

IN THE MATTER OF	*	BEFORE THE MARYLAND
BRENDA L. MILES, D.R.T.	*	STATE BOARD OF
Respondent	*	DENTAL EXAMINERS
Certificate Number: 8166	*	Case Number: 2011-048
* * * * *		* * * * *

FINAL DECISION AND ORDER

BACKGROUND

On or about January 14, 2013 The Maryland State Board of Dental Examiners (the "Board") notified BRENDA L. MILES, D.R.T. (the "Respondent" or "Ms. Miles"), Certificate Number 8166, that she was being charged with violations of the Maryland Dentistry Act (the "Act"), Md. Code Ann., Health Occ. ("H.O.") §§ 4-101 et seq. (2009 Repl. Vol.) and the Board's regulations under Code Md. Regs. ("COMAR"), tit. 10 §§ 44.19 et seq. The pertinent provisions of the Act and the Board's regulations provide:

H. O. § 4-505. Certification of dental radiation technologists.

- (a) *"Dental radiation technologists" and "practice dental radiation technology" defined, rules and regulations; competency requirements.* — The Board of Dental Examiners shall:
 - (2) Adopt rules and regulations concerning qualifications, training, certification, monitoring of, and enforcement requirements for a dental radiation technologist[.]

COMAR 10.44.19.11. Penalties for Violations of These Regulations.

- A. Subject to the hearing provisions of this chapter, the Board may deny a certificate to practice dental radiation technology, reprimand any certified dental radiation technologist, place any certified dental radiation technologist on probation, or suspend or revoke the certificate of any certified dental radiation technologist, if the holder of the certificate:
 - (3) Fraudulently or deceptively obtains or attempts to obtain a certificate for the applicant or for another;
 - (7) Is convicted of or pleads guilty or nolo contendere to a felony

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

(15) Behaves dishonorably or unprofessionally.

A hearing regarding this matter was held on April 17, 2013 in front of a quorum of the Board. The Board issues this Final Decision and Order based upon its consideration of the entire record, including the exhibits, witness testimony and oral arguments. This Final Order is issued in accordance with the Board's sanctioning guidelines, Code Md. Regs., §10.44.31.06. Ms. Miles was present at the hearing and represented herself. Also present were the Administrative Prosecutors, Mr. Michael Kao, Assistant Attorney General and Mr. Christopher Anderson, Assistant Attorney General. The hearing was conducted in accordance with the Maryland Administrative Procedure Act, the Board's Practice Act and regulations. The Board unanimously agreed to the Findings of Fact and Conclusions of Law in this Order. For the reasons set forth below, the Board approves and adopts this Final Decision and Order.

SUMMARY OF THE EVIDENCE

The prosecution introduced exhibits 1 through 15 into evidence. Ms. Miles did not introduce any exhibits, but did testify on her own behalf.

The prosecution called Danielle Gonnelli ("Ms. Gonnelli" or "Investigator Gonnelli"), Board Investigator, as its only witness. Ms. Gonnelli testified that she has worked for the Board of Dental Examiners as an investigator since October of 2010. Ms. Gonnelli further testified that she became familiar with the Respondent when an anonymous complaint was received alleging that the Respondent had fraudulently obtained her certification and further alleging that the Respondent had a criminal

history. Ms. Gonnelli testified that the Respondent first received her DRT certificate in June of 1992, but that it expired March 1st, 2011, after which the Respondent submitted a reinstatement application, received to the Board on February 24, 2012. Based on the anonymous complaint, dated September 13, 2010, the Board began an investigation upon receipt of the Respondent's reinstatement application and asked the Respondent to forward her criminal history to the Board in order to continue the reinstatement process. In response, the Respondent faxed a document that contained one page of her criminal history, followed by a Criminal Justice Information System report and a narrative. Based on the information received, Ms. Gonnelli performed a search on the Maryland Judiciary Case Search system for the Respondent. This search indicated several convictions against the Respondent. Further documentation as provided by the relevant court systems indicated convictions against the Respondent for various crimes, including obtaining CDS by fraud, theft less than \$500, theft less than \$100, possession of a controlled dangerous substance ("CDS") and uttering a forged prescription. After obtaining this documentation, Investigator Gonnelli reviewed the Respondent's prior renewal applications and reinstatement applications, upon which she discovered that the Respondent had failed to report any of her criminal history on any of the applications in the "Character and Fitness" sections. Ms. Gonnelli further testified that the "Character and Fitness" sections of the Board's renewal and reinstatement applications specifically ask the applicant if they have "pled guilty, nolo contendere, conviction or receipt of probation before judgment or other diversionary disposition for an alcohol or controlled dangerous substance offense, including but not limited to driving while under the influence of alcohol or controlled dangerous substance?" Ms.

