

HEARING CONDUCTED BY THE
TEXAS STATE OFFICE OF ADMINISTRATIVE HEARINGS
SOAH DOCKET NO. 503-17- 0662 .MRT
TEXAS MEDICAL RADIOLOGIC TECHNOLOGIST LICENSE NO. GMR00101151

IN THE MATTER OF THE

COMPLAINT AGAINST

DARRYL KEITH GREEN, MRT

BEFORE THE

TEXAS MEDICAL

RADIOLOGIC TECHNOLOGIST BOARD

COMPLAINT

TO THE HONORABLE TEXAS MEDICAL BOARD AND THE HONORABLE
ADMINISTRATIVE LAW JUDGE TO BE ASSIGNED:

The Staff of the Texas Medical Radiologic Technologist Board (Board) files this Complaint against Darryl Keith Green, MRT, (Respondent), for alleged violations of the Texas Medical Radiologic Technologists Act (Act), Title 3, Subtitle K, TEX. OCC. CODE ANN. §§601.001 *et seq.* (Vernon Supp. 2016) and the rules adopted thereunder, which are set forth at 25 Tex. Admin. Code Chapter 140, Subchapter J, and would respectfully show the following:

I. SUMMARY OF FACTUAL ALLEGATIONS

Board Staff alleges that Respondent has engaged in unprofessional behavior by making abusive remarks and acting in an aggressive manner while employed by Seton Medical Center – Harker Heights, on or about December 15, 2013, and by exhibiting strange behavior on or about March 15, 2016, including forgetfulness, perspiring, repeating himself and moving constantly along with pinprick pupils and then refusing to submit to a “for cause” drug screening, and instead turning in his badge. Respondent’s employment was terminated on or about March 21, 2016, based on his refusal to submit to drug screening in violation of Seton Medical Center’s drug screening policy.

II. LEGAL AUTHORITY AND JURISDICTION

1. Respondent is a medical radiologic technologist and holds Texas Medical Radiologic Technologist License No. GMR00101151, which was originally issued by the Texas Department of State Health Services (DSHS) on November 10, 2011. Respondent's license was in full force and effect at all times material and relevant to this Complaint.

2. Respondent received notice of one or more Informal Settlement Conferences (ISC). The Board complied with all procedural rules, including but not limited to, the rules set forth at 25 Tex. Admin. Code Chapter 140, Subchapter J, relating to medical radiologic technologists, as applicable.¹

3. No agreement to settle this matter has been reached by the parties.

4. All jurisdictional requirements have been satisfied.

5. The filing of this Complaint and the relief requested are necessary to protect the health and public interest of the citizens of the State of Texas.

III. APPLICABLE STATUTES AND STATUTORY VIOLATIONS

The following statutes, rules, and agency policy are applicable to the procedures for conduct of the hearing this matter:

A. General Statutes and Rules:

1. Section 601.304 of the Act requires that the Board adopt procedures governing formal disposition of a contested case before the State Office of Administrative Hearings (SOAH).

2. 25 TEX. ADMIN. CODE §140.514(i) sets forth the procedures adopted by the Board pursuant to Section 601.304 of the Act.

3. 25 TEX. ADMIN. CODE §140.514(h) sets forth aggravating factors that warrant more severe or restrictive action by the Board.

4. 1 TEX. ADMIN. CODE CHAPTER 155 sets forth the rules of procedure adopted by SOAH for contested case proceeding.

¹ S.B. 202, Acts of the 84th Legislature, R.S. (2015) transferred several health care practitioner licensing and enforcement programs from the Department of State Health Services (DSHS) to the Texas Medical Board including the program regulating the practice of medical radiologic technology. S.B. 202 explicitly provides that any DSHS rule in effect on September 1, 2015 remains in effect until changed by the Board. The Board has not yet promulgated rules relating to the MRT program.

5. 1 TEX. ADMIN. CODE §155.507 requires the issuance of a Proposal for Decision (PFD) containing Findings of Fact and Conclusions of Law.

B. Specific Violations Cited:

Respondent has violated one or more of the following provisions of the Act:

1. Section 601.301 of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's violation of the Act or the rules adopted thereunder.

