

STATE BOARD OF OSTEOPATHIC MEDICINE
P O BOX 2649
HARRISBURG PA 17105-2649
www.dos.state.pa.us/ost

BOARD ACTION REPORT

NAME: MIKAELA POTRAKO

LICENSE TYPE: Osteopathic Athletic Trainer
LIC NUMBER: RTO000377
ORIG LIC DATE: 01/30/2018
EXP DATE: 12/31/2020

ADDRESS: 322 SOUTH FIVE POINTS ROAD
WEST CHESTER, PA 19382

DOB: 10/29/1992
SSN:

SCHOOL: UNIVERSITY OF DELAWARE
YR OF GRAD: 2015

Date of Order: 04/14/2021

Effective Date of Action: 02/22/2021

Action Taken: **FINAL ORDER.** Respondent's license to practice as an osteopathic athletic trainer, LICENSE NO. RTO000377, along with any other authorizations to practice the profession issued by the Board to Respondent are SUSPENDED INDEFINITELY, RETROACTIVE TO MONDAY FEBRUARY 22, 2021.

Reason for Action: Respondent did not undergo the Board ordered mental and physical examination. Respondent was unable to practice the profession with reasonable skill and safety to patients by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals or other type of material, or as a result of a mental or physical condition.

PA STATE BOARD OF OSTEOPATHIC MEDICINE
ADMINISTRATIVE OFFICER
April 30, 2021

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

BEFORE THE STATE BOARD OF OSTEOPATHIC MEDICINE

**COMMONWEALTH OF PENNSYLVANIA
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

vs.

MIKAELA POTRAKO, LAT

CASE NO. 19-53-012921

FINAL ADJUDICATION AND ORDER

**K. KALONJI JOHNSON
COMMISSIONER BUREAU OF
PROFESSIONAL AND
OCCUPATIONAL AFFAIRS**

**RANDY G. LITMAN, D.O.
CHAIR
STATE BOARD OF OSTEOPATHIC
MEDICINE**

**2601 North Third Street
P.O. Box 69523
Harrisburg, PA 17016-9523**

DMW

Prothonotary Filed On:
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Department of State

This matter comes before the State Board of Osteopathic Medicine ("Board") following the Board's issuance of a *Memorandum Order* on February 1, 2021. The matter commenced on April 29, 2020, when the Commonwealth presented a *Petition to Compel a Mental and Physical Examination* ("Petition"), of Mikaela Potrako, LAT ("Respondent"), to the Board's *Probable Cause Screening Committee* ("Committee").¹ The *Petition* alleged that there was probable cause to believe that Respondent is unable to practice the profession with reasonable skill and safety to patients by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals or other type of material, or as a result of any mental or physical condition prohibited by section 15(b)(5) of the Osteopathic Medical Practice Act ("Act"), 63 P.S. § 271.15(b)(5)², and the holding of

¹ The members of the Board that participated on the Probable Cause Screening Committee in this matter were Burton T. Mark, D.O. and John B. Bulger, D.O. Other than making the initial determination to order the mental/physical examination, the members of the Probable Cause Screening Committee have recused themselves from further consideration of this matter.

² § 271.15. Reasons for refusal, revocation or suspension of license.

- (b) The board shall have authority to refuse, revoke or suspend the license of a physician assistant, respiratory therapist or athletic trainer for any or all of the following reasons:

(5) Being unable to serve as a physician assistant with reasonable skill and safety to the physician's patients by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material, or as a result of any mental or physical condition.

(6) In enforcing paragraph (5), the board shall, upon probable cause, have authority to compel a physician assistant to submit to a mental or physical examination by physicians designated by it. Failure of a physician assistant to submit to such examination shall constitute an admission of the allegations against him unless the failure is due to circumstances beyond his control, consequent upon which a default and final order may be entered without the taking of testimony or presentation of evidence. A physician assistant affected under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that he can resume the competent assistance of a physician in the physician's practice of medicine, with reasonable skill and safety to the physician's patients.

