

IN THE MATTER OF * BEFORE THE MARYLAND
LAURA M. LIPKE, OTR/L * BOARD OF OCCUPATIONAL
Respondent * THERAPY PRACTICE
License Number: 03605 * Case Number: 2009-005

* * * * *

FINAL DECISION AND ORDER OF REVOCATION

I. INTRODUCTION

On October 26, 2009, the Maryland State Board of Occupational Therapy Practice (the "Board") hereby charged **LAURA M. LIPKE, OTR/L** (the "Respondent") (D.O.B. 10/26/68), License Number 03605, with violating provisions under the Maryland Occupational Therapy Practice Act (the "Act"), Md. Health Occ. Code Ann. ("H.O.") §§ 10-101 *et seq.* (2005 Rep. Vol. and 2008 Supp.) and Code Md. Regs. ("COMAR") tit. 10, § 46.02.01.

Specifically, the Board charged the Respondent with violating the following provisions of the Act under H.O. § 10-315:

H.O. § 10-315

Subject to the hearing provisions of § 10-316 of this subtitle, the Board may ... reprimand any licensee ... place any licensee ... on probation, or suspend or revoke a license ... if the ... licensee ...:

- (3) Commits any act of gross negligence, incompetence, or misconduct in the practice of occupational therapy or limited occupational therapy;
- (5) Violates any rule or regulation of the Board, including any code of ethics adopted by the Board; [and]
- (8) Provides professional services while: (ii) Using any narcotic or controlled dangerous substances defined in Article 27 of the Code, or other drug that is in excess of therapeutic amounts or without valid medical indication.]

The Board also charges the Respondent with violating the following COMAR provisions:

COMAR 10.46.02 CODE OF ETHICS

10.46.02.01 General Conduct

A. The licensee shall:

(2) Provide the highest quality services to the client; [and]

(11) Function with discretion and integrity in relations with other health professionals[.]

Ms. Lipke was sent notice of the hearing and charges on October 26, 2009. This notice informed Ms. Lipke that there was a case resolution conference and a mandatory pre-hearing conference scheduled in this matter. The Respondent did not appear at the case resolution conference on Friday, November 20, 2009 at 10:00 a.m. Additionally, the Respondent did not appear at the mandatory pre-hearing conference held on Tuesday, December 22, 2009 at 10:00 a.m. The Board's October 26, 2009 letter of procedure informed the Respondent that her presence at the pre-hearing conference was required. After Ms. Lipke did not attend case resolution conference and the mandatory pre-hearing conference, she was sent another notice informing her that she could be found in default and was required to attend her hearing on January 15, 2010.

On January 15, 2010, an evidentiary hearing was held before the Board. A quorum of the Board was present. Robert J. Gilbert, Administrative Prosecutor, presented the State's case against the Respondent. Despite the notices sent by the Board, the Respondent failed to appear and the Board proceeded with the hearing as permitted in Maryland Code Ann., Health Occ. § 10-316(1).

Mr. Gilbert moved to find the respondent in default. Instead of fincing the Respondent in default, the Board requested that Mr. Gilbert put on his case. Mr. Gilbert moved his exhibits into evidence and presented argument. Based on this evidence in the record, the Board issues this order. A quorum of the Board decicod this matter unanimously.

II. FINDINGS OF FACT

Based on the record, the Board finds that:

1. At all times relevant to these charges, the Respondent was and is licensed to practice occupational therapy in the State of Maryland. The Respondent was initially licensed to practice occupational therapy in Maryland on or about March 21, 1997, Under License Number 03605. The Respondent's license is currently active through June 30, 2010.
2. At all times relevant to these charges, the Respondent was employed as an occupational therapist at Union Memorial Hospital ("Union Memorial"), located in Baltimore, Maryland.
3. The Board initiated an investigation of the Respondent after reviewing a complaint against her, dated January 29, 2009, that was filed by the Director of Employee Health and Safety at Union Memorial (the "Complainant"). The Complainant reported that the Respondent had been referred to the Department of Employee Health and Safety at Union Memorial for a Mandatory Fitness for Duty evaluation after having performance issues while practicing as an occupational therapist there. The Complainant reported that the Respondent underwent drug testing that was positive for the presence of cocaine (a Schedule II controlled dangerous substance).

4. The Board's investigative findings are set forth *infra*.
5. The Respondent began working as an occupational therapist at Union Memorial in or around 2004.
6. In or around 2006, the Respondent began receiving a series of warnings about her performance as an occupational therapist at Union Memorial.
7. On or about April 14, 2007, the Respondent underwent a coaching/counseling session regarding lateness from work.
8. On or about September 5, 2007, the Respondent underwent a coaching/counseling session to address complaints about her "offensive" communication style with co-workers and patients.
9. On or about November 5, 2007, the Respondent received a verbal warning for failing to report for work on four separate occasions during a six month period in 2007.
10. On or about March 4, 2008, the Respondent received a verbal warning for chronic lateness/absenteeism, and underwent a coaching/counseling session to address the issue.
11. On or about November 25, 2008, the Respondent received a verbal warning for her behavior towards patients and staff, after a patient reported that she was "loud, angry, aggressive, rude and talk[ed] down to her." The Respondent was reportedly the subject of four additional complaints of unprofessional behavior, all of which contained "similar content/theme," according to Union Memorial records.
12. On or about November 25, 2008, Union Memorial issued a written warning to the Respondent, noting that she had multiple tardy occurrences, and that within the

six week period after the warning, she had been late on 21 of the last 26 days she worked. The Respondent was advised that further complaints could result in progressive discipline including termination.

