

IN THE MATTER OF

\*

BEFORE THE MARYLAND

WILLIAM S. ARNOLD, JR., P.A.-C

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STATE BOARD OF PHYSICIANS

Respondent.

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Case Number 2015-0106(B)

License Number C02873

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**FINAL DECISION AND ORDER**

**PROCEDURAL HISTORY**

William S. Arnold, Jr., P.A.-C (“Mr. Arnold”) has held a license to practice as a physician assistant in the State of Maryland since January of 2004. On May 13, 2013, in the Court of Common Pleas of York County, Pennsylvania, Mr. Arnold pled guilty to two counts (counts 25 and 26) of Possession of Instruments of a Crime, in violation of 18 PA. CONS. STAT. ANN. § 907(a). (Case No. CP-67-CR-0005581-2010). Specifically, counts 25 and 26 of the indictment charged Mr. Arnold with possessing a computer hard drive and multiple compact discs that contained images and videos of child pornography, with the intent to employ them criminally.

The Court sentenced Mr. Arnold to 6 to 23 months in the York County prison, as to count 25 and five years of supervised probation, consecutive to the jail sentence, as to count 26. The Court imposed sex offender conditions as part of the probation, restricted Mr. Arnold’s access to the internet and children other than his own daughter, and ordered the forfeiture of the computer, discs, and files that were seized.

On April 20, 2015, the Office of the Attorney General filed with the Maryland Board of Physicians (the “Board”) a petition to revoke Mr. Arnold’s license to practice as a physician assistant (“the Petition”) and show cause order pursuant to section 15-314(b) of the Maryland Physician Assistants Act. The statute 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 physician assistant is convicted of or pleads guilty or nolo contendere with respect 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.

MD. CODE ANN., HEALTH OCC. (“Health Occ.”) § 15-314(b). Attached to the Petition were certified copies of the criminal complaint with affidavit of probable cause, docket entries, guilty plea colloquy, transcript of the plea agreement and sentencing hearing, sentencing order, pre-parole investigation and order, and transcript of the sentence modification hearing.

On May 22, 2015, Mr. Arnold, through his counsel, filed a response to the Petition and show cause order and requested a hearing. Board Disciplinary Panel B (“Panel B”)<sup>1</sup> declined to grant Mr. Arnold’s request for a hearing pursuant to COMAR 10.32.02.07 E(3).

Having reviewed and considered the entire record in this case, Panel B issues this Final Decision and Order.

### **FINDINGS OF FACT**

Panel B finds the following facts by a preponderance of the evidence:

1. Mr. Arnold was initially licensed to practice as a physician assistant in the State of Maryland on January 20, 2004, and at all times relevant to the charges in this case, Mr. Arnold has held a license to practice as a physician assistant in the State of Maryland.
2. On October 22, 2010, Mr. Arnold was arraigned in the Court of Common Pleas of York County, Pennsylvania (Case No. CP-67-CR-0005581-2010) and charged with one count of dissemination of child pornography, twenty three counts of possession of child pornography, and two counts of possession of instruments of a crime.

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<sup>1</sup> In 2013, the Board was divided into two disciplinary panels to resolve allegations of grounds for disciplinary action against a licensed allied health professional. Health Occ. § 15-101(i-1), Health Occ. § 14-401. *See also* House Bill 1096, ch. 401, 2013 Md. Laws.

3. On May 13, 2013, Mr. Arnold entered into a negotiated plea agreement wherein he agreed to plead guilty to two counts of Possession of Instruments of a Crime<sup>2</sup> (counts 25 and 26) and, thereafter, the remaining counts were nolle prossed. Counts 25 and 26 of the criminal information provided:

Count 25: Possession of Instruments of Crime

18 Pa. C.S.A. 907(a) – Misdemeanor 1<sup>st</sup> Degree

[On or about April 5, 2010, Mr. Arnold] possessed an instrument of crime, namely, a computer hard drive containing multiple images and video files of child pornography, with the intent to employ it criminally.

Count 26: Possession of Instruments of Crime

18 Pa. C.S.A. 907(a) – Misdemeanor 1<sup>st</sup> Degree

[On or about April 5, 2010, Mr. Arnold] possessed an instrument of crime, namely, multiple compact discs containing multiple images and video files of child pornography, with the intent to employ it criminally.

4. The following conversation between the Court and Mr. Arnold occurred at the plea agreement hearing:

THE COURT: Count 25 alleges that on or about April 5 of 2010, you possessed instruments of crime, in this case a computer hard drive containing multiple images and video files of child pornography with the intent to employ it or use it criminally. Did you do that?

THE DEFENDANT: Yes.

THE COURT: The answer is yes? You did? You are admitting that?

THE DEFENDANT: Yes.

THE COURT: Count 26 alleges possession of instruments of crime, that you possessed an instrument of crime, namely multiple compact discs containing multiple images and video files of child pornography with the intent to employ it criminally. Did you do that?

