

IN THE MATTER OF	*	BEFORE THE MARYLAND BOARD
AUSTIN K. WHITE, SLP	*	OF EXAMINERS FOR AUDIOLOGISTS,
License No. 07755	*	HEARING AID DISPENSERS, AND
Respondent	*	SPEECH-LANGUAGE PATHOLOGISTS
	*	Case No. AHS-09-2019

* * * * *

FINAL DECISION AND ORDER OF REVOCATION

Procedural Background

On December 21, 2018, the Maryland Board of Examiners for Audiologists, Hearing Aid Dispensers, and Speech-Language Pathologists (the “Board”) received a complaint regarding criminal charges filed against Austin K. White, Speech-Language Pathologist (the “Respondent”). As a result of this complaint, the Board initiated an investigation. Based on the information provided to the Board during the investigation, on March 7, 2019 the Board issued an “Order for Summary Suspension” which notified the Respondent that the Board was summarily suspending his license to practice speech-language pathology under Maryland Code Annotated, State Government Article, § 10-226(c)(2) and Code of Maryland Regulations (COMAR) 10.41.04.07.D because the Board determined that the public health, safety, or welfare required the immediate suspension of the Respondent’s license and that the public health, safety, or welfare imperatively required emergency action. The Board also scheduled a post-deprivation show cause hearing on the summary suspension for April 18, 2019. The Respondent appeared before the Board on April 18, 2019 and presented argument as to why the Board should not continue the summary suspension of the Respondent’s license. On May 21, 2019, the Board

issued an order continuing the summary suspension of the Respondent's license, and providing the Respondent the opportunity to request an evidentiary hearing on the summary suspension and disciplinary charges. On or about June 17, 2019, the Respondent requested an evidentiary hearing on the summary suspension of his license and disciplinary charges.

On June 28, 2019, the Board issued charges to the Respondent, charging him with a violation of the Maryland Audiology, Hearing Aid Dispensing, and Speech-Language Pathology Act (the "Act"), specifically Md. Code Ann., Health Occ. Art., § 2-314(4) ("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"). By a letter dated December 10, 2019, the Board notified the Respondent that an evidentiary hearing was scheduled for January 16, 2020 at 2:00 p.m. before the Board. In accordance with a request from the Respondent, by a letter dated January 15, 2020, the Board notified the respondent that the evidentiary hearing was rescheduled to February 20, 2020 at 2:00 p.m. before the Board.

On February 20, 2020, a quorum of the Board was present and an evidentiary hearing was held. Karen Malinowski, Administrative Prosecutor, was present and presented the State's case against the Respondent. The Respondent appeared and represented himself at the hearing.

Evidentiary Exhibits and Witnesses

State's Exhibits

The State submitted the following documents, which were admitted into evidence:

1. License Verification Information - Maryland (1 page).
 - License Verification Information - Pennsylvania (1 page).
2. Complaint (1 page).

- Cumberland Times-News – online article dated November 30, 2018 (2 pages).
 - Employment Verification from Contractor dated February 7, 2019 (1 page).
3. Case C-01-CR-19-00031, State of Maryland v. Austin Kenneth White (1 page).
- Application for Statement of Charges (9 pages).
 - Criminal Information (2 pages).
 - Statement of Charges (2 pages).
 - Arrest Warrant (1 page).
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- Maryland Judiciary Case Search Printout (6 pages).
 - Maryland Sex Offender Registry Printout (2 pages).
4. Transcript of Interview with Respondent dated February 5, 2019 (13 pages).
5. Order for Summary Suspension of License to Practice Speech-Language Pathology dated March 7, 2019 (8 pages).
6. Transcript of Summary Suspension Show Cause hearing dated April 18, 2019 (6 pages).
7. Order Continuing Summary Suspension of License to Practice Speech-Language Pathology dated May 21, 2019 (3 pages).
8. Request for Hearing by Respondent received June 17, 2019 (1 page).
9. Charges Under the Maryland Audiology, Hearing Aid Dispensing, and Speech-Language Pathology Act dated June 28, 2019 (8 pages).
10. Notice of Administrative Hearing dated December 10, 2019 (2 pages).
- Notice of Administrative Hearing dated January 15, 2020 (2 pages).

