

IN THE MATTER OF * BEFORE THE MARYLAND
TIMOTHY H. EMEIGH, R.T. * STATE BOARD OF PHYSICIANS
Respondent. *
License Number R03572 * Case Number: 2017-0052A

FINAL DECISION AND ORDER

PROCEDURAL HISTORY

On July 17, 2014, Timothy H. Emeigh, a radiographer licensed by the Maryland State Board of Physicians (“Board”), pled guilty to a charge of health care fraud, in violation of federal law, in the United States District Court for the District of Maryland (“U.S. District Court”). (Case No. 1:14-cr-0298).

As a result of Mr. Emeigh’s guilty plea, the Office of the Attorney General, on March 24, 2015, filed with the Board a Petition to Suspend Mr. Emeigh’s license to practice radiography based on the Maryland Radiation Therapy, Radiography, Nuclear Medicine Technology and Radiology Assistance Act (“Act”), Md. Code Ann., Health Occ. (“Health Occ.”) § 14-5B-14(c)(1) (2014 Repl. Vol.), which provides:

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 to a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside.

On June 29, 2015, Disciplinary Panel A of the Board (“Panel A”) issued an order concluding that Mr. Emeigh had pled guilty to a crime of moral turpitude and, therefore, suspended his license pursuant to Health Occ. § 14-5B-14(c)(1). At that time, Mr. Emeigh had not been sentenced by the U.S. District Court.

On June 17, 2016, Mr. Emeigh was sentenced in the U.S. District Court to 48 months imprisonment, supervised release for one year, and an assessment of \$100.00. On March 9, 2017, the Office of the Attorney General filed with the Board a Petition to Revoke Mr. Emeigh's license to practice radiography based on the Act, which provides:

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, the Board shall order the revocation of a license on the certification by the Office of the Attorney General.

Health Occ. § 14-5B-14(c)(2). Attached to the Petition were certified copies of the criminal docket entries, the judgment entered, and a Show Cause Order mandating that Mr. Emeigh show cause in writing by April 12, 2017 if there was any reason why his license to practice radiography should not be revoked. The Board received Mr. Emeigh's response on April 3, 2017 wherein Mr. Emeigh stated that he would not contest the petition to revoke his license.

Having reviewed and considered the entire record in these § 14-5B-14(c) proceedings, 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. Emeigh was originally licensed to practice radiography in the State of Maryland on October 5, 1993, having been issued License Number R03572. Mr. Emeigh continuously renewed his license until April 30, 2015 when his license expired.¹
2. Mr. Emeigh is not, and never has been, licensed to practice medicine in Maryland or in any other state.
3. In late 1993, Mr. Emeigh began employment with a Maryland company ("Company A") that supplied portable x-ray machines and provided portable ultrasound tests, electrocardiograms ("EKGs"), echocardiograms, and Holter monitors, predominately to

¹ Pursuant to Section 14-403 of the Health Occupations Article, the license of an individual regulated by the Board "may [not] lapse by operation of law while the individual is under investigation . . ." Md. Code. Ann., Health Occ. § 14-403(a) (2014 Repl. Vol.) Because of the Board's continuing investigation of Mr. Emeigh throughout these proceedings, his radiography license did not lapse or expire.

clients in nursing homes and prisons. Initially, Respondent worked for Company A as an x-ray technologist.

