

IN THE MATTER OF
CHINEDU ONYEJI, P.T.
License No. 23438

* BEFORE THE
* MARYLAND BOARD OF
* PHYSICAL THERAPY
* EXAMINERS

Respondent

* * * * *

FINAL DECISION AND ORDER

Background

On September 16, 2010, the Board of Physical Therapy Examiners (the "Board") received an application for a physical therapist's license from Chinedu Onyeji (the "Respondent"). On the application, the Respondent answered two of the character and fitness questions in the affirmative and provided an explanation indicating that he was currently charged with various drug offenses in Philadelphia, but maintained his innocence. As the Respondent indicated that the charges were pending at the time of application, the Board voted to issue him a physical therapist license and monitor the criminal proceedings in Philadelphia in the event administrative action was warranted. As a result of its monitoring efforts, the Board subsequently discovered that the Respondent had various other criminal convictions in Indiana that were not disclosed on his application for licensure. Therefore, the Board issued a Notice of Intent to Revoke Licensure on December 29, 2010.

A contested case hearing was held under the Administrative Procedure Act, Md. Code Ann., State Gov't §10-201 *et seq.*, and COMAR 10.38.05, before a quorum of the Board on March 15, 2011.¹ After the conclusion of the hearing on the same date, March

¹ At the hearing, the Respondent made a motion to delegate the contested case hearing to the Office of the Administrative hearing. The Respondent argued that the Board could not objectively hear this matter since

15, 2011, the same quorum of the Board convened to deliberate and voted unanimously to sanction the Respondent's license in accordance with the terms and conditions set forth in this Final Decision and Order.

SUMMARY OF THE EVIDENCE

A. Documents.

The following documents were admitted into evidence.²

- State's Exhibit No. 1 - Investigative Report
- State's Exhibit No. 2 - Summary of Investigative Report
- State's Exhibit No. 3 - Application for Physical Therapist Licensure
Transfer Report
Explanation of the Nature of Unresolved Case
Criminal Docket, In the Court of the Common
Pleas of Philadelphia County, Case No. CP-51-
CR-000455-2009
Exam Questionnaire
- State's Exhibit No. 4 - Licensing Display Print Out
- State's Exhibit No. 5 - Memorandum dated 9/24/2010
- State's Exhibit No. 6 - Records from Philadelphia County District Attorney
Cover letter dated 9/29/2010
Fax Cover Sheet
Arrest Report
Court Summary
- State's Exhibit No. 7 - Documents provided by the Respondent
Investigative Report
Chemistry Laboratory Report

it had also voted to charge the Respondent. Without any specific allegation of bias on the part of the Board, the Board's vote to charge the Respondent is not sufficient to warrant recusal of the Board from hearing the matter and rendering a final decision. *Withrow v. Larkin*, 421 U.S. 35 (1975).

² The Respondent made various motions objecting to the admission of State's Exhibits Nos. 1, 2, 6, 7, 8, 9, 10, and 12, arguing that these exhibits were unduly repetitious, irrelevant and immaterial. The Board voted to deny the Respondent's motions. As set forth herein, such exhibits were given the weight they were due.

