

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

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

**v.**

**License No. 9499  
Case No. 10-FY-2023**

**MEGAN MAYNARD,  
Respondent.**

**FINAL ORDER**

Pursuant to W. Va. Code § 30-23-26(b), the West Virginia Medical Imaging and Radiation Therapy Technology Board of Examiners (“Board”) hereby ADOPTS and incorporates by reference, in its entirety, the *Hearing Examiner’s Recommended Findings of Fact, Conclusions of Law, and Recommended Decision* issued by Hearing Examiner Janis I. Reynolds on December 4, 2023, as the Board’s Findings of Fact and Conclusions of Law in this matter. A copy of the *Hearing Examiner’s Recommended Findings of Fact, Conclusions of Law, and Recommended Decision* is attached to this Final Order.

This matter proceeded to hearing on September 7, 2023, at the State Capitol Complex, Building 6, Suite 402, in Charleston, West Virginia, before Hearing Examiner Janis I. Reynolds. The Board appeared by Assistant Attorney General, Adriana Marshall. Respondent, Megan Maynard, was properly served with the Notice of Hearing and Statement of Charges by certified mail but did not appear nor did she request a continuance. The Board presented testimony and other evidence at the hearing, and then submitted its Proposed Findings of Fact and Conclusions of Law to the Hearing Examiner on September 28, 2023.

Based on the evidence of record, the Board has shown by a preponderance of the evidence that Megan Maynard violated the Board's governing statutes and rules in reporting to work while her ability to practice medical imaging or radiation technology therapy safely and effectively was compromised by controlled substances, as more fully described in the attached *Hearing Examiner's Recommended Findings of Fact, Conclusions of Law, and Recommended Decision*.

NOW, THEREFORE, in consideration of the foregoing, the Board does hereby ORDER and DECREE as follows:

1. Megan Maynard's license, License No. 9499, is hereby SUSPENDED until the following conditions are met: 1) Respondent must agree to the terms of the West Virginia Pharmacist Recovery Network's Compliance Agreement ("Agreement") following an individualized evaluation of Respondent's needs with regard to substance abuse monitoring and/or treatment and 2) Respondent must provide the Board with documentation that she has tested negative for any substances as set forth in the Agreement.

2. Upon the Board's receipt of documentation from the West Virginia Pharmacist Recovery Network that: 1) Respondent has signed the Agreement and 2) Respondent has tested negative for any substances as set forth in the Agreement, the Board will immediately lift the suspension of Respondent's license. Respondent will be placed on probation and receive monitoring and/or treatment services for a period of time based on the recommendation and evaluation of the West Virginia Pharmacist Recovery Network.

3. The probationary period will begin upon the Board's receipt of the documentation that she has signed the Agreement and tested negative for any substances as set forth in the

Agreement. Respondent's period of probation will end upon successful completion of the Pharmacist Recovery Network program.

4. During the probation period, Respondent must comply with the following:
  - a. Respondent is required to adhere to the terms of the Agreement;
  - b. Respondent is required to pay the costs of any drug and/or alcohol tests performed;
  - c. If at any time during the period of probation, a drug/alcohol test is reported positive or there is credible information to indicate that Respondent has failed to adhere to the terms of the Agreement, Respondent's license shall be immediately suspended until such time as Respondent complies with the terms of the Agreement and/or receives a negative drug/alcohol test. Respondent is entitled to a hearing to contest any such violation.
5. The West Virginia Pharmacist Recovery Network must provide the Board with updates regarding Respondent's progress under the program on a monthly basis.
6. Respondent is required to submit a certificate of completion from the West Virginia Pharmacist Recovery Network to end her period of probation.
7. Respondent shall pay for the costs of the proceeding in this matter as set forth in the attached invoices.
8. This document is a public record as defined in W.Va. Code § 29B-1-2.
9. A copy of this Order will be submitted to the ARRT.
10. Respondent may appeal this Order to the Intermediate Court of Appeals of West Virginia within thirty days of entry of this Order.

ENTERED this, the 26 day of January, 2024.

WEST VIRGINIA MEDICAL IMAGING BOARD

BY: Tyson Judy  
Tyson Judy  
Board Chair

**REYNOLDS LEGAL SERVICES, PLLC  
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December 4, 2023

**HAND DELIVERED**

Jamie S. Browning, Executive Director  
WV Medical Imaging Board  
1124 Smith Street, Suite B-300  
Charleston, WV 25301

Re: Recommended Decision  
*WV Medical Imaging Board v. Megan Maynard*  
Case No. 10-FY-2023

Dear Ms. Browning:

I am enclosing the original of my Recommended Decision in this case for further consideration by the Board. An invoice for services is also enclosed.

