

IN THE MATTER OF
CHIZARRA DASHIELL
License Number A01741

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BEFORE THE MARYLAND
BOARD OF OCCUPATIONAL
THERAPY PRACTICE

FINAL DECISION AND ORDER OF REVOCATION

I. PROCEDURAL BACKGROUND

On or about June 15, 2015, the Maryland Board of Occupational Therapy Practice (the "Board") received a complaint from a licensed occupational therapist in the District of Columbia regarding the practice of Chizarra Dashiell (the "Respondent"). The Board conducted an investigation, and, based upon that investigation, on May 5, 2016, the Board notified the Respondent that it was charging her license to practice as an occupational therapy assistant ("OTA") in the State of Maryland with several violations of the Maryland Occupational Therapy Practice Act. Specifically, the Board charged the Respondent's OTA license with violations of Md. Code Ann., Health Occ. ("HO") § 10-315:

- (1) Fraudulently or deceptively obtains or attempts to obtain a license or temporary license for the applicant, licensee, or holder or for another;
- (3) Commits any act of gross negligence, incompetence, or misconduct in the practice of occupational therapy or limited occupational therapy;
- (4) Knowingly violates any provision of this title; specifically HO§§ 10-401 and 10-403;
- (5) Violates any rule or regulation of the Board, including any code of ethics adopted by the Board; specifically COMAR 10.46.02.01.A.(11) ("A licensee shall... [f]unction with discretion and integrity in relations with other health professionals") and COMAR 10.46.02.01.A.(15) (A licensee shall... [c]omply with all applicable laws dealing with occupational therapy"); and
- (9) Is disciplined by a licensing or disciplinary authority of any other state or country or convicted or disciplined by a court of any state or country for an act that would be

grounds for disciplinary action under this section.

The Board's charging document also notified the Respondent of the Respondent's opportunity to request an evidentiary hearing before the Board regarding its charges. The Respondent requested an evidentiary hearing. By letter dated July 27, 2016, the Board notified the Respondent that an evidentiary hearing had been scheduled before the Board on November 18, 2016 at 9:30 a.m.

On the date of the hearing, November 18, 2016, Debra Smith, the administrative prosecutor assigned to represent the State in the matter of the Respondent contacted both the Board and the Respondent requesting an emergency postponement due to illness. However, another administrative prosecutor, John Nugent, presented the State's case in Ms. Smith's place. The Respondent failed to appear at the scheduled time, and the Board proceeded to hear the matter.¹

After the hearing had concluded, the Respondent contacted the Board and objected to the Board moving forward with its hearing. Further, the Respondent indicated that she had submitted documentary exhibits to Ms. Smith. The Respondent stated that, because Ms. Smith was not present at the hearing, those documents were not considered by the Board. After considering the Respondent's objection, on December 6, 2016, the Board notified the Respondent and Ms. Smith that the Board would re-open the matter on January 20, 2017 in order to allow the Respondent to present any documentary or testimonial evidence for the Board's consideration.

On January 20, 2017, a quorum of the Board was present and an evidentiary hearing was held. Ms. Smith and the Respondent were present.

¹ The Board has the authority to hear and to determine a disciplinary hearing without the Respondent present, provided that due notice of the scheduled hearing has been provided to the Respondent. *See* HO § 10-316(h).

Evidentiary Exhibits and Witnesses

State's Exhibits:

