

OLUSOLA IDOWU, L.D.N.

Respondent

License Number: B00222

\* BEFORE THE  
\* STATE BOARD OF  
\* DIETETIC PRACTICE  
\* Case Number: 09-002

\* \* \* \* \*

**FINAL DECISION AND ORDER OF REVOCATION**

On October 3, 2008, the State Board of Dietetic Practice (the "Board") notified Respondent, Olusola Idowu, L.D.N., of its intent to revoke her dietitian-nutritionist license, pursuant to the Administrative Procedure Act (the "APA"), Md. State Govt. Code Ann. ("SG") § 10-226(c)(1) (2004 Repl. Vol. and 2007 Supp.), and the Maryland Dietetic Practice Act, codified at Md. Health Occ. Code Ann. ("HO") § 5-101, *et seq.*, (the "Act") (2005 Repl. Vol. and 2007 Supp.). Specifically, the pertinent provision of the APA, SG § 10-226(c), states:

*Revocation of suspension. (sic)*— (1) Except as provided in paragraph (2) of this subsection, a unit may not revoke or suspend a license unless the unit first gives the licensee:

- (i) written notice of the facts that warrant suspension or revocation; and,
- (ii) an opportunity to be heard.

The pertinent provision of the Act that Respondent is charged with violating, HO § 5-311, states:

Subject to the hearing provisions of § 5-312 of this subtitle, the Board, on the affirmative vote of a majority of its members then serving, may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license if the applicant or licensee[.].

- (6) Is convicted of or pleads nolo contendere to a felony or 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 January 15, 2009, a Case Resolution Conference (“CRC”) was held in an attempt to resolve the case with a settlement. The parties were unable to reach an agreement at the CRC. Therefore, this case was scheduled to proceed to a hearing at the Office of Administrative Hearings (“OAH”), pursuant to SG § 10-205.

The case was scheduled for a pre-hearing conference on March 10, 2009 and a hearing before Yolanda L. Curtain, Administrative Law Judge (“ALJ”) on April 28, 2009. Prior to the conference, on March 4, 2008, Roberta Gill, Assistant Attorney General and Administrative Prosecutor for the State of Maryland (the “State”), filed a Motion to Exclude Evidence and a Motion for Summary Decision. On March 10, 2009, the pre-hearing conference took place before the ALJ. Present at the conference was Ms. Gill, on behalf of the State, and the Respondent, who represented herself.

At the conference, the parties were given an opportunity to present arguments on the State’s Motion to Exclude Evidence. After hearing arguments, and in consideration of the fact that the Respondent failed to file a Pre-Hearing Conference Statement prior to or at the time of the conference, the ALJ granted the State’s motion on the record.

The ALJ gave the Respondent until March 23, 2009 to file a written response to the State’s Motion for Summary Decision. The ALJ issued a Pre-Hearing Conference Order on March 11, 2009. Thereafter, the Respondent never filed a response to the State’s Motion for Summary Decision.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, SG §§ 10-201 – 10-226, the regulations of hearing

procedures for the Board, Code of Maryland Regulations (“COMAR”) 10.56.04.01 *et seq.*, and regulations of procedure of OAH, COMAR 28.02.01.01 *et seq.* On April 16, 2009, the ALJ issued a Ruling on State’s Motion for Summary Decision with a Proposed Order. The ALJ concluded that there are no material facts in dispute and that the Board is entitled to judgment as a matter of law. The ALJ further concluded and proposed that the Respondent’s dietitian-nutritionist license should be revoked because Respondent was convicted of criminal offenses that are felonies and crimes of moral turpitude, in violation of HO § 5-311(6) (Supp. 2008). Neither party filed Exceptions to the ALJ’s Proposed Decision.

After consideration of the entire record in this case, including any motions made and responses thereto, and the Proposed Decision and Order, the Board issues this Final Decision and Order of Revocation.