State's Witness

David Bruce, Board Investigator.

The Respondent's Exhibits

The Respondent submitted the following documents, which were admitted into evidence:

1. E-mail from Respondent with attached Letter of Resignation dated November 28, 2018 (2 pages).
2. Letter to Judge with four Character Reference Letters dated May 1, 2019 (6 pages).
3. Respondent's Pre-Sentence Investigation Report dated April 1, 2019 (7 pages).
5. Notice of Discharge of Respondent from Employment dated December 23, 2019 (1 page).
6. Letter from Respondent's Supervising Parole Agent dated February 20, 2020 (1 page).
7. Forensic Psychological Evaluation/Sex Offender Evaluation (as redacted by the Respondent) dated February 25, 2019 (22 pages).
8. Transcript of Respondent's Sentencing Proceeding, Case No. C-01-CR-18-931, Circuit Court for Allegany County, Maryland dated June 11, 2019 (15 pages).

The Respondent's Witness

Austin K. White, Respondent.

FINDINGS OF FACT

The Board makes the following findings of fact, based on the entirety of the record:

1. On March 2, 2015, the Board issued license number 07755 to the Respondent to practice speech-language pathology in the State of Maryland. (State's Exhibit 1, Page No. 000001). At all times relevant to this Order, the Respondent was licensed to practice in Maryland as a speech-language pathologist. *Id.* The expiration date of the Respondent's license is May 31, 2020. *Id.*
2. The Respondent was issued license number SL011607 by the Pennsylvania State Board of Examiners in Speech-Language Pathology and Audiology on or around September 4, 2013. This license expired on July 31, 2016. (State's Ex. 1, No. 000002).

3. By a letter dated December 21, 2018, the Board received information from the Director of Human Services for a county-wide public school system in Maryland. The letter stated in part:

I am writing to make you aware of criminal charges related to the possession of child pornography against a speech pathologist that was contracted to work in our schools through [Agency] during the school year, 2018-2019. The speech pathologist's name is Austin Kenneth White. He worked with children at one of our elementary schools on November 26, 2018. He resigned the next day without reason... On December 8, 2018, the charges and his arrest came to our attention through another employee who forwarded a newspaper article to me.

(State's Ex. 2, Nos. 000003 – 000005).

4. Based on that information, the Board initiated an investigation. (State's Exs. 2, No. 000006; 3, Nos. 000007–000029; and 4, Nos. 0000030–000042). The Board's investigation revealed that the Respondent's work history included:

a. From approximately June 2016 until November 2017, the Respondent worked as the Lead Speech-Language Pathologist and Clinical Director for an Outpatient Rehabilitation Center in Maryland. (State's Ex. 4, Nos. 000031, 000034; Respondent's Exs. 3, 7; Transcript, p. 60).

b. In June or July 2018, the Respondent, working for a medical staffing agency, covered a four-week personnel absence at a skilled nursing facility in Maryland. (State's Ex. 4, Nos. 000031, 000034, 000053; Respondent's Exs. 3, 7; Tr., pp. 60-61).

c. In November 2018, the Respondent was hired by Agency to work a full-time placement in a county school system located in Maryland. The Respondent worked November 19, 2018; November 20, 2018; and November 21, 2018. According to documentation from Agency, the Respondent is "no longer eligible to provide services through [Agency] or any of its affiliated companies." (State's Ex. 2, No. 000006; State's Ex. 4, Nos. 000031, 000034, 000053; Respondent's Exs. 3, 7; Tr., pp. 18, 28, 61).

5. The Board's investigation also revealed that the Respondent was criminally charged in the District Court for Alleghany County, Maryland with two counts of Child Pornography Promotion/Distribution, and four counts of Possession of Child Pornography. (State's Ex. 3, Nos. 000017-000020, 000020-000025; State's Ex. 4, Nos. 000033, 000037; Tr., pp. 18-20).

6. According to the Application for Statement of Charges:

[FBI Special Agent] then obtained a search warrant for the home of Austin White, which was executed on 11/7/2017.