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<sup>2</sup> The possession of instruments of a crime statute, 18 PA. CONS. STAT. ANN. § 907, provides, in pertinent part:

**(a) Criminal instruments generally.**-- A person commits a misdemeanor of the first degree if he possesses any instrument of crime with intent to employ it criminally.

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**(d) "Instrument of crime."** Any of the following:

(1) Anything specially made or specially adapted for criminal use.

(2) Anything used for criminal purposes and possessed by the actor under circumstances not manifestly appropriate for lawful uses it may have.



THE DEFENDANT: Yes.

THE COURT: You are admitting that?

THE DEFENDANT: Yes.

5. Thereafter, the Court sentenced Mr. Arnold to 6 to 23 months in the York County prison on count 25 and five years of supervised probation, consecutive to the jail sentence, on count 26. The Court also ordered Mr. Arnold to complete sex offender conditions as part of his probation, restricted his access to the internet and children other than his own daughter, and ordered the forfeiture of the hard drive and compact discs that were seized.
6. Mr. Arnold was incarcerated in the York County prison from June 3, 2013 until the date of his parole on November 2, 2013.
7. On November 13, 2013, the Court held a modification hearing, at Mr. Arnold's request, to address and clarify certain sex offender conditions of Mr. Arnold's probation. The Court granted the modification request, in part, by allowing children to visit the Arnold home when Mr. Arnold was not present, but denied internet access in the home and continued to prohibit Mr. Arnold from entering places where minors tend to congregate.
8. Mr. Arnold did not appeal his convictions within the time prescribed by law and the guilty plea and convictions have not been set aside.

### DISCUSSION

Pursuant to COMAR 10.32.02.07 E(2), a response to a show cause order must be limited to the following issues: "(a) Lack of conviction or plea; (b) Whether the crime is one involving moral turpitude; (c) Misidentity of the respondent with the defendant in the criminal matter; and (d) Other relevant issues, if any, other than mitigation." Mr. Arnold does not deny that he pled guilty to two counts of possession of instruments of a crime and does not argue that he was misidentified as the defendant in the criminal case. Rather, Mr. Arnold argues that (1) the crimes he pled guilty to were not crimes of moral turpitude because he did not knowingly possess the child pornography; (2) the facts in the police report and the charges were unsubstantiated and were not part of his guilty plea; and (3) he did not have a specific intent to commit a crime of moral turpitude, e.g., possession of child pornography.

Health Occ. § 15-314(b) 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. “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 Md. 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)). 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. Md. State Bd. Of Physicians*, 162 Md. App. 457, 483 (2005). 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.” *Walman*, 280 Md. at 462.

In Mr. Arnold’s case, the possession of instruments of a crime statute does not, on its face, establish that the crime involves moral turpitude. In interpreting the statute, the Supreme Court of Pennsylvania has explained that “it is the actor’s criminal purpose that provides the touchstone of his liability for possessing an instrument of crime” and that “[s]uch purpose may be inferred from the circumstances surrounding the possession.” *Commw. v. Andrews*, 564 Pa. 321, 337 (2001) (internal citations and quotation marks omitted). In determining whether this particular crime involves moral turpitude, Panel B must determine Mr. Arnold’s criminal purpose for possessing the computer hard drive and compact discs (“CDs”), and in doing so, must consider “the facts present in the individual case at hand.” *Walman*, 280 Md. at 462.

During the plea agreement hearing, Mr. Arnold admitted that he possessed a computer hard drive and multiple CDs, containing images and video files of child pornography, with the

intent to employ them criminally. This admission alone contains all the facts necessary to determine whether the possession of instruments in this case was a crime involving moral turpitude. Panel B need not and, in this case, did not rely upon any facts other than those contained in the plea agreement hearing transcript in reaching its decision.

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.*

In pleading guilty, Mr. Arnold admitted that his conduct constituted all the elements of the criminal charge including that he possessed instruments containing child pornography “with the intent to employ it criminally.” 18 PA. CONS. STAT. ANN. § 907. The Superior Court of Pennsylvania has established that “the statute was not intended to include as instruments of crime equipment not used in the crime itself, but used only to facilitate the crime.” *Commw. v. Williams*, 808 A.2d 213, 215 (Pa. Super. Ct. 2002). Under Pennsylvania law, the criminal possession of child pornography is defined as: “any person who intentionally views<sup>3</sup> or knowingly possesses or controls any book, magazine, pamphlet, slide, photograph, film, videotape, computer depiction or other material depicting a child under the age of 18 years

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<sup>3</sup> “Intentionally views” is defined as: “The deliberate, purposeful, voluntary viewing of material depicting a child under 18 years of age engaging in a prohibited sexual act or in the simulation of such act. The term shall not include the accidental or inadvertent viewing of such material.” 18 PA. CONS. STAT. ANN. § 6312(g).



engaging in a prohibited sexual act or in the simulation of such act[.]” 18 PA. CONS. STAT. ANN. § 6312(d).