63 P.S. § 271.15(b)(5), (6). Section 15(b)(5) and (6) of the Act mirrors these provisions.

Lencovich v. Bureau of Professional and Occupational Affairs, 829 A.2d 1238 (Pa. Cmwlth. 2003).³

On April 29, 2020 the Committee issued an *Order Compelling Mental and Physical Examination* ("Order") requiring Respondent to submit to a mental and physical examination ("the examination") with James W. Cornish, M.D. ("Dr. Cornish"), in Philadelphia, Pennsylvania. A *Notice of Mental and Physical Examination* ("Notice") accompanied the *Order* advising that the examination would be conducted by Dr. Cornish on June 30, 2020, at 11:00 a.m. and advising that if Respondent had an unavoidable conflict with the scheduled examination date and time, that Respondent was required to contact the prosecuting attorney to have the examination rescheduled. The *Petition*, *Notice* and *Order* advised that should Respondent fail to undergo an ordered mental and physical examination, Respondent would be subject to disciplinary action and costs of investigation under 63 P.S. § 2205(b)(1)⁴ for violating a lawful Board Order under Section 16(b)(6) of the Act, 63 P.S. § 271.15(b)(6).

³ *Lencovich v. Bureau of Professional and Occupational Affairs*, 829 A.2d 1238 (Pa. Cmwlth. 2003) holds that "the requirement that a licensee possess a state of mental and physical health that will not impair his or her ability to practice the profession 'with reasonable skill and safety to patients,' is a statutory condition of continued licensure." See *Lencovich* citing *Accord Galena v. Department of State*, 551 A.2d 676 (Pa. Cmwlth. 1988)

⁴ 63 P.S. § 2205 has since been replaced by 63 P.S. § 3018. The relevant section reads as follows:

§ 3108. Civil penalties.

(b) In addition to the disciplinary powers and duties of the licensing boards and licensing commissions within the bureau under their respective practice acts, licensing boards and licensing commissions shall have the power, respectively:

(1) To impose discipline, including, but not limited to, a civil penalty of up to \$10,000 per violation on a licensee or unlicensed person who violates a lawful disciplinary order of the licensing board.

63 P.S. § 3108(b)(1)

On May 5, 2020, the Commonwealth mailed the *Petition, Notice and Order* to Respondent's address on file with the Board, 322 South Five Points Road, West Chester, PA 19382, via the United States Postal Service (USPS) by first-class mail, postage prepaid, and by certified mail, return receipt requested, tracking number 9171 9690 095 0226 5896 69. The *Petition, Notice and Order* mailed by certified mail, tracking number 9171 9690 095 0226 5896 69 was delivered to Respondent and/or Respondent's agent at Respondent's address on file with the Board. Respondent did not appear for the scheduled examination with Dr. Cornish on June 30, 2020.

On July 8, 2020, the Commonwealth filed a *Motion to Deem Facts Admitted and Enter Default* ("Motion") alleging that Respondent received the *Petition, Notice and Order* and that Respondent did not appear for the examination on June 30, 2020, as required by the Board's *Order*. The *Motion* was mailed to Respondent's West Chester address on file with the Board via first-class mail. Respondent did not respond to the Commonwealth's *Motion*. On February 1, 2021, the Board issued a *Memorandum Order* finding Respondent in default for failing to undergo the examination as ordered by the Committee on the Board's behalf. The *Memorandum Order* notified Respondent that the Board would indefinitely suspend her license and other authorizations to practice the profession if she failed to file an *Answer* or request a hearing within twenty (20) days. The *Memorandum Order*, like the *Motion* was mailed to Respondent via first-class at her address on file with the Board, 322 South Five Points Road, West Chester, PA 19382. The Board, having received no *Answer* from Respondent, and with the exclusion of the Committee, now issues this *Final Adjudication and Order* in resolution of this matter.

FINDINGS OF FACT

1. At all times relevant and material, Respondent held a license issued by the State Board of Osteopathic Medicine to practice as an osteopathic athletic trainer in the Commonwealth of Pennsylvania, license number RTO000377. (Board Records, Petition at ¶ 1)

2. Respondent's license is currently suspended. (Board Records; *Memorandum Order* dated February 1, 2021 for Case No. 19-53-012921)

3. Respondent's last known address on file with the Board is: 322 South Five Points Road, West Chester, PA 19382. (Board records, Petition at ¶ 3)

4. During the period of January 2018 through August 26, 2019, Respondent was employed as an athletic trainer by ATI Physical Therapy. (Petition at ¶ 5)

5. Respondent worked through ATI as an athletic trainer at Garnet Valley High School in Glen Mills, Pennsylvania. (Petition at ¶ 6)