Transcription of Preliminary Hearing held on
3/31/2009

State's Exhibit No. 8

Records from Bloomington Police Department,
Case No. B05-0766-IR

Cover letter and subpoena duces tecum, dated
9/29/10

Affidavit of Records Custodian

Initial Report

Arrest Report

Narrative by Office Harris

Use of Force Reporting Form

Plate Registration Response

MVA Records

Plate Registration Response

Legal Rights Advice Form

Property Sheet

Police Officer/Rental Property Report

Campus Auto Rental

Inmate Property Release Form

Remand to Jail Custody and Receipt for Prisoner

Copy of Indiana State Operator Driver License and
License to Carry Handgun

Monroe County Sheriff Department, Charge forms
FBI Report

Remand to Jail Custody and Receipt for Prisoner

Monroe County Sheriff Department, Charge forms
FBI Report

Property Sheet

Inquiry Transaction

NCIC Interstate Identification Index

Indiana State Police Criminal History Report

Interstate Identification Index

Criminal History Record

Bloomington Police Dept. – Supp. Case Report #1
Probable Cause Affidavit

Bloomington Police Dept. – Supp. Case Report #2
Probable Cause Affidavit

Bloomington Police Dept. – Supp. Case Report #3
Supp. #3 by Officer Harris #1469

Bloomington Police Dept. – Supp. Case Report #4
Supp. #4 by Officer Burns #1469

Request for Laboratory Examination

Miscellaneous document

Certificate of Analysis

Bloomington Police Dept. – Supp. Case Report #5
Supp. #5 by Officer Harris #1469
Certificate of Analysis
Bloomington Police Dept. – Supp. Case Report #6
Supp. #6 by Officer Harris #1469
Bloomington Police Dept. – Supp. Case Report #7
Supp. #7 by Officer Harris #1469
Certificate of Analysis
Bloomington Police Dept. – Supp. Case Report #8
Supp. #8 by Officer Harris #1469
Bloomington Police Dept. – Supp. Case Report #9
Supp. #9 by Officer Harris #1469

State's Exhibit No. 9

- Records from Philadelphia Police Dept., Case No.
B05-0477-ID

Cover letter and subpoena duces tecum, dated
9/29/2010
Affidavit of Records Custodian
Supplemental Case Report #1
Supplemental #1 by Officer Harris
Copy of Indiana University Student ID and State
Operator Drivers License
Remand to Jail Custody
Monroe County Sheriff Dept. Charge form
Writ of Attachment
MVA records
Initial Report for Quinton Black
Arrest Report
Narrative by Sargeant Lake
Remand to Jail Custody
Copy of Learners Permit – State of Indiana
Use of Force Reporting Form
Supplement #2 by Officer Gilmore
Copies of Reports
CFS Information Report
CFS information Report

State's Exhibit No. 10

- State of Indiana Criminal & Citation Search Results
for Chinedu Onyije

Criminal & Citation Search Reports
Chronological Case Summary (Misdemeanor)
Chronological Case Summary (Class A Felony)

Chronological Case Summary (Misdemeanor)

- State's Exhibit No. 11 - Memorandum Decision, 2/19/2007 – In the Court of Appeals of Indiana
- State's Exhibit No. 12 - Interview of Chinedu Onyije
- State's Exhibit No. 13 - Subpoena Ad Testificadum
Affidavit of Service
Oath
Interview Conclusion Statement
Transcribed Interview
Notice of Intent to Revoke Licensure
- Respondent's Exhibit A - Application for Reduction of Conviction to Class A Misdemeanor, Granted January 2007
- Respondent's Exhibit B - Letter from Robert T. Miller, Chief Deputy Prosecuting Attorney, Monroe County, Indiana, dated 3/7/2011

B. Witnesses.

State: John Bull – Investigator, Board of Physical Therapy Examiners

Respondent: Chinedu Onyije, D.P.T.

FINDINGS OF FACT

Based upon the testimony and documentary evidence presented at the evidentiary hearing, the Board finds that the following facts are true:

1. On or about September 13, 2010, the Respondent submitted an Application for Physical Therapist Licensure to the Board. (State's Ex. 3)
2. On the Respondent's application, he indicated "yes" to the following questions:

6. Have you committed a criminal act to which you pled guilty or nolo contendere or for which you were convicted or received probation before judgment?

7. Excluding minor traffic violations, are you currently under arrest or released on bond, or are there any current or pending charges against you in any court of law? (State's Ex. 3)

3. The application required that the Respondent provide a written explanation for all "YES" responses. (State's Ex. 3)

4. The Respondent attached a typed response with his application, titled, "Explanation of the Nature of Unresolved Case", in which he explained the circumstances surrounding a March 24, 2009, arrest in Philadelphia, Pennsylvania for offenses relating to illegal controlled substances. The Respondent explained the case was scheduled for hearing on October 6, 2010, at which time the determination would be made as to whether the case would proceed to trial. The Respondent further declared his innocence by explaining that he was returning home from working at his physical therapy affiliation and was "entrapped in the middle of a police raid". (State's Ex. 3)

5. The Respondent also submitted court documents relating to the Philadelphia charges which indicated that he had been charged with several violations of Pennsylvania drug laws, including the unlawful sale or distribution of controlled substances and criminal conspiracy to distribute controlled dangerous substances. (State's Ex. 3)

6. The Respondent did not provide any further information regarding any other criminal convictions. (State's Ex. 3)

7. Further, the Respondent answered "no" to the following question:

12. Have you committed an offense involving alcohol or controlled dangerous substances to which you pled guilty or nolo contendere or for which you were convicted or received probation before judgment?

