

COPY

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE STATE BOARD OF MEDICINE

Commonwealth of Pennsylvania,
Bureau of Professional and
Occupational Affairs
v.

James S. Weagley, LAT,
Respondent

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File No. 13-49-10849

Docket No. 0275-49-15

Department of State

2015 OCT - 8 AM 7:45

PROTHONOTARY

FINAL ORDER

AND NOW, this 8TH day of October, 2015, noting that neither party filed an application for review and that the State Board of Medicine (Board) did not issue a Notice of Intent to Review, in accordance with 1 Pa. Code § 35.226(a)(3) and 49 Pa. Code § 16.57, the hearing examiner's Adjudication and Order dated August 18, 2015, appended to this order as **Appendix A**, is now the **FINAL ORDER** of the Board in this proceeding.

This order shall be effective immediately.

**BUREAU OF PROFESSIONAL &
OCCUPATIONAL AFFAIRS**

STATE BOARD OF MEDICINE



IAN J. HARLOW
COMMISSIONER

ANDREW J. BEHNKE, MD
CHAIR

Respondent's Address:

James S. Weagley, LAT
461 Noble Road
Atglen, PA 19310

Prosecuting attorney:

Jason T. Anderson, Esquire

Board counsel:

Teresa Lazo, Esquire

Date of mailing:

OCTOBER 8, 2015

APPENDIX A

RECEIVED
AUG 18 2015
Department of State
Prothonotary

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DEPARTMENT OF STATE
BEFORE THE STATE BOARD OF MEDICINE

Commonwealth of Pennsylvania,
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v.

James S. Weagley, LAT,
Respondent

Docket No. 0275-49-15
File No. 13-49-10849

ADJUDICATION AND ORDER

Suzanne Rauer
Hearing Examiner

Commonwealth of Pennsylvania
GOVERNOR'S OFFICE OF GENERAL COUNSEL
Department of State
P.O. Box 2649
Harrisburg, PA 17105-2649
(717) 772-2686

DATE RECEIVED 8/18/15
PROCT. GEN.
COMPL.
HEARD BY WANNER

HISTORY

This matter comes before a hearing examiner for the Department of State on an Order to Show Cause (OSC) filed February 18, 2015, in which the Commonwealth alleged that James S. Weagley, LAT (Respondent) is subject to disciplinary action under the Medical Practice Act (Act), Act of December 20, 1985, P.L. 457, No. 112, *as amended*, 63 P.S. §422.1–§422.53. Count One of the OSC alleged that Respondent continued to practice while Respondent's medical athletic trainer license or certificate was expired, not registered, suspended or revoked, in violation of the Act at 63 P.S. §422.41(6), by and through the Board's regulations at 49 Pa. Code §16.61(a)(9).

By letter dated February 26, 2015 and filed with the Prothonotary for the Department of State on March 2, 2015, Respondent admitted that his license was lapsed from July 15, 2007 through March 20, 2014, and that he practiced as an athletic trainer from July 15, 2007 through February 27, 2014. Respondent filed an application for reactivation of his medical athletic trainer's license on December 2, 2013, and his license was reactivated by the Board on March 21, 2014.

A formal administrative hearing was held in this matter June 18, 2015 in Harrisburg, Pennsylvania, before Hearing Examiner Suzanne Rauer. Prosecuting Attorney Jason T. Anderson appeared at the hearing on behalf of the Commonwealth. Respondent appeared at the hearing *pro se*. The record in this matter was closed with the filing of the hearing transcript on July 2, 2015.

FINDINGS OF FACT

1. Respondent holds a license to practice as a medical athletic trainer in the Commonwealth of Pennsylvania, License No. RT000365A, which was originally issued on November 9, 1987. (Board records)
2. Respondent's license is active through December 31, 2016, and may be renewed thereafter upon the filing of the appropriate documentation and payment of the necessary fees. (Board records)
3. At all pertinent times, Respondent held a license to practice as a medical athletic trainer in the Commonwealth of Pennsylvania. (Board records)
4. Respondent's last known address on file with the Board is 461 Noble Road, Atglen, PA 19310. (Board records)
5. Respondent's license to practice as an athletic trainer expired on July 14, 2007. (Commonwealth's Exhibit C-2)
6. Respondent applied for reactivation of his license by submitting the reactivation application, fee and appropriate late fees to the Board, but not until December 2, 2013. (Commonwealth's Exhibit C-3)
7. Respondent submitted a Verification of Practice/Non-Practice Form with the reactivation application, and checked "Yes" to the following question: "Have you engaged in the practice of your profession in Pennsylvania since your license or certification lapsed or since you placed it on inactive status?" (Commonwealth's Exhibit C-3; Board records)
8. Affixed to the Verification of Practice/Non-Practice Form Respondent submitted is the Respondent's signature immediately below the following statement: "I understand that any false statement made is subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn

falsification to authorities and may result in the suspension or revocation of my license, permit and/or certification.” (Commonwealth’s Exhibit C-3; Board records)