4. Beginning in 1997, Mr. Emeigh, at the request of the owner of Company A, agreed to perform intermittent x-ray interpretations instead of a licensed physician, even though Mr. Emeigh was not authorized under his radiography license to do so.
5. On June 18, 2014, the United States Attorney, in *United States of America v. Timothy Emeigh*, Case No. 1:14-cr-0298, filed a Criminal Information charging Mr. Emeigh with health care fraud in violation of 18 United States Code ("U.S.C.") § 1347 and aiding and abetting health care fraud, in violation of 18 U.S.C. § 2.
6. In the Criminal Information ("Information"), the U.S. Attorney alleged that beginning at least in 1997 and continuing through October 2013, Mr. Emeigh willfully executed a scheme to defraud Medicare by creating false radiology, ultrasound and cardiologic reports, by submitting insurance claims for radiology, ultrasound and cardiologic examination interpretations that were never completed by licensed physicians, and by falsely representing to Medicare, as well as to ordering physicians, that the interpretations had in fact been completed by actual licensed physicians.
7. The Information further alleged that in 1997, Mr. Emeigh, as part of the scheme to defraud, began performing intermittent x-ray interpretations in lieu of a licensed physician.
8. The Information further alleged that as a result of the charged offense, Mr. Emeigh was required to forfeit to the United States, gross proceeds traceable to the offense of approximately \$700,000.
9. On July 17, 2014, Mr. Emeigh waived indictment by the Grand Jury of the U.S. District Court and agreed that the case would proceed by information rather than indictment.
10. On July 17, 2014, Mr. Emeigh entered a plea of guilty to the charge of Health Care Fraud, in violation of 18 U.S.C. 1347.² In the stipulation of facts attached to Mr. Emeigh's plea agreement and signed by Mr. Emeigh, he admitted that as part of a fraudulent scheme, he began performing x-ray interpretations in lieu of a licensed physician radiologist in the late 1990s. Mr. Emeigh also admitted that in 2003, he began

² Section 1347 of the United States Code provides:

Health care fraud

- (a) Whoever knowingly and willfully executes, or attempts to execute, a scheme or artifice –
 - (1) to defraud any health care program; or
 - (2) to obtain, by means of false or fraudulent pretenses, representation, or promises, any of the money or property owned by, or under the custody or control of, any health care program, in connection with the delivery of or payment for health care benefits, items, or services, shall be fined under this title or imprisoned not more than 10 years or both.
- (b) With respect to violations of this section, a person need not have actual knowledge of this section or specific intent to commit a violation of this section.

18 U.S.C. § 1347.

interpreting medical tests and writing reports in the name of licensed physicians, and generated interpretation reports. Mr. Emeigh further admitted that by 2010, he was performing more than 70% of the x-ray interpretations for Company A, while masquerading as a licensed radiologist physician. Bills for these services were routinely submitted to Medicare, resulting in a financial loss of more than \$2,500,000 from January, 2007 through October, 2012.

11. On June 29, 2015, Panel A suspended Mr. Emeigh's license pursuant to Health Occ. § 14-5B-14(c)(1).
12. On June 17, 2016, Mr. Emeigh was sentenced in the U.S. District Court to 48 months imprisonment, supervised release for one year, and an assessment of \$100.00.
13. On March 9, 2017, the Office of the Attorney General filed with the Board a Petition to Revoke Mr. Emeigh's license to practice radiography pursuant to Health Occ. § 14-5B-14(c)(2).
14. Mr. Emeigh did not appeal his convictions within the time prescribed by law and the guilty plea and conviction have not been set aside.

CONCLUSIONS OF LAW

Mr. Emeigh does not dispute that he pled guilty to a crime involving moral turpitude and did not contest the petition to revoke his license. Panel A makes the following conclusions of law which were similarly articulated in the Panel's order of suspension, dated June 29, 2015.

Mr. Emeigh's plea of guilty to a felony count of Health Care Fraud in violation of 18 USC § 1347 constitutes a crime involving moral turpitude *per se*. Mr. Emeigh knowingly and willfully executed a scheme or artifice to defraud Medicare. He pled guilty to knowingly and willfully submitting false and fraudulent bills to Medicare in order to obtain reimbursement from Medicare, in violation of 18 U.S.C. § 1347, a statute whose essential elements include a scheme to defraud and an intent to defraud.

Maryland appellate courts have repeatedly held that if fraud or intent to defraud is an essential element of a statute under which a defendant is convicted, the crime involves moral turpitude as a matter of law. *See Board of Physician Quality Assurance v. Felsenberg*, 351 Md.

288, 295 (1998) (crimes involving fraud are crimes involving moral turpitude); *Attorney Grievance Comm'n v. Klauber*, 289 Md. 446, 457-59, *cert. denied*, 451 U.S. 1018 (1981) (the term "moral turpitude" connotes a fraudulent or dishonest intent); *Attorney Grievance Comm'n v. Walman*, 280 Md. 453, 459-60 (1977) (a crime of moral turpitude is characterized by dishonesty, fraud, or deceit); *Oltman v. Maryland State Bd. of Physicians*, 162 Md. App. 453, 485-87, *cert. denied*, 389 Md. 125 (2005) (crime was one of moral turpitude [because] it was dishonest, and characterized by fraud).