6. ATI Physical Therapy was under contract with the Garnet Valley School District to provide athletic training services at Garnet Valley High School. (Petition at ¶ 7)

7. On or about August 22, 2019, it was reported to Rochelle Helm ("Ms. Helm"), Director of Sports Medicine at ATI Physical Therapy, that there were several instances when Respondent smelled of alcohol while working as an athletic trainer at Garnet Valley High School. (Petition at ¶ 8)

8. During the afternoon of August 23, 2019, Ms. Helm made a site visit to observe Respondent working as an athletic trainer at Garnet Valley High School. (Petition at ¶ 9)

9. On that date, Ms. Helm smelled a strong odor of alcohol, noticed hurried speech by Respondent and observed salivation at Respondent's mouth during the site visit at Garnet Valley High School. (Petition at ¶¶ 10-12)

10. Based on the indicators referenced in paragraph 9, Ms. Helm suspected that Respondent was under the influence of alcohol while at work as an athletic trainer at Garnet Valley High School. (Petition at ¶ 13)

11. Respondent consented to a breathalyzer test which was conducted at approximately 4:59 p.m. on August 23, 2019 at Main Line Health Fitness and Wellness Center. (Petition at ¶ 14)

12. Respondent's breathalyzer showed a positive result for alcohol. (Petition at ¶ 15)

13. On or about August 26, 2019, Ms. Helm drafted a memorandum concerning Respondent's employment as an athletic trainer with ATI Physical Therapy and outlining the events that occurred on August 23, 2019 during the site visit and the breathalyzer test. The memorandum also included language from the Employee Handbook stating the basis for requiring the breathalyzer test. (Petition at ¶ 16; attached Exhibit "A")

14. On or about August 26, 2019, Jeri Brennan, Sr., HR Business Partner at ATI Physical Therapy sent correspondence to Respondent, which stated in part, "This letter serves as a formal notification that your employment with ATI Physical Therapy is being terminated for cause effective, Monday, August 26, 2019, due to the reasons outlined in the Memo attached." (Petition at ¶¶ 18-20)

15. On April 29, 2020, the Board's *Probable Cause Screening Committee* issued an *Order* directing Respondent to attend a mental and physical examination with Dr. James W. Cornish, M.D. in Philadelphia, Pennsylvania, on June 30, 2020, at 11:00 a.m. (Motion at ¶¶ 2-3).

16. On May 5, 2020, the Commonwealth mailed the *Petition*, *Order* and *Notice* by first-class mail, postage prepaid, and by certified mail, return receipt requested, tracking number 9171 9690 0935 0226 5896 69, to Respondent at her address on file with the Board, 322 South Five Points Road, West Chester, PA 19382. (Motion at ¶ 5, Order at Certificate of Service).

17. The Commonwealth obtained electronic proof that the certified mail for tracking number 9171 9690 0935 0226 5896 69 was delivered to Respondent and/or Respondent's agent at her address on file with the Board. (Motion at ¶ 5, Exhibit 2)

18. Respondent did not appear for the mental and physical examination with Dr. Cornish on June 30, 2020 as ordered. (Motion at ¶ 6)

19. By correspondence dated July 1, 2020, Dr. Cornish advised the Prosecuting Attorney that Respondent did not appear for the scheduled examination, call Dr. Cornish or email Dr. Cornish regarding this matter. (Motion at ¶ 7; attached Exhibit 3)

20. On July 8, 2020, the Commonwealth filed a *Motion to Deem Facts Admitted and Issue Adjudication (Motion)* and mailed it via the USPS by first-class mail to Respondent's address on file with the Board, 322 South Five Points Road, West Chester, PA 19382. (Motion at *Certificate of Service*)

21. On February 1, 2021, the Board issued a *Memorandum Order* granting the Commonwealth's *Motion* and mailed it to Respondent on February 2, 2021 to her address on file with the Board, 322 South Five Points Road, West Chester, PA 19382. (Memorandum Order)

22. The *Memorandum Order* notified Respondent that if she did not file an *Answer* or request a hearing to challenge the validity of the order compelling the examination or to contest the allegations of the *Motion* within twenty (20) days of the date of the *Memorandum Order*, the Board would indefinitely suspend her license (i.e. effective Monday, February 22, 2021). (*Memorandum Order*)

23. Respondent did not file an *Answer* to the *Motion* or the *Memorandum Order* and did not request a hearing. (Docket entries, Case No. 19-53-012921)

CONCLUSIONS OF LAW

1. The Board has jurisdiction over Respondent in this matter. (Findings of Fact Nos. 1-3).

2. Respondent has been afforded reasonable notice of the requirement that she submit to a mental and physical examination, including the possibility of licensure suspension for failure to comply, and has been afforded an opportunity to be heard in accordance with the Administrative Agency Law, 2 Pa.C.S. § 504. (Findings of Fact Nos. 15-23).