2. Section 601.302(5) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's engaging in unprofessional conduct including violating the standards of the medical radiologic practice, as further defined by the rules set forth in 25 Tex. Admin. Code 140.514(c)(5), any practice or omission that fails to conform to accepted principles and standards for the medical radiologic technology profession; and 140.514(c)(20), making abusive, harassing or seductive remarks to a patient, client, or co-worker in the workplace.

3. Section 601.302(6) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's developing an incapacity that prevents the practice of radiologic technology with reasonable skill, competence and safety to the public as the result of (a) an illness; (b) drug or alcohol dependency; or (c) another physical or mental condition or illness, as further defined at 25 Tex. Admin. Code 140.514(b)(6).

4. Section 601.302(9) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's violation of a rule adopted under this Act; specifically, the rules set forth in 25 Tex. Admin. Code 140.514, relating to disciplinary actions.

IV. FACTUAL ALLEGATIONS

Based on information and belief, Board Staff alleges:

1. On or about May 12, 2012, Respondent commenced employment as a medical radiologic technologist at Seton Medical Center located in Harker Heights, Texas. During orientation, Respondent executed consent forms acknowledging that he had received a copy Seton's policies including its Drug Screening Policy which provides that refusal to submit to a "for cause" drug screen constitutes grounds for termination.

2. On or around December 15, 2013, Respondent was overheard calling a nurse an offensive curse word. Respondent became agitated and aggressive towards the charge nurse

when she investigated this incident and when he started cursing in and around the nurse's station, the charge nurse had him escorted out of the hospital by security. On the following day, Respondent acknowledged that he had not handled the situation appropriately and offered to apologize for his behavior. Respondent was informed at this time that another episode of this type of behavior could result in additional corrective action up to and including termination. Respondent's abusive and aggressive behavior constitutes a violation of the Act and Board rules; specifically:

Section 601.302(5) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's engaging in unprofessional conduct, including violations of the standards of practice applicable to medical radiologic technologists, as further defined by the MRT rules set forth in 25 Tex. Admin. Code 140.514(c)(5), any practice or omission that fails to conform to accepted principles and standards for the medical radiologic technology profession; and 140.514(c)(20), making abusive, harassing or seductive remarks to a patient, client, or co-worker in the workplace.

Section 601.302(9) of the Act authorizes the Board to take disciplinary action against Respondent for a violation of a rule adopted under this Act; specifically, the rules set forth in 25 Tex. Admin. Code §140.514(b)(5), relating to unprofessional conduct, as further defined by 25 Tex. Admin. Code §140.514(c)(20), making abusive, harassing or seductive remarks to a patient, client, or co-worker in the workplace.

3. On or about March 15, 2016, Respondent was asked by the Director of Diagnostic Imaging to submit to a "for cause" drug-screening because he was exhibiting strange behavior, including forgetfulness and anxiety and also repeating himself verbally. Although Respondent initially agreed to drug screening, he refused to consent to drug screening once he arrived at the Human Resources department. The Director of Human Resources observed him as he sat in her office, anxious, perspiring, repeatedly stating that his wife would not get her way, while constantly moving his legs. She also observed that his pupils were pinpoint in appearance, suggesting possible intoxication and/or impairment. When Respondent executed a form indicating that he was refusing the requested drug screening, Respondent was informed that hospital policy provided that such refusal was grounds for involuntary termination.

Section 601.302(5) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's engaging in unprofessional conduct, including violations of the standards of practice applicable to medical radiologic

technologists, as further defined by the MRT rules set forth in 25 Tex. Admin. Code 140.514(c)(5), any practice or omission that fails to conform to accepted principles and standards for the medical radiologic technology profession.

Section 601.302(6) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's developing an incapacity that prevents him from practicing radiologic technology with reasonable skill, competence, and safety to the public as the result of drug or alcohol dependency or another physical or mental condition or illness.

4. On or about March 21, 2016, Respondent was terminated from employment for refusing to submit to "for cause" drug screening. Respondent has subsequently failed to follow up with the TXPHP program to address these alleged impairment issues.

