

IN THE MATTER OF

\* BEFORE THE

ALAN ROSENTHAL

\* MARYLAND STATE

Respondent

\* BOARD OF PHYSICIANS

License Number: unlicensed

Case Number: 2014-0373

\* \* \* \* \*

**CONSENT ORDER**

On April 14, 2014, Disciplinary Panel A of the Maryland State Board of Physicians (the "Board") charged Alan Rosenthal (the "Respondent"), an unlicensed individual, under the Maryland Radiation Therapy, Radiographer, Nuclear Medicine Technology and Radiology Assistant Act (the "Act"), Md. Code Ann. Health Occ. ("H.O.") §§ 14-5B-01 *et seq.* (2009 Repl. Vol. & 2013 Supp.).

The pertinent provisions of the Act provide as follows:

**14-5B-17. Unauthorized practice prohibited.**

- ...
- (c) *Radiography.* – Except as otherwise provided in this subtitle, a person may not practice, attempt to practice, or offer to practice radiography in this State unless licensed to practice radiography by the Board[.]<sup>1</sup>

The Board's regulations provide:

**10.32.10.09 Scope of Practice – Radiography.**

A. The scope of practice of radiography includes the following:

- ...
- (3) Selection, preparation and operation of radiography equipment and accessories to perform procedures;
- (4) Positioning patient to best demonstrate anatomy of interest, while respecting patient's physical limitations and comfort;
- (5) Determination of radiographic exposure factors, settings of factors on control panel, and application of x-ray exposures;

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<sup>1</sup> Exceptions to the licensure requirement do not apply to this case.

(6) Application of radiation protection principles to minimize radiation exposure to patient, self, and others;

(9) Oversight of image processing standards and the appropriate labeling of images[.]

On June 11, 2014, a conference with regard to this matter was held before Panel A of the Board's Disciplinary Committee for Case Resolution Conference ("DCCR"). As a result of the DCCR, the Respondent agreed to enter into this Consent Order, consisting of Findings of Fact, Conclusions of Law and Order.

### **FINDINGS OF FACT**

1. The Respondent is not and never has been licensed to practice radiography or any other health occupation in the State of Maryland.
2. The Respondent received a limited radiologic technologist license in Virginia in 1997. That license expired on July 31, 1999.
3. The Respondent has a paramedic technology degree from a Maryland community college.
4. The Respondent is the owner of a walk-in urgent care facility ("Facility")<sup>2</sup> in Potomac, Maryland. The Respondent opened the Facility in 2001.
5. On or about October 23, 2013, the Board received a complaint from an individual then employed by the Respondent alleging that the Respondent was engaged in the unlicensed practice of radiography. Specifically, the complainant, who received his Maryland radiographer license in October 2013, alleged that the

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<sup>2</sup> Names of individuals and facilities are confidential.

Respondent was "actively shooting radiographs during the week without Maryland license or national certification."<sup>3</sup>

6. Upon receipt of the complaint, Panel A of the Board initiated an investigation.
7. In furtherance of its investigation, Board staff conducted an unannounced visit of the Facility and delivered a copy of the complaint and subpoenas for radiographs and a list of Facility personnel who were employed since 2011.
8. Board staff interviewed the complainant, physicians employed by the Respondent, the Facility office manager and the Respondent. Board staff also obtained radiographs and billing records for a number of patients.
9. When interviewed by Board staff, the complainant stated that he had assumed that the Respondent was a licensed radiographer, but after reviewing the Board and American Registry of Radiologic Technologists ("ARRT") websites, learned that he was not licensed. The complainant further stated that in early 2013, he had told the Respondent and the Facility's office manager that it was illegal to practice radiography without a license. The complainant stated that the Respondent continued to take radiographs thereafter.
10. The complainant stated that when the Respondent took radiographs, he used radiograph markers with his (the Respondent's) initials on them. Review of the radiographs obtained by the Board verified the complainant's statement.
11. Interviews of four physicians who were employed by the Respondent to staff the Facility revealed that during their employment, the Respondent, when given an order for a radiograph, had taken patients back to the radiograph room, took

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<sup>3</sup> The complainant had worked at the Facility every other weekend for approximately two and a half years, initially as a medical assistant and, after his licensure, as a radiographer, until his resignation in December 2013.



radiographs and walked the patient out of the radiograph room. One of the physicians had observed the Respondent positioning patients.

