by the prosecution need [be] advanced. . . . It supplies both evidence and verdict, [thus] ending [the] controversy.” *Id.*

Mr. Opoku entered a guilty plea to fourth degree sex offense. His conduct in engaging in sexual contact with Health Care Worker A without her consent undermines the public's confidence in the respiratory care profession. *See Stidwell v. Maryland State Bd. Of Chiropractic Exam'rs*, 144 Md. App. 613, 619 (2002) (a criminal offense that undermines the public's confidence in a profession may be a crime of moral turpitude if so determined by the appropriate licensing board). Mr. Opoku's admitted sexual assault of an employee at his workplace while he was on duty working as a respiratory care practitioner meets the “base, vile, and shameful” definition of moral turpitude. *Id.*

CONCLUSIONS OF LAW

Based on the above-discussion, Panel A concludes that Mr. Opoku's conviction for Fourth Degree Sex Offense is a crime involving moral turpitude. As a result, Health Occ. § 14-5A-17(c)(2), requires Panel A to order the revocation of Mr. Opoku's license to practice respiratory care.

ORDER

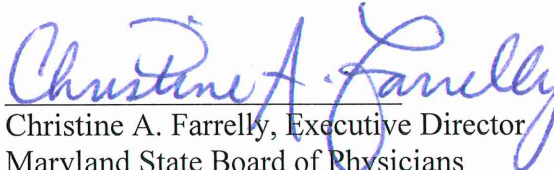
It is, by Board Disciplinary Panel A, hereby:

ORDERED that the license of Philip Opoku, RCP, license number L02034, is **REVOKED**; and it is further

ORDERED that the summary suspension is terminated as moot; and it is further

ORDERED that this is a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., Gen. Prov. § 4-101 *et seq.* (2014).

12/22/2017
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, Mr. Opoku 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 Mr. Opoku 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 M. Darin, Assistant Attorney General
Office of the Attorney General
Department of Health and Mental Hygiene
300 West Preston Street, Suite 302
Baltimore, Maryland 21201**