BEFORE THE BOARD OF MEDICAL EXAMINERS
STATE OF MONTANA

IN THE MATTER OF DOCKET NO. CC-06-0001-MED REGARDING:

THE DISCIPLINARY TREATMENT OF	)	Case No. 471-2006
THE LICENSE OF JOYCE L. WILLIAMS,	)	
License No. 7542.	)	
	)	

SUMMARY JUDGMENT FINDINGS AND CONCLUSIONS AND RECOMMENDED BOARD ORDER

The background for this order appears in the Hearings Bureau file, including discovery requests, a motion and a renewed motion to deem requests for admissions as admitted, a motion for summary judgment and a pre-hearing memorandum (all filed by prosecuting counsel M. Gene Allison) as well as the Hearings Bureau's original notice of hearing and telephone conference, and the hearing examiner's December 6, 2005, "Discovery Order" and February 13, 2006, "Order Deeming Admissions Made, Barring Evidence and Setting Oral Argument."

On February 21, 2006, as scheduled by the previous orders, the hearing examiner convened a final telephonic pre-hearing conference. M. Gene Allison participated as prosecuting counsel. Licensee Joyce L. Williams participated on her own behalf.

The hearing examiner, in accord with the February 13, 2006, order, began by giving Williams an opportunity to present reasons ("good cause") for her failure to respond to the requests for admission, failure to file a final pre-hearing statement containing (1) lists of final contentions; (2) lists of exhibits and witnesses (exchanging copies of exhibits with Allison); (3) requests for the issuance of subpoenas; and (4) proposed stipulated facts and failure to respond to the motion for summary judgment. Williams argued that she had been suffering from major health problems, including positional cervical myopathy, chronic fatigue, fibromyalgia, diabetes (recently diagnosed) and a "major car accident" resulting from an episode of hypoglycemia and causing a hospitalization of one day's duration. Williams stated that she had frequently been unable to get out of bed all day. She also claimed that she had not received the December 6, 2005, "Discovery Order," mailed to the same address as were the prior notices and orders, the subsequent February 13, 2006, order, and copies of the filings by prosecuting counsel Allison, all of which she admitted receiving.

Williams also denied any recollection that the hearing examiner had granted her an extension of time for discovery responses during the December 2, 2005, telephone conference

and had told her a written order would follow (the December 6 order).[1] In light of her acknowledgment that she had received the other notices, orders and copies of filings from Allison, and in light of her failure to respond to any of the orders or filings subsequent to the December 2, 2005, telephone conference, her denial of receipt of the December 6, 2005, "Discovery Order" is neither probative nor determinative of the immediate issue–her defaults regarding requests for admissions, final pre-hearing filings and prosecuting counsel's motion for summary judgment.

The February 13, 2006, "Order Deeming Admissions Made, Barring Evidence and Setting Oral Argument," which Williams admits she received, stated specifically, on page 1:

> At the final pre-hearing conference, the hearing examiner will hear oral argument on the motion for summary judgment. Licensee is in default for failure to respond to that motion. Unless she can show good cause, which will require sworn testimony or affidavits, for that default, the hearing examiner will probably grant the motion after oral argument.

That order also stated, on page 1:

> The requests for admissions set forth in the November 4, 2005, "Department's First Set of Combined Discovery Requests" are deemed admitted. The licensee is barred from presenting evidence to rebut or contravene any of those admissions.
>
> The licensee is further barred from presenting evidence that should have been timely identified or produced in responses to the discovery requests.

Williams has not shown good cause to relieve her of the consequences of any of her defaults. Taking as true all of her reported health problems, she has not established that she was incapable of making any responses to any of the filings and that she was incapable of filing any timely explanations and requests for further time to file complete responses. "Frequent" incapacitation with one day of hospitalization over approximately 3 months does not justify the total lack of any responses.

Williams' statement that she did not understand that the hearing examiner granted an extension of time for her discovery responses is incredible. Her statement that she did not expect a written order to that effect after the telephone conference is likewise incredible.

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[1] During the February 21, 2006, telephone conference, the hearing examiner erroneously stated that the December 2, 2005, telephone conference had been recorded. It was not. Nonetheless, the hearing examiner's clear recollection is that he advised the parties during that telephone conference that Williams was granted an extension of time to respond to discovery, as stated in the subsequent December 6, 2005, order.

