

IN THE MATTER OF	*	BEFORE THE MARYLAND
MARK E. ALEX	*	STATE BOARD OF
POLYSOMNOGRAPHIC TECHNOLOGIST	*	PHYSICIANS
APPLICANT	*	Case Number: 2014-0330

\* \* \* \* \*

**FINAL DECISION AND ORDER**

The Maryland Board of Physicians (the "Board") notified Mark E. Alex (the "Applicant"), of the Board's Intent to Deny Initial Application for Licensure as a Polysomnographic Technologist under the Maryland Medical Practice Act (the "Act"), Md. Health Occ. Code Ann. ("Health Occ.") §§ 14-5C-02 *et seq.*

The pertinent provisions of the Act are as follows:

Health Occ. § 14-5C-09. Qualifications for license.

.....

(b) The applicant shall:

(1) Be of good moral character[.]

.....

Health Occ. § 14-5C-17. Denial of license.

(a) Subject to the hearing provisions of §14-405 of this title, the Board, on the affirmative vote of a majority of a quorum of the Board, may deny a license to any applicant, or a disciplinary panel, on the affirmative vote of a majority of a 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 polysomnography;

(10) Willfully makes or files a false report or record in the practice of polysomnography[.]

The Board makes the following findings of fact:

## **FINDINGS OF FACT**

### **I. BACKGROUND**

1. The Applicant initially received certification from the Board of Registered Polysomnographic Technologists (“BRPT”) as a Registered Polysomnographic Technologist on June 16, 2001, which he subsequently renewed. The Applicant’s current certificate will expire on January 2, 1017.

2. From May 2001 to July 2010, the Applicant was employed by Employer A, a sleep services company in Maryland.<sup>1</sup> In January 2005, the Applicant was promoted to “Clinical Coordinator.”

3. On April 25, 2011, the Applicant began employment with Employer B, a sleep disorder program in a hospital in Frederick County, Maryland, as a clinical supervisor.

### **II. THE APPLICATION**

4. On or about July 16, 2013, the Applicant submitted to the Board an Application for Licensure of Polysomnographic Technologists (the “Application”).

5. Question 13 of the Application required responses to ten (10) sub-questions regarding the Applicant’s character and fitness to practice.

6. The Applicant answered “yes” to the following pertinent character and fitness question in Question 13:

Question D. – Has your employment by any health care employer been affected by disciplinary actions including probation, suspension, loss of privileges, transfer to other duties, or termination of employment or

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<sup>1</sup> The Applicant had been employed as a polysomnographic technologist by a predecessor company of Employer A since on or about 1994.

contract? (e.g. provide name of institution, correspondence received or sent, related documents.)

7. The Applicant provided an explanation regarding his answer to Question 13(D) in regard to his termination from his employment in July 2010 as follows:

Reason: Improper clocking in/out.

As a manager on 24/7 call, I often clocked in/out from home because I never sought or received compensation for after hours call. (We were supposed to email in our telephone time.) I didn't hide it, I was warned & terminated. I know it was wrong, but the promoting of the CEO's wife (basically a secretary) to a position supervising coordinators (no sleep background) had really affected my morale & I made a bad choice.

I did sign the termination, but did not retain a copy.

P.S. I'm actually doing the same job @ (his current place of employment), partly on the reference from a V.P. at (his former place of employment) (on salary).

### **III. INVESTIGATION**

8. On August 5, 2013, the Board issued a subpoena to Employer A, the Applicant's former employer, requiring delivery of the Applicant's complete personnel file.