3. In that Respondent did not undergo the Board ordered mental and physical examination, Respondent violated a Board Order under Section 15(b)(6) of the Board's Act, § 63 P.S. 271.15(b)(6) and the holding of *Lencovich v. Bureau of Professional and Occupational Affairs*, 829 A.2d 1238 (Pa. Cmwlth. 2003), thereby subjecting her to the imposition of a disciplinary sanctions, civil penalty up to \$10,000 per violation and the costs of investigation under 63 P.S. § 3108(b)(1). (Findings of Fact Nos. 15-23)

4. In that Respondent, an osteopathic athletic trainer employed at Garnet Valley High School, reported to work on August 23, 2019 intoxicated and was thereafter terminated from her position as an athletic trainer at ATI Physical Therapy, Respondent is subject to the imposition of a disciplinary sanction under section 15(b)(5) of the Act, 63 P.S. § 63 P.S. § 271.15(b)(5), for being unable to practice the profession with reasonable skill and safety to patients by reason of illness, drunkenness, excessive use or drugs, narcotics, chemicals or other type of material, or as a result of any mental or physical condition. (Findings of Fact Nos. 4-14).

DISCUSSION

Due Process

Respondent did not file an *Answer* contesting the allegations of the *Motion* or challenging the validity of the *Order* compelling her to undergo a mental and physical examination despite having been given a chance to do so. Under the foregoing circumstances, the Board must first determine whether Respondent has been afforded the appropriate due process to permit it to render a final decision based on the merits in this case. If Respondent was made sufficiently aware of the charges against her and the procedures by which she can defend herself, then her due process rights were adequately protected. Clark v. Department of Public Welfare, 427 A.2d 712 (Pa. Cmwlth. 1981); Celane v. Insurance Commissioner, 415 A.2d 130 (Pa. Cmwlth. 1980). See also, Gutman v. State Dental Council and Examining Board, 463 A.2d 114 (Pa. Cmwlth. 1983).

Section 33.31 of the General Rules of Administrative Practice and Procedure ("GRAPP"), 1 Pa. Code § 33.31, authorizes service by mail. "Notice of administrative action which is mailed to the interested parties' last known address has been found to be reasonable notice." Kobylski v. Milk Marketing Board, 516 A.2d 75, 77 (Pa. Cmwlth. 1986), citing Yarbrough v. Department of Public Welfare, 478 A.2d 956 (Pa. Cmwlth. 1984). "Constitutionally adequate notice of administrative action is notice which is reasonably calculated to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Milford Township Board of Supervisors v. Department of Environmental Resources, 165 Pa. Cmwlth. 14, 18, 644 A.2d 217, 219 (1994).

In this case, the *Petition*, *Notice*, and *Order* notified Respondent of the allegations against her, the procedure to challenge those allegations and the consequences of failing to file a timely response. The charge that Respondent is unable to practice the profession with reasonable skill and safety to patients by reason of illness, drunkenness, excessive use or drugs, narcotics,

chemicals or other type of material, or as a result of any mental or physical condition was contained in the *Petition*, *Notice*, and *Order*. In compliance with section 15(b)(5) of the Act, 63 P.S. § 271.15(b)(5), and the holding of *Lencovich v. Bureau of Professional and Occupational Affairs*, 829 A.2d 1238 (Pa. Cmwlth. 2003), the *Order* required Respondent to undergo a mental and physical evaluation to assist the Board in assessing whether Respondent truly is unable to practice the profession with reasonable skill and safety to patients, as alleged. The *Order* further advised Respondent that failure to attend the evaluation would constitute a violation of a lawful order of the Board and an admission of the allegations contained in the *Petition*.

