

**WEST VIRGINIA MEDICAL IMAGING AND RADIATION
THERAPY TECHNOLOGY BOARD OF EXAMINERS**

IN RE: KIMBERLY A. SCAFELLA,
West Virginia Medical Imaging
License No. 5203.

Complaint No. 03-FY2010

CONSENT AGREEMENT

Now comes the West Virginia Medical Imaging and Radiation Therapy Technology Board of Examiners (hereinafter "Board"), by its Executive Director, Grady M. Bowyer, and Kimberly A. Scafella, (hereinafter "Respondent"), for the purpose of resolving Board Complaint No. 03-FY2010, against Respondent. As reflected in this agreement, the parties have reached an understanding concerning the proper disposition of the matters in controversy, and the Board, approving such an agreement, does hereby find and Order as follows:

FINDINGS OF FACT

1. The Board is a state entity created by West Virginia Code § 30-23-1 *et seq.* and is empowered to regulate the practice of medical imaging and radiation therapy technology pursuant to the same.

2. Respondent was issued license # 5203 to practice medical imaging in the State of West Virginia on September 1, 2005 and renewed her license annually since that time.

3. Respondent was employed as a radiologic technologist at Monongalia General Hospital.
4. On November 15, 2009, it was reported to Monongalia General Hospital that Respondent had permitted her daughter and her boyfriend into a patient care area and further reported by the mother of the minor patient that Respondent had permitted the teenage boy to complete the exposure.
5. On November 15, 2009, Respondent was responsible for taking x-ray images of a minor patient with the mother of the patient present.
6. During the execution of those images, the mother of the minor patient states that the Respondent permitted two teenagers, who were not Monongalia General Hospital employees, in the Radiology Control Room while Respondent was positioning the minor patient in preparation to take the x-ray exposures.
7. The mother of the patient reported that these teenagers, later identified as Respondent's daughter and her boyfriend, were very affectionate with each other, kissing and hugging in plain view of the patient and the patients mother.
8. The mother of the patient further reported that Respondent was calling out orders to the teenagers, instructing them on how to "push the button" to take

the x-ray exposure and the teenage boy subsequently took the exposure as Respondent was holding the minor patient.

9. Peggy Pust, Director of Imaging Services at Monongalia General Hospital, requested the security video footage for November 15, 2009 which clearly showed Respondent entering the hospital through the main entrance accompanied by the two teenage individuals meeting the description provided by the mother of the patient.
10. Ms. Pust also took the statement of several other employees at the hospital which corroborated the incident of November 15, 2009.
11. On November 17, 2009, Ms. Pust met with Respondent to discuss the allegations and subsequent investigation and issued a letter to Respondent on November 20, 2009 effectively terminating her employment at Monongalia General Hospital.
12. On or about November 20, 2009, the Board was notified by Monongalia General Hospital that they had terminated Respondent for having family members in a patient care area during a radiologic exam and delegating radiologic functions to those unlicensed family members, which also failed to protect the patient's privacy.

13. On November 25, 2009, the Board forwarded Respondent a copy of the complaint via United States Certified Mail requesting that she submit a response to the allegations contained in the complain within thirty (30) days.
14. On December 16, 2009, the Board received notice that the November 25, 2009 certified letter sent to Respondent was being returned unclaimed.
15. On December 16, 2009, the Board made a second attempt to forward a copy of the complaint to Respondent via United States Certified Mail, again requesting that she respond to the allegations contained in the complaint which was received by Respondent on December 17, 2009.
16. On December 18, 2009, the Board received a response from Respondent effectively denying all allegations contained within the complaint.

CONCLUSIONS OF LAW

1. The Board is a state entity created by W. Va. Code § 30-23-1 *et seq.* and is empowered and authorized to regulate the practice of medical imaging and radiation therapy technology in West Virginia.
2. The Medical Imaging and Radiation Therapy Technology Act, pursuant to W. Va. Code § 30-23-1 *et seq.*, grants the Board power to make and enforce necessary rules and regulations for the licensing of medical imaging and radiation therapy technologists and the general practice of medical imaging and radiation therapy technology. The Act confers on the Board the right to

take disciplinary action against licensees who violate its rules and regulations in order to protect the public interest and to preserve proper levels of education, experience and skill.

