

BEFORE THE WEST VIRGINIA MEDICAL IMAGING AND RADIATION  
THERAPY TECHNOLOGY BOARD OF EXAMINERS

WEST VIRGINIA MEDICAL IMAGING & RADIATION  
THERAPY TECHNOLOGY BOARD OF EXAMINERS,

RECEIVED

2/8/13

WV MI & RTT BOARD

*Complainant,*

v.

Complaint No. 04-FY-2013

Wayne Schwartzmiller,

*Respondent.*

STATEMENT OF CHARGES AND CONSENT AGREEMENT AND ORDER

The West Virginia Board of Medical Imaging & Radiation Therapy Technology Board of Examiners, (Board), has instituted an investigation into allegations that certain conduct by you may constitute a violation of West Virginia Code § 30-23-1 *et seq.* and/or the legislative rules promulgated thereunder. The Board has made a finding of probable cause to file a complaint for disciplinary action. The charges are as follows:

1. That the Board is a regulatory Board created for the purpose of regulating the Medical Imaging and Radiation Therapy profession. W. Va. Code § 30-23-1 *et seq.*
2. That in order to carry out its regulatory duties, the Board is empowered to suspend, revoke or otherwise discipline a licensee's Medical Imaging license pursuant to W. Va. Code § 30-23-24 and W. Va. Code R. § 18-3-3.4.
3. That the Respondent held a license as a Medical Imaging Technologist, License No. 4296, which lapsed on June 30, 2012.
4. That during all times pertinent herein, Respondent was employed as a Medical Imaging Technologist at Stonewall Jackson Memorial Hospital in Weston, West Virginia.
5. That between July 1, 2012 through July 6, 2012, the Respondent performed procedures as a medical imaging

technologist at Stonewall Jackson Memorial Hospital while the license was lapsed.

6. Complainant inquired of Stonewall Jackson Memorial Hospital, as to Respondent's work status and was informed that Respondent was an employee and had performed the duties of a medical imaging technologist after June 30, 2012, when the license expired. Moreover, Respondent has since renewed the license with the appropriate fee attached.
7. That the Board at its January 17, 2013 Board meeting, voted to find probable cause for a violation of W. Va. Code § 30-23-2 and W. Va. Code § 18-1-4.4.
8. That those acts described in Paragraphs three through six, if proven to be true, would constitute a violation of W. Va. Code § 30-23-2 and W. Va. Code R. § 18-1-4.4.

However, the parties have reached an agreement as to the proper disposition of this matter, and do hereby agree to the following findings, conclusions, and order in lieu of a hearing:

#### FINDINGS OF FACT

1. The Board is a regulatory Board created for the purpose of regulating the Medical Imaging and Radiation Therapy profession. W. Va. Code § 30-23-1 *et seq.*
2. In order to carry out its regulatory duties, the Board is empowered to suspend, revoke or otherwise discipline a licensee's Medical Imaging license pursuant to W. Va. Code § 30-23-24 and W. Va. Code R. § 18-3-3.4.
3. Respondent held a license as a Medical Imaging Technologist, License No.4296, which lapsed on June 30, 2012.
4. During all times pertinent herein, Respondent was employed as a Medical Imaging Technologist at Stonewall Jackson Memorial Hospital in Weston, West Virginia.
5. The Respondent performed procedures as a medical imaging technologist for Stonewall Jackson Memorial Hospital while the license was lapsed.
6. Respondent admits the oversight of failing to renew the license, and was removed from working any more shifts until properly licensed by the Board. Moreover, Respondent has since renewed the license with the appropriate fee attached.
7. The Board at its January 17, 2013 Board meeting, voted to find probable cause for a violation of W. Va. Code § 30-23-2 and W. Va. Code § 18-1-4.4.

8. Respondent's actions violated W. Va. Code § 30-23-2 and W. Va. Code R. § 18-1-4.4.

#### CONCLUSIONS OF LAW

1. Pursuant to W. Va. Code §30-23 *et seq.*, the Board is the duly constituted state entity empowered to regulate the practice of medical imaging & radiation therapy technology in the state of West Virginia, and has jurisdiction to take disciplinary action against the Respondent.

2. Based upon the allegations of unprofessional or unethical conduct set out above in the *Findings of Fact* section, and pursuant to W. Va. Code §30-23-24 the Board may revoke, suspend, or otherwise discipline any license to practice medical imaging and radiation therapy technology upon proof of certain enumerated infractions. Specifically, W. Va. Code §30-23-2 provides for the discipline of a license if such licensee is not properly licensed pursuant to the Board's statute and regulations.

3. The Board's Legislative Rules, at W. Va. Code R. § 18-1-4.8, state that the Board shall consider as a presumptive penalty in cases of first time violation for a technologist working on an expired license in the amount of five hundred dollars (\$ 500.00).