1. Notice of Agency Action, "Charges Under the Maryland Occupational Therapy Practice Act," issued by the Maryland Board of Occupational Therapy Practice (7 pages).
2. Maryland Board of Occupational Therapy Practice Complaint Form, received June 15, 2015 (26 pages).
3. Soliant Health Response to a Maryland Board of Occupational Therapy Practice Subpoena, received July 15, 2015 (46 pages).
4. Decision and Order of the Board of Occupational Therapy of District of Columbia, In the Matter of Chizarra Dashiell, issued November 26, 2015 (12 pages).
5. Maryland Board of Occupational Therapy Practice Licensee Information for the Respondent, printed June 15, 2015 (1 page).
6. Maryland Board of Occupational Therapy Practice Licensee Information for the Respondent, printed November 18, 2016 (1 page).
7. Maryland Board of Occupational Therapy Practice Application for Licensure, received by the Board on December 4, 2008 (4 pages).
8. Maryland Board of Occupational Therapy Practice Application for Licensure, received by the Board on January 14, 2009 (2 pages).
9. Maryland Board of Occupational Therapy Practice Application for License Renewal, received by the Board on January 10, 2010 (2 pages).
10. Maryland Board of Occupational Therapy Practice Database Entries from the Respondent's 2012 Renewal Application, printed June 16, 2015 (2 pages).
11. Maryland Board of Occupational Therapy Practice Database Entries from the Respondent's 2013 Renewal Application, printed June 16, 2015 (3 pages).
12. Maryland Board of Occupational Therapy Practice Database Entries from the Respondent's 2014 Renewal Application, printed June 16, 2015 (3 pages).
13. Maryland Board of Occupational Therapy Practice Database Entries from the Respondent's 2015 Renewal Application, printed June 16, 2015 (3 pages).

14. District of Columbia Municipal Regulations for Occupational Therapy, updated January 17, 2014 (20 pages).
15. The Respondent's Response to the Board regarding the June 15, 2015 Complaint, received by the Board on July 24, 2015 (34 pages).
16. District of Columbia Department of Health Investigative Report, In the Matter of Chizarra Dashiell, dated March 27, 2013 (19 pages).
17. District of Columbia Board of Occupational Therapy, "Notice of Intent to Deny," In the Matter of Chizarra Dashiell, dated December 16, 2014 (6 pages).
18. District of Columbia Board of Occupational Therapy, "Hearing Notice," In the Matter of Chizarra Dashiell, dated July 21, 2015 (2 pages).
19. Hearing Transcript, District of Columbia Board of Occupational Therapy, In the Matter of Chizarra Dashiell, dated September 21, 2015 (20 pages).

State's Witnesses:

None.

Respondent's Exhibits:

1. New License Application, District of Columbia Board of Occupational Therapy, dated October 11, 2011 (4 pages).
2. Letter from the District of Columbia Board of Occupational Therapy to the Respondent, dated November 2, 2011 (1 page).
3. National Board for Certification in Occupational Therapy Verification of Certification, dated October 13, 2011 (1 page).
4. New License Application, District of Columbia Board of Occupational Therapy, dated September 16, 2013 (4 pages).
5. Letter from the District of Columbia Board of Occupational Therapy to the Respondent, dated December 9, 2013 (1 page).
6. Letter from the National Board for Certification in Occupational Therapy to the District of Columbia Board of Occupational Therapy, Re: Score Report, dated September 25, 2013 (1 page).

7. Letter from the District of Columbia Board of Occupational Therapy to the Respondent, dated September 19, 2013 (1 page).
8. Email Conversation, dated February 8, 2011 (2 pages).
9. Email Conversation, dated February 28, 2013; March 5, 2013 (6 pages).
10. Email to the Respondent, dated August 23, 2013 (1 page).
11. Email to the Respondent, dated July 25, 2013 (1 page).

Respondent's Witnesses:

The Respondent testified on her own behalf.

Board Exhibits:

1. Email, with attachment, from the Respondent to the Board, dated October 31, 2016 (2 pages).
2. Letter from Ms. Debra Smith to the Board, dated November 1, 2016 (1 page).
3. Letter from the Board to the Respondent, dated November 3, 2016 (1 page).
4. Letter from the Board to the Respondent, dated May 5, 2016 (3 pages).
5. Letter from the Board to the Respondent and Ms. Debra Smith, dated December 6, 2016 (1 page).

II. FINDINGS OF FACT

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

1. On or about May 6, 2009, the Board issued the Respondent a license to practice as an OTA in the State of Maryland, license number AO!741. (State's Exhibit 5, p. 1.)
2. On or about June 15, 2015, the Board received a complaint alleging that the Respondent "worked in Washington DC without a license and lied to worksites stating that she did have a license in DC." (State's Exhibit 2, p. 2.) Based upon that complaint, the Board initiated an investigation.

