

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

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

RECEIVED
2/26/13
WV MI & RTT BOARD

v.

Case No: 03-FY-2013

BRENDA TONKIN,
Respondent.

CONSENT AGREEMENT AND ORDER

After due investigation of a written complaint, the West Virginia Medical Imaging & Radiation Therapy Technology Board of Examiners (Board) determined that there was probable cause to believe that Brenda Tonkin (Respondent) has exhibited unprofessional and unethical conduct in the practice of medical imaging, in violation of the provisions of W. Va. Code § 30-23-1 *et seq.* and the Rules of the Board, W. Va. Code R. § 18-1-1 *et seq.* The Respondent was provided with written notice of the allegations against her pursuant to the rules of the Board and the laws of this State.

Now, in lieu of hearing, the parties have reached an agreement for the resolution of this case matter and the parties agree to entry of the following Order in disposition of this matter.

FINDINGS OF FACT

The Board adopts the following findings in this matter:

1. That Brenda Tonkin is a licensee of the Board, License No.2124 and is subject to the license requirements of said Board.
2. The Board is a regulatory board created for the purpose of regulating the practice of medical imaging and radiation therapy technology. W. Va. Code § 30-23-1, *et seq.*
3. In order to carry out its regulatory duties, the Board is empowered to suspend, revoke or otherwise discipline an individual's license because of authority granted to it by W. Va. Code § 30-23-24.
4. That Brenda Tonkin was, at all times material hereto, employed as a licensed medical imaging technologist and the Director of Radiology at Stonewall Jackson Memorial Hospital.
5. That on December 10, 2012, the Board received a complaint via electronic mail from Jamie Browning of the Office of Environmental Health Services who discovered that while performing a routine inspection at Stonewall Jackson Memorial Hospital that fluoroscopy was being performed without the proper direct supervision of a licensed physician by the Respondent.
6. That the Board sent a copy of the complaint to the Respondent for a response via letter dated December 11, 2012.
7. That the Board received a response via letter dated December 20, 2012, and received December 26, 2012, by the Board.

8. That the response was from the Chief Executive Officer of Stonewall Jackson Hospital, Avah Stalnaker, M. H.A. on behalf of the Respondent.

9. That an Informal Conference was held on January 17, 2013, regarding this matter before the Board's Ethics Committee. In attendance were the Respondent and the Chief Executive Officer of Stonewall Jackson Memorial Hospital, Avah Stalnaker along with members of the Board's Ethics Committee. Respondent admitted to performing fluoroscopy without the proper supervision of a licensed physician. Moreover, Respondent and Ms. Stalnaker explained the steps that were being taken by Stonewall Jackson Memorial Hospital to ensure that this practice does not happen again.

10. That the Board, after conducting an investigation, by vote at its January 31, 2012, meeting, via teleconference made a finding of probable cause for a violation of W. Va. Code § 30-23-24(a)(4) and W. Va. Code R. §§ 18-6-4.8 and 18-5-5.1.17.

11. That the Respondent's actions constitute a violation of the current Code of Ethics adopted by the Board, and the regulations governing the practice of radiologic technology, and that these violations of the Board's governing regulations are grounds for disciplinary action by the Board pursuant to W. Va. Code W. Va. Code § 30-23-24(a)(4) and W. VA Code R. §§ 18-6-4.8 and 18-5-5.1.17.

CONCLUSIONS OF LAW

1. That the Board has jurisdiction to take disciplinary action against Respondent.
2. That based upon the allegations of unprofessional or unethical conduct set out above in the *Findings of Fact* section, the Board is authorized to suspend, revoke or otherwise restrict the license of the Respondent to practice social work, pursuant to W. Va. Code § 30-23-24.
3. That “[i]nterpretative fluoroscopic procedures are to be performed only under the direct supervision of a West Virginia licensed physician, with the exception of spotting of the terminal ileum by a properly trained, licensed radiographer. Direct supervision is defined as a West Virginia licensed physician being in the room or by live remote audio/video” W. Va. Code R. § 18-6-4.8.
4. That licensee shall not “[p]ractice outside the scope of practice authorized by the individual’s current state permit or license.” W. Va. Code R. § 18-5-5.1.17.