9. On September 20, 2013, the Board received the personnel file from Employer A. The personnel file contained a termination notice from the chief operating officer ("COO"), effective July 21, 2010, which revealed the following:

- a. On May 26, 2010, Employer A conducted an audit of the Applicant's time clocking history and clocking irregularities when it had been discovered that the Applicant participated in a management coordinators' conference call from the Applicant's home;
- b. The results of the audit were presented to the Applicant in a meeting with the COO on May 27, 2010;

- c. The audit revealed that from at least September 2009 until May 26, 2010, the Applicant had been clocking in and out from home on 165 different dates, without prior approval from management, and contrary to instructions from the COO and company policy;
- d. According to the COO, the Applicant's practice of clocking in and out from home resulted in regular pay and overtime pay for time spent traveling to and from his home and for fictitious work time, to which he was not entitled;
- e. At the meeting, the Applicant acknowledged he had been clocking in and out from home, and stated that the time spent traveling to work "offset" the time he spent on the telephone in the evenings with technicians; however, the Applicant never documented telephone discussions with technicians in the "time collection system," as required;
- f. According to the COO, the Applicant had directly participated in prior investigations with his own employees for time card falsifications similar to the practices in which the Applicant engaged;
- g. The Applicant agreed at the May 27, 2010 meeting that he would clock in and out only from his assigned work lab;
- h. Subsequent to May 27, 2010, beginning in mid-June until July 20, 2010, the pattern of unauthorized and improper clocking continued on 16 dates;
- i. Effective July 21, 2010, the Applicant was terminated from employment for "gross misconduct/time card falsification."

10. On October 10, 2013, the Allied Health Unit of the Board forwarded the Application to the Compliance Unit of the Board for review based on the Applicant's admission of being terminated from employment as a disciplinary action.

11. On November 4, 2013, the Board notified the Applicant of the Board's review of his Application and investigation of his termination from employment.

12. On November 5, 2013, the Board sent a subpoena to the Applicant's subsequent employer, Employer B, requiring delivering of the Applicant's complete personnel file.

13. On November 15, 2013, the Board received the personnel file from Employer B. The Applicant had been terminated by Employer A on October 16, 2013 because he had not provided proof of having met the newly required licensure requirement.<sup>2</sup>

#### **IV. SUMMARY**

14. The Applicant fails to meet the qualifications of licensure as a Polysomnographic Technician of good moral character as required by Health Occ. § 14-5C-09, based on gross misconduct at work and timecard falsification.

15. Under Health Occ. § 14-5C-17, there is evidence that the Applicant is guilty of unprofessional conduct in the practice of polysomnography in violation of (a)(3) based in gross misconduct at work and timecard falsification.

16. Under Health Occ. § 14-5C-17, there is evidence that the Applicant willfully made or filed a false report or record in the practice of polysomnography in violation of (a)(10) based on timecard falsification.

17. For the reasons stated above, the Board may deny a license to the Applicant as a Polysomnographic Technician.

#### **CONCLUSIONS OF LAW**

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that there are reasons to deny the Applicant's Initial Application for Licensure as a Polysomnographic Technician under Health Occ. § 14-5C-09 based on his lack of good moral character.

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<sup>2</sup> Health Occ. § 14-5C-02 *et seq.* became effective October 1, 2012, and required that "on or after October 1, 2013, an individual shall be licensed by the Board before the individual may practice polysomnography in this State."

In addition, and under Health Occ. § 14-5C-17(a) the Board may deny a license to any applicant if the applicant engages in any of the disciplinary acts. The Board concludes as a matter of law that the grounds for action under this section are Health Occ. § 14-5C-17(a)(3) (unprofessional conduct) and Health Occ. § 14-5C-17(a)(10) (files a false report).


**ORDER**

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 27<sup>th</sup> day of March, 2014, by an affirmative vote of the majority of the of the Board considering the case:

**ORDERED** that the Applicant's Application for Licensure as a Polysomnographic Technician in the State of Maryland is **DENIED**; and it is further

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

3/27/14  
Date

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

### **NOTICE OF RIGHT OF APPEAL**

Pursuant to Md. State Gov't. Code Ann. §10-222, the Applicant has the right to take a direct judicial appeal. Any appeal shall be made as provided for judicial review of a final decision in the State Government Article and Title 7, Chapter 200 of the Maryland Rules of Procedure.

### **NOTICE OF RIGHT TO PETITION FOR JUDICIAL REVIEW**

Pursuant to Md. Code Ann., Health Occ. § 14-408(b), Mr. Alex 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. Alex 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, Acting 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:

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