3. On or about November 26, 2015, the Government of the District of Columbia, Board of Occupational Therapy (the "DC Board") issued a "Decision and Order" ("DC Order") that denied the Respondent's application for a license to practice as an occupational therapist or occupational therapy assistant in the District of Columbia. (State's Exhibit 4.) According to the DC Order, a complaint was received by the DC Board on September 25, 2012 that alleged that, in 2010-2011, the Respondent identified herself as an OTA and "had performed evaluations, assessments, and developed treatment plans, and written initial goals without evidence of an OT's input or co-signature." (State's Exhibit 4, pp. 4-5.) As a result of that complaint, on December 16, 2014, the DC Board issued a "Notice of intent to Deny" the Respondent's pending application for licensure as an OTA in the District of Columbia. (State's Exhibit 4, p. 1.) That Notice charged the Respondent with violating four counts of the D.C. Official Code. (*Id.*)

4. In the DC Order, the DC Board stated:

D.C. Official Code §§ 3-1210.01 and 3-1205.01(a)(1) collectively prohibit an individual from practicing or attempting to practice as an occupational therapy assistant in the District of Columbia without a license. D.C. Official Code § 3-1205.14(a)(24) subjects a person to disciplinary action by the Board if she is found to be practicing without a license as required by the District of Columbia. Documents provided by both complainants reveal Respondent provided services to students in the District of Columbia while being unlicensed and unauthorized to do so.

(State's Exhibit 4, p. 7.) The DC Order stated that the DC Board reviewed multiple assessment records indicating that the Respondent signed as the provider of OT services. (*Id.*) The DC Order plainly stated that:

Based on the evidence, it is also clear that the Respondent began her work in the District well before her license application in November 2011. She did not complete her application and therefore she herself should be fully aware that she did not possess a license or authorization to practice on any given day or moment during the

2010-2011 school year. Yet she continued to practice and even identifying herself as a licensed OT and OTA in the District.

(State's Exhibit 4, p. 8.) Accordingly, the DC Board concluded as a matter of law that the Respondent violated D.C. Official Code § 3-1205.01(a) and § 3-1205.14(a)(24). (State's Exhibit 4, p. 10.)

5. Based upon that conclusion of law, the DC Board determined that disciplinary action was warranted and denied her application for licensure in the District of Columbia. (State's Exhibit 4, p. 10.) According to D.C. Official Code § 3-1205.14(c), the denial of a license is considered disciplinary action. (*Id.*) In addition, the DC Board ordered that, if the Respondent were to ever seek licensure in the District of Columbia either as an occupational therapist or as an OTA, she must pay a fine of \$5,000.00; meet with the Board to respond to questioning; and only practice under a DC Board-approved supervisor. (State's Exhibit 4, pp. 10-11.)

6. The DC Order also stated:

This Order is the Final Order of the Board in this disciplinary matter and a public record and, as mandated by federal law, 42 USC § 11101 and 45 CFR § 60, "the National Practitioner Data Bank- Health Integrity and Protection Data Bank," this disciplinary action shall be reported to the U.S. Department of Health and Human Services.

(State's Exhibit, p. 12.) The Respondent was also sent a copy of the DC Order. (*Id.*)

7. On May 14, 2015, the Respondent submitted an application for the renewal of her OTA license in the State of Maryland. (State's Exhibit 5.) On that application, the Respondent answered "NO" to Character and Fitness Question Number 6, "During the last year, are there any outstanding complaints, investigations, or charges pending against you in any jurisdiction (including Maryland) by any licensing or disciplinary board or a comparable body in the armed services?"

(State's Exhibit 13, p. 2.) The Respondent answered "NO" despite having been formally charged by the DC Board on December 16, 2014. (State's Exhibit 17.)

Discussion

As a preliminary matter, the Board must address the unusual set of circumstances by which this case was heard. As discussed earlier, this matter was scheduled for a hearing on November 18, 2016. That morning, Ms. Smith, the administrative prosecutor assigned to the Respondent's case, had emailed the Board and the Respondent indicating that she was seeking a postponement due to illness. Instead of granting the postponement, however, another administrative prosecutor from the Office of the Attorney General volunteered to present the State's case. No one responded to Ms. Smith's email. The hearing went on as scheduled and the State offered 19 exhibits into evidence.