4. The Board concludes that the above-stated Findings of Fact support the sanction of disciplinary action pursuant to W. Va. Code § 30-23-2 and W. Va. Code R. § 18-1-4.4.

#### CONSENT

Wayne Schwartzmiller, by signing hereon, agrees to the following:

1. That I have had the opportunity to consult with counsel and execute this Consent Agreement voluntarily, freely, without compulsion or duress and mindful that it has legal consequences.
2. That no person or entity has made any promise or given any inducement whatsoever to encourage me to make this settlement other than as set forth herein.
3. That I acknowledge that I am aware that I may pursue this matter through appropriate administrative and/or court proceedings, and I am aware of my legal rights regarding this matter, but intelligently, knowingly and voluntarily waive such rights.
4. That I waive any defenses including, but not limited to, laches, statute of limitations, and estoppel, that I may have otherwise claimed as a condition of this agreement.
5. That I acknowledge that the execution of this document constitutes disciplinary action by the Board. It

is therefore considered to be public information, and information regarding this matter is available to any employer, prospective employer, or any other individual who may inquire as to her licensure status.

6. That I admit that my actions were a violation of the statute and rules of the Board.

ORDER

On the basis of the foregoing, the Board does hereby ORDER and DECREE that:

1. Respondent shall be assessed a monetary penalty in the amount of two hundred dollars (\$200.00) for the period of time which the Respondent was employed without a current license and performed the duties of a medical imaging technologist for a total of two hundred dollars (\$ 200.00). Said penalty shall be in accordance with the following terms:
  - a. a civil fine in the amount of One Hundred Dollars (\$ 100.00);
  - b. administrative costs in the amount of one hundred dollars (\$ 100.00).
2. The total amount due the Board by the Respondent, therefore, equals two hundred dollars (\$ 200.00). This amount shall be payable to the Board according to the terms contained in Attachment "A", which accompanies this Order and is made part thereof.
3. The Board is bound by agreement and law to report the results of all disciplinary actions, including the instant matter, for posting to the Board's web page and to the WV Secretary of State's office for publishing in the STATE REGISTER.
4. This document is a public record as defined in W. Va. Code §29B-1-2(4).
5. This Order constitutes the entire agreement between the parties.
6. Respondent acknowledges that failure to comply with this Order may result in additional disciplinary action, including failure to submit timely payments in accordance with the agreed upon payment schedule identified as Attachment "A."

AGREED TO BY Wayne Schwartzmiller:

*Wayne Schwartzmiller*  
SIGNATURE

2-6-13  
DATE

Sworn and subscribed before me this 6<sup>th</sup> day of February, 2013.

My Commission expires:

January 21, 2020

*Chasity Farmer*  
Notary Signature



Entered this 6<sup>th</sup> day of February, 2013.

*Nancy Godby* 02-08-13

Nancy Godby, MS-MHA, MA, RT(R)(M) ARRT, CHC  
Executive Director  
West Virginia Medical Imaging & Radiation  
Therapy Technology Board of Examiners

**ATTACHMENT "A"**  
**PAYMENT SCHEDULE OF MONETARY PENALTY**

I, Wayne Schwartzmiller, do hereby acknowledge by signing the accompanying Order that I agree to submit to the West Virginia Medical Imaging & Radiation Therapy Technology Board of Examiners (Board) a monetary penalty in the amount of two hundred dollars (**\$200.00**). I agree to submit this amount in accordance with one of the two following options:

**OPTION ONE:**

  
*(Sign and date here to select Option One)*

I agree to submit the total amount of the monetary penalty in the amount of two hundred dollars (**\$200.00**) within thirty (30) days of the date of execution of the Order. This singular \$200.00 payment incorporates one hundred dollar (\$100.00) for Fine and one hundred dollars (\$100.00) for Administrative Costs.

*(Note: When Option One is selected and you choose to do so, you can include payment along with the Consent Agreement when mailed to the Board office).*

**OPTION TWO:**

\_\_\_\_\_  
*(Sign and date here to select Option Two)*

I agree to submit the amount of one half (1/2) of the monetary penalty in the amount of one hundred dollars (\$100.00) in a single payment labeled "Fine" within thirty (30) days of the date of the execution of the Order.

**AND**

I agree to submit the remaining one half (1/2) of the monetary penalty in the amount of one hundred dollars (\$100.00) in a single payment labeled "Administrative Costs" within sixty (60) days of the date of the execution of the Order.

I understand that failure to submit payments according to an agreed-upon schedule may result in additional disciplinary action in accordance with the **W. Va. Code § 30-23-24 (a) (7)**, which states that the West Virginia Medical Imaging & Radiation Therapy Technology Board of Examiners may revoke, suspend, or otherwise discipline a license for failure to comply with any order or final decision of the Board.