

IN THE MATTER OF

*

BEFORE THE MARYLAND

PAUL ANDREW HAYNIE,

*

STATE BOARD OF

Radiographer

*

PHYSICIANS

Respondent

*

License Number: R08756

*

Case Number: 2015-0255A

CONSENT ORDER

On July 8, 2015, Disciplinary Panel A of the Maryland State Board of Physicians (the "Board") charged Paul Andrew Haynie, Radiographer (the "Respondent"), License Number R08756, under the Maryland Radiation Therapy, Radiography, Nuclear Medicine Technology, and Radiology Assistance Act (the "Act"), Md. Code Ann., Health Occ. ("Health Occ.") § 14-5B-14 (2014 Repl. Vol.), and pursuant to Md. Code Regs. 10.32.10.14.

The pertinent provision of Health Occ. § 14-5B-14 provides as follows:

- (a) Subject to the hearing provisions of § 14-405 of this title, the Board, on the affirmative vote of a majority of the quorum of the Board, may deny a license to any applicant, or a disciplinary panel, on the affirmative vote of a majority of the quorum of the disciplinary panel, may reprimand any licensee, place any licensee on probation, or suspend or revoke a license, if the applicant or licensee:

...

- (3) Is guilty of unprofessional or immoral conduct in the practice of radiation therapy, radiography, nuclear medicine technology, or radiology assistance[.]

The pertinent section of Md. Code Regs. 10.32.10.14 under which the Board charges the Respondent is as follows:

...

B. The following are prohibited acts:

- (3) Being guilty of unprofessional or immoral conduct in the practice of radiation therapy, radiography, nuclear medicine technology, or radiology assistance[.]

On October 14, 2015, Disciplinary Panel A was convened as a Disciplinary Committee for Case Resolution ("DCCR") in this matter. Based on negotiations occurring as a result of this DCCR, the Respondent agreed to enter into this Consent Order, consisting of Findings of Fact, Conclusions of Law, and Order.

I. FINDINGS OF FACT

Disciplinary Panel A finds:

A. Background

1. The Respondent was licensed as a radiographer in Maryland on February 25, 2008. The Respondent's license expired on April 30, 2015.¹

2. The Respondent was licensed by the American Registry of Radiologic Technologists.

3. At the time of the acts described herein, the Respondent worked as contract employee at Hospital A,² in Bethesda, Maryland. Contractor A employed the Respondent from September 2008 through June 2013, and Contractor B, from June 2013 through May 2014.

4. On or about January 12, 2012, the Respondent signed a Confidentiality Agreement with Hospital A in which he agreed to protect the privacy and security of individual identifiable health information, and:

¹ Md. Code Ann., Health Occ. § 14-403(a) provides the Respondent's license may not lapse by operation of law while he is under investigation or while charges are pending.

² Neither facility nor patient names will be used in this document in order to maintain confidentiality, but will be provided to the Respondent on request.

I agree not to make any unauthorized transmissions, inquiries...

...

I agree to log off, lock or shutdown my computer or terminal prior to leaving my workstation unattended.

...

I agree to make only authorized entries for Inquiry and changes in any [Hospital A], Government, or contract medical care system that contains Protected Health Information (PHI) and not to disclose any proprietary and/or confidential information.

I further agree to comply with the information security ..., privacy and confidentiality rules and regulations as (sic) forth in command and higher authority directives, the Privacy Act of 1974...and the Health Insurance Portability and Accountability Act [.]

5. On or about October 17, 2014, a female in her 30s (the "Complainant") filed a complaint with the Board alleging the Respondent had accessed her Personal Health Information ("PHI") without her consent. The Complainant had had a prior long-term personal relationship with the Respondent from approximately 2010 through 2014. The Complainant and the Respondent resided together with two of her family members from 2011 through 2014.³ At the time the Complainant resided with the Respondent, she was estranged from her former husband ("ex-husband") who had been on active duty for the Navy.

6. After receiving the complaint, the Board initiated an investigation into the allegations.

7. By letter dated November 12, 2014, Board staff notified the Respondent of its investigation and requested a written response.

³ One of the family members is at issue in these charges, and has been identified below as Family Member A.