3. The Board may “refuse to issue, refuse to renew, suspend, revoke or limit any license, apprentice license, permit or practice privilege and may take disciplinary action against a licensee or permittee who . . . has [violated] any provision of this article or any rule promulgated hereunder; [or violated] any professional standard or rules of professional conduct[.]” W. Va. Code § 30-23-24(a)(4) and (5).
4. The Standard of Practice requires that a licensee “assess situations; exercise care, discretion and judgment; assume responsibility for professional decisions; and act in the best interests of the patient W. Va. Code R. § 18-5-4.1.5.
5. Respondent’s permitting her family members in the patient care area and allowing an unlicensed person to take the x-ray exposure demonstrates a lack of care, discretion and judgment and is in violation of West Virginia Code § 30-23-24(a)(5) and West Virginia Code Rules § 18-5-4.1.5.
6. To “[knowingly] aid, assist, advise or allow a person without a current and appropriate state permit or license to engage in the practice of medical imaging or radiation therapy technology, in a jurisdiction which requires a

person to have a current and appropriate state permit or license in order to practice medical imaging or radiation therapy technology in that jurisdiction," to which Respondent is admitting herein, is a violation of the standards of ethics pertaining to the medical imaging profession. W. Va. Code R. § 18-5-5.1.14.

7. Respondent's advising, directing and allowing an unlicensed person to take the x-ray exposure is in violation of West Virginia Code § 30-23-24(a)(5) and West Virginia Code Rules § 18-5-5.1.14.
8. The Board has the authority to assess administrative costs for the adjudication of complaints. W. Va. Code § 30-1-8(a).

CONSENT

Respondent, Kimberly Scafella, both in her individual capacity and as a licensed medical imaging technologist, by the execution hereof, agrees to the following:

1. Respondent is aware of her right to be represented by counsel and of her option to pursue this matter through appropriate administrative and/or court procedures, but Respondent intelligently and voluntarily waives her right to do so.
2. Respondent intelligently and voluntarily waives her right to a formal hearing before the Board in this matter. No person or entity has made any promise

or given any inducement whatsoever to encourage Respondent to make this settlement other than as set forth herein.

3. Respondent acknowledges that this Consent Order is being executed for the purpose of avoiding further administrative action with respect to the above-styled matter. In this regard, Respondent authorizes the Board to review and examine all investigative file materials concerning Respondent prior to or in conjunction with consideration of this Consent Order.
4. Respondent acknowledges that the Board may reject this proposal and may hold a hearing to impose such sanctions of a disciplinary nature as required by law and as it may otherwise deem appropriate.
5. Respondent admits that permitting her daughter and her boyfriend into the patient care area and allowing them to “push the button” to make the exposure constitutes a violation of the accepted standards of practice and code of ethics, and is therefore a violation of the Medical Imaging and Radiation Therapy Technology Act.
6. Respondent accepts the findings set forth above and consents to the entry of this Consent Agreement freely and voluntarily, and not under any duress, restraint or compulsion. Further, Respondent consents to the entry of the following Order affecting her conduct as a state licensed medical imaging technologist.

7. Respondent understands that this Consent Agreement and the underlying complaint are public records and agree that the sum and substance of the complaint and this agreement in part or in their entirety will be set forth in Board publications and on the Board website, as well as other appropriate placements, including the American Registry of Radiologic Technologists (ARRT).
8. Respondent acknowledges that proof of any misstatement or misrepresentation made in connection with this matter will result in the rescission of this agreement, the reinstatement of the complaint, the summary revocation of any license issued to Respondent, and the addition of any other charges which may arise or ensue from providing false information to the Board.

ORDER

1. On the basis of the foregoing, and upon entry of this Consent Order by this tribunal, the Board hereby **ORDERS** that this Consent Order shall serve as an informal settlement of this Complaint pursuant to West Virginia Code § 30-1-8(a).
2. On the basis of the foregoing, the Board hereby **ORDERS** that license number 5203, issued to Respondent, be placed on a probation for a period of

one (1) year. The computation of such period is to begin on the date on which this **ORDER** is entered into the records of the Board.