Gonnelli testified that the Respondent checked "NO" to each question pertaining to criminal history and manually signed and affirmed the contents of the application. Ms. Gonnelli further testified that during an investigative interview on July 25, 2012, the Respondent admitted to her convictions and indicated that she had checked "NO" to the criminal history questions in her 2007 application.

Ms. Brenda Miles testified on her own behalf. Ms. Miles testified that at the age of 41, she was surprised with a pregnancy, and was "totally on [her] own" and that she began to "slide down." Ms. Miles testified that the theft under \$100 was the result of her writing a \$10 check for gas, on which she wrote her phone number and told the recipient to call with any questions. Ms. Miles testified that the other theft under \$100 was when she mistakenly walked out of a grocery store with makeup after picking up her father's prescription. Ms. Miles admitted to using cocaine, and testified that she did it because she wanted to have the energy so that she could "do what [she] had to do." Ms. Miles denied using heroine, and testified that the possession charges were a result of passengers in her car having the CDS. Ms. Miles further testified that when Investigator Gonnelli asked her during an interview if she had checked the "NO" boxes to the questions on her renewal and reinstatement applications regarding criminal history, Ms. Miles responded that she had not checked the boxed because "if there was any questions, I wanted to be able to explain."

During cross examination by Mr. Anderson, Ms. Miles reiterated that she did not check the boxes on her 2007 application to the Board, but admitted that she did sign the application, and that her signature indicated that what was included in the application was correct. Ms. Miles was requested to read parts of the transcript from

her possession of CDS trial, during which the police officer who arrested her indicated that he "recovered a piece of aluminum foil containing three black glass vials with a powder substance, suspected cocaine." Ms. Miles further read from the trial transcript which indicated that she admitted to the court that she had purchased cocaine. Ms. Miles subsequently admitted that she had the cocaine on her person when she was arrested for CDS possession.

FINDINGS OF FACT

The Board bases its decision on the following facts, which are based on the evidence and testimony admitted at the hearing. The Board has reason to believe the following:

BACKGROUND

1. At all times relevant to the charges, the Respondent held a dental radiation technologist certificate issued by the Board. The Respondent was originally certified to practice dental radiation technology in Maryland on June 12, 1992, under Certificate Number 8166.

2. The Respondent's certificate expired on March 1, 2005. The Board reinstated the Respondent's certificate after receiving an Application for Reinstatement of Dental Radiation Technologist Certificate, dated November 7, 2005, from the Respondent.

3. On or about September 13, 2010, the Board initiated an investigation of the Respondent after receiving a written anonymous complaint, which alleged that the Respondent obtained her dental radiation technologist certificate fraudulently and that she had an extensive criminal record involving drug related offenses.

4. The Respondent again allowed her certificate to expire on March 1, 2011, without filing for a renewal.

BOARD'S INVESTIGATION

5. Subsequent to receiving the complaint against the Respondent, the Board subpoenaed the Respondent's criminal record from various trial courts in Maryland.

