

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA



NOV 2 2012

GEORGIA STATE BOARD OF
EXAMINERS FOR SPEECH-
LANGUAGE PATHOLOGY AND
AUDIOLOGY,

Petitioner,


v.

JANINE L. WRIGHT,

Respondent.

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Docket No.:
OSAH-PLBD-SLPA-1311110-132-Miller


Kevin Westray, Legal Assistant

INITIAL DECISION
ORDER GRANTING PETITIONER'S MOTION FOR SUMMARY DETERMINATION

I. SUMMARY OF PROCEEDINGS

On September 14, 2012, the Georgia State Board of Examiners for Speech-Language Pathology and Audiology ("Board"), Petitioner herein, requested a hearing to determine whether the license of the Respondent, Janine L. Wright, to practice as a speech-language pathologist should be sanctioned based on the allegations set forth in the Matters Asserted and Statutes and Rules Involved.

An evidentiary hearing was originally scheduled for October 30, 2012. However, on September 28, 2012, the Board moved for summary determination. The case was therefore removed from the hearing calendar to allow time for responsive pleadings and a ruling on the Board's Motion. The Respondent submitted letters to the Court on October 2 and 24, 2012, both of which have been considered in conjunction with the Board's Motion. The Board responded to the Respondent's first letter on October 11, 2012, and filed a reply brief on October 31, 2012.

After consideration of the parties' arguments and submissions, and for the reasons stated below, the Board's motion is **GRANTED**. The Respondent's license to practice as a speech-language pathologist in Georgia is **REVOKED**.

II. STANDARD ON SUMMARY DETERMINATION

Summary determination in this proceeding is governed by Office of State Administrative Hearings (“OSAH”) Rule 15, which provides, in relevant part:

A party may move, based on supporting affidavits or other probative evidence, for summary determination in its favor on any of the issues being adjudicated on the basis that there is no genuine issue of material fact for determination.

Ga. Comp. R. & Regs. r. 616-1-2-.15(1). On a motion for summary determination, the moving party must demonstrate that there is no genuine issue of material fact such that the moving party “is entitled to a judgment as a matter of law on the facts established.” Pirkle v. Env’tl. Prot. Div., Dep’t of Natural Res., OSAH-BNR-DS-0417001-58-Walker-Russell, 2004 Ga. ENV. LEXIS 73, at *6-7 (OSAH 2004) (citing Porter v. Felker, 261 Ga. 421 (1991)); See generally Piedmont Healthcare, Inc. v. Ga. Dep’t of Human Res., 282 Ga. App. 302, 304-305 (2206) (noting that a summary determination is “similar to a summary judgment” and elaborating that an administrative law judge “is not required to hold a hearing” on issues properly resolved by summary determination.)

Further, pursuant to OSAH Rule 15:

When a motion for summary determination is supported as provided in this Rule, a party opposing the motion may not rest upon mere allegations or denials, but must show, by affidavit or other probative evidence, that there is a genuine issue of material fact for determination.

Ga. Comp. R. & Regs. r. 616-1-2-.15(3). See Lockhart v. Dir., Env’tl. Prot. Div., Dep’t of Natural Res., OSAH-BNR-AE-0724829-33-RW, 2007 Ga. ENV LEXIS 15, at *3 (OSAH 2007) (citing Leonaitis v. State Farm Mutual Auto Ins. Co., 186 Ga. App. 854 (1988)). In this case, no genuine issues of material fact exist, and the Board is entitled to judgment as a matter of law.

III. FINDINGS OF FACT

Viewing the evidence in the light most favorable to the Respondent, the following facts are undisputed:¹

1.

The Respondent holds a current license to practice as a speech-language pathologist in the State of Georgia. The Respondent's license was issued on August 15, 2001, and expires on March 31, 2013. (Petitioner's Statement of Undisputed Facts ["Undisputed Facts"] ¶ 1; Ex. P-1.)

2.

On February 9, 2012, in the Superior Court of Dekalb County, Georgia, Case No. 10CR3617, the Respondent was found guilty of Medicaid Fraud, a felony, in violation of O.C.G.A. § 49-4-146.1(b)(1). She was sentenced to confinement for a period of ten years, with four to be served in prison and the remainder on probation with certain terms and conditions. According to the Bill of Indictment, the Respondent owned and operated SLC Professional Consultants and Referral Services, and she was enrolled with Medicaid, Peach State, WellCare, and Amerigroup to provide speech-language pathology services to eligible children. Between June 2008 and January 2010, the Respondent billed and received payments totaling approximately \$60,119.57 for speech-language pathology services that she did not provide. (Undisputed Facts ¶ 2; Ex. P-2.)

3.