Following the search of the residence, White, who was present at the time of execution of the search warrant agreed to be transported... for an interview...

During the interview, White admitted to going online to receive and view videos of young boys ages 8 to 11 who were engaged in sexual activities ... In addition, White indicated he would seek out images of young boys in various sexual poses online... White admitted he would use websites ..., along with the file sharing networks ... White also admitted to using private messengers to include: Wikr, Kik, and Zoom, to view child pornography. He recalls the first time viewing child pornography in approximately 2007 and the last time was as recent as a month ago...

....

As a result of the search hits and analysis of photos found on the evidence items [hard disk drives and external storage devices removed from the Respondent's house during the execution of the search warrant], there were multiple photos of suspected child pornography depicting pre-pubescent and teenage males in various poses and positions... There were also multiple Skype conversations, Yahoo and Zoom chats identified which were sexually explicit in nature.

(State's Ex. 3, Nos. 000013-000014).

7. On February 12, 2019, in the Circuit Court for Allegany County, Maryland, the Respondent pleaded guilty to one count of Possession of Child Pornography, in violation of Md. Code Ann., Criminal Law Art., § 11-208. (State's Ex. 3, No. 000024; 6, No. 000054;

Respondent's Ex. 3; Tr., pp. 20, 53). The State entered *nolle prosequi* as to the remainder of the Respondent's charges. (State's Ex. 3, Nos. 000023-000025; Tr., pp. 32-33).

8. The Respondent was sentenced to 3 years suspended with 5 years of supervised probation. (State's Ex. 3, Nos. 000024-000025; Respondent's Ex. 8; Tr., p. 21). Additionally, the Respondent was ordered by the Court to submit to a drug evaluation, testing, and treatment (Respondent's Exs. 5, 6; Tr., p. 36); to pay any required costs; to submit to sex offender evaluation and complete any required treatment (Respondent's Ex. 7; Tr., pp. 38-42); to submit to mental health evaluation and complete any required treatment; to register with a designated law enforcement agency as a sexual offender (State's Ex. 3, Nos. 000028-000029; Respondent's Ex. 8; Tr., pp. 21-22)¹; to comply with the requirements and pay any costs associated with internet/computer monitoring (Respondent's Ex. 8; Tr., p. 49); to have no unsupervised contact with minor children (Respondent's Ex. 8; Tr., p. 71); and agree to the forfeiture of the equipment that was seized by the authorities at the time of the search warrant at the Respondent's residence. (Respondent's Exs. 3, 8).

9. The Respondent acknowledged during his testimony that this "was why we're here today; one guilty plea for possession of child pornography, one image." (Tr., p. 53).

10. The Respondent also acknowledged that the crime for which he pleaded guilty is a crime of moral turpitude: "Now, I know I violated moral turpitude. I know that. And I know that I violated public trusts." (Tr., p. 78).

11. The Respondent testified that, at the time of the hearing:

¹ The Respondent is a Tier I Sex Offender Registrant, and will remain on the Maryland Sex Offender Registry for fifteen (15) years. Md. Code Ann., Criminal Procedure Art., § 11-707(a)(4)(i). (State's Ex. 3, Nos. 000028-000029; Tr., p. 22).

THE [RESPONDENT]: It has been 27 months since I have done any suspect.

[BOARD MEMBER]: Define any suspect.

THE [RESPONDENT]: Looking at child pornography. Chatting with anyone about children. Thinking about children in a sexual way.

(Tr., p. 65).

12. The Respondent acknowledged that “I know that we don’t have provisional licensure or restricted licensure, whatever the term may be. But I’m not able, according to current stipulations of my probation, to work with anybody under 18 that [does] not [have] another adult present.” (Tr., p. 71).