6. Court records in response to the Board's subpoena revealed that the Respondent had the following criminal history, which she failed to disclose to the Board:

- A. On November 29, 1999, the Respondent was convicted of one count of Obtaining Controlled Dangerous Substance ("CDS") by Fraud in the District Court of Maryland for Baltimore County under Case Number: 0C116249 and received a 12-month suspended sentence with 18 months of supervised probation.
- B. On May 20, 2002, the Respondent pled guilty and was convicted of one count of Theft under \$500 in the District Court of Maryland for Baltimore County under Case Number: 6C169098. She received a 30-day suspended sentence and was placed on unsupervised probation for 12 months.
- C. On or about April 7, 2005, the Respondent was arrested and charged with eleven counts of fraudulent prescription related offenses. The Respondent was later convicted of one count of Uttering a Fraudulent Prescription for Ritalin 60 mg (a psychostimulant and Schedule II CDS) in the Circuit Court for Baltimore County on August 24, 2005, under Case Number: 03-K05-002527, and received a two-year suspended sentence with three

years of supervised probation. On December 1, 2006, the Court found the Respondent in violation of her probation and imposed 13 months of incarceration.

- D. On or about July 19, 2010, the Respondent was charged with Uttering a Bad Check under \$500 and Theft under \$100. On March 16, 2011, the Respondent was convicted of Theft under \$100 in the District Court of Maryland for Baltimore County under Case Number: 0C332224 and received a sentence of time-served.
- E. On or about November 10, 2010, the Respondent was arrested and charged with Possession of Cocaine and Possession of Heroin in Baltimore City. On April 26, 2011, the Respondent was convicted of both counts in the District Court of Maryland for Baltimore City under Case Number 3B02098106 and received a sentence of time-served.

ALLEGATIONS OF SPECIFIC VIOLATIONS

Fraudulent and Deceptive Attempts to Obtain Certificate

7. On or about March 27, 2007, the Respondent filed a 2007 Dental Radiation Technologist Renewal Application (2007 Renewal Application") with the Board.

8. In her 2007 Renewal Application under "Section III — Character and Fitness," the Respondent answered "NO" to the following questions, which covered the period between March 1, 2005, and February 28, 2007:

- f. Have you pled guilty, nolo contendere, had a conviction or receipt of probation before judgment or other diversionary disposition of any

criminal act, excluding minor traffic violations?

- g. Have you pled guilty, nolo contendere, had a conviction, or receipt of probation before judgment or other diversionary disposition for an alcohol or controlled dangerous substance offense, including but not limited to driving while under the influence of alcohol or controlled dangerous substances?

9. In her 2007 Renewal Application, the Respondent affirmed with her signature that "the content of this document are true and correct to the best of my knowledge and belief." The attestation further indicated that "[f]ailure to provide truthful answers may result in disciplinary action."

10. The Respondent failed to disclose in her 2007 Renewal Application that on August 24, 2005, she was convicted in the Circuit Court for Baltimore County of Uttering a Fraudulent Prescription for Ritalin 60 mg, a Schedule II CDS, and received a two-year suspended sentence and three years of supervised probation.

11. The Respondent's failure to disclose in her 2007 Renewal Application that she had been convicted of Uttering a Fraudulent Prescription for Ritalin 60 mg constitutes fraudulently or deceptively obtaining or attempting to obtain a certificate, in violation of H.O. § 4-505 and COMAR 10.44.19.11A(3).

Conviction for Crime Involving Moral Turpitude

12. The Respondent's conviction for Obtaining CDS by Fraud in the District Court of Maryland for Baltimore County under Case Number: OC116249 on November 29, 1999 constitutes being convicted of a crime involving moral turpitude, in violation of H.O. § 4-505 and COMAR 10.44.19.11A(7).

13. The Respondent's guilty plea and conviction for Theft under \$500 in the

District Court of Maryland for Baltimore County under Case Number: 6C169098 on May 20, 2002, constitutes being convicted of a crime involving moral turpitude, in violation of H.O. §4-505 and COMAR 10.44.19.11A(7).

14. The Respondent's conviction for Uttering a Fraudulent Prescription for Ritalin 60 mg in the Circuit Court for Baltimore County under Case Number: 03-K-05-002527 on August 24, 2005 constitutes being convicted of a crime involving moral turpitude, in violation of H.O. §4-505 and COMAR 10.44.19.11A.

15. The Respondent's conviction for Theft Under \$100 in the District Court of Maryland for Baltimore County under Case Number: 03CC2224 on March 16, 2011, constitutes being convicted of a crime involving moral turpitude, in violation of H.O. §4-505 and COMAR 10.44.19.11A.