The Commonwealth mailed the *Petition*, *Notice* and *Order* to Respondent at her address on file with the Board via USPS by first-class mail, postage prepaid and by certified mail, return-receipt requested, tracking number 9171 9690 0935 0226 5869 69. Respondent received the *Petition*, *Notice* and *Order* as evidenced by the USPS electronic proof for tracking number 9171 9690 0935 0226 5896 69. Even though Respondent received reasonable notice of the Board's requirement that she attends a mental and physical evaluation, Respondent failed or refused to appear for the examination with Dr. Cornish in Philadelphia, Pennsylvania, on June 30, 2020, at 11:00 a.m. as required by the *Order* and accompanying *Notice*.

Subsequent to Respondent's failure to attend the mental and physical examination, on July 8, 2020 the Commonwealth also filed and served upon Respondent a *Motion to Deem Facts Admitted (Motion)* alleging that Respondent had been ordered to attend the mental and physical evaluation and that Respondent failed to comply with the *Order*, and requesting that the Board deem the allegations in the *Petition* as admitted. Respondent did not respond to the Commonwealth's *Motion*.

On February 1, 2021, the Board issued a *Memorandum Order* in which Respondent was advised that the Board had granted the Commonwealth's *Motion* and had deemed admitted the factual allegation in the *Petition*. The Board, through the *Memorandum Order*, also advised Respondent of the procedure to file an *Answer* to challenge the validity of the order compelling the examination, and/or to contest the allegations in the *Motion*. The *Memorandum Order* further notified Respondent that if she did not file an *Answer* or request a hearing to challenge the validity of the order compelling the examination or to contest the allegations of the *Motion* within twenty (20) days of the date of the *Memorandum Order*, the Board would indefinitely suspend her license, effective Monday, February 22, 2021. The *Memorandum Order* was sent to Respondent's address on file with the Board.

Having determined that Respondent received sufficient notice of the actions against her, the Board is also satisfied by the record that Respondent also received an opportunity to challenge the charge and defend herself. The *Petition* alleged (and the Committee found) that there was probable cause to establish that she is unable to safely practice as an osteopathic athletic trainer. The Board, through its Committee, required Respondent to submit to a mental and physical examination. Further, the *Petition*, *Order* and *Notice* advised Respondent that if she failed to comply with the examination *Order*, the allegations in the *Petition* would be deemed admitted and that she may be subject to discipline. Specifically, Paragraph 7 of the *Order* advised:

Respondent's failure to comply with this Order, except for circumstances beyond h[er] control, shall constitute a violation of a lawful order of the Board under 63 P.S. § 2205(b)(1), and in accordance with Section 15(b)(6) of the Osteopathic Medical Practice Act, act of October 5, 1978, P.L. 1109, No. 261, ("Act"), as amended, 63 P.S. § 271.15(b)(6), and the holding of *Lencovich v. Bureau of Professional and Occupational Affairs*, 829 A.2d 1238 (Pa. Cmwlth. 2003), admission of the allegations contained in the *Petition* to Compel Mental and Physical Examination upon which a Default and Final Order may be entered without the taking of testimony or presentation of evidence. Such Final Order may result in the State Board of Osteopathic Medicine taking disciplinary or corrective action against Respondent including, but not limited to, license

suspension, the imposition of a civil penalty of up to \$10,000 per violation, and the costs of investigation.

(Paragraph 7, Order)

In its February 1, 2021 *Memorandum Order*, the Board delineated in detail the procedure by which Respondent could challenge the validity of the *Order* and/or contest the allegation on the *Motion*, the mechanics of the hearing process, and the penalty for inaction. Specifically, the *Memorandum Order* provided:

The indefinite suspension will become effective unless Respondent files a request for a hearing to challenge the validity of the order compelling the examination or to contest the allegations of the motion to enter default and deem facts admitted, within 20 days from the date of this order.

(*Memorandum Order*, docket for Case No. 19-53-012921).

The *Memorandum Order* further advised that:

[i]f a request for hearing and answer are not filed within the time period set forth above, Respondent's license will be **SUSPENDED INDEFINITELY** effective February 22, 2021 (20 days after the date of mailing of this order as indicated below) and Respondent shall be responsible for the costs of investigation, including those costs associated with failing to attend the mental and physical examination as scheduled, and the Board will issue a final adjudication and order to that effect. (emphasis in original).

