

IN THE MATTER OF * **BEFORE THE**
MUHAMMAD S. AKHTAR, O.D. * **MARYLAND STATE**
* **BOARD OF EXAMINERS**
* **IN OPTOMETRY**
Applicant for Licensure * **Case Number: 2019-012**

* * * * *

FINAL ORDER

On July 2, 2019, the Maryland State Board of Examiners in Optometry (the “Board”) notified **MUHAMMAD S. AKHTAR, O.D.** (the “Applicant”), of its intent to deny his *Application for Licensure* (the “Application”), dated May 6, 2019. The Notice of Intent to Deny Application for Licensure Under the Maryland Optometry Act (the “Notice”) informed the Applicant that unless the Applicant requested a hearing in writing within 30 days of the date of mailing of the Notice, the Board intended to sign this Final Order, which was enclosed. More than 30 days have elapsed and the Applicant failed to request a hearing. Therefore, the Board hereby denies the Applicant’s Application to practice optometry.

The basis for the Board’s action was pursuant to the Maryland Optometry Act (the “Act”), Md. Code Ann., Health Occ. (“Health Occ.”) §§ 11-101 *et seq.* (2014 Repl. Vol.) and Code Md. Regs. (“COMAR”) 10.28.14 *et seq.*

The pertinent provisions of the Act provide:

Health Occ. § 11-313. Denials, reprimands, probations, suspensions, and revocations – Grounds.

Subject to the hearing provisions of § 11-315 of this subtitle, the Board, on the affirmative vote of a majority of its members then serving, may deny a license to any applicant . . . if the applicant . . .:

- (3) Is convicted of or pleads guilty or 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;
- (17) Behaves immorally in the practice of optometry;
- (20) Has had a license to practice optometry denied, suspended or revoked in another state for an act which would be grounds for disciplinary action under this section;
- (21) Has violated any provision of this title;
- (22) Violates any rule or regulation adopted by the Board; [and/or]
- (23) Commits an act of unprofessional conduct in the practice of optometry[.]

Pursuant to Health Occ. § 11-313(20), grounds for action under Health Occ. § 11-313 include the following:

- (17) Behaves immorally in the practice of optometry;
- (21) Has violated any provision of this title;
- (22) Violates any rule or regulation adopted by the Board; [and/or]
- (23) Commits an act of unprofessional conduct in the practice of optometry[.]

Health Occ. § 11-302. Qualifications of applicants.

- (a) *In general.* – To qualify for a license, an applicant shall be an individual who meets the requirements of this section.
- (b) *Moral character.* -- The applicant shall be of good moral character.

The pertinent provisions under COMAR provide:

COMAR 10.28.14. Code of Conduct.

03. General Conduct.

...

B. In the capacity of or identity as a licensed optometrist, the licensee may not:

- (3) Exploit a relationship with a patient for personal advantage or satisfaction[.]

04. Sexual misconduct.

A. An optometrist may not engage in sexual misconduct in the practice of optometry.

...

F. Sexual Harassment.

- (1) The licensee may not sexually harass a:

- (a) Patient[.]

INVESTIGATIVE FINDINGS

The Board finds the following:

I. BACKGROUND

1. The Ohio State Board of Optometry (the “Ohio Board”) issued the Applicant an optometry license on August 11, 1993. The Ohio Board revoked the

Applicant's Ohio optometry license, effective October 15, 1999. *See* ¶ 8-9, *infra*.

2. The Kentucky Board of Optometric Examiners (the "Kentucky Board") issued the Applicant an optometry license on July 8, 1994. The Kentucky Board refused to renew the Applicant's Kentucky optometry license on May 24, 1999. *See* ¶ 10, *infra*.

3. On May 6, 2019, the Applicant submitted an online Application to the Board through the Board's website. In the section of the Application titled, *Additional Questions*, the Applicant was instructed to answer "YES" or "NO" to a series of questions. The Applicant provided explanations for his affirmative responses.