ANALYSIS

Based on the evidence and testimony presented at the February 20, 2020 evidentiary hearing, the Board finds that the Respondent violated the Maryland Audiology, Hearing Aid Dispensing, and Speech-Language Pathology Act (the “Act”). The Board finds that the crime of possession of child pornography is a “crime of moral turpitude” within the meaning of § 2-314(4) of the Act. “[M]oral turpitude’ ...strikes the broader chord of public confidence in the administration of government and the licensure of persons to practice certain professions.” *See, Stidwell v. Maryland State Board of Chiropractic Examiners*, 144 Md. App. 613, 619 (2002). “That is, a person who has credibility to testify may not have the public’s confidence to practice certain professions or to serve on a governmental board.” *Id.* The Supreme Court observed: “Child pornography harms and debases the most defenseless of our citizens.” *U.S. v. Williams*, 553 U.S. 285, 307 (2009). The Board finds that based upon the underlying facts used to support the Respondent’s guilty plea, the public would not have confidence in the licensure of the Respondent to practice the profession of speech-language pathology at this time.

The Board finds that the Respondent's misconduct, as detailed in the Findings of Fact above, falls within paragraph A.(4) of the Board's sanctioning guidelines. See COMAR 10.41.13.04. The range of potential sanctions under that paragraph is probation for 1 year to revocation. *Id.* The potential monetary penalty under that paragraph is \$1,000.00 to \$5,000.00. *Id.* In this instance, the Board finds that revocation of the Respondent's license to practice speech-language pathology in the State of Maryland is appropriate.

CONCLUSIONS OF LAW

Pursuant to Md. Code Ann., State Gov't Art., § 10-226(c)(2) and COMAR 10.41.04.07, if the Board concludes that the public health, safety or welfare imperatively requires emergency action, and that there is a substantial likelihood that a licensee poses a risk of harm to the public health, safety, or welfare, the Board may summarily suspend a license. Based on the foregoing Findings of Fact, the Board concludes that the Respondent's license to practice as a speech-language pathologist was necessarily summarily suspended on March 7, 2019.

Based on the foregoing Findings of Fact, the Board concludes that the Respondent violated Md. Code Ann., Health Occ. Art., § 2-314 as follows:

(4) 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.

ORDER

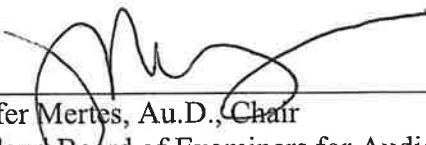
Based upon the foregoing Findings of Fact and Conclusions of Law, and upon the affirmative vote of a majority of the members of the Board' it is hereby:

ORDERED that the **SUMMARY SUSPENSION** of the license of Austin Kenneth White, no. 07755, to practice as a speech-language pathologist in the State of Maryland, is hereby **AFFIRMED**; and it is further

ORDERED that, the license of Austin Kenneth White to practice as a speech-language pathologist in the State of Maryland, no. 07755, is hereby **REVOKED**; and it is further

ORDERED that this document is a Final Decision and Order of the Maryland Board of Examiners for Audiologists, Hearing Aid Dispensers, and Speech-Language Pathologists and as such, is a **PUBLIC DOCUMENT** under Md. Code Ann., General Provisions Art., § 4-333(b).

5/18/20
Date



Jennifer Mertes, Au.D., Chair
Maryland Board of Examiners for Audiologists,
Hearing Aid Dispensers, and Speech-Language Pathologists

NOTICE OF APPEAL RIGHTS

Any person aggrieved by a final decision of the Board under Md. Code Ann., Health Occ. Art., § 2-314 may take a direct judicial appeal within thirty (30) days as provided by Md. Code Ann., Health Occ. Art., § 2-316; Md. Code Ann., State Gov't Art., § 10-222; and Title 7, Chapter 200 of the Maryland Rules, including Md. Rule 7-203 ("Time for Filing Action").

If the Respondent files an appeal, the Board is a party and should be served with the court's process at the following address:

Candace G. Robinson, Au.D., CCC-A, Executive Director
Maryland State Board of Examiners for Audiologists, Hearing Aid Dispensers,
and Speech-Language Pathologists
4201 Patterson Avenue
Baltimore, Maryland 21215-2299
Phone: 410-764-4723
Fax: 410-358-0273

At that point, the Administrative Prosecutor is no longer a party to this case and need not be served or copied. Notice of any petition should also be sent to the Board's counsel at the following address:

Deborah A. Donohue
Assistant Attorney General
Maryland Department of Health
300 West Preston Street, Suite 302
Baltimore, Maryland 21201