

CASE NO. 1060-14-0008
DOCKET NO. A24206-511-2015

IN THE MATTER OF

JERRY FEARS, MRT #19005

CELINA, TEXAS

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BEFORE THE

DEPARTMENT OF STATE
HEALTH SERVICES

AUSTIN, TEXAS

DEFAULT ORDER FOR REVOCATION

The undersigned designee of the Commissioner of the Department of State Health Services, having reviewed and considered the information submitted in this matter, is of the opinion that the Medical Radiologic Technologist (MRT) certification #19005 of Jerry Fears, Celina, Texas, should be placed on a two (2) year probated suspension for violations of the provisions of the Medical Radiologic Technologist Rules, at 25 Texas Administrative Code (TAC) §140.514(b)(2), (3), (4) and (5) and §140.514(c)(1), (4), (5), (6), (26), (31)(A) and (B).

Findings of Fact and Conclusions of Law are attached hereto and made a part hereof for all purposes.

NOW, THEREFORE, IT IS SO ORDERED, that:

The Medical Radiologic Technologist certification #19005 of Jerry Fears, is hereby placed on a two (2) year probated suspension.

Signed on this 6th day of June, 2015.



Kathryn C. Perkins, RN, MBA
Assistant Commissioner
Division for Regulatory Services

IN THE MATTER OF JERRY FEARS

FINDINGS OF FACT

Finding of Fact No. 1

The Department of State Health Services (Department), Division for Regulatory Services, Enforcement Unit, is authorized to enforce the Texas Medical Radiologic Technologist Act (Act), Chapter 601 of the Texas Occupations Code (TOC), and the Medical Radiologic Technologist Rules (Rules) found at 25 Texas Administrative Code (TAC) Chapter 140, relating to the certification and regulation of Medical Radiologic Technologists (MRTs) in Texas.

Finding of Fact No. 2

Chapter 601 of the TOC, § 601.301(5), authorizes the Department to place the offender's certification on probation if that person violates a Rule under this chapter.

Finding of Fact No. 3

On or about November 13, 2013, Jerry Fears, while performing the duties and responsibilities of a Medical Radiologic Technologist and acting as the Radiation Safety Officer (RSO) for Plano Orthopedic & Sports Medicine Center, Plano Texas, engaged in unprofessional and unethical conduct when Mr. Fears filed a false report with the Department during a Department inspection, and Mr. Fears failed to perform the duties of a RSO, when Mr. Fears failed to ensure that two Non-Certified Technicians (NCT), which were under his supervision, safely and properly performed the exams within their scope of a NCT, in violation of 25 TAC §140.514(b)(2), (3), (4) and (5) and §140.514(c)(1), (4), (5), (6), (26), (31)(A) and (B).

Finding of Fact No. 4

25 TAC §140.514(b) states that the department may take disciplinary action against a person subject to the Act for:

- (2): making or filing a false report or record made in the person's capacity as an MRT;
- (3): intentionally or negligently failing to file a report or record required by law;
- (4): intentionally obstructing or inducing another to intentionally obstruct the filing of a report or record required by law;
- (5): engaging in unprofessional conduct, including the violation of the standards of practice of radiologic technology established by the department.

25 TAC §140.514(c) states, "Engaging in unprofessional conduct means the following:

- (1): making any misleading, deceptive, or false representations in connection with service rendered;
- (4): aiding or abetting a person in violating the Act or rules adopted under the Act;
- (5): any practice or omission that fails to conform to accepted principles and standards of the medical radiologic technology profession;
- (6): performing a radiologic procedure which results in mental or physical injury to a patient or which creates an unreasonable risk that the patient may be mentally or physically harmed;

(26): failing to follow appropriate safety standards or the Texas Regulations for the Control of Radiation in the operation of diagnostic or therapeutic radiologic equipment or the use of radioactive materials;

(31): using or permitting or allowing the use of the person's name, certificate, or professional credentials in a way that the person knows, or with the exercise of reasonable diligence should know:

(A): violates the Act, this chapter or department rule relating to the performance of radiologic procedures; or

(B): is fraudulent, deceitful or misleading.

Finding of Fact No. 5

In accordance with the Administrative Procedure Act, Government Code, Chapter 2001, if the Department proposes disciplinary action, the Department shall give written notification to the certificant. The notice must state the facts or conduct alleged to warrant the action and state that the certificant has an opportunity to request a hearing.

Finding of Fact No.6

A Notice of Violation (Notice) of the Department's intent to impose a two (2) year probated suspension against the certification of Jerry Fears as a MRT #19005, was mailed via first class service and certified mail service, #70112970000402065613. The Notice, signed by Jay P. Fowler, Enforcement Consumer Safety Program Specialist, Enforcement Unit, Division for Regulatory Services, informed Jerry Fears at his last known address, 1070 Mellanie Lane, Celina, Texas, of the Department's intent to impose a two (2) year probated suspension against his certification as a MRT, #19005. The Notice stated the grounds for the probated suspension of the certification as a MRT (as set out in Findings of Fact Nos. 3 and (4)) and informed Mr. Fears that he had the right to request a formal hearing, in accordance with Chapter 2001 of the Texas Government Code. In addition to being offered a formal hearing, the Department offered Mr. Fears an informal conference to meet with Department representatives. On April 6, 2015, the Notice sent via certified mail service was returned to the Department signed by Mr. Fears. The Notice sent via first class mail service has not been returned to the Department. More than 30 days have elapsed since mailing and presumed delivery of the Notice.

Finding of Fact No. 7

Jerry Fears has not requested a hearing or otherwise responded to the Notice.

CONCLUSIONS OF LAW

Conclusion of Law No. 1

All procedural requirements regarding proper notice, opportunity to request a hearing, and due process of law have been met.

Conclusion of Law No. 2

Jerry Fears's certification as a MRT, #19005, should be placed on a two (2) year probated suspension for his failure to comply with the Rules at 25 TAC §140.514(b)(2), (3), (4), (5) and §140.514(c)(1), (4), (5), (6), (26), (31)(A) and (B).

Conclusion of Law No. 3

The two (2) year probated suspension of Jerry Fears's certification as a MRT, #19005, is in accordance with the above Findings of Fact and Conclusions of Law.