After the conclusion of the hearing, at approximately 2:18 p.m., the Respondent emailed requesting to be notified of the new hearing date, even though the Board had already heard the matter in her absence pursuant to HO § 10-316(h). After noting that during the evening prior to the hearing the Respondent had emailed her documentary exhibits to Ms. Smith and that due to Ms. Smith's absence those documents were not considered by the Board, the Board re-opened the matter and scheduled another hearing for January 20, 2017.

On January 20, both Ms. Smith and the Respondent appeared. The Board chair for the hearing advised the parties:

Ms. Dashiell, given that the Board has already admitted the State's exhibits into evidence, today's hearing is to give you a chance to have the opportunity to introduce your evidence. The Board members will have an opportunity to question any witness and examine the document presented. At the conclusion of the evidence, both sides may present closing arguments. Because the State bears the burden of proving its case by a preponderance of the evidence, Ms. Smith will be allowed time for rebuttal. After the hearing, the Board will issue separate findings of fact, conclusions of law,

and its order. The Board's final decision will be made in writing and will be mailed to both parties. Are there any objections or questions?

(Tr., p. 8.) The Respondent made no objection to the Board's re-opening of the matter. (*Id.*) Further, the Respondent presented no procedural objections when asked by the Chair. (*Id.*) As such, the hearing proceeded.²

Violation of HO§ 10-315(9)

The DC Order is the basis for the matter before this Board. Section 10-315(9) of the Occupational Therapy Practice Act provides that the Board may reprimand any licensee, place any licensee on probation, or suspend or revoke the license of a licensee if the Board finds, by a preponderance of the evidence, that: (1) the licensee was disciplined by a licensing, military or disciplinary authority in this State or any other state or country or convicted or disciplined by a court in this State or any other state or country; and (2) that the discipline or conviction was for an act that would be grounds for disciplinary action under the Board's disciplinary statutes. HO § 10-315(9).

In this case, the two conditions for the Board to find a violation of HO§ 10-315(9) have been met. On November 26, 2015, the DC Board denied the Respondent's application for OTA licensure in the District of Columbia. (State's Exhibit 4.) The Board finds that this denial clearly constitutes discipline in that (1) according to D.C. Official Code § 3-1205.14(c), the denial of a license is considered disciplinary action; (2) the DC Board itself characterizes the denial as discipline by referring to it as a "disciplinary matter;" (3) the DC Board submitted its order to the federal Department of Health and Human Services as a "disciplinary action." (State's Exhibit 4, p. 12.)

Furthermore, this discipline was based upon, among other things, the DC Board finding as a matter of fact and concluding as a matter of law that the Respondent practiced as an occupational therapist/OTA without a license. (State's Exhibit 4, pp. 8-10.)

The Board finds that the Respondent's aforementioned conduct in the District of Columbia would have violated HO § 10-315(4) in that the conduct would have violated a provision of the Maryland Occupational Therapy Act, specifically HO § 10-401 which states that a person may not practice limited occupational therapy unless licensed to do so in the State of Maryland. None of the evidence or testimony presented by the Respondent in any way refuted the validity of the DC Order. Moreover, this Board cannot, and will not, re-litigate a duly-issued order from another jurisdiction. If the Respondent disagreed with the DC Board's findings and conclusions, she could have appealed. Accordingly, the Board finds that the Respondent violated HO § 10-315(9).

Violation of HO § 10-315(1)

The Respondent was also charged with a violation of HO § 10-315(1), which allows the Board to discipline a licensee if the Board finds that the licensee has "[f]raudulently or deceptively obtains or attempts to obtain a license or temporary license for the applicant, licensee, or holder or for another." The Respondent submitted an application for the renewal of her OTA license in the State of Maryland in 2015 in which she answered "NO" to a question asking if she had any charges pending against her in any other jurisdiction's licensing or disciplinary board. (State's Exhibit 13, p.