It is also settled that "the related group of offenses involving intentional dishonesty for purposes of personal gain are crimes involving moral turpitude." *Oltman*, 162 Md. App. at 486 (citations and quotation marks omitted). By causing materially false, fraudulent and dishonest claims to be submitted to Medicare, Mr. Emeigh intended to defraud and deceive Medicare in order to obtain monetary reimbursement to which he was not entitled. His billing offenses were characterized by repeated fraud, deceit and intentional dishonesty for purposes of his own personal gain. The facts underlying Mr. Emeigh's criminal offenses, therefore, also established moral turpitude. *Oltman*, 162 Md. App. at 486.

Even if Mr. Emeigh's guilty plea to knowingly and willfully defrauding a health care benefit plan did not involve a crime of moral turpitude *per se*, the Board has concluded in multiple prior decisions that defrauding a health care benefit plan constitutes a crime of moral turpitude. See *In the Matter of Robert E. Korman, M.D.*, Case No. 2012-0160, July 12, 2013 (filing fraudulent bills to Medicare in order to obtain reimbursement in violation of 18 U.S.C. § 1347 is a crime of moral turpitude); *In the Matter of Douglas F. Greer, M.D.*, Case Nos. 2008-0640, 2008-0653, July 23, 2009 (healthcare fraud in violation of 18 U.S.C. § 1347, is a crime of moral turpitude); *In the Matter of Ehigiator Akhigbe, M.D.*, Case Nos. 2010-0770, July 28, 2011,

and Case No. 2013-0043, July 1, 2013 (same). *See also In the Matter of Oparaugo I. Udebiuwa, M.D.*, Case No. 2006-0851, October 24, 2007 (misdemeanor Medicaid fraud is a crime of moral turpitude); *In the Matter of Roman Ostrovsky, M.D.*, Case No. 2006-0522, June 12, 2007 (a series of false statements and material misrepresentations in claims for payment submitted to the Maryland Medical Assistance Program is a crime of moral turpitude); *In the Matter of James An Nguyen, M.D.*, Case No. 2004-0638, February 1, 2006 (conviction of felony Medicaid fraud is a crime of moral turpitude).

In the instant case, Mr. Emeigh was convicted of health care fraud in violation of 18 U.S.C. § 1347. Mr. Emeigh was intentionally dishonest in committing an act of willful deception on a massive scale for a prolonged duration of time for purposes of his own personal financial gain. Panel A concludes that Respondent was convicted of a crime involving moral turpitude and the time for filing an appeal has passed, thus the revocation of Mr. Emeigh's radiography license is required under Health Occ. § 14-5B-14(c)(2).

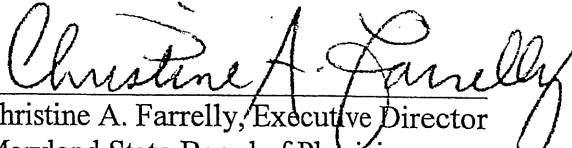
ORDER

It is, on the affirmative vote of a majority of the quorum of Board Disciplinary Panel A, hereby

ORDERED that the license of Timothy H. Emeigh, R.T., license number **R03572**, to practice radiography in the State of Maryland, is **REVOKED**, as mandated by Md. Code Ann., Health Occ. §14-5B-14(c)(2); and it is further:

ORDERED that this final decision and order is a **PUBLIC DOCUMENT**.

05/19/2017
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. Emeigh 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 his 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. Emeigh files a petition for judicial review, the Board is a party and should be served with the court's process at the following address:

**Maryland State Board of Physicians
Christine A. Farrelly, Executive Director
4201 Patterson Avenue
Baltimore, Maryland 21215**

Notice of any petition should also be sent to the Board's counsel at the following address:

**Stacey M. Darin
Assistant Attorney General
Department of Health and Mental Hygiene
300 West Preston Street, Suite 302
Baltimore, Maryland 21201**