### **FINDINGS OF FACT**

The Board has found these facts by a preponderance of the evidence:

1. At all times relevant, the Respondent was licensed by the Board to practice as a dietitian-nutritionist in the State of Maryland. The Respondent was initially licensed on October 13, 1990. The Respondent’s license would have expired on October 31, 2008.
2. At all times relevant hereto, the Respondent was the owner and sole practitioner of SSS Nutrition Services, also known as Healthy You Nutrition Services, LLC, located in Hagerstown, Washington County, and in Silver Spring, Prince George’s County, Maryland.
3. On July 17, 2008, the Board received information that the Respondent was found guilty by a jury of Medicaid (Medical Assistance) Fraud.
4. The facts, as found by a jury, are as follows:

- A. The Respondent, a Medicaid provider, billed Amerigroup, a State Medicaid health plan, from March 2002 to January 2006, for nutritional services she purportedly provided to Medicaid recipients;
- B. In addition, she billed three private insurers, Great West, CareFirst and Aetna in a similar fashion;
- C. The proper codes to use for nutritional services performed by a nutritionist are 97802 for the initial visit and 97803 for follow-up visits. These codes pay about \$14 for a 15 minute session;
- D. Out of 2000 billings, the Respondent used the proper code two times. For nearly every remaining visit, the Respondent used a "physician" consultation code of 99245, which paid her \$177-\$186 per session. The CPT code book defines that code as a type of service provided by a "physician", and is an office consultation that requires three key components: "a comprehensive history, a comprehensive examination, and a medical decision-making of high complexity." Furthermore, under this code, "physicians" typically spend 80 minutes face-to-face with the patient and/or family;"
- E. The Respondent used this code 624 times to bill Amerigroup. Because the Respondent is not a physician, she can never use this code for services she performed, and, each time she used the code for her own services, she provided a materially false statement to Amerigroup;
- F. Further, this code, by definition, is an initial consultation code. Thus, even for a specialist, the remaining visits are properly billed using a regular office visit

code, which carries a lower reimbursement rate. The Respondent, however, used this code for nearly every appointment for nearly every client;

- G. The Respondent told State investigators that she selected this code and knew what the code stood for. She told Amerigroup agents that she was due the amount paid by this code because she performed the activities listed in the code;
- H. The evidence established that the Respondent did not, in fact, perform the activities described in the code and, rarely, if ever, spent 80 minutes with a client;
- I. The State introduced pages from the Respondent's appointment books showing that the Respondent routinely scheduled her clients every 15 to 30 minutes;
- J. The Respondent often billed for more than 10 hours in her office, even for as much as 15, 18 or 19 hours a day. Respondent's calendar, however, showed that she was in her office generally less than nine hours a day;
- K. Several of the Respondent's clients testified that, after the initial visit, the Respondent usually spent about 15 minutes with them on subsequent visits;
- L. In addition, the Respondent failed to perform a "comprehensive history" of each client every single week, nor would there be any need to do so. Similarly, she was not performing a "comprehensive examination" every single week or making a medical decision of high complexity. Nevertheless, she continued to submit this code, which paid the highest possible amount for any doctor's office visit;

M. The Respondent used the 99245 code to bill, as follows:

| <u>Payor</u> | <u>Number of 99245 billings</u> | <u>Amount paid for 99245 billings</u> |
|--------------|---------------------------------|---------------------------------------|
| Amerigroup   | 625                             | \$ 107,331                            |
| Great West   | 38                              | 4,512                                 |
| Carefirst    | 413                             | 53,228                                |
| Aetna        | 87                              | <u>13,256</u>                         |
| Total        |                                 | \$ 178,327                            |

5. The Respondent was subsequently charged with five counts of defrauding Medicaid and other insurers.

6. On July 7, 2008, the Respondent was found guilty in a trial in the Circuit Court for Washington County for using this wrong code for a total of 1183 times at a cost of \$178,327.00.

Specifically,

Count 1: Defraud State Health Care: plea: not guilty; found guilty;  
Count 2: Theft Scheme--\$500 +: plea: not guilty; found guilty;  
Count 3: False/Misleading Info: plea: not guilty; found guilty;  
Count 4: False/Misleading Info: plea: not guilty; found guilty;  
Count 5: False/Misleading Info: plea: not guilty; found guilty.

7. At the sentencing hearing held on September 16, 2008, the Respondent was sentenced to three years incarceration, all suspended; placed on 18 months supervised probation for collection of restitution; thereafter, forty-two months of unsupervised probation. The Respondent was ordered not to engage in "medical nutrition or any other health field, except as an employee of a business of which defendant has no legal or equitable interest." The Respondent is to pay restitution as follows: to the Department of Health and Mental Hygiene pursuant to Count 1, \$107,331; with regard to Count 3, Great

West, \$4512; with regard to Count 4, \$53,228 to CareFirst; with regard to Count 5, \$13,256 to Aetna, for a grand total of \$178,327.

8. As set forth above, the Respondent was convicted of a felony and a crime involving moral turpitude for which revocation is the only correct sanction.