It has been a pleasure hearing the case. Please let me know if you need anything further in this matter.

Sincerely,

*Janis Reynolds*  
Janis I. Reynolds  
Hearing Examiner

JIR/dk  
Enclosure

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

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THERAPY TECHNOLOGY BOARD OF EXAMINERS,  
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**License Number: 9499  
Case No. 10-FY-2023**

**MEGAN MAYNARD,  
Respondent.**

**HEARING EXAMINER'S RECOMMENDED FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND RECOMMENDED DECISION**

**PROCEDURAL HISTORY**

This matter came on for hearing September 7, 2023, at the State Capitol Complex, Building 6, Suite 402, Charleston, West Virginia, pursuant to the West Virginia Medical Imaging and Radiation Therapy Technology Board of Examiners Board's ("Board") Notice of Hearing and Statement of Charges dated July 25, 2023.

At hearing, the Board was represented by Assistant Attorney General Adriana L. Marshall, Executive Director Jamie Browning, and Chairman of the Board Tyson Judy. This hearing was scheduled to start at 9:30 a.m., and the participants waited until 9:45 a.m. to give Megan Maynard ("Respondent") time to appear in person or call in. Ms. Maynard did not appear, nor had she responded in any way to the Complaint and Notice of Hearing. The Board presented the telephone testimony of Ms. Browning and Jeffery Adkins, Director of Radiology at St. Mary's Medical Center ("SMMC"). This matter became mature for decision upon receipt of the Board's Proposed Findings of Fact and Conclusions of Law on September 30, 2023.

## **EXHIBITS**

1. Complaint dated March 28, 2023
2. Board Initiated Complaint dated April 24, 2023
3. Amended Board-Initiated Complaint and Summary Suspension Order (Complaint No. 10-FY-2023) dated May 23, 2023
4. Notice of Hearing and Statement of Charges dated July 25, 2023
5. Medical Review Officer Report (Drug Test) dated March 26, 2023
6. Termination Letter dated March 27, 2023
7. License

## **ISSUES**

The issue before the Undersigned is whether the Board has proven the violations of Code and Rules alleged in the Statement of Charges. The Statement of Charges charged Respondent with violating W. VA. CODE §§ 30-23-24(a)(5) & (12); W. VA. CODE R. §§ 18-5-4.1.1; 4. 1 .5; & 4.1.8; and W. VA. CODE R. §§ 18-5-5.1.5 & 5.1.7. If any of the listed charges are proven, this behavior constitutes professional misconduct subject to disciplinary action. It should be noted that Respondent's license was Summarily Suspended on May 25, 2023. ( See Finding of Fact 15.).

After a detailed review of the entire record, including testimony and documentary evidence, and in accordance with W. VA. CODE § 30-23-26(b) and § 29A-5-3, the undersigned Hearing Examiner makes the following recommended Findings of Fact and Conclusions of Law. The credibility of witnesses was assessed, and the Proposed Findings of Fact and Conclusions of Law submitted by the Board, after the hearing, were reviewed and considered.

## **FINDINGS OF FACT**

1. West Virginia Medical Imaging and Radiation Therapy Technology Board of Examiners Board ("Board") is a statutorily created regulatory body whose mission is to

protect the public through the regulation of the practice of medical imaging and radiation therapy. W. VA. CODE § 30-23-1, *et seq.*

2. Respondent's License, Number 9499, was issued on December 12, 2013. Bd. Ex. 7.

3. At the time of the misconduct alleged in the Statement of Charges, Respondent worked at SMMC in the Radiology Department.

4. On March 15, 2023, Mr. Adkins, Director of Radiology at SMMC observed Respondent was acting in an unusual manner, and she appeared impaired. When questioned, Respondent indicated she had not had enough sleep, and she was not taking any new prescriptions. *Id.*

5. A little later that day, Respondent knocked over a patient's tray and some of her personal items. Mr. Adkins again questioned Respondent. She informed him she had not taken any controlled substances. She agreed to drug testing and "assured" Mr. Adkins she would pass. Adkins at 17- 18.

6. Respondent was sent home and suspended on March 15, 2023, pending the results of an investigation. Bd. Ex. 1.

7. Also on March 15, 2023, Respondent reported to the testing facility.

8. The Medical Review Officer Report (Drug Test), dated March 26, 2023, noted the first urine specimen Respondent provided was apparently taken from the toilet bowl, as it had: 1) zero temperature change; and 2) a blue tint, the same as the toilet water in the specimen room. Bd. Ex. 5.