Given the admissions of record, the preclusion of presentation of evidence and the default on summary judgment, there are no contested questions of fact. The following are the uncontroverted facts of record.

1. Exhibit A in the hearing examiner's file, copies of which were served on Williams, are true, complete and authentic copies of the original documents and are admitted into the record.

2. Due to previous chemical dependency issues, Williams was placed in the Montana Professional Assistance Program (MPAP) on or about July 7, 1993.

3. While participating in MPAP, Williams had an apparent relapse in the later part of the year 2000, as reported to the board by the clinical coordinator for MPAP.

4. Because of the reported relapse, Williams' license was summarily suspended in January of 2001.

5. Williams' license was reinstated in January of 2002 on a probationary basis.

6. An informant contacted the Drug Enforcement Administration in the summer of 2000 to report that she had been filling prescriptions for Williams.

7. An investigation into the informant's tip determined that Williams had been using another doctor's prescription pad and DEA registration number to obtain hydrocodone and oxycodone, narcotic painkillers.

8. Williams used several pharmacies in Billings, Miles City, Glendive and Williston, ND, to obtain the above-mentioned prescriptions.

9. Williams unlawfully wrote prescriptions for a total of about 350 pills. Each prescription was for either 30 or 40 pills at a time. Sometimes, several prescriptions were filled in a single day.

10. As a result of the investigation, law enforcement officers arrested Williams in Billings in January 2001 after Williams bought 30 hydrocodone tablets at Costco.

11. In January 2002, Williams pleaded guilty in federal district court to 20 counts of obtaining drugs through fraud and received a sentence of 6 months under house arrest and 3 years of federal probation.

12. As a result of the criminal conviction, the probation of Williams' medical license was extended for 3 years with conditions which included the requirement to appear before the board annually and to remain compliant with MPAP.

13. On September 9, 2004, one of the urinalysis (UA) samples that Williams submitted for MPAP tested positive for codeine. As an excuse for the positive UA, Williams reported to MPAP that Williams' stepson had transferred prescription cold medication to an over-the-counter bottle and Williams inadvertently took some. This was not the first time Williams had used this excuse with regard to a positive drug analysis.

14. On November 19, 2004, the full board directed Williams to meet with them face-to-face at the upcoming January 21, 2005 board meeting because of their concern with several urine tests in the recent past which were positive. On the same day Williams was required to meet with the screening panel to discuss the complaint filed in this matter.

15. On January 21, 2005, the full board reviewed Williams' case and asked Williams to sign a new MPAP agreement by February 4, 2005. The terms of the new agreement were to require Williams (1) to work with MPAP Clinical Coordinator Michael Ramirez as Williams' supervisor; (2) to have a UA monitor and an acceptable therapist and (3) to complete an evaluation for pain management, narcotic addiction, etc. at the Cleveland Center within one month from the January 21, 2005 board meeting.

16. Because the full board had offered Williams this agreement, the January 21, 2005, screening panel opted to table the matter until such time as Williams had entered into the new MPAP agreement and otherwise complied with the recommendations of the full board.

17. At the January 21, 2005 screening panel meeting, the screening panel noted that the full board had set a deadline of one month in which Williams must enter into the MPAP agreement and either obtain or commence the evaluation. At the January 21, 2005 screening panel meeting, the screening panel made it very clear to Williams that Williams' full compliance with MPAP was required and that any more issues of noncompliance would result in disciplinary action, including revocation of Williams' medical license.

18. On March 1, 2005, Williams again met with the screening panel telephonically along with MPAP Clinical Coordinator, Michael Ramirez.

19. At the March 1, 2005 screening panel meeting, Williams agreed that she still had not provided MPAP with the name of an alternate UA collector as required and still had no date set for the Cleveland pain evaluation despite the passage of the deadline set on January 21, 2005 by both the full board and the screening panel.

20. Williams told the March 1, 2005, screening panel meeting that she initially made the arrangements for the pain evaluation on February 18, but that she went into the hospital with pneumonia on that date.

21. Despite stating that she was too sick to attend the pain evaluation, Williams called Ramirez the following day from Helena (a 5-hour trip from Sidney, Montana).

22. Despite a concerted effort to facilitate Williams' compliance with the board's recommendations, Williams still failed to comply as of March 1, 2005.

23. As of the March 1, 2005 screening panel meeting, there were UA collections (taken on February 14 and 19, 2005) for which results were pending.