### **STATEMENT OF THE CASE AND DISCUSSION**

The Board adopts and incorporates by reference the Statement of the Case and Discussion of the ALJ in her Proposed Decision and Order, dated April 16, 2009. The entire Proposed Decision is attached and incorporated herein as Appendix A.

The Board agrees with the findings and rationale of the ALJ in the Proposed Decision. The Board adopts the legal analysis upon which the ALJ based her conclusion to grant the State's Motion for Summary Decision. Since there are no facts in dispute, the Board is entitled to judgment as a matter of law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986); *Cheney v. Bell Nat'l Life Ins.*, 70 Md. App 163, 166 (1987), *aff'd.*, 315 Md. 761 (1989). The Respondent is precluded from attacking in these proceedings the underlying offenses that led to the guilty findings. *Culver v. Maryland Ins. Com'r*, 175 Md. App. 645 (2007).

It is undisputed that the Respondent was convicted of crimes that are felonies and that involve moral turpitude, all which stem from her practice as a licensed dietitian-nutritionist. The convictions bear heavily on the Respondent's character and trustworthiness to practice dietetics. The ALJ was correct in granting the State's Motion for Summary Decision and in proposing that the Board revoke Respondent's dietetic-nutritionist license.

## CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, Statement of the Case and Discussion, the Board concludes, as a matter of law, that Olusola Idowu, L.D.N. violated Maryland Health Occ. Code Ann. § 5-312(6). The Board adopts and incorporates by reference the Conclusions of Law made by the ALJ in the Proposed Decision dated April 16, 2009.

## SANCTION

The Respondent was convicted of Medicaid fraud, as well as related theft offenses regarding billing and insurance, in the Circuit Court for Washington County. As a result of these convictions, the Court ordered Respondent to pay restitution in the amount of \$178,327. The Court also ordered a 3-year suspended sentence and placed Respondent on 18 months of supervised probation and 42 months of unsupervised probation. In addition, the Court ordered the Respondent not to engage in medical nutrition or any other health field, except as an employee. The Court's sanction is indicative of the severity of Respondent's criminal acts. Accordingly, the Respondent is guilty of a serious violation of the Dietetic Practice Act, HO § 5-312(6).

The Respondent repeatedly was dishonest in her practice on many levels. Not only was she untruthful in her billing to Medicaid and other insurers, but she also betrayed her peers, her clients and the public trust by her actions. Respondent has brought disrepute to the profession of dietetics. Due to Respondent's complete disregard of the law and her responsibilities as a professional dietitian-nutritionist, the Board believes that a severe sanction is necessary to deter such further misconduct by the Respondent and by other dietitian-nutritionists who may be tempted to ignore the law and to abdicate their responsibilities to practice dietetics in an honest, trustworthy



and responsible manner.

As the Board's sanctions act as a "catharsis for the profession and a prophylactic for the public," (McDonnell v. Comm'n on Medical Discipline, 301 Md. 426, 436 (1984)), it is imperative that dietitian-nutritionists understand that serious misconduct has serious ramifications and is likely to have an effect on one's license to practice one's profession. It is for all of these reasons that the Board adopts the ALJ's recommendation and has determined that revocation is the only appropriate and correct sanction for Respondent's misconduct.

### **ORDER**

Based on the foregoing Findings of Fact, Statement of the Case and Discussion, Conclusions of Law, and Sanction, by a majority vote of a quorum of the Board, it is hereby

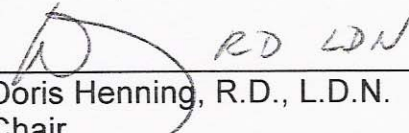
**ORDERED** on this 21 day of May 2009, that the Maryland dietetic-nutritionist license of Respondent, Olusola Idowu, L.D.N., license number B00222, is **REVOKED**; and it is further

**ORDERED** that upon presentation and receipt of this Final Decision and Order of Revocation, the Respondent shall immediately have delivered to the Board the display license and wallet-sized license to practice dietetics in the State of Maryland, previously issued by the Board; and it is further

**ORDERED** that this Final Decision and Order of Revocation shall be effective from the date it is signed by the Board; and it is further

**ORDERED** that this is a Final Decision and Order of the Maryland State Board of Dietetic Practice, and, as such, is a PUBLIC DOCUMENT and is reportable to any