Despite being advised of the serious consequences of failing to submit to the examination and being provided with specific information about her due process rights, Respondent failed to respond to the *Memorandum Order*. The Board is therefore satisfied that Respondent has received adequate notice and an opportunity to be heard such that it may find her in default. Accordingly, the facts set forth in the Petition, are deemed admitted.

Discussion on the Merits

The Board must next determine what legal conclusion is appropriate given the facts deemed admitted. The Board's conclusion must be supported by substantial evidence. Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion.

Taterka v. Bureau of Professional and Occupational Affairs, 882 A.2d 1040, 1044 n.4 (Pa. Cmwlth. 2005). The facts deemed admitted establish that during the period of January 2018 through August 26, 2019, Respondent was employed as an athletic trainer by ATI Physical Therapy. Respondent worked through ATI as an athletic trainer at Garnet Valley High School in Glen Mills, PA. ATI Physical Therapy was under contract with the Garnet Valley School District to provide athletic training services at Garnet Valley High School.

On or about February August 22, 2019, it was reported to Rochelle Helm ("Ms. Helm"), Director of Sports Medicine at ATI Physical Therapy that there were several instances when Respondent smelled of alcohol while working as an athletic trainer at Garnet Valley High School. During the afternoon of August 23, 2019, Ms. Helm made a site visit to observe Respondent working as an athletic trainer at Garnet Valley High School. On that date, Ms. Helm smelled a strong odor of alcohol, noticed hurried speech by Respondent and observed salivation at Respondent's mouth during the site visit at Garnet Valley High School. Based on these indicators, Ms. Helm suspected that Respondent was under the influence of alcohol while at work as an athletic trainer at Garnet Valley High School. Respondent consented to a breathalyzer test which was conducted at approximately 4:59 p.m. on August 23, 2019 at Main Line Health Fitness and Wellness Center. Respondent's breathalyzer showed a positive result for alcohol.

On or about August 26, 2019, Ms. Helm drafted a memorandum concerning Respondent's employment as an athletic trainer with ATI Physical Therapy and outlining the events that occurred on August 23, 2019 during the site visit and the breathalyzer test. The memorandum also included language from the Employee Handbook stating the basis for requiring the breathalyzer test. On or about August 26, 2019, Jeri Brennan, Sr., HR Business Partner at ATI Physical Therapy sent correspondence to Respondent, which stated in part, "This letter serves as a formal notification

that your employment with ATI Physical Therapy is being terminated for cause effective, Monday, August 26, 2019, due to the reasons outlined in the Memo attached.”

Due to the Respondent’s action of reporting to work intoxicated, the Board ordered Respondent to submit to a mental and physical examination with Dr. Cornish, but Respondent failed to attend as required by the Board Order. The Board is permitted to make reasonable inferences based upon the outlined deemed admitted facts. *Shrader v. Bureau of Professional and Occupational Affairs*, 673 A.2d 1 (Pa. Cmwlth. 1995) Given that Respondent was working as an athletic trainer at a high school and reporting to work intoxicated, coupled with her failure to undergo the ordered mental and physical examination, the inference is reasonably deduced in this case that Respondent is not able to practice in the profession with reasonable skill and safety. As such, Respondent is subject to the imposition of a disciplinary sanction under section 15(b)(6) of the Board’s Act, § 63 P.S. 271.15(b)(6), the holding of *Lencovich v. Bureau of Professional and Occupational Affairs*, 829 A.2d 1238 (Pa. Cmwlth. 2003) and under 63 P.S. § 3108(b)(1).

Sanction

In determining the appropriate sanction, the Board considers, as paramount, its duty to protect the public from practitioners who cannot safely practice. Respondent holds a license as an osteopathic athletic trainer. As an athletic trainer, Respondent is responsible for rendering emergency care as well as the development of injury prevention programs and providing appropriate prevention and supporting devices for the physically active person. See section 2 of the Act, 63 P.S. § 271.2 (relating to definitions) at Athletic Training Services. Physically active persons rely on Respondent, in her role as an athletic trainer, to help prevent injuries and to render emergency care when injuries do occur. The consumption of alcohol could not only impair

Respondent's motor skills but also her reaction time which could potentially result in serious harm or even death to Respondent's clients.

