

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA**

**GEORGIA COMPOSITE MEDICAL  
BOARD,**

**Petitioner,**

v.

**RICHARD KESSLER,**

**Respondent.**

**Docket No.:** [REDACTED]

[REDACTED]-OSAH-GCMB-PA-60-Malihi

**Agency Reference No.:** [REDACTED]

**INITIAL DECISION**

The Georgia Composite Medical Board (“Petitioner” or “Board”) initiated this matter at the request of the Respondent, whose license to practice as a physician assistant has been summarily suspended by the Board. The Board seeks a continued suspension of the license until such time as the Respondent shows he is safe to practice. An evidentiary hearing took place on January 26, 2021. The Board was represented by Maximillian Changus, Assistant Attorney General. Respondent was represented by James Matthew Bass, Esq. After careful consideration of the evidence presented, and for the reasons stated below, the undersigned **RECOMMENDS** that Respondent’s license to practice as a physician assistant be **INDEFINITELY SUSPENDED** under the conditions set forth in Section III of this Initial Decision.

**I. Findings of Fact**

1.

Respondent is a physician assistant who holds a license to practice in the State of Georgia, and he held such license at all times relevant to the issues presented for hearing. Respondent’s license was originally issued on February 3, 2012, and is scheduled to expire on June 30, 2021. His license currently is suspended. (Testimony of Board Investigator Jonathan McGehee; Ex. P-1).

2.

On or about August 11, 2016, the Board received information that Respondent had been given a workplace drug screen, which was positive for hydrocodone, benzodiazepines, and Fentanyl. Respondent did not have a prescription for Fentanyl. Additionally, it was reported that a search of Respondent's locker revealed IV tubing, materials to start IVs, syringes, and approximately ten vials of Fentanyl and some Propofol. Respondent's employer noted concerning behaviors including Respondent's failure to properly waste unused drugs, including Fentanyl. Respondent's employment subsequently was terminated. (Testimony of J. McGehee; Ex. P-3, P-4, P-6, P-7.)

3.

It is undisputed that in approximately 2008 or 2009 Respondent was diagnosed with [REDACTED] [REDACTED] (Testimony of J. McGehee; Ex. P-3, P-5, P-7.)

4.

On October 16, 2016, Respondent signed a Private Agreement Not to Practice based on referral to the Georgia Professionals Health Program ("PHP"). Therein, [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] (Testimony of J. McGehee; Ex. P-2, P-7.)

5.

In October of 2016, in conjunction with the PHP referral, Respondent was evaluated by Talbott Recovery. The assessment team opined that [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]. (Testimony of J. McGehee; Ex. P-3.)

6.

A few months later, on or about December 5, 2016, the Board was notified that Respondent was not being monitored by the PHP and that he was seeking work outside of medicine. The PHP had been unable to contact Respondent to ensure he was not practicing as a physician assistant. Then, in March of 2017, it was confirmed that Respondent was working as a physician assistant, without evidence that he had ever undergone the recommended treatment. As a result, on July 27, 2017, the Board issued a confidential Order for Mental/Physical Evaluation, which Respondent underwent at Ridgeview Institute. (Testimony of J. McGehee; Ex. P-4, P-5, P-6.)

7.

The Ridgeview Institute evaluation report, dated September 6, 2017, noted [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] As a result of this information, the Board found that Respondent’s continued practice of medicine as a physician assistant “pose[d] a threat to the public health, safety, and welfare,” and it summarily suspended Respondent’s license on September 13, 2017. (Testimony of J. McGehee; Ex. P-5, P-6.)

## **II. Conclusions of Law**

1.

The Board bears the burden of proof in this matter. Ga. Comp. R. & Regs. 616-1-2-.07(1).  
The standard of proof is a preponderance of evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

2.

When a contested case is referred to the Office of State Administrative Hearings, the administrative law judge assigned to the case has “all the powers of the referring agency. . . .” O.C.G.A. § 50-13-41(b). The evidentiary hearing is de novo, and the administrative law judge “shall make an independent determination on the basis of the competent evidence presented at the hearing.” Ga. Comp. R. & Regs. 616-1-2-.21(1).