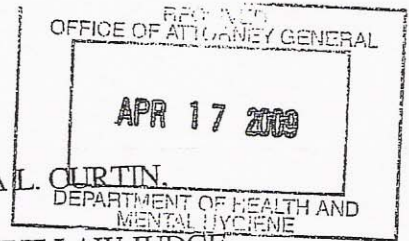
entity to which the Board is obligated to report, and is disclosable pursuant to the Maryland Public Information Act, codified at Md. State Govt. Code Ann. § 10-611, *et seq.*

  
Doris Henning, R.D., L.D.N.  
Chair  
Board of Dietetic Practice

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

Pursuant to Maryland Health Occ. Code Ann. §5-313, you have a right to take a direct judicial appeal. A petition for appeal shall be filed within thirty (30) days from your receipt of this Final Decision and Order of Revocation and shall be made as provided for judicial review of a final decision in the Maryland Administrative Procedure Act, Maryland State Gov't Code Ann. §§10-201 *et seq.*, and Title 7, Chapter 200 of the Maryland Rules.

# Appendix A



STATE BOARD OF DIETETIC  
PRACTICE

v.

OLUSOLA IDOWU, L.D.N.  
License No. B00222

RESPONDENT

- \* BEFORE YOLANDA L. CURTIN,
- \* AN ADMINISTRATIVE LAW JUDGE
- \* OF THE MARYLAND OFFICE
- \* OF ADMINISTRATIVE HEARINGS
- \* OAH NO.: DHMH-BDP-80-08-43066

\* \* \* \* \*

## RULING ON STATE'S MOTION FOR SUMMARY DECISION

STATEMENT OF THE CASE  
DISCUSSION  
CONCLUSIONS OF LAW  
PROPOSED ORDER

### STATEMENT OF THE CASE

On October 3, 2008, the State Board of Dietetic Practice (Board) notified the Respondent of its intent to revoke her dietitian-nutritionist license because she has been convicted of criminal charges involving felonies and crimes of moral turpitude, pursuant to the Maryland Dietetic Practice Act. Md. Code Ann., Health Occ. § 5-311(6) (Supp. 2008). Thereafter the matter was referred to the Office of Administrative Hearings for a hearing.<sup>1</sup>

A pre-hearing conference in this matter was scheduled for March 10, 2009. Prior to the conference, on March 6, 2009, Roberta Gill, Assistant Attorney General and Administrative Prosecutor for the State of Maryland (State) filed a Motion to Exclude Evidence and a Motion for Summary Decision. On March 10, 2009, I held the pre-hearing conference as scheduled. Present at the conference was Ms. Gill, on behalf of the State, and the Respondent, who represented herself.

<sup>1</sup> The file does not contain a request for hearing filed by the Respondent.

At the conference, the parties were given an opportunity to present arguments on the State's Motion to Exclude Evidence, which I granted on the record.<sup>2</sup> As to the Motion for Summary Decision, I gave the Respondent until March 23, 2009, to file a written response. I issued a Pre-hearing Conference Order on March 11, 2009. Thereafter, a response to the State's Motion for Summary Decision was not filed by the Respondent.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, the Rules of Procedure for the Board, and the Rules of Procedure of the Office of Administrative Hearings. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2004 & Supp. 2008); Code of Maryland Regulations (COMAR) 10.56.04; COMAR 28.02.01.

### DISCUSSION

The standard for ruling on a motion for summary decision is set forth in COMAR 28.02.01.16D, which provides the following:

#### D. Motion for Summary Decision.

- (1) A party may move for summary decision on any appropriate issue in the case.
- (2) A judge may grant a proposed or final summary decision if the judge finds that:
  - (a) There is no genuine issue of material fact; and
  - (b) A party is entitled to prevail as a matter of law.

The purpose of a motion for summary decision, which is similar to summary judgment, is to decide whether a trial is necessary to resolve disputes of material facts. *Greenwell v. American Guaranty Corp.*, 262 Md. 102, 109 (1971). Pursuant to prevailing case law, summary

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<sup>2</sup> The motion was granted because the Respondent had failed to file a Pre-hearing Conference Statement prior to the conference or on the date of the conference.

judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). A fact is material if it would affect the outcome of a case. *Id.* at 248. To establish that a material fact exists, the nonmoving party may not rest upon mere allegations or denials of the adverse party's pleading, but must come forward with specific facts showing that there is a genuine issue for trial. *Matshushita Electronic Indus. v. Zenith Radio Co.*, 475 U.S. 574 (1986). In deciding a motion for summary judgment or summary decision, the evidence, including all inferences derived from the evidence, must be viewed in the light most favorable to the nonmoving party. *Natural Design, Inc. v. Rouse Co.*, 302 Md. 47 (1984).