4. The Applicant replied "YES" to Question 4, which asked, "Has your license to practice in any state ever been revoked or suspended?" The Applicant stated, "I was licensed to practice optometry in Ohio and Kentucky. Both jurisdictions revoked my license in 1999 because I plead guilty to committing a felony in Ohio and they refuse to renew or reinstate."

5. The Applicant replied "YES" to Question 5, which asked, "Have you ever pled guilty, nolo contendere, or been convicted or received probation before judgment of any criminal act (excluding traffic violations)?" The Applicant stated, "I plead guilty in Ohio to the charge of gross sexual imposition. I served a one year prison term and a five year probation, but was released 9 months early. No contact with law enforcement since."

6. The Applicant replied "YES" to Question 6, which asked, "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?" The Applicant stated, "I plead

guilty to a charge of gross sexual imposition in Ohio back in 1999. Served one year prison sentence and a five year probation, but as (sic) released 9 months early. No contact with law enforcement since.”

II. BOARD INVESTIGATION

7. The Board initiated an investigation of the Applicant based on the affirmative responses/disclosures he provided in his Application. The Board obtained information from the Ohio Board, which revoked the Applicant’s Ohio optometry license in 1999 after he had been convicted of felonious sexual assaults of two minor female patients during the course of optometric examinations. The Board also obtained information from the Kentucky Board, which reported that it refused to renew the Applicant’s Kentucky optometry license in 1999 after receiving notification from the Ohio Board that the Applicant had been convicted of a felony. The Board’s investigation determined the following:

8. In an Adjudication Order dated October 25, 1999, the Ohio Board revoked the Applicant’s Ohio optometry license, effective October 15, 1999.¹ The Ohio Board made a series of Findings of Fact in support of its Adjudication Order, which included the following:

- (a) The Ohio Board issued the Applicant an optometric certificate of licensure on August 11, 1993;
- (b) On October 5 and 9, 1999, the Applicant, while then licensed to practice optometry in Ohio, and in the course of his examination of two female patients, aged twelve years and

¹ The Ohio Board conducted a hearing on this matter on June 16, 1999. The Applicant was advised of the hearing date but was not present due to his incarceration.

fourteen years, touched inappropriately the breasts and other body parts of these patients under the guise of an optometric examination;

- (c) On March 4, 1999, the Applicant, in the Hamilton County Court of Common Pleas, entered guilty pleas to four counts of gross sexual imposition, felonies, and was convicted of: two counts of gross sexual imposition pursuant to Ohio Revised Code Section 2907.05(A)(1), felonies in the fourth degree; and two counts of gross sexual imposition pursuant to Ohio Revised Code Section 2907.05(A)(4), felonies in the fourth degree;
- (d) The Applicant was sentenced to one year of incarceration for each of counts one and two; and was sentenced to four years of incarceration for each of counts three and four;
- (e) The Applicant's sentences for the four counts of gross sexual imposition were ordered to be served concurrently; and
- (f) On April 8, 1999, the Executive Director of the Ohio Board received a hand-written letter from the Applicant wherein the Applicant apologized for his misconduct, describing it as "very unprofessional, unethical and inexcusable."

9. The Ohio Board found that the Applicant's actions, as described above, constituted violations of the Ohio Optometry Laws, Section 4725.11(A)(2), in that he was convicted of a felony charge and for "gross immorality, or grossly unprofessional or dishonest conduct." On that basis, the Ohio Board revoked the Applicant's Ohio optometric certificate of licensure, effective October 15, 1999.

10. The Kentucky Board refused to renew the Applicant's Kentucky optometry license on May 24, 1999, after receiving information from the Ohio Board that he had been convicted of a felony in Ohio.