24. With Williams' agreement, the March 1, 2005, screening panel voted to have Williams sign a new agreement with MPAP before March 11, 2005. Williams also agreed that she would place her license on inactive status and not reactivate it without MPAP approval.

25. A urine sample provided by Williams on February 19, 2005, tested positive for codeine. As a result, MPAP withdrew as Williams' advocate.

26. Despite stern warnings to Williams on January 21, 2005, from both the full board and the screening panel, and despite being told at that time that any future noncompliance would result in disciplinary action, Williams knowingly took codeine cough syrup 1 month later, only 2 days after signing an agreement with MPAP.

27. During her association with MPAP, Williams has (1) tested positive for Diazapam on 10/22/2003; (2) tested positive for Diazapam on 10/24/2003; (3) tested positive for amphetamines on 03/08/2004; (4) tested positive for Tramadol on 08/15/2004; (5) tested positive for Codeine on 09/09/2004 and (6) tested positive for Codeine on 02/19/2005.

28. Williams has committed unprofessional conduct as detailed in the Notice of Proposed Board Action in this proceeding.

29. An appropriate penalty for Williams' commission of unprofessional conduct is revocation of her license for an appropriate time as determined by the Montana Board of Medical Examiners, during which Williams may not reapply for a Montana medical license.

Summary judgment is proper in professional and occupational licensing cases. ***E.g.***, *Matter of Peila* (1991), 249 Mont. 272, 815 P.2d 139, 144-45.

Rule 56(c), Mont. R. Civ. P., provides that summary judgment is appropriate "if the pleadings . . . and admissions on file, together with the affidavits, . . . show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Summary judgment is appropriate when the adverse party (Williams, in this case) has had a reasonable opportunity to be heard on factual issues genuinely in dispute:

> The appellant contends that the Board improperly granted summary judgment in this case, arguing that there were material factual issues in dispute and that under the Montana Administrative Procedure Act (MAPA) he had the right to an evidentiary hearing. Procedural due process requires that parties be given reasonable notice and a reasonable opportunity to be heard; these due process requirements are reflected in

MAPA in §§2-4-601, and 2-4-612(1), MCA. Section 2-4-612(1), MCA, provides that "[o]pportunity shall be afforded all parties to respond and present evidence and argument on all issues involved" [original emphasis]. However, due process does not require development of facts through an evidentiary hearing when there are no material factual issues in dispute. *Smith v. State Dept. of Revenue, CSED* (Alaska 1990), 790 P.2d 1352, 1353. ***See also***, K. Davis, 1989 *Supplement to Administrative Law Treatise*, § 12.10 at 332-334.

Matter of Peila, ***op. cit.***, 815 P.2d ***at*** 144.

The purpose of Rule 56, Mont. R. Civ. P., "is to dispose of those actions which do not raise genuine issues of material fact, and to eliminate the expense and burden of unnecessary trials." *Kane v. Miller* (1993), 258 Mont. 182, 852 P.2d 130.

Upon a finding that a licensee has committed unprofessional conduct, the board may impose any or all of a wide variety of sanctions including revocation of license. Mont. Code Ann. § 37-1-312. To determine appropriate sanctions, the board must first consider sanctions that are necessary to protect the public and only after that determination has been made can the board then consider remedies designed to rehabilitate the licensee. Mont. Code Ann. § 37-1-312(2). The facts of record establish that Williams has engaged in unprofessional conduct for which revocation of her license is appropriate. The board should determine the length of time for such revocation, before Williams may reapply for a Montana medical license.

There are no genuine issues as to any material facts and the moving party is entitled to a judgment as a matter of law. Therefore, the hearing examiner recommends that the Montana Board of Medical Examiners issue a final order revoking the Montana medical license of Joyce L. Williams, License No. 7542, for an appropriate time as determined by the board, during which Williams may not reapply for a Montana medical license.

DATED this 22nd day of February, 2006.

DEPARTMENT OF LABOR & INDUSTRY
HEARINGS BUREAU

By: /s/ TERRY SPEAR
Terry Spear
Hearing Examiner

NOTICE

Mont. Code Ann. § 2-4-621 provides that the proposed order in this matter, being adverse to the licensee, may not be made final by the regulatory board until this proposed order is served upon

each of the parties and the party adversely affected by the proposed order is given an opportunity to file exceptions and present briefs and oral argument to the regulatory board.