9. The second specimen tested positive for Marijuana and Oxycodone. *Id.*



10. On March 27, 2023, Respondent received a letter, by certified mail, informing her that her “at will” employment was terminated for gross misconduct. This letter noted Respondent’s actions had violated numerous rules and regulations, and noted the positive test results for controlled substances. SSMC’s grievance policy was attached, but there is no evidence Respondent pursued this option. Bd. Ex. 6.

11. The fact Respondent posed a safety risk played a part in the decision to terminate Respondent. Adkins at 19.

12. On March 28, 2023, the Board received a complaint from Mr. Adkins noting Respondent’s positive test results for controlled substances. Bd. Ex. 1.

13. On April 24, 2023, after receiving Mr. Adkins’ Complaint, the Board notified Respondent that the Board was initiating a Complaint against her license for violating her profession’s Code of Ethics. Respondent was requested to provide a written response to these allegations within fourteen days of receipt of the Complaint letter. Respondent was also requested to participate in an Informal Conference with the Board via Zoom on May 18, 2023. Respondent did not respond to the Complaint, and she did not attend the Informal Conference. Respondent had received the Complaint and Notice by certified mail. Bd. Ex. 2; Tr. at 10 - 11.

14. On May 18, 2023, the Board voted to issue an “Amended Board - Initiated Complaint and Summary Suspension Order.” This Complaint identified violations of: 1) the West Virginia Code § 30-23-24; 2) the Board’s Standard of Practice Rule § 18-5-4; and 3) the Board’s Code of Ethics Rule § 18-5-5. Bd. Ex. 3; Tr. at 12.

15. On May 25, 2023, the Board issued a Summary Suspension Order. The Complaint noted the Summary Suspension Order was based of the Board's findings that Respondent was a danger to the public. Bd. Ex. 3; Tr. at 12.

16. Respondent did not respond to the Complaint or Summary Suspension Order, even though Respondent received these documents by certified mail. Bd. Ex. 3.

17. On July 25, 2023, the Board issued its Statement of Charges and Notice of Hearing that scheduled this matter for hearing on September 7, 2023. Ms. Browning received confirmation, via certified mail, that Respondent received this notice. Additionally, Ms. Browning attempted to contact Respondent by email and text message without success. Tr. at 13.

18. Respondent has not responded in any way to the Statement of Charges or Notice of Hearing nor did she attend this hearing or request a continuance.

Consistent with the above recommended Findings of Fact, the undersigned Hearing Examiner recommends the following Conclusions of Law.

#### **CONCLUSIONS OF LAW**

1. W. VA. CODE § 30-23-1, *et seq.* provides the West Virginia Medical Imaging and Radiation Therapy Technology Board of Examiners Board's ("Board") with authority to issue licenses to practice in this state and with authority to act as the regulatory and disciplinary body for the practice of medical imaging in West Virginia. W. VA. CODE §§ 30-23-1 & 30-23-6.

2. The Board is authorized to "[p]ropose rules in accordance with the provisions of article three, chapter twenty nine-a of this code to implement the provisions of this article." W. VA. CODE § 30-23-6 (18).

3. Respondent's license to practice in the State of West Virginia is subject to regulation and discipline, including the power to suspend or revoke a license by the Board. W. VA. CODE § 30-23-6(c)(3). The Board is authorized to investigate alleged violations; conduct disciplinary hearings; determine disciplinary action; and issue orders. W. VA. CODE §§ 30-23-6(b)(11), (12), & (13).

4. At this hearing, the rules of evidence as applied in civil cases in the circuit courts of this state were followed. W. VA. CODE § 29A-5-2. All exhibits entered into evidence at hearing were authentic, valid, and admitted with the proper evidentiary foundation. The Board received and investigated the complaint against Respondent.

5. The Board bears the burden of proving the allegations in the Statement of Charges and Notice of Hearing. See W. VA. CODE R. 18-3.10 & 3.10.13.