Accordingly, the intent to employ criminally, in this case, necessarily includes the intentional or knowing possession of child pornography. In his response to the Petition and show cause order, Mr. Arnold claims that he accidentally downloaded the child pornography and that he “pled guilty to possessing computer equipment which, unbeknownst to him, contained child pornography.” This version of facts completely contradicts Mr. Arnold’s prior admission at the plea agreement hearing and the elements of the charges to which he pled guilty. If Mr. Arnold’s possession of the child pornography was unintentional or accidental, as he claims, Mr. Arnold would not have possessed the instruments with the intent to employ them criminally. Mr. Arnold did not dispute the elements of the charges to which he pled guilty and he accepted the plea agreement. Mr. Arnold cannot now challenge or collaterally attack the final judgment entered upon the Court’s acceptance of his guilty plea. *See Oltman*, 162 Md. App. at 487 (“[A]ppellant cannot now collaterally attack the conclusive final judgment of the criminal court in his case. . . . To the contrary, the . . . court’s final judgment is conclusive proof of [appellant’s] guilt of the crime charged.”) (internal quotation marks and citations omitted).

Mr. Arnold further argues that the possession of criminal instruments is a general intent crime that may be satisfied by the intent to commit any type of criminal activity, not necessarily criminal activity involving moral turpitude. As such, he contends that he did not possess the computer hard drive and CDs with the specific intent to commit a crime of moral turpitude. Had Mr. Arnold’s guilty plea not specified that the instruments of a crime he possessed contained child pornography, the mere possession of CDs and a hard drive with a general criminal intent might not have constituted a crime of moral turpitude. In this case, however, Mr. Arnold

explicitly admitted to possessing CDs and a hard drive that contained images and videos of child pornography with the intent to criminally employ them. As discussed above, the criminal possession of child pornography implies that the person knowingly possessed or intentionally viewed the material. The Board has determined in prior decisions, and Mr. Arnold does not dispute, that the knowing or intentional possession of child pornography is a crime of moral turpitude. See *In the Matter of Ronald L. Shreve, Jr. RCP*, Case No. 2006-0584, Aug. 7, 2008, <https://www.mbp.state.md.us/bpqapp/Orders/L0062108.078.PDF>; *In the Matter of John P. Serlemitsos, M.D.*, Case No. 2001-1081, Dec. 19, 2001, <https://www.mbp.state.md.us/bpqapp/Orders/D3265412.191.PDF>.

It is evident that, but for his possession of child pornography, Mr. Arnold would have not been charged with or convicted of possession of instruments of a crime. The negotiated plea agreement that Mr. Arnold accepted allowed him to plead guilty to the lesser misdemeanor charges and did not require him to register as a sex offender, but still required that he abide by sex offender conditions for the duration of his five-year probation. At the modification hearing, the Court expressed concern “[g]iven the nature of the crime” regarding Mr. Arnold having access to the internet and computers in his home. After much discussion with the parties and the probation officer, the Court restricted Mr. Arnold’s computer access and did not allow him to have internet access in the home. The Court permitted Mr. Arnold to transport his daughter to school and other activities, but upheld the condition that Mr. Arnold was not permitted to enter any location where minors would tend to congregate. The Court also instructed Mr. Arnold to attend one of the two sex offender treatment programs that were recommended and approved by probation.



References to sex offender treatment and concerns regarding access to children and the internet are strewn throughout the plea agreement hearing and the modification hearing transcripts. The crime to which Mr. Arnold pled guilty was clearly rooted in his admitted possession of child pornography. Because the criminal possession of child pornography perpetuates the exploitation of minors, Mr. Arnold's conduct undermines the public's confidence in the physician assistant profession. *See Stidwell v. Md. 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. Arnold's admitted possession of child pornography with the intent to employ it criminally certainly meets the "base, vile, and shameful" definition of moral turpitude. *Id.*

#### **CONCLUSIONS OF LAW**

Based on the above-discussion, Panel B concludes that Mr. Arnold's convictions for possession of instruments of a crime are crimes involving moral turpitude. As a result, Health Occ. § 15-314(b)(2), requires Panel B to order the revocation of Mr. Arnold's physician assistant's license.

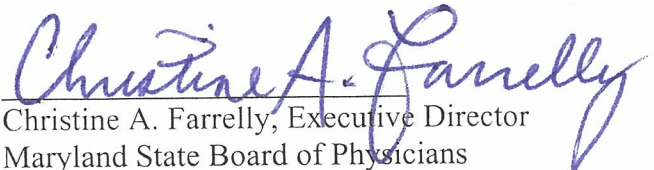
#### **ORDER**

It is, by Board Disciplinary Panel B, hereby:

**ORDERED** that the license of William S. Arnold, Jr., P.A.-C, license number C02873, is **REVOKED**; and it is further

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

12/11/2015  
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. Arnold 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. Arnold 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**