III. GROUNDS FOR DENIAL OF APPLICAIION

Grounds under Health Occ. § 11-302

11. Pursuant to Health Occ. § 11-302(b), an Applicant shall be of good moral character. The Board denies the Applicant's Application because he does not possess good moral character, a requirement of licensure. Evidence that the Applicant does not possess good moral character includes his sexual assault of two female minor patients during the course of optometric examinations, for which he was convicted on four felony counts of gross sexual imposition in Ohio in 1999, and for which he was incarcerated for a substantial time period. As a result, the Ohio Board revoked the Applicant's Ohio optometry license. In addition, the Kentucky Board refused to renew the Applicant's Kentucky optometry license due to his felony convictions.

Grounds under Health Occ. § 11-313

12. The Board may deny an applicant's application for licensure if the applicant violates any provision contained in Health Occ. § 11-313. The Board denies the Applicant's Application in that his actions constitute violations of the Act under Health Occ. § 11-313.

13. The Applicant sexually assaulted two minor females in 1999 during the course of his performance of optometric examinations, which resulted in his being convicted on four counts of gross sexual imposition in Ohio, for which he was incarcerated for a substantial time period, and for which the Ohio Board revoked his optometry license in 1999. The Kentucky Board refused to renew the Applicant's Kentucky optometry license as a result of his felony convictions.

14. The Applicant's actions, as described above, constitute a violation of the following provisions of the Act under Health Occ. § 11-313: (3) Is convicted of or pleads guilty or 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; (17) Behaves immorally in the practice of optometry; (20) Has had a license to practice optometry denied, suspended or revoked in another state for an act that would be grounds for disciplinary action under this section; (21) Has violated any provision of this title; (22) Violates any rule or regulation adopted by the Board; and (23) Commits an act of unprofessional conduct in the practice of optometry.

15. The acts for which the Applicant was disciplined in Ohio would be grounds for disciplinary action in Maryland. Pursuant to Health Occ. § 11-313(20), grounds for action under Health Occ. § 11-313 include: Health Occ. § 11-313(17) Behaves immorally in the practice of optometry; Health Occ. § 11-313(21) Has violated any provision of this title; Health Occ. § 11-313(22) Violates any rule or regulation adopted by the Board; and Health Occ. § 11-313(23) Commits an act of unprofessional conduct in the practice of optometry.

16. Pursuant to Health Occ. § 11-313(22), the Applicant violated the following rules/regulations: COMAR 10.28.14.03B(3) (a licensee may not exploit a relationship with a patient for personal advantage or satisfaction); COMAR 10.28.14.04A (a licensee may not engage in sexual misconduct in the practice of optometry); and COMAR 10.28.14.04F(1)(a) (a licensee may not sexually harass a patient).

ORDER

It is, on the affirmative vote of a majority of the quorum of the Board, hereby:

ORDERED that the Application for Licensure of **MUHAMMAD S. AKHTAR, O.D.**, is **DENIED**; and it is further

ORDERED that this is a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., Gen. Prov. §§ 4-101 *et seq.* (2014 & 2018 Supp.).

8/1/19
Date

Patricia G. Bennett
Patricia G. Bennett, Executive Director
Maryland State Board of Examiners in Optometry

NOTICE OF RIGHT TO PETITION FOR JUDICIAL REVIEW

Pursuant to Health Occ. § 11-318, the Applicant has the right to seek judicial review of this Final Order. Any petition for judicial review shall be filed within thirty (30) days from the date of mailing of this Final Order. The cover letter accompanying this Final 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 the Applicant files a petition for judicial review, the Board is a party and should be served with the court's process at the following address:

Patricia G. Bennett
Executive Director
Maryland State Board of Examiners in Optometry
4201 Patterson Avenue
Baltimore, Maryland 21215
Phone: (410) 764-5994
Fax: (410) 358-2906

Notice of any petition should also be sent to the Board's counsel at the following address:

Deborah Donohue, Assistant Attorney General
Maryland Office of the Attorney General
Maryland Department of Health
300 West Preston Street, Suite 302
Baltimore, Maryland 21201
Phone: (410) 767-4308
Fax: (410) 333-7894