9. The Board reactivated Respondent’s license effective March 20, 2014. (Commonwealth’s Exhibit C-3; Board records)

10. In his answer to the OSC dated February 26, 2015 and received March 2, 2015, Respondent admitted that his license was lapsed from July 15, 2007 until March 20, 2014, and that he had practiced as an athletic trainer at the Octorara Area High School from July 15, 2007 until February 27, 2014 on a lapsed license. (Commonwealth’s Exhibit C-4)

11. Respondent was served with the order to show cause and all subsequent pleadings, orders and notices filed of record in this matter. (Docket No. 0275-49-15)

CONCLUSIONS OF LAW

1. The Board has jurisdiction in this matter. (Findings of Fact, Nos. 1-3)
2. Respondent has been afforded reasonable notice of the charges against him and an opportunity to be heard in this proceeding, in accordance with the Administrative Agency Law, 2 Pa. C.S. § 504. (Findings of Fact, No. 11)
3. Respondent is subject to discipline under § 41(6) of the Act, 63 P.S. §422.41(6), by and through the Board's regulations at 49 Pa. Code §16.61(a)(9), as alleged in Count One of the OSC, in that Respondent continued to practice his profession while Respondent's license or certificate was expired from July 15, 2007 until February 27, 2014. (Findings of Fact, Nos. 5-10)

DISCUSSION

This action is brought under the Act at 63 P.S. §422.41(6), by and through the Board's regulations at 49 Pa. Code §16.61(a)(9), which provide, in pertinent part, as follows:

§ 422.41. . . . Reasons for refusal, revocation, or suspension of license

The board shall have authority to impose disciplinary or corrective measures on a board-regulated practitioner for any or all of the following reasons:

* * *

(6) Violating a lawful regulation promulgated by the board or violating a lawful order of the board previously entered by the board in a disciplinary proceeding.

* * *

§ 16.61. Unprofessional and immoral conduct.

(a) A Board-regulated practitioner who engages in unprofessional or immoral conduct is subject to disciplinary action under section 41 of the act (63 P. S. § 422.41). Unprofessional conduct includes, but is not limited to, the following:

* * *

(9) Continuing to practice while the Board-regulated practitioner's license or certificate has expired, is not registered or is suspended or revoked.

* * *

A violation of the Act subjects Respondent to disciplinary or corrective measures pursuant to § 41 of the Act, 63 P.S. § 422.41, *supra*, and in such an instance, the Board is authorized to impose any of the disciplinary or corrective measures outlined in the Act at § 42(a), 63 P.S. § 422.42(a):

§ 422.42. **Types of corrective action**

(a) **Authorized actions.**--When the board is empowered to take disciplinary or corrective action against a board-regulated practitioner under the provisions of this act or pursuant to other statutory authority, the board may:

(1) Deny the application for a license, certificate or any other privilege granted by the board.

(2) Administer a public reprimand with or without probation.

(3) Revoke, suspend, limit or otherwise restrict a license or certificate.

(4) Require the board-regulated practitioner to submit to the care, counseling or treatment of a physician or a psychologist designated by the board.

(5) Require the board-regulated practitioner to take refresher educational courses.

(6) Stay enforcement of any suspension, other than that imposed in accordance with section 40, and place a board-regulated practitioner on probation with the right to vacate the probationary order for noncompliance.

(7) Impose a monetary penalty in accordance with this act.

The Commonwealth charged in its OSC that Respondent violated the Board's regulations at 49 Pa. Code §16.61(a)(9) in that Respondent practiced his profession from July 15, 2007 until February 27, 2014 on a lapsed license. The Commonwealth's evidence consists of the unchallenged allegations in the OSC and documentary evidence, entered into evidence at the hearing as Commonwealth's Exhibits C-1 through C-4, which included Respondent's answer to the OSC and his Reactivation or Status Change Application for Allied Health Professionals, in both of which Respondent admitted that he practiced as a medical athletic trainer from after July 15, 2007 when his license lapsed. In his Answer to the OSC and in his testimony, Respondent admitted to working from July 15, 2007 until February 27, 2014 while his license was lapsed. Given those admissions, and the evidence and testimony presented, the Commonwealth has

proven the allegations in Count One of the OSC by a preponderance of the evidence, subjecting Respondent's license to disciplinary action by the Board.