3. The Board also **ORDERS** the Respondent to pay administrative costs in the amount of Three hundred, Ninety nine dollars and Sixty cents (\$ 399.60).
4. Respondent shall not violate the provisions of West Virginia Code § 30-23-1 *et seq.*
5. Respondent shall not commit any act which would be a crime under West Virginia or federal law. If Respondent is charged by any law enforcement agency with committing any such criminal act, the Board shall be notified in writing of the formal charge(s) against Respondent, and resolution of same.
6. Throughout the duration of this Consent Agreement, Respondent shall take all steps required to maintain a current and active license in the State of West Virginia. Respondent shall remain current on all licensing fees, satisfy all continuing education requirements and shall not allow her license to lapse or otherwise be placed on an inactive status.
7. Respondent shall not, under any circumstances, misrepresent the status of her license.
8. Respondent shall, within ten (10) days of employment or continuation of medical imaging and radiation therapy practice, cause the employer or

immediate supervisor, to notify the Board, in writing, of the employer or supervisor's receipt of a copy of this agreement.

9. Respondent shall inform the Board in writing within ten (10) days of the date Respondent assumes the practice of medical imaging technology in the State of West Virginia and shall include the name, address, and telephone number of her employer. Respondent shall provide in writing the name of her immediate supervisor. Respondent shall inform the Board of any interruption in medical imaging technology practice or change in employment within ten (10) days of such interruption or change.
10. Respondent shall immediately inform their medical imaging technology employer, any prospective medical imaging technology employer, and the director of any medical imaging technology education program in which Respondent enrolls or teaches, that the Board has placed Respondent's license on probation, and shall provide a complete copy of this agreement to their employer(s). The Board may provide the employer(s) with a copy of this agreement and may communicate with the employer.
11. The Board **ORDERS** that Respondent was issued a letter of reprimand that will be placed in her file with the Board.
12. The Board further **ORDERS** that Respondent shall submit documentation of nine (9) contact hours of continuing education during the one (1) year

probationary period in the following subjects and manner: three (3) continuing education hours in Health Insurance Portability and Accountability Act (HIPAA), three (3) continuing education hours in Radiation Safety, and three (3) three continuing education hours in Ethics. These additional nine (9) continuing education hours must be approved by the Board prior to attending, and all completed continuing education hours must be submitted to the Board within two (2) weeks of their completion. These continuing education requirements contained within this Order are in addition to the twelve (12) annual or twenty-four (24) biannual required by law.

13. Respondent shall report in person for appointment with the Board staff upon request.

Violation of Terms:

14. Any deviation from these requirements without prior written consent of the Board shall constitute a violation of this Order, and result in the Consent Agreement being rendered null and void.
15. The Board shall immediately notify Respondent via certified mail of the specific nature of the charges. If the Respondent has been issued her Probationary license, that license shall be suspended as of the date of receipt of the certified letter.

- a. Respondent may request reinstatement of her probationary license through renewal of this agreement, or execution of a new agreement, which may contain different or additional terms. The Board is not bound to comply with this request.
- b. If the Board does not accept a renewed or new agreement, Respondent shall be notified in writing. Respondent may request a hearing to seek reinstatement of her probationary license. If Respondent requests a hearing following suspension for violation of this agreement and does not prevail, the cost incurred in holding such hearing shall be borne by Respondent. If Respondent prevails, the cost of such hearing shall be borne by the Board. Cost shall refer only to the expense of employing a court reporter and hearing examiner for the purpose of the hearing, and shall not include any legal or other fees incurred by the Board or Respondent in bringing the matter to hearing.
- c. The Board may schedule a hearing on its own initiative for the purpose of allowing the Board opportunity for considering further suspension or revocation of Respondent's license. Said hearing shall be scheduled in accordance with the provisions of West Virginia Code

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§ 30-1-8 and § 30-23-1, et. seq. The Board shall bear the cost if it should seek a hearing following suspension of Respondent's probationary license for violation of this agreement. Cost shall refer only to the expense of employing a court reporter and hearing examiner for the purpose of the hearing, and shall not include any legal or other fees incurred by Respondent in bringing the matter to hearing.

AGREED TO BY:



KIMBERLY A. SCAFELLA

5/11/10
DATE

ENTERED into the records of the West Virginia Medical Imaging and Radiation Therapy Technology Board of Examiners this:

9th day of August, 2010.

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

By: 
GRADY M. BOWYER,
EXECUTIVE DIRECTOR