8. On or about December 1, 2014, Board staff conducted an interview of the Complainant.

9. On or about December 4, 2014, the Respondent filed a written response with the Board in response to the allegations.

10. On or about March 24, 2015, Board staff interviewed the Respondent regarding the allegations.

B. Hospital A's investigation

11. On or about April 15, 2014, the Complainant filed a complaint with Hospital A alleging the Respondent had accessed her medical records and those of her family members without permission.

12. The complaint was precipitated by allegations that the Complainant overheard the Respondent during a telephone conversation (with an unknown party) inquiring about benefits the Complainant would receive from her deceased ex-husband. The Complainant alleges she heard the Respondent discuss medical information about her ex-husband that she had not disclosed to him.

13. Based on the Complainant's complaint, Hospital A conducted an audit of providers who had accessed the Complainant's electronic medical records ("EMR") and those of her family members.

14. On or about May 2, 2014, following the audit, the Complainant met with Hospital A's Privacy Officer to review the results of the audit.

15. The Complainant stated that on one occasion she had provided the Respondent with verbal permission for him to access her EMR for test results. She did

not, however, provide him with verbal permission on any other occasion to access her EMR.

16. Hospital A required that a specific form entitled "DD form 2870" be signed by the patient in order for records to be released.

17. At no time did the Complainant sign the DD form 2870 nor did she provide any written consent for the Respondent to access her records or her family members' records.

18. Based on Hospital A's audit, the Respondent was found to have inappropriately accessed the Complainant's personally identifiable information ("PII") on the following dates:

- a. 1/15/2013 - the Respondent accessed 3 separate modules⁴ of the Complainant's EMR: the Previous Encounters module for 4 minutes, the Immunizations module for less than 1 minute, and the Demographics module for 1 minute;
- b. 2/11/2013 - the Respondent accessed the Demographics module of the Complainant's medical records for 2 minutes;
- c. 4/25/2013 - the Respondent accessed 2 separate modules of the Complainant's EMR: the Demographics module for 4 minutes and the Previous Encounters module for 3 minutes;
- d. 5/2/2013 - the Respondent accessed the Demographics module of the Complainant's medical records for 75 minutes (from 11:17 a.m. through 12:32 p.m.);
- e. 6/19/2013 - the Respondent accessed 3 separate modules of the Complainant's EMR: the Previous Encounters module for 160 minutes, the Demographics module for 160 minutes and the Clinical Notes module of the Complainant's medical records for 160 minutes (all were from 6:57 a.m. through 9:37 a.m.);

⁴ A module refers to a self-contained unit responsible for performing a defined task that can be linked with other units to form a larger system.

- f. 12/6/2013 - the Respondent accessed 2 separate modules of the Complainant's EMR for one minute: the Demographics module and Previous Encounters module.

19. Hospital A also "substantiated" through its audit that on February 25, 2013, the Respondent accessed 3 separate modules of Family Member A's EMR, "without an apparent need to know and outside of his official duties" according to his former supervisor. The Respondent accessed the Previous Encounters module for 50 minutes, the Immunizations module for less than 1 minute and the Health History module for 47 minutes.

20. The PII involved in the Respondent's inappropriate records access on the above-referenced dates involved names, social security numbers, dates of birth and protected health information.

21. On or about May 22, 2014, the author of the Breach of PII Report stated that the Respondent's supervisor contacted Contractor B and recommended removal of the Respondent based on the results of the audit.

22. On or about May 22, 2014, the Respondent voluntarily terminated his employment with Hospital A.

23. On or about July 11, 2014, Hospital A documented on a "Breach Risk Analysis Template" its final determination with regard to the Respondent's actions:

It was discovered that a former employee of [Hospital A] impermissibly accessed the Electronic Health Records (EHR) of two individuals. These actions were not performed within the scope of duty in good faith. Using the information provided, [Hospital A's Privacy Officer] performed a risk analysis and determined the unsecured PHI involved has been compromised. Therefore, the breach requires notification to HHS and the impacted individuals...

24. By letter dated September 25, 2014 Hospital A wrote to Complainant stating in part:

...