8. At the conclusion of the application, the Respondent affirmed that the facts and statements he stated were true and correct to the best of his knowledge and belief. (State's Ex. 3)
9. On or about September 21, 2010, the Respondent attended the Board at its monthly open meeting, during which time he was allowed to speak regarding his application. The Respondent again disclosed his pending criminal matter in Philadelphia. The Respondent did not disclose any other criminal arrest or conviction during this time. (T. 31-33)
10. Because the Respondent had not yet been convicted of the pending charges he disclosed to the Board, the Board granted him a physical therapist license, effective September 24, 2010, under License Number 23438, but voted to continue to monitor the disposition of the pending criminal matter. (State's Exs. 4 and 5; T. 33)
11. The Board's investigator was assigned the responsibility to monitor the Respondent's pending criminal case in Philadelphia. In doing so, the investigator, Mr. Bull, discovered that the Respondent had been convicted of other criminal offenses in Indiana, set forth below, which he failed to disclose on his application for licensure. (T. 33-35)
12. On January 7, 2005, the Respondent pled guilty to false informing in Monroe County Circuit Court, Indiana. The Respondent had identified himself as

another individual when a sheriff was attempting to serve him with an arrest warrant. (T. 69-70; State's Ex. 12, Bates 241; State's Ex. 10, Bates 211)

13. The Respondent failed to disclose on his application that he pled guilty to the criminal offense of false reporting.
14. On August 28, 2005, the Respondent was arrested for possession with intent to distribute cocaine, possession of cocaine with a handgun, and possession of at least three grams of cocaine, all felonies. (State's Ex. 8, Bates 70) The Respondent was driving a rental car and was stopped by police officers for excessive speeding. The officers searched the trunk of the car and recovered baggies of cocaine and a loaded handgun. The Respondent had a permit for a separate handgun found in the glove compartment. (State's Ex. 8, Bates 73-77)
15. The Respondent subsequently entered into an agreement to testify against the passenger in the passenger's trial on felony drug and handgun charges. (State's Ex. 12, Bates 240) Pursuant to the agreement, the Respondent pled guilty on December 21, 2005, in Monroe County Circuit Court to one count of maintaining a common nuisance, a class D felony in Indiana.³(State's Ex. 10, Bates 216)
16. The Respondent was sentenced to incarceration for 18 months, with all but 234 days suspended, with credit for 117 days served, probation for 11 months, court costs totaling \$156.00, a drug interdiction fee of \$200.00, and an alcohol/drug program fee of \$350.00. (State's Ex. 10, Bates 216)

³ In January 2007, the Respondent's conviction for maintaining a common nuisance was reduced from a Class D felony to a Class A misdemeanor based on his satisfactory completion of his probationary requirements (Respondent's Ex. A)

17. The Respondent's conviction in Indiana for maintaining a common nuisance is a controlled substances violation pursuant to Indiana Code, Title 35, Article 48, Chapter 4 – Offenses Related to Controlled Substances, Section 13 for, as the Respondent accurately described, "transporting someone who had the drugs". (State's Ex. 12, Bates 240)
18. The Respondent failed to disclose to the Board that he pled guilty to the criminal offense of maintaining a common nuisance.
19. At the evidentiary hearing before the Board, the Respondent testified that he meant to disclose his Indiana convictions, but he made a mistake and forgot to attach a written explanation. He testified that the written explanations were stored on a flash drive, but have since been inadvertently erased. (T. 99-100)
20. The Board does not find credible Respondent's rationale as to why he did not disclose information, on two separate occasions, regarding at least two of his other criminal offenses.

DISCUSSION AND SANCTION

The Board reviews and utilizes the information included in the applications for licensure in order to determine whether an applicant is qualified to practice physical therapy in Maryland. The Board necessarily relies on the honesty and integrity of the physical therapists to complete the applications with information that is accurate, comprehensive and truthful. Based on the testimony and documentary evidence admitted in the hearing on this matter, the Board finds that the Respondent deliberately misled the Board in his failure to disclose information regarding his Indiana convictions.