3.

The Board is the entity responsible for licensing physician assistants in Georgia and establishing standards for the profession. The Board is authorized to sanction a licensee who has violated the statutes and rules governing the profession as set forth in the Medical Practice Act, O.C.G.A. §§ 43-34-20 to - 46; the rules of the Georgia Composite Medical Board, Ga. Comp. R. & Regs. 360-3-.01 to 360-3-.07; and the general statutory provisions regarding disciplinary actions by professional licensing boards, found at O.C.G.A. § 43-1-19.<sup>1</sup> The sanctions available to the Board are set forth in O.C.G.A. § 43-1-19(d). In taking disciplinary action, the Board may:

- (1) Refuse to grant or renew a license to an applicant;
- (2) Administer a public or private reprimand, but a private reprimand shall not be disclosed to any person except the licensee;
- (3) Suspend any license for a definite period or for an indefinite period in connection with any condition which may be attached to the restoration of such license;

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<sup>1</sup> Chapter 1 of Title 43 is expressly adopted and incorporated by reference into Chapter 34 of Title 43. O.C.G.A. § 43-34-6(a).

- (4) Limit or restrict any license as the board deems necessary for the protection of the public;
- (5) Revoke any license;
- (6) Condition the penalty upon, or withhold formal disposition pending, the applicant's or licensee's submission to such care, counseling, or treatment as the board may direct;
- (7) Impose a fine not to exceed \$500.00 for each violation of a law, rule, or regulation relating to the licensed business or profession; or
- (8) Impose on a licensee or applicant fees or charges in an amount necessary to reimburse the professional licensing board for the administrative and legal costs incurred by the board in conducting an investigative or disciplinary proceeding.

O.C.G.A. § 43-1-19(d).

4.

Pursuant to O.C.G.A. § 43-1-19(a), a professional licensing board shall have the authority to impose the aforementioned sanctions should the majority of the board find that the licensee has done the following:

- (6) Engaged in any unprofessional, immoral, unethical, deceptive, or deleterious conduct or practice harmful to the public that materially affects the fitness of the licensee . . . to practice a business or profession licensed under this title or is of a nature likely to jeopardize the interest of the public; such 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. Such conduct or practice shall also include any departure from, or the failure to conform to, the minimal reasonable standards of acceptable and prevailing practice of the business or profession licensed under this title; . . .
- (8) Violated a statute, law, or any rule or regulation of this state, any other state, the professional licensing board regulating the business or profession licensed under this title, the United States, or any other lawful authority without regard to whether the violation is criminally punishable when such statute, law, or rule or regulation relates to or in part regulates the practice of a business or profession licensed under this title and when the licensee or

applicant knows or should know that such action violates such statute, law, or rule; or violated a lawful order of the board previously entered by the board in a disciplinary hearing, consent decree, or license reinstatement; [...]

- (10) Displayed an inability to practice a business or profession licensed under this title with reasonable skill and safety to the public or has become unable to practice the licensed business or profession with reasonable skill and safety to the public by reason of illness or the use of alcohol, drugs, narcotics, chemicals, or any other type of material . . . .

O.C.G.A. § 43-1-19(a)(6),(8), (10).

5.

Similarly, the Medical Practice Act, O.C.G.A. § 43-34-8(a) authorizes the Board to discipline a licensee upon a finding that the licensee has done the following:

- (7) Engaged in any unprofessional, unethical, deceptive, or deleterious conduct or practice harmful to the public, which need not have resulted in actual injury to any person. As used in this paragraph, the term “unprofessional conduct” shall include any departure from, or failure to conform to, the minimum standards of acceptable and prevailing medical practice and shall also include, but not be limited to, the prescribing or use of drugs, treatment, or diagnostic procedures which are detrimental to the patient as determined by the minimum standards of acceptable and prevailing medical practice or by rule of the board; [...]
- (10) Violated or attempted to violate a law, rule, or regulation of this state, any other state, the board, the United States, or any other lawful authority without regard to whether the violation is criminally punishable, when such law, rule or regulation relates to or in part regulates the practice of medicine, when the licensee or applicant knows or should know that such action violates such law, rule, or regulation; or violated a lawful order of the board previously entered by the board in a disciplinary hearing;
- (11) Committed any act or omission which is indicative of bad moral character or untrustworthiness; [. . . .]
- (13) (A) Become unable to practice pursuant to this chapter with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of any mental or physical condition.

(B) In enforcing this paragraph the board may, upon reasonable grounds, require a licensee, certificate holder, permit holder, or applicant to submit to a mental or physical examination by physicians designated by the board. [. . . .]

Further, “The provisions of Chapter 13 of Title 50, the ‘Georgia Administrative Procedure Act,’ with respect to emergency action by a professional licensing board and summary suspension of a license are adopted and incorporated by reference into this Code section.” O.C.G.A. § 43-34-8(a.1).

6.

As set forth in the Board’s rules, in relevant part, the Board is “authorized to deny, revoke, suspend, fine, reprimand or otherwise limit the license of a physician or physician assistant for all the grounds set forth in O.C.G.A. § 43-34-8, and to deny, revoke, suspend, fine, reprimand or otherwise limit the license of a physician pursuant to O.C.G.A. § 43-34-8.” Ga. Comp. R. & Regs. 360-3-.01. The Board’s rule defining “unprofessional conduct” includes, in relevant part, “[p]racticing medicine while mentally, physically, or chemically impaired” and “[a]ny other practice determined to be below the minimal standards of acceptable and prevailing practice.” Ga. Comp. R. & Regs. 360-3-.02(13), (18). Finally, again in relevant part, the rules provide that the Board “is authorized to take disciplinary action for violations of laws and rules and regulations which relate to or in part regulate the practice of medicine,” including the following:

- (1) The Georgia Medical Practice Act (O.C.G.A. T. 43, Ch. 34);
- (2) The Georgia Controlled Substances Act (O.C.G.A. T. 16, Ch. 13, Art. 2); [. . .]
- (6) The Rules of the Georgia Composite Medical Board, Ch. 360, Rules and Regulations of the State of Georgia[.]

Ga. Comp. R. & Regs. 360-3-.03.

7.

The Board presented evidence at the hearing that it had good cause to summarily suspend the Respondent's license. Despite Respondent's attempts at the hearing to argue certain inconsistencies in the various tests and assessments, these facts remain: over the course of several months in 2016 and 2017, the Board received a concerning report from Respondent's employer, a report that Respondent had failed to follow through with his PHP agreement and that the PHP was unable to contact him, confirmation that Respondent was working as a physician assistant without evidence that he had ever undergone the recommended treatment, and, significantly, two evaluations indicating that Respondent was not safe to practice. Having weighed all the evidence, the Court concludes that the suspension should remain in effect indefinitely until Respondent demonstrates to the satisfaction of the Board that he is safe to practice.

### **III. Decision**

Based on the aforementioned Findings of Fact and Conclusions of Law, the Board has cause for discipline, and it may deny, revoke, suspend, fine, reprimand, or otherwise limit the Respondent's license to practice as a physician assistant. The undersigned **RECOMMENDS** that Respondent's license to practice as a physician assistant be **INDEFINITELY SUSPENDED** and **FURTHER RECOMMENDS** that the Respondent be allowed to petition the Board for the lifting of such suspension and restoration of his license at any time following the effective date of this decision. Such petition shall include documentation of the results of a mental/physical examination in compliance with any requirements of the Board and documentation that he has been deemed safe to practice by a Board-certified physician.



**SO ORDERED**, this the 2<sup>nd</sup> day of March, 2021.

*Michael Malihi*

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**Michael Malihi**  
**Administrative Law Judge**