By way of mitigation, Respondent testified that the National Athletic Trainers Association establishes the credentials for athletic training, and that he has maintained his certification since 1977. (N.T. 13) Respondent has also maintained his continuing education requirements of 80 credits for each three year period through the National Athletic Trainers Association during that time. (N.T. 13) At some point after 1977, Respondent was required to obtain and maintain licensure through the Commonwealth of Pennsylvania, first with the Physical Therapy Board and later through the State Board of Medicine.¹ (N.T. 14) During the period when Respondent's athletic trainer license with the State Board of Medicine was lapsed, Respondent testified that he did not receive notifications for renewal, and did not receive notification that his medical athletic trainer's license was lapsed. (N.T. 14) It was not until November 21, 2013 that Respondent received correspondence from the Board notifying him that his license had lapsed.² (N.T. 14) Respondent continued practicing while rectifying the situation with his lapsed license. (N.T. 15) Respondent assumed full responsibility for that decision, as well as for allowing his license to lapse, and asked for leniency in that he has practiced as an athletic trainer for over 30 years without any action having been taken against him. (N.T. 15) Respondent also noted that he has already incurred a significant financial penalty, in that he had no income for a three month period after February 27, 2014. (N.T. 15) At the time of the hearing in this matter, Respondent was self-employed as a sports safety consultant, and was working part time at Great Valley High School as an athletic trainer. (N.T. 17)

¹ Respondent was originally licensed on November 9, 1987, as established by Board records.

² Respondent testified that he worked as a sports safety consultant in addition to his employment as an athletic trainer, and that the plaintiff's expert in a case he was working on researched Respondent's background, found that his license had lapsed, and reported Respondent to the Board. (N.T. 14)

The primary responsibility of the Board is to protect the health and welfare of the citizens of this Commonwealth. A license holder who fails to abide by the requirements of the Act for licensure must bear the consequences of that failure. Respondent failed to fulfill his professional duty to ensure that he was properly licensed and in doing so practiced as a medical athletic trainer on a lapsed license in the Commonwealth for almost seven years. Whereas a substantial penalty could be imposed, it is noted that Respondent immediately took action to obtain a current license upon learning that his license lapsed in 2007. It should also be noted that Respondent has not previously been subject to discipline. Additionally, whereas he could have been more aware of his obligations regarding the renewal of his license, Respondent did not receive notice or renewal forms during the time his license was lapsed. Respondent continued to maintain the required continuing education through the National Athletic Trainers Association during the time his license was lapsed, and upon the request of the Commonwealth provided documentation of his continuing education and certification by that organization under cover of correspondence that was received on August 7, 2015.³ The hearing examiner finds Respondent's testimony to be credible, and that his failure to renew was not willful. Given those facts, the Commonwealth's recommendation that a reprimand and a civil penalty be imposed against Respondent's medical athletic trainer license is an appropriate sanction to balance the lengthy period of lapsed license practice with the mitigating testimony.

Accordingly, based upon the above findings of fact, conclusions of law and discussion, the following order will issue:

³ That correspondence, dated July 17, 2015 and received by the Prothonotary for the Department of State on August 7, 2015, and the two page attachment thereto, are hereby marked as Respondent's Exhibit R-1 and admitted into evidence in this matter.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE STATE BOARD OF MEDICINE

Commonwealth of Pennsylvania,
Bureau of Professional and
Occupational Affairs

v.
James S. Weagley, LAT
Respondent

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Docket No. 0275-49-15
File No. 13-49-10849

ORDER

AND NOW, this 18th day of August, 2015, upon consideration of the foregoing findings of fact, conclusions of law and discussion, it is hereby **ORDERED**, as to Respondent **James S. Weagley, LAT**, License No. **RT000365A**, as follows:

1. A **PUBLIC REPRIMAND** shall be issued against Respondent's license to practice as a medical athletic trainer.
2. Respondent shall pay a **CIVIL PENALTY** of **\$1,000**.
3. Respondent shall pay said civil penalty by certified check, attorney's check or U.S. Postal Service money order, made payable to "Commonwealth of Pennsylvania," and shall mail it to:

Board Counsel
State Board of Medicine
P.O. Box 69523
Harrisburg, PA 17106-9523

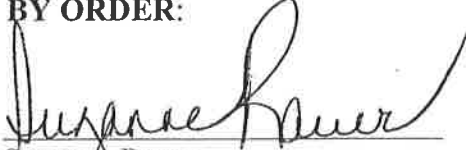
within thirty (30) days of the date of this Order.