In addition, the undisclosed criminal convictions for maintaining a common nuisance and false informing serve as a basis for disciplinary action by the Board.

The Respondent argues that he was under no obligation to disclose his conviction for common nuisance since the conviction, which was originally a Class D felony, was reduced to a Class A misdemeanor prior to the Respondent making application to the Maryland Board. However, this is a distinction without a difference. The Board's application simply asks whether the applicant has committed "an offense involving alcohol or controlled dangerous substances" (Question #12) or a "criminal act to which you pled guilty" (Question # 6). The application questions do not distinguish between a felony or a misdemeanor and thus, the Respondent was under the obligation to answer both in the affirmative and include a written explanation regarding this conviction. Furthermore, whether the distinction between a misdemeanor and a felony is relevant to the Board's evaluation of the application is a determination for the Board to make, not the Respondent.

It is undisputed that the Respondent answered "no" to Question #12, and provided no explanation, either with his application or when he appeared before the Board, regarding Question #6. The Respondent knew that maintaining a common nuisance meant "transporting someone who had drugs". He was therefore well aware that this conviction was one involving controlled dangerous substances which would require him to answer "yes" to, and provide an explanation for, Question #12.

A separate issue is whether the Board may sanction the Respondent for this conviction in accordance with Health Occ. Sec. 13-316(6) since the conviction was reduced from a felony to a misdemeanor. The statute provides that a licensee may be

sanctioned if he "is convicted of or *or pleads guilty...to a felony or to a crime involving moral turpitude.*" Since the Respondent pled guilty to a Class D felony, the Board has the authority to sanction him pursuant to this statute. The Board could also base its discipline on its determination that maintaining a common nuisance is a crime of moral turpitude, but finds that this determination is unnecessary in this case.

In addition, the Respondent failed to disclose his conviction for false reporting, which also qualifies as "criminal act[s] to which [the Respondent] pled guilty". This is also undisputed.

The Board does not find credible the Respondent's explanation regarding his failure to disclose his full criminal history. The Respondent testified that he meant to disclose his Indiana convictions, which is why he marked "yes" for Question 6. However, he stated that he made a mistake in forgetting to attach the explanation for those convictions because he was focused on the pending Philadelphia charges. (T. 91-92) He stated that he since lost these documents because they got erased from the flash drive on which they were stored. (T. 99-100) The Board finds that it is highly unlikely that anyone would "forget" to explain about a criminal offense that caused him to be incarcerated for over 100 days. In addition, if the Respondent's intent was truly to be forthcoming with the Board, and if he mistakenly believed that he had included all information regarding his criminal history, the Respondent would surely have addressed, or offered to have addressed, his other criminal convictions when he appeared at the Board's open meeting to explain the circumstances highlighted in his pending application. Instead, the Respondent made no mention of any other criminal involvement implying that the Philadelphia charges were a mere isolated incident of which he would

soon be acquitted. The Board finds that the Respondent intentionally withheld information regarding his convictions in Indiana.

In addition, the Respondent was very guarded during his testimony at the hearing. He was hesitant in answering questions, and he appeared to be choosing his words very carefully. The Respondent's cautious demeanor was well beyond what the Board expects of a typical anxious licensee testifying on his or her own behalf.

The Maryland Physical Therapy Act, Sec. 13-316(6) and (7), provides that the Board may sanction a licensee if the licensee pleads guilty to a felony or crime of moral turpitude. In addition, the Board may sanction a licensee who is convicted of a violation of a narcotics law. The Respondent pled guilty to maintaining a common nuisance, a Class D felony and a narcotics violation. The fact that the conviction was subsequently reduced to a Class A misdemeanor based on satisfactory completion of probation is irrelevant to the Board's evaluation of this matter. Furthermore, the Respondent pled guilty to false informing, which constitutes a crime of moral turpitude. The Respondent's convictions necessitate a significant sanction and certain conditions to ensure that the Respondent practices in such a manner that is ethical and poses no risk to the public.