² At the onset of the hearing, the Respondent claimed that she did not have any witnesses because she did not know that was "an option." (Tr., p. 6.) The Board finds this contention without any merit. In its May 5, 2016 letter, the Board clearly set forth the hearing procedures that advised the Respondent of her rights to "call witnesses on [her] behalf." (Board's Exhibit 4, p. 2.) Further, the Board's hearing regulations plainly state that each party has the right to call witnesses. COMAR 10.46.03.05.F.(2)(a). The Board presumes that its licensees are familiar with its regulations.

2.) This was a false answer. The Respondent had been formally charged by the DC Board on December 16, 2014. (State's Exhibit 17.)

The Board is permitted to make reasonable inferences based upon the facts in the record. In this case, the Respondent was aware of the pending administrative charges against her. This is evidenced by the fact that she requested a hearing before the DC Board on the matter. (State's Exhibit 18, p. 1.) Thus, the Board makes the reasonable inference that by answering "NO" to the question on her 2013, 2014, 2015 renewal applications was an effort to conceal her investigation and disciplinary woes in the District of Columbia to avoid possible investigation or discipline in Maryland. The Board also notes that the DC Board found that the Respondent engaged in similar behavior in its application process by failing to disclose her criminal record to the DC Board. (State's Exhibit 4, pp. 6-7.) Accordingly, based upon the evidence set forth in the record, the Board finds that the Respondent violated HO § 10-315(1).

Sanction

The Board finds that the Respondent's violations of the Occupational Therapy Practice Act fall within multiple categories of the Board's sanctioning guidelines. As such, the Board's regulations state that "[w]hen conduct results in multiple violations of the Maryland Occupational Therapy Practice Act and the regulations adopted by the Board, the Board shall consider sanctions that are greater than those imposed for a single violation." COMAR 10.46.07.03 .C. In the present matter, the Board finds that the Respondent's conduct falls most appropriately within the COMAR 10.46.07.06.C.(5), which provides for a sanctioning range of reprimand to revocation, and COMAR 10.46.07.06.K.(1), which provides for a sanctioning range of reprimand to a 2-year suspension.

Practicing without a license is an egregious offense, whether it occurs in Maryland or another jurisdiction where licensure as an OT or an OTA is required. If one is willing to practice a regulated health profession without a required license, it is reasonable to speculate what other basic statutory or regulatory requirements that individual would choose not to follow. Thus, the Board finds that the Respondent's failure to disclose to this Board that she was subject to formal disciplinary proceedings in the District of Columbia is doubly concerning. Taken together, the Board finds that the Respondent has a troubling disregard for honesty and following appropriate laws and regulations designed to protect the public. As such, the Board finds that the Respondent has lost the Board's confidence to maintain licensure in the State of Maryland and will revoke her license.

III. CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes that the Respondent violated Md. Code Ann., Health Occ. § 10-315:

(1) Fraudulently or deceptively obtains or attempts to obtain a license or temporary license for the applicant, licensee, or holder or for another; and

(9) Is disciplined by a licensing or disciplinary authority of any other state or country or convicted or disciplined by a court of any state or country for an act that would be grounds for disciplinary action under this section, *specifically* Md. Code Ann., Health Occ. § 10-316(4) ("Knowingly violates any provision of this title; specifically Md. Code Ann., Health Occ. §§ 10-401 and 10-403).

IV. ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby:

ORDERED that the license of the Respondent, Chizarra Dashiell, License Number AO1741, to practice as an occupational therapy assistant in the State of Maryland is hereby **REVOKED**; and it is further

ORDERED that *this* document is a **PUBLIC DOCUMENT** under Md. Code Ann., General

Provisions §§ **4-101** *et seq.*

3/6/2017

Date

Wanda R. Banks, MA, OTR/LIDA

Wanda R. Banks, MA, OTR/L

Board Vice Chairperson

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NOTICE OF APPEAL RIGHTS

Any person aggrieved by a final decision of the Board under HO § 10-315 may take a direct judicial appeal within *thirty* (30) days as provided by HO § 10-317, Md. Code Ann., State Gov't § 10-222, and Title 7, Chapter 200 of the Maryland Rules, including Md. Rule 7-203 ("Time for Filing Action").