On July 10, 2014, [Hospital A] confirmed potential compromises of your PHI occurred when a staff member impermissibly accessed and viewed your electronic health record (EHR). The access took place on the following dates: January 15, 2013; February 11, 2013; April 25, 2013; May 2, 2013; June 19, 2013; and December 6, 2013. The data elements involved include your name, Social Security Number, date of birth, home address, and certain elements of your PHI.

...

C. Board Staff's Interview of the Respondent

25. The Respondent stated that he had been in a personal relationship with the Complainant from approximately February 2010 through February 2014.

26. The Respondent acknowledged, "It was encouraged for me to resign from the job, because an investigation was taking place."

27. The Respondent acknowledged that he had accessed the Complainant's and Family Member A's medical records.

28. The Respondent stated that his rationale for accessing the Complainant's medical records was that it was related to his medical duties as he was involved with taking the Complainant to her surgeries, and for her medical care.

29. The Respondent acknowledged that the Complainant did not provide him with written consent to access her electronic medical records.

30. When asked by Board staff about the lengthy duration of the records access on several of the dates, he responded that he had locked his computer for the purpose of leaving on his lunch break.

31. When asked by Board staff whether he had accessed the Complainant's ex-husband's medical records, the Respondent stated that he did not recall.

32. The Respondent stated that he accessed Family Member A's medical record in order to ascertain an appointment time.

II. CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, Disciplinary Panel A concludes as a matter of law that the Respondent's actions constitute violations of unprofessional conduct in the practice of radiography in violation of Md. Code Ann., Health Occ. § 14-5B-14(a)(3) and Md. Code Regs. 10.32.10.14(B)(3).

III. ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby:

ORDERED that the Respondent is hereby **REPRIMANDED**; and it is further

ORDERED that the Respondent be placed on a minimum period of **TWO (2) YEARS of PROBATION**; and it is further

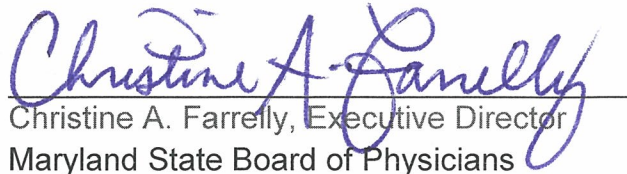
ORDERED that the time period of the Respondent's **PROBATION** is tolled until the Respondent again possesses a license as a radiographer; and it is further

ORDERED that within **SIX (6) MONTHS** of the Respondent's probation, he shall successfully complete a Board-approved comprehensive course or 1:1 tutorial in ethics. Failure to satisfactorily complete the course or tutorial shall be considered a violation of this Consent Order and/or of his probation. The condition of probation is tolled until the Respondent again possesses a license; and it is further

ORDERED that the Respondent is responsible for all costs incurred in fulfilling the terms and conditions of this Consent Order; and it is further

ORDERED that this Consent Order shall be a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., Gen. Prov. §§ 4-101-4-601 (2014).

Date 11/9/2015


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

III. CONSENT

I, Paul Andrew Haynie, acknowledge that I am represented by counsel and have consulted with counsel before entering into this Consent Order. By this Consent and for the sole purpose of resolving the issues raised by the Board, 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 law. I agree to forego my opportunity to challenge these allegations. I acknowledge the legal authority and jurisdiction of the Board 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 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.

10/28/15
Date

Paul Andrew Haynie
Paul Andrew Haynie, Radiographer

Reviewed and Approved by:

Patrick Hanifin
Patrick Hanifin, Esquire

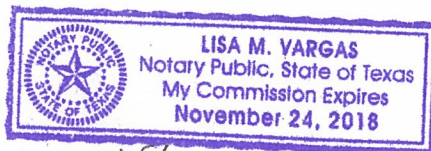
STATE OF Texas

CITY/COUNTY OF:

I **HEREBY CERTIFY** that on this 28th day of October, 2015, before me, a Notary Public of the State and County aforesaid, personally appeared Paul Andrew Haynie, and gave oath in due form of law that the foregoing Consent Order was his voluntary act and deed.

AS WITNESS, my hand and Notary Seal.

Lisa M. Vargas
Notary Public



My commission expires: 11-24-2018