The Respondent failed to notify the Board of her conviction within ten days. (Undisputed Facts ¶ 3; Exs. P-3 [Affidavit of Lisa Durden], P-3A.)

¹ The Respondent states that she disagrees with the Board's Motion and its effort to sanction her license, but she has not effectively disputed any of the Board's proposed undisputed material facts. (Respondent's Letters filed Oct. 2 and 24, 2012.)

IV. CONCLUSIONS OF LAW

1.

No genuine issues of material fact exist in this matter. The sole question presented is whether the Board is authorized to revoke the Respondent's license to practice as a speech-language pathologist in Georgia based on the undisputed facts set forth above. See Ga. Comp. R. & Regs. r. 616-1-2-.15.

2.

The Board may take disciplinary action against a licensee for violations of O.C.G.A. § 43-1-19. See O.C.G.A. § 43-44-13. The available sanctions are set forth in O.C.G.A. § 43-1-19(d) and may include, *inter alia*, revocation, suspension, reprimand, fine, and/or practice restrictions.

3.

Under Georgia law, the Board is authorized to sanction any licensee who has:

- (3) Been convicted of any felony or of any crime involving moral turpitude in the courts of this state . . . as used in this paragraph, the term "conviction" shall include a finding or verdict of guilty or a plea of guilty, regardless of whether an appeal of the conviction has been sought;

. . .

- (6) Engaged in any unprofessional, immoral, unethical, deceptive, or deleterious conduct or practice harmful to the public, which conduct or practice materially affects the fitness of the licensee or applicant to practice a business or profession licensed under this title, or of a nature likely to jeopardize the interest of the public, which conduct or practice need not have resulted in actual injury to any person or be directly related to the practice of the licensed business or profession but shows that the licensee or applicant has committed any act or omission which is indicative of bad moral character or untrustworthiness . . . ;

. . .

- (8) Violated . . . any rule or regulation of this state, . . . [or] the professional licensing board regulating the business or profession licensed under this

title . . . (without regard to whether the violation is criminally punishable), which . . . rule or regulation relates to or in part regulates the practice of a business or profession licensed under this title, when the licensee or applicant knows or should know that such action is violative of such . . . rule

O.C.G.A. § 43-1-19(a).

4.

In this case, it is undisputed that the Respondent has been convicted of a felony criminal offense, as set forth in the Findings of Fact, above. Therefore, the Board is authorized to sanction her license pursuant to O.C.G.A. § 43-1-19(a)(3).

5.

It is further undisputed that the Respondent's conviction for felony Medicaid Fraud arose out of her work as a licensed speech-language pathologist, as set forth in the Findings of Fact, above. Accordingly, the Court concludes that the Respondent has engaged in unprofessional, immoral, unethical, deceptive, and deleterious conduct and practices that are harmful to the public, materially affect her ability to practice her profession, and are indicative of bad moral character and untrustworthiness, in violation of O.C.G.A. § 43-1-19(a)(6).

6.

The Board's rules require licensees to "maintain accurate and complete records of professional services rendered" and "charge only for services rendered." Ga. Comp. R. & Regs. rr. 609-4-.02(2), .03(4). The Respondent violated these regulatory provisions by committing the offense of Medicaid Fraud in connection with her professional practice, as set forth in the Findings of Fact, above. Thus, the Board is further authorized to sanction the Respondent's license based on her failure to comply with applicable rules governing the practice of speech-language pathology. O.C.G.A. § 43-1-19(a)(8).

7.

Finally, it is undisputed that the Respondent failed to report her conviction to the Board within ten days, as required by O.C.G.A. § 43-1-27. The statute specifically provides, “The failure of a licensed individual to notify the appropriate licensing authority of a conviction shall be considered grounds for revocation of his or her license” Id. The Board is also authorized to sanction the Respondent’s license on this ground.

8.

The Respondent’s correspondence indicates that she is currently incarcerated and unable to participate in a hearing. She further reports that she has appealed her conviction. However, the Board is not required to defer disciplinary action until she has been released from prison or the appeals process has been exhausted. O.C.G.A. 43-1-19(a)(3). The Respondent has not offered any evidence in mitigation of her conduct.

9.

After considering the gravity of the Respondent’s criminal offense, as well as its connection to her professional practice, her failure to report her conviction to the Board, her current incarceration, and the absence of mitigating evidence, the Court finds that revocation is the appropriate sanction in this case.

V. ORDER

In accordance with the foregoing Findings of Fact and Conclusions of Law, the Board's Motion for Summary Determination is hereby **GRANTED**. The Respondent's license to practice as a speech-language pathologist in Georgia is **REVOKED**.

SO ORDERED, this 2nd day of November, 2012.

A handwritten signature in cursive script, reading "Kristin L. Miller", written in dark ink.

KRISTIN L. MILLER
Administrative Law Judge