In its motion, the State argues that because the Respondent was found guilty of Medicaid fraud and related theft offenses, which are crimes of moral turpitude, she is precluded from attacking in these proceedings the underlying offenses that led to the guilty findings. As such, the State argues that there are no material facts in dispute. Furthermore, since Section 5-311(6) of the Health Occupation Article (HO) gives the Board the power to revoke the Respondent's dietitian-nutritionist license for felony convictions or for crimes of moral turpitude, then the State argues that it is entitled to judgment as a matter of law.

I agree with the State that in these proceedings the Respondent is precluded from collaterally attacking the underlying offenses that led to her guilty convictions. *See Culver v. Maryland Ins. Comm'r*, 175 Md. App. 645 (2007). The Respondent was afforded an opportunity to fully litigate the criminal charges that were issued against her before the Circuit Court of Washington County. After a jury trial, the Respondent was found guilty of Defraud State Health Care, Theft Scheme over \$500, and three counts of False/Misleading Information, which all stemmed from her role as owner and sole practitioner of SSS Nutrition Services. As a result of

the guilty findings, the Respondent received a three year suspended sentence and she was placed on eighteen months of supervised probation and forty-two months of unsupervised probation. She was order to pay restitution totaling \$178,327.. In addition, she was ordered by the Court to not engage in medical nutrition or any other health field, except as an employee. In light of the prior criminal proceedings and ultimate guilty findings, in these administrative proceedings, the Respondent does not have the opportunity to re-litigate the facts that led to the guilty findings.

In addition, pursuant to HO Section 5-311(6) the Board has the authority to reprimand, suspend or revoke a dietitian-nutritionist license if the licensee has been convicted of a felony or a crime of moral turpitude. While the statute provides a licensee with an opportunity for a hearing before the Board takes its action, a hearing in this matter would simply provide the Respondent with an opportunity to attempt to re-litigate the guilty findings that were made in the criminal case. As discussed previously, the Respondent is precluded from re-litigating the charges that led to the guilty findings; as such, there are no material facts at issue to be resolved in the administrative hearing. *See Culver*, 175 Md. App. at 659. Moreover, the Respondent was given an opportunity to respond to the State's Motion for Summary Decision. Certainly in a response the Respondent could have presented facts to show why revocation is not the appropriate outcome in this case, which may have presented a genuine issue for trial. Yet, despite being directed to do so, the Respondent failed to file any response.

It is undisputed that the Respondent has been convicted of crimes that are felonies and crimes of moral turpitude, which all stem from her practice as a dietician-nutritionist in which she defrauded Medicaid and other insurers. The convictions bear heavily on the Respondent's character and trustworthiness to practice as a dietitian-nutritionist and, as such, the Board has a substantial basis for electing to revoke the Respondent's license. Since the Board has the power

to revoke, pursuant to HO Section 5-311(6), the Board is entitled to judgment as a matter of law. Accordingly, I find that the State's Motion for Summary Decision should be granted.

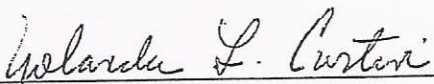
### CONCLUSIONS OF LAW

I conclude that there are no material facts in dispute and the Board is entitled to judgment as a matter of law. COMAR 28.02.01.16D; *Culver v. Maryland Ins. Comm'r*, 175 Md. App. 645 (2007). I further conclude that the Respondent's dietitian-nutritionist license should be revoked because she was convicted of criminal offenses that are felonies and crimes of moral turpitude. Md. Code Ann., Health Occ. § 5-311(6) (Supp. 2008).

### PROPOSED ORDER

I **PROPOSE** that the State's Motion for Summary Decision be granted and that a hearing in this matter not be held. I further **PROPOSE** that the Respondent's dietitian-nutritionist license be revoked.

April 16, 2009  
Date Decision Mailed

  
\_\_\_\_\_  
Yolanda L. Curtin  
Administrative Law Judge

YLC/\*\*  
#104407

### NOTICE OF RIGHT TO FILE EXCEPTIONS

As set forth in the delegation letter, any party may file exceptions, in writing, to this Proposed Decision with the State Board of Dietetic Practice within ten days of issuance of the proposed decision. The Office of Administrative Hearings is not a party to any review process.

**Copies Mailed To:**

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