13. On or about January 14, 2009, the Respondent reported to the Union Memorial Department of Employee Health and Safety, which gave her a drug/alcohol test that was positive for cocaine. The testing sample was taken during the time the Respondent was on duty as an occupational therapist at Union Memorial.

14. On or about January 19, 2009, the Respondent presented to the Department of Employee Health and Safety at Union Memorial and met with the Complainant, who discussed with her the positive results of the drug test. The Respondent claimed that she did not use drugs explaining that she uses over-the-counter supplements and teas, takes prescribed oxycodone for occasional pain, and eats "a lot of poppy seeds."

15. The Respondent was then referred to Crossroads Centers ("Crossroads"), which provides substance abuse treatment services. The Respondent underwent drug testing there on January 22, 2009, which was positive for cocaine.

16. On or about January 26, 2009, the Respondent executed and entered into Union Memorial's "Mandatory Last Chance Continued Work Agreement ('Contract)," in which she agreed, *inter alia*, to abstain totally from the use of all "mood-changing and mind altering drugs," enroll in a drug rehabilitation program and to continued drug testing.

17. On February 16, 2009, the Respondent reported to Crossroads for continued treatment services. On this date, Crossroads requested a urine sample.

which the Respondent failed to provide within the required time period. Crossroads reported this failure to Union Memorial as a positive test.

18. The Respondent was requested to report for random drug testing on February 18, 2009. The Respondent provided a sample that was measured as being at an invalid (below normal) temperature. The Respondent was requested to provide a second sample that tested positive for cocaine. The testing sample was taken during the time the Respondent was on duty as an occupational therapist at Union Memorial.

19. On or about February 23, 2009, Union Memorial terminated the Respondent's employment based on her violation of her Contract, including, *inter alia*, failing to provide timely urine samples for drug testing providing a sample that was below the acceptable temperature range, and testing positive for cocaine.

20. The Board attempted to contact the Respondent by subpoena on three separate occasions for an interview at the Board: March 9, 2009; April 14, 2009; and August 28, 2009. On each occasion, the Board issued the subpoena by certified mail. In addition, the Board served the last subpoena by hand-delivery to the Respondent's residence, which was accepted by an adult male who stated that the Respondent was working.

21. The Respondent's conduct, as set forth above, constitutes, in whole or in part, a violation of one or more of the following provisions of the Act: H.O. § 10-315(3), commits any act of gross negligence, incompetence, or misconduct in the practice of occupational therapy or limited occupational therapy; H.O. § 10-315(5), violates any rule or regulation of the Board, including any code of ethics adopted by the Board; and/or H.O. § 10-315(8), provides professional services while (ii) using any narcotic or

controlled dangerous substances defined in Article 27 of the Code, or other drug that is in excess of therapeutic amounts or without valid medical indication.

22. The Respondent's conduct, as set forth above, constitutes, in whole or in part, a violation of one or more of the following provisions of COMAR 10.46.02.01: 10.46.02.01A(2), the licensee shall provide the highest quality services to the client; and/or 10.46.02.01A(11), the licensee shall function with discretion and integrity in relations with other health care professionals.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent violated Md. Health Occ. Code Ann. §§ 10-315(3), (5) and/or (8), and COMAR 10.46.02.01. The Respondent's conduct, as set forth above, constitutes, in whole or in part, a violation of one or more of the following provisions of the Act: H.C. § 10-315(3), commits any act of gross negligence, incompetence, or misconduct in the practice of occupational therapy or limited occupational therapy; H.O. § 10-315(5), violates any rule or regulation of the Board, including any code of ethics adopted by the Board; and/or H.O. § 10-315(8) provides professional services while (ii) using any narcotic or controlled dangerous substances defined in Article 27 of the Code, or other drug that is in excess of therapeutic amounts or without valid medical indication. The Respondent's conduct, as set forth above, constitutes, in whole or in part, a violation of one or more of the following provisions of COMAR 10.46.02.01: 10.46.02.01A(2), the licensee shall provide the highest quality services to the client, and/or 10.46.02.01A(11), the licensee shall function with discretion and integrity in relations with other health care professionals.

III. ORDER

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

ORDERED that the Respondent's license to practice as an O.T. is hereby

REVOKED.

5/13/10
Date

Joyce Ford, CO-AL
Chairperson, Maryland State Board of
Occupational Therapy Practice