

**STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH
PUBLIC HEALTH HEARING OFFICE**

In re: Lech Skiba

Petition No. 2012-13
June 6, 2013

MEMORANDUM OF DECISION

Procedural History

On March 7, 2013, the Department of Public Health (the "Department") filed a Statement of Charges ("Charges") against Lech Skiba ("Respondent") notifying him that the Department was seeking an order revoking or imposing other disciplinary action against his asbestos abatement worker's certificate. Rec. Ex. 1.

On March 19, 2013, the Department issued a Notice of Hearing ("Notice") scheduling a hearing for April 22, 2013. In the Notice, the Commissioner of the Department appointed this Hearing Officer to rule on all motions, determine findings of fact and conclusions of law, and issue an order. Rec. Ex. 2.

On April 22, 2013, an administrative hearing was held to adjudicate the Charges. The hearing was conducted in accordance with Chapter 54 of the Connecticut General Statutes ("Statutes") and § 19a-9-1, *et seq.* of the Regulations of Connecticut State Agencies ("Regulations"). Respondent neither appeared at the hearing nor requested that it be continued. Tr. pp. 2-3. The Department appeared at the hearing represented by Attorney Linda Fazzina. *Id.*

During the hearing, the Department made an oral Motion to Deem the Allegations Admitted for Respondent's failure to file an answer. The Motion was granted. Tr. p. 5.

This Memorandum of Decision is based entirely on the record and sets forth this Hearing Officer's findings of fact, conclusions of law, and order. To the extent that the findings of fact actually represent conclusions of law, they should be so considered, and vice versa. *SAS Inst., Inc. v. S & H. Computer Systems, Inc.*, 605 F. Supp. 816 (M.D.

Tenn. 1985). Both the Department and Respondent had the opportunity to present evidence, conduct cross-examination, and provide arguments.

Allegations

1. In paragraph 1 of the Charges, the Department alleges that Respondent of Willmington, Delaware has been the holder of Connecticut asbestos abatement worker certificate number 011302. Said certificate expired on or about April 30, 2011, and has not been renewed as of the date of these charges.
2. In paragraph 2 of the Charges, the Department alleges that in or about June 2012, Respondent presented a falsified and/or altered certificate in connection with asbestos abatement work performed at Wapping Elementary School in South Windsor, Connecticut.
3. In paragraph 3 of the Charges, the Department alleges that the above-described facts constitute grounds for disciplinary action pursuant to § 20-440 of the Statutes and/or §§ 20-440-5(b) and/or 20-440-6(b) of the Regulations.

Findings of Fact

1. Respondent had reasonable, adequate, and actual notice of the hearing on April 22, 2013. Rec. Ex. 2.
2. Respondent did not attend the hearing or requested that it be continued.
3. Respondent failed to file an Answer to the Charges.
4. An investigation commenced, and the Charges were issued, within eighteen (18) months of the time period within which respondent held the license. Rec. Ex. 1.
5. Pursuant to the undersigned's Ruling of April 22, 2013, granting the Department's Motion to Deem the Allegations Admitted, all of the above allegations are deemed admitted and true. Tr. p. 5; *see also*, § 19a-9-