Furthermore, by intentionally failing to disclose information that was critical to the Board's evaluation of his qualifications for licensure, the Respondent fraudulently and deceptively obtained a license. The potential harm to the public resulting from such concealment is substantial. In these circumstances, the Board feels that a significant sanction is necessary to deter the Respondent and other physical therapists from similar misconduct in the future.

The Respondent indicates that he understands that if his pending criminal charges in Philadelphia result in yet another criminal conviction, he is subject to further disciplinary action by the Board. If, however, the Respondent's pending criminal charges conclude favorably for the Respondent, the Board hopes that this experience serves as a teachable moment and that he is able to pursue his professional career in physical therapy without any further incidents.

CONCLUSION

Based upon the foregoing summary of evidence, findings of fact, and discussion, the Board concludes that Chinedu Onyije is subject to disciplinary sanction pursuant to Md. Code Ann., Health Occ. §§ 13-316-(1), (6), (7), and (15). The Board finds it unnecessary to make conclusions based on the remainder of the charges, and therefore dismisses the charges of violations of Health Occ. §§ 13-316(12), (19) and (24).

ORDER

Based on the foregoing Findings of Fact, Opinion, and Conclusion, by a unanimous decision of a quorum of the Board it is hereby:

ORDERED that Mr. Onyije's license shall be placed on SUSPENSION for a period of NINETY (90) DAYS, effective five (5) days from the date of this Order; and be it further,

ORDERED that Mr. Onyije shall submit his physical therapist license to the Board within five (5) days from the date of this Order to retain during the above suspension period;

ORDERED that following the satisfactory completion of the suspension period, Mr. Onyije shall be placed on PROBATION for TWO (2) YEARS, during which time he shall:

1. Not practice in a home health setting;
2. Successfully complete the ethics course sponsored by the Federation of State Boards of Physical Therapy ("FSBPT") or other similar Board-approved health practitioner ethics course; and
3. Practice under the general supervision of another physical therapist and ensure that the physical therapist submits quarterly performance reports to the Board indicating satisfactory performance; and be it further,

ORDERED that Mr. Onyije may petition the Board for termination of probation after completing two (2) years of probation provided that Mr. Onyije has been fully compliant with the probationary terms; and be it further,

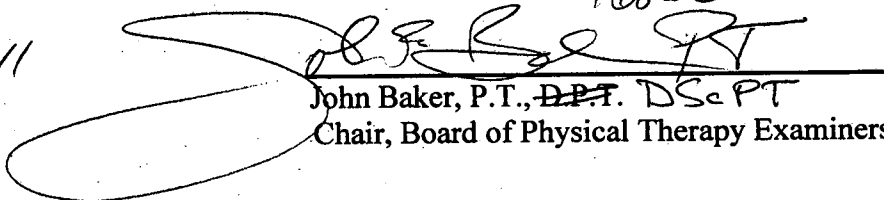
ORDERED that in the event that the Board receives credible evidence that Mr. Onyije has violated the terms of probation herein, the Board may take further disciplinary action against Mr. Onyije's license, after notice and opportunity for a hearing, or the Board may summarily suspend Mr. Onyije's license prior to a hearing, depending on the nature of the violation; and be it further,

ORDERED that Mr. Onyije shall at all times cooperate with the Board and all supervisors in the monitoring, supervision, and investigation of Mr. Onyije's compliance with the terms and conditions of this Order; and be it further,

ORDERED that Mr. Onyije shall bear all costs in complying with the terms of this Order; and be it further,

ORDERED that this is a final order of the Maryland Board of Physical Therapy Examiners and as such is a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., State Gov't Art., §§10-611, *et seq.*

06/29/2011
Date

1686w

John Baker, P.T., ~~D.P.T.~~ DScPT
Chair, Board of Physical Therapy Examiners

NOTICE OF RIGHT TO APPEAL

Pursuant to Md. Code Ann., Health Occ. Art., §13-318, you have the right to take a direct judicial appeal. A petition for appeal shall be filed within thirty (30) days of this Final Decision and Order and shall be made as provided for judicial review of a final decision in the Maryland Administrative Act, Md. Code Ann., State Gov't Art., §§10-201, *et seq.*, and Title 7, Chapter 200 of the Maryland Rules.