Dishonorable and Unprofessional Behavior

16. The Respondent's actions, including: failing to disclose her conviction for Uttering a Fraudulent Prescription for Ritalin 60 mg in her 2007 Renewal Application; being convicted of obtaining CDS by fraud on November 29, 1999; pleading guilty to and being convicted of Theft Under \$500 on May 20, 2002; being convicted of Uttering a Fraudulent Prescription for Ritalin 60 mg on August 24, 2005; and being convicted of Theft Under \$100 on March 16, 2011, constitute behaving dishonorably and unprofessionally, in violation of H.O. §4-505 and COMAR 10.44.19.11A(15).

CONCLUSIONS OF LAW

Based on the foregoing facts, the Board concludes that the Respondent fraudulently and deceptively obtained a certificate from the Board when she failed to disclose her criminal record to the Board upon submitting her renewal application, in violation of Health Occ. § 4-505 and COMAR 10.44.19.11A(3). By answering "NO" to the

questions on the 2007 Dental Radiation Technologist Renewal Application under Section III- Character and Fitness, despite being aware of having several criminal convictions, the Board finds that the Respondent was fraudulently and deceptively attempting to obtain a certificate. The Board did not find convincing the Respondent's contention that she did not check the "NO" box on her application, as her signature clearly attested to the truthfulness of the statements contained within.

The Board also concludes, based on the foregoing Findings of Fact, that the Respondent's conviction and/or guilty plea for (1) Obtaining CDS by Fraud in the District Court of Maryland for Baltimore County under Case Number: 0C116249 on November 29, 1999; (2) Theft Under \$500 on May 20, 2002; (3) Uttering a Fraudulent Prescription for Ritalin 60 mg in the Circuit Court for Baltimore County under Case Number: 6C169098 on August 24, 2005; and (4) Theft Under \$100 in the District Court of Maryland for Baltimore County under Case Number: 0C332224 on March 16, 2011 constitute being convicted of a crime involving moral turpitude in violation of Health Occ. § 4-505 and COMAR 10.44.19.11A(7).

Further, the Board concluded that the Respondent's actions, including failing to disclose her conviction for Uttering a Fraudulent Prescription for Ritalin 60 mg in her 2007 Renewal Application; being convicted of obtaining CDS by fraud on November 29, 1999; pleading guilty to and being convicted of Theft under \$500 on May 20, 2002; being convicted of Uttering a Fraudulent Prescription for Ritalin 60 mg on August 24, 2005; and being convicted of Theft under \$100 on March 16, 2011, constitute the Respondent as behaving dishonorably and unprofessionally, in violation of Health Occ. § 4-505 and COMAR 10.44.19.11A(15).

Based upon the foregoing summary of evidence, findings of fact, and opinion, the

Board concluded that the Respondent's license shall be revoked. This sanction was made in accordance with the Board's sanctioning guidelines. Specifically, the Board found that aggravating factors outweighed any mitigation presented by the Respondent. The total number of violations especially gave the Board pause. Additionally, the Respondent was not honest and forthright in her dealings with the Board. For these reasons, the Board elected to give the Respondent a severe sanction.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 2nd day of April, 2014, that, by a majority vote of the Board, it is hereby:


ORDERED that the Respondent's dental radiation certificate is hereby **REVOKED**; and it is further

ORDERED that the Respondent will not be eligible to apply for reinstatement for five years; and it is further

ORDERED that for purposes of public disclosure and as permitted by Md. Code Ann., State Govt., §10-617(h), this document consists of the contents of the foregoing Findings of Fact, Conclusions of Law and Order, and is reportable to any entity to whom the Board is obligated to report; and it is further

ORDERED that this Order is final and a public document pursuant to Md. Code Ann., State Govt., §§10-601 *et seq.*

04/02/2014
Date


Ngoc Quang Chu, D.D.S., President
Maryland State Board of Dental
Examiners

NOTICE OF RIGHT TO APPEAL

Pursuant to Md. Code Ann., Health Occ. Art., §4-319, you have the right to take a direct judicial appeal. A petition for appeal shall be filed within thirty days of your receipt 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.