6. The Board may designate a Hearing Examiner to conduct hearings. W. VA. CODE § 30-23-26(b); W. VA. CODE R. §18-4-5.23. The undersigned Hearing Examiner is a licensed attorney, and was designated by the Board to conduct this hearing. This hearing was conducted pursuant to West Virginia Code and the Board's Legislative Rules. See W. VA. CODE § 29A-5-1, *et. seq.*

7. Credibility is determined by the Hearing Examiner in administrative cases, based upon thorough evaluation of witness testimony. See *Darby v. Kanawha County Bd. of Educ.*, 227 W. Va. 525, 711 S.E.2d 595, 599 (2011). The Hearing Examiner is uniquely situated to make such determinations, and such determinations are binding unless patently without basis in the record. *Martin v. Randolph County Bd. of Educ.*, 195 W. Va. 297, 304, 465 S.E.2d 399, 406 (1995). Credibility determinations may be based upon many factors, including the following: the general demeanor and comportment of the witness at hearing;

the bias or interest of the witness; the consistency or inconsistency of the statements of the witness; the witness' ability and acuteness to observe; the memory of the witness; the reputation for honesty of the witness; and other factors which tend to cause the trier of fact to believe or disbelieve the testimony of the witness. See *Franklin D. Cleckley, Handbook on Evidence for W. Va. Lawyers*, § 607.02(1)(b) (5<sup>th</sup> Ed. 2012).

8. The undersigned Hearing Examiner finds the testimony of Mr. Adkins and Ms. Browning to be credible. Their testimony was consistent and supported by documentary evidence.

9. The Board has adopted rules identifying professional misconduct subject to disciplinary action. The types of actions identified as professional misconduct are listed in W. VA. CODE §§ 30-23-24 and W. VA. CODE R. §§ 18 -5- 4 & 5.

10. The Notice of Hearing informed Respondent she was charged with violating W. VA. CODE §§ 30-23-24 (a) (5) & (12); and W. VA. CODE R. §§ 18-5-4.1.1; 18-5-4.1.5, 18-5-4.1.8; 18-5-5.1.5 and 18-5-5.1.7.

11. W. VA. CODE § 30-23-24(a)(12) states the Board has the right to discipline a licensee "for any conduct affecting the licensee's fitness to perform medical imaging or radiation therapy technology."

12. W. VA. CODE § 30-23-24(a)(5) states the Board has the right to discipline a licensee for any "[v]iolation of any professional standard or rule of professional conduct."

13. The Board alleged the following violations of the Standard of Practice rule, W. Va. Code R. § 18-5.4:

- a) W. Va. Code R. §18-5-4.1.1 "conduct himself or herself in a professional manner . . .";

- b) W. VA. CODE R. §18-5-4.1.5 “assess situations; exercise care, discretion and judgement . . . and act in best interest of the patient”; and
- c) W. VA. CODE R. §18-5-4.1.8 “practice ethical conduct appropriate to the profession and protect the patient’s right to quality radiologic technology care.”

14. The Board also alleged the following violations of the Code of Ethics rule,

W. Va. Code R. § 18-5-5:

- a) 5.1.5(a) Failure to conform to . . . rules and regulations regarding medical imaging or radiation technology practice;
- b) 5.1.5(b) [Engage] in any medical imaging or radiation technology practice that may create unnecessary danger to a patient’s life, health, or safety. . .;
- c) 5.1.5. (c) [Engage] in any practice that is contrary to the ethical conduct appropriate to the profession that results in the termination of employment. . . and;
- d) 5.1.7 Engage in actual or potential inability to practice medical imaging or radiation technology therapy with reasonable skill and safety to patients by reason of illness, use of alcohol, drugs, chemicals or any other material; or as a result of any medical condition.

15. The evidence established Respondent reported to work while her ability to practice medical imaging or radiation technology therapy safely and effectively was compromised by controlled substances.

16. As noted in the Findings of Fact, the Board has established Respondent violated the above cited Code Sections and Rules. Respondent reported to work impaired and lied about her condition. She then tried to deceive the Medical Officer in charge of her Urine Drug Screen, but failed.

17. Respondent's behavior constituted misconduct as described above. The Board had good cause to proceed with disciplinary action against Respondent's license to practice medical imaging and/or radiation technology therapy.


18. Additionally, the Board has clearly demonstrated the previously issued Summary Suspension Order was warranted. Respondent's failure to respond at any juncture in this proceeding precludes any other finding.

### **RECOMMENDED DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing Examiner **RESPECTFULLY RECOMMENDS and FINDS** that the West Virginia Medical Imaging and Radiation Therapy Technology Board of Examiners has proven the allegations identified in the Statement of Charges dated July 25, 2023. Respondent's behavior and actions violated both the West Virginia Code and the Board's Rules, as set forth herein. **FURTHER**, the undersigned finds the Board may take further disciplinary action against Respondent's as deemed appropriate.

Pursuant to W. VA. CODE § 30-23-26(b) the Board may adopt, modify, or reject any findings of fact and conclusions of law recommended by the Hearing Examiner.

DATED: December 4, 2023

  
Janis I. Reynolds, Esquire  
Hearing Examiner  
WV State Bar No. 4363