The Board has a statutory obligation to protect the public from practitioners who cannot practice with the requisite skill and safety due to impairment, therefore is required to rule on the Commonwealth's *Motion*. Given the deemed admitted facts, the Board finds that it can only meet its obligation to protect the public is by suspending all authorizations to practice the profession issued by the Board to Respondent until such time as *a)* Respondent submits to a mental and physical evaluation by Dr. Cornish or a comparably-credentialed Board-approved evaluator; *b)* the evaluator provides an opinion, to a reasonable degree of medical certainty, that Respondent is competent to resume practice as an osteopathic athletic trainer with reasonable skill and safety to patients; *c)* Respondent demonstrates at a hearing that she can resume competent care as an athletic trainer with reasonable skill and safety to patients; and *d)* Respondent demonstrates at hearing that there are no other impediments to resuming active practice. In any petition for reinstatement Respondent shall also verify that she has not practiced as an athletic trainer during the period of suspension and that she has completed all administrative requirements (e.g. mandatory continuing education) necessary for the reinstatement of her license.

Accordingly, the Board enters the following order:

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

**Commonwealth of Pennsylvania,
Bureau of Professional and
Occupational Affairs**

v.

**Mikaela Potrako, LAT,
Respondent**

Case No. 19-53-012921

FINAL ORDER

AND NOW, this 14th day of April, 2021, the State Board of Osteopathic Medicine (“Board”), upon consideration of the entire record in this matter, including the *Findings of Fact*, *Conclusions of Law*, and *Discussion*, and in accordance with the *Memorandum Order* issued February 1, 2021, **ORDERS** that Respondent's license to practice as an osteopathic athletic trainer, **license no. RTO000377**, along with any other authorizations to practice the profession issued by the Board to Respondent be **SUSPENDED INDEFINITELY, retroactive to Monday, February 22, 2021**.

If Respondent has not already done so, within 10 days of the effective date of this Order, Respondent shall surrender the wall certificate, registration certificate, wallet card and other licensure documents by forwarding them to the following address: State Board of Osteopathic Medicine, Board Counsel, PO Box 69523, Harrisburg, PA 17106-9523.

Respondent may Petition the Board to reinstate her license by providing the following documentation:

a. An evaluation and assessment from Dr. Cornish, or similarly-credentialed physician approved by the Pennsylvania Health Monitoring Program (PHMP), concluding that Respondent is competent to resume practice with reasonable skill and safety to patients;

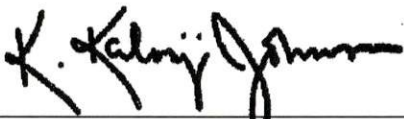
b. A current Criminal History Record Information (a/k/a "Criminal Record Check") from a governmental agency from all states where Respondent has resided since the suspension, compiled no more than thirty (30) days prior to the petition for reinstatement; and

c. A signed verification that Respondent has not practiced as an athletic trainer since the suspension.

Prior to reinstatement, Respondent must prove at a formal hearing before the Board or its designee that Respondent is capable of practicing as an osteopathic athletic trainer with reasonable skill and safety to patients. After the Board reinstates Respondent's license, it will be reinstated to inactive/expired status until Respondent completes all application administrative requirements. Upon reinstatement, Respondent may be required to participate in PHMP monitoring for a period to be determined by the Board based upon the evaluation and assessment.

This order shall take effect immediately. The suspension of Respondent's license was effective as of Monday, February 22, 2021.

**BUREAU OF PROFESSIONAL AND
OCCUPATIONAL AFFAIRS**



**K. KALONJI JOHNSON
COMMISSIONER**

BY ORDER:

**STATE BOARD OF OSTEOPATHIC
MEDICINE**



**RANDY G. LITMAN, D.O.
CHAIR**

Respondent:

Mikaela Potrako, LAT
322 South Five Points Road
West Chester, PA 19382

For the Commonwealth:

Keith E. Bashore, Esquire

Board Counsel:

Dana M. Wucinski, Esquire

Date of Mailing:

April 20, 2021

NOTICE

The attached Adjudication and 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 State Board of Osteopathic Medicine with a copy of your Petition for Review. The agency contact for receiving service of such an appeal is:

Dana M. Wucinski, Esquire
Board Legal Counsel
State Board of Osteopathic Medicine
P.O. Box 69523
Harrisburg, PA 17106-9523