4. Should Respondent fail to pay the civil penalty within thirty (30) days of the date of this Order, his license to practice the profession shall be **INDEFINITELY SUSPENDED** without the need for any further action by any prosecuting attorney for

the Commonwealth and will remain suspended until such time as Respondent pays the civil penalty in full.

This order shall take effect *twenty (20) days from the date of mailing* unless otherwise ordered by the State Board of Medicine.

BY ORDER:


Suzanne Rauer
Hearing Examiner

For the Commonwealth:

Jason T. Anderson, Esquire
GOVERNOR'S OFFICE OF GENERAL COUNSEL
DEPARTMENT OF STATE OFFICE OF CHIEF COUNSEL
PROSECUTION DIVISION
P.O. Box 69521
Harrisburg, PA 17106-9521

For Respondent:

James S. Weagley, LAT
461 Noble Road
Atglen, PA 19310

Date of Mailing: 8/13/15

NOTICE

REHEARING AND/OR RECONSIDERATION

A party may file an application for rehearing or reconsideration **within 15 days of the mailing date** of this adjudication and order. The application must be captioned "*Application for Rehearing*", "*Application for Reconsideration*", or "*Application for Rehearing or Reconsideration*". It must state specifically and concisely, in numbered paragraphs, the grounds relied upon in seeking rehearing or reconsideration, including any alleged error in the adjudication. If the adjudication is sought to be vacated, reversed, or modified by reason of matters that have arisen since the hearing and decision, the matters relied upon by the petitioner must be set forth in the application.

APPEAL TO BOARD

An application to the State Board of Medicine for review of the hearing examiner's adjudication and order must be filed by a party **within 20 days of the date of mailing** of this adjudication and order. The application must be captioned "*Application for Review*". It must state specifically and concisely, in numbered paragraphs, the grounds relied upon in seeking the Board's review of the hearing examiner's decision, including any alleged error in the adjudication. Within an application for review a party may request that the Board hear additional argument and take additional evidence.

An application to the Board to review the hearing examiner's decision may be filed irrespective of whether an application for rehearing or reconsideration is filed. However, the filing of an application for rehearing and/or reconsideration does not extend, or in any other manner affect, the time period in which an application for review may be filed.

STAY OF HEARING EXAMINER'S ORDER

Neither the filing of an application for rehearing and/or reconsideration nor the filing of an application for review operates as a stay of the hearing examiner's order. To seek a stay of the hearing examiner's order, the party must file an application for stay directed to the Board.

FILING AND SERVICE

An original and three (3) copies of all applications shall be filed with:

Prothonotary
P.O. Box 2649
Harrisburg, PA 17105-2649

A copy of all applications must also be served on all parties.

Applications must be received for filing by the Prothonotary within the time limits specified. The date of receipt at the office of Prothonotary, and not the date of deposit in the mail, is determinative.

NOTICE

The attached Final Order represents the final agency decision in this matter. It may be appealed to the Commonwealth Court of Pennsylvania by the filing of a Petition for Review with that Court within 30 days after the entry of the order in accordance with the Pennsylvania Rules of Appellate Procedure. See Chapter 15 of the Pennsylvania Rules of Appellate Procedure entitled "Judicial Review of Governmental Determinations," Pa. R.A.P 1501 – 1561. Please note: An order is entered on the date it is mailed. If you take an appeal to the Commonwealth Court, you must serve the Board with a copy of your Petition for Review. The agency contact for receiving service of such an appeal is:

Board Counsel
P.O. Box 69523
Harrisburg, PA 17106-9523

The name of the individual Board Counsel is identified on the Final Order.



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

Teresa Lazo
Assistant Counsel

tlazo@pa.gov

October 8, 2015

VIA FIRST CLASS AND CERTIFIED MAIL

James S. Weagley, LAT
461 Noble Road
Atglen, PA 19310

VIA INTEROFFICE MAIL

Jason T. Anderson, Esquire
P.O. Box 69521
Harrisburg, PA 17106-9521

RE: Final Order:
Commonwealth of Pennsylvania, Bureau of Professional and
Occupational Affairs v. James S. Weagley, LAT
Docket No. 0275-49-15
File No. 13-49-10849

Dear Mr. Weagley and Mr. Anderson:

Enclosed please find a Final Order that the State Board of Medicine issued in the above-referenced matter.

Sincerely,

Teresa Lazo, Counsel
State Board of Medicine

Enclosure

cc: Suzanne Zerbe, Board Administrator
State Board of Medicine

DEPARTMENT OF STATE/OFFICE OF CHIEF COUNSEL
2601 NORTH 3RD STREET/P.O. BOX 69523/HARRISBURG, PA 17106-9523
PHONE: 717-783-7200/FAX: 717-787-0251/WWW.DOS.PA.GOV