12. The office manager stated that the Facility employed a radiographer, the complainant, only on weekends. She further stated that the Facility had an agreement with a separate radiology center ("Center A"), located approximately one and a half blocks from the Facility, for reading and confirmation of radiographs.
13. Interviews of other employees revealed that patients were referred to Center A for radiographs when the Respondent was not present at the Facility, but that the Respondent took patient radiographs when he was present.
14. The office manager stated that the Respondent had told her that he was authorized to take radiographs in Maryland based on his license in Virginia and his paramedic training.
15. When interviewed by Board staff, the Respondent stated that he does not maintain a log of who took patient radiographs. He stated, "[y]ou can tell by the day..." who took a radiograph.
16. The Respondent stated that it was a "misconception" that he was taking radiographs based on the use of markers with his initials, because the markers are used by "everybody who's worked for me as an x-ray tech" and the markers are used only to indicate left and right.
17. The Respondent initially stated that he operated the radiography machine "a couple of times when the doctor was tied up." He estimated that he had done so "[i]n the 13 years, four or five times." The Respondent stated that because he

had been licensed in Virginia, he "didn't see any reason...why I couldn't push the button. I made a mistake."

18. When asked if he positioned patients, the Respondent stated, "I was told that in Maryland I'm allowed to position a patient and the doctor has to actually push the buttons."
19. When specifically asked how often he positioned patients for radiographs, the Respondent stated "maybe three or four x-rays a week." The Respondent continued to maintain that the Facility physicians "pushed the button;" however, only one of the physicians stated that he had done so, and then only rarely when the Respondent was having difficulty positioning a patient. The other physicians stated that they were not involved with the taking of patient radiographs.
20. The Respondent acknowledged that he took radiographs and had been aware that he was required to be licensed to do so.
21. Patients whose radiographs were taken at the Facility, either by the Respondent or the complainant, were billed for those services.

#### **CONCLUSION OF LAW**

Based on the foregoing Findings of Fact, Disciplinary Panel A finds as a matter of law that the Respondent engaged in the unauthorized practice of radiography, in violation of H.O. § 14-5B-17(c).

#### **ORDER**

Based on the foregoing Findings of Fact and Conclusion of Law, it is, by Disciplinary Panel A, hereby

**ORDERED** that the Respondent shall pay a monetary fine in the amount of \$2,500.00 to be paid in full to the Board by certified or bank guaranteed check made payable to the Maryland State Board of Physicians in twelve (12) equal monthly installments, with the first installment due thirty (30) days after this Consent Order is executed; and it is further

**ORDERED** that the Consent Order is considered a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., State Gov't § 10-611 *et. seq.* (2009 Repl. Vol. and 2013 Supp.).

8/6/2014

Date

Christine A. Farrelly

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

I HEREBY ATTEST AND CERTIFY UNDER PENALTY OF PERJURY ON 8/6/14 THAT THE FORGOING DOCUMENT IS A FULL, TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE IN MY OFFICE AND IN MY LEGAL CUSTODY.

Christine A. Farrelly  
EXECUTIVE DIRECTOR  
MARYLAND BOARD OF PHYSICIANS

**CONSENT**

I, Alan Rosenthal., acknowledge that I am represented by counsel and have consulted with counsel before entering this Consent Order. By this Consent and for the purpose of resolving the issues raised by Disciplinary Panel A, I agree and accept to be bound by the foregoing Consent Order and its conditions.

I acknowledge the validity of this Consent Order as if entered into after the conclusion of a formal evidentiary hearing in which I would have had 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 provided by the law. I agree to forego my opportunity to challenge these allegations. I acknowledge the legal authority and jurisdiction of Disciplinary Panel A to initiate these proceedings and to issue and enforce this Consent Order. I affirm that I am waiving my right to appeal any adverse ruling of a disciplinary panel of the Board that I might have filed after any such hearing.

I sign this Consent Order after having an opportunity to consult with counsel, voluntarily and without reservation, and I fully understand and comprehend the language, meaning and terms of the Consent Order.

7-24-14  
Date

Alan Rosenthal  
Alan Rosenthal  
Respondent

**NOTARY**

STATE OF MARYLAND  
CITY/COUNTY OF MONTGOMERY

I HEREBY CERTIFY that on this 25 day of July 2014, before me, a Notary Public of the foregoing State and City/County, personally appeared Alan Rosenthal and made oath in due form of law that signing the foregoing Consent Order was his voluntary act and deed.

AS WITNESSETH my hand and notarial seal.

[Signature]  
Notary Public

My Commission Expires  
June 1, 2016