CONSENT OF LICENSEE

I, Brenda Tonkin, by affixing my signature hereto, acknowledge 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 admit that my actions were unprofessional and unethical and a violation of the statute and rules of the Board.

The Respondent, Brenda Tonkin, by affixing her signature hereon, agrees to the following:

ORDER

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

1. Respondent is hereby placed on probation for a period of two (2) years effective upon the entry date of this *Order* hereto.

2. During this two (2) year period of probation the Respondent must complete the following requirements:

a. Respondent shall complete fifteen (15) Category A contact hours of continuing education with a minimum of eight (8) in medical ethics. Four and one quarter (4.25) contact hours shall be completed by the following two courses entitled: "Fluoroscopy Radiation Protection and Safety," and "Operation and Safety of Fixed Fluoroscopy Unit." Both of these specified courses shall be completed in the first year of the consent. Respondent shall obtain Board approval of the Category A contact hours prior to their completion, and Respondent shall provide proof of completion of all fifteen (15) contact hours to the Board. These fifteen (15) Category A contact hours are in addition to the standard requirement of twenty-four (24) Category A contact hours that a licensee must complete for license renewal.

b. Respondent shall reimburse the Board for all of the administrative and legal expenses incurred by the Board in the investigation and disposition of this case in the amount of \$264.25.

c. Respondent shall also pay the Board an Administrative fine in the amount of \$200.00.

3. The Board is bound by agreement and by law to report the results of all disciplinary actions, including the instant matter, to the American Registry of Radiologic Technologists (ARRT).

4. That this document is a public record as defined in W. Va. Code § 29B-1-2(4).

5. This *Consent Agreement and Order* constitutes the entire agreement between the parties.

WEST VIRGINIA MEDICAL IMAGING &
RADIATION THERAPY TECHNOLOGY
BOARD OF EXAMINERS

Nancy Oughton

By:

Nancy Oughton, Chairperson

Entered:

04-18-2013
DATE

Agreed to by:

Brenda J. Tonkin

Brenda Tonkin, Respondent

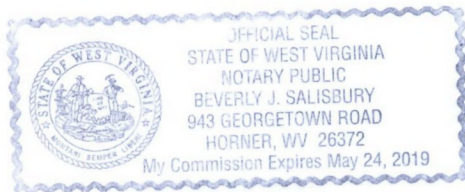
2/21/13
DATE

Sworn and subscribed before me this 21st day of February, 2013.

My Commission expires: May 24, 2019

Beverly J. Salisbury

Notary Public



ATTACHMENT "A"
PAYMENT SCHEDULE OF MONETARY PENALTY

I, _____, 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 four hundred sixty four dollars twenty five cents (**\$464.25**). 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 four hundred sixty four dollars twenty five cents (**\$464.25**) within thirty (30) days of the date of execution of the Order. This singular \$465.25 payment incorporates two hundred dollars (\$200.00) for the Administrative Fine and two hundred sixty four dollars twenty five cents (\$264.25) 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 two hundred dollars (**\$200.00**) of the four hundred sixty four dollars twenty five cents (**\$464.25**) monetary penalty in a single payment labeled "Administrative Fine" within thirty (30) days of the date of the execution of the Order;

AND

I agree to submit the remaining two hundred sixty four dollars twenty five cents (**\$264.25**) of the monetary penalty in a single payment labeled "Administrative Costs" within sixty (60) days of the date of the execution of the Order.

OPTION THREE: _____
(Sign and date here to select Option Three)

I agree to submit the amount two hundred dollars (**\$200.00**) of the monetary penalty in a single payment labeled "Administrative Fine" within thirty (30) days of the date of the execution of the Order;

AND

I agree to submit the remaining two hundred sixty four dollars twenty five cents (**\$264.25**) of the four hundred sixty four dollars twenty five cents (**\$464.25**) in two payments of one hundred thirty two dollars thirteen cents (**\$132.13**) for the first payment and one hundred thirty two dollars twelve cents (**\$132.12**) for the second payment, each of the two payments labeled "Administrative Costs" within sixty (90) 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.

(Respondent Sign and date here)