V. AGGRAVATING AND MITIGATING FACTORS

The rules set forth at 25 Tex. Admin. Code §140.514(h) provide that the Board may consider aggravating factors that warrant more severe or restrictive disciplinary action. This case includes the following aggravating factors: 1) the severity of the offense; 2) the deterrent effect of the penalty imposed; and 3) any efforts made towards rehabilitation.

Board staff is aware of no mitigating factors that apply and demand that Respondent submit proof to substantiate any alleged mitigating factors.

VI. NOTICE TO RESPONDENT

IF YOU DO NOT FILE A WRITTEN ANSWER TO THIS COMPLAINT WITH THE STATE OFFICE OF ADMINISTRATIVE HEARINGS WITHIN 20 DAYS AFTER THE DATE OF RECEIPT, A DEFAULT ORDER MAY BE ENTERED AGAINST YOU, WHICH MAY INCLUDE THE DENIAL OF LICENSURE OR ANY OR ALL OF THE REQUESTED SANCTIONS, INCLUDING THE REVOCATION OF YOUR LICENSE. A COPY OF ANY ANSWER YOU FILE WITH THE STATE OFFICE OF ADMINISTRATIVE HEARINGS SHALL ALSO BE PROVIDED TO THE HEARINGS COORDINATOR OF THE TEXAS MEDICAL BOARD.

VII. PRAYER

WHEREFORE, PREMISES CONSIDERED, Board Staff requests that an administrative law judge employed by the State Office of Administrative Hearings conduct a contested case hearing on the merits of the Complaint, and issue a Proposal for Decision containing Findings of

Fact and Conclusions of Law necessary to support a determination that Respondent violated the Act and the rules adopted thereunder, as set forth in this Complaint.

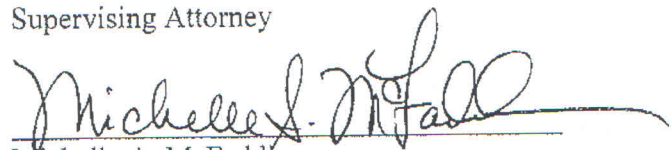
Respectfully submitted,

TEXAS MEDICAL BOARD

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Litigation Manager

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By:



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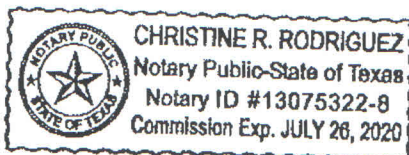
THE STATE OF TEXAS

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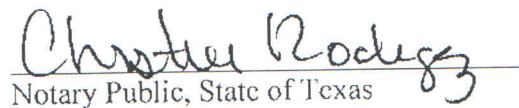
COUNTY OF TRAVIS

SUBSCRIBED AND SWORN to before me by Michelle A. McFaddin, J.D., on

October 11, 2016.



Notary without Bond


Notary Public, State of Texas

Filed with the Texas Medical Board on Oct. 11, 2016.

A handwritten signature in dark ink, appearing to read "Mari Robinson", is written over a horizontal line.

Mari Robinson, J.D.
Executive Director
Texas Medical Board

CERTIFICATE OF SERVICE

I certify that on the 11th day of October, 2016, a true and correct copy of the foregoing Complaint has been served as follows:

By Email to: docketing@soah.texas.gov

Docket Clerk
State Office of Administrative Hearings
William P. Clements Bldg.
300 W. 15th Street, Suite 504
Austin, TX 78701-1649

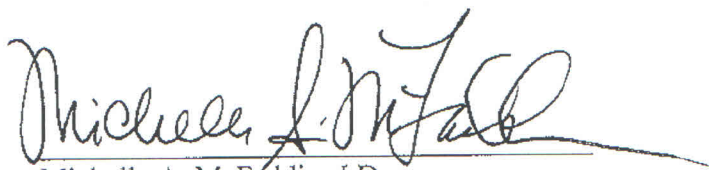
By CMRRR No. 7014 2870 0000 3056 7822, and

by First Class Mail to:

Darryl Keith Green, MRT
2405 Hemlock Drive
Killeen, Texas 76549

By Hand Delivery to:

Robin Etheridge
Hearings Coordinator
Texas Medical Board
333 Guadalupe, Tower 3, Suite 610
Austin, TX 78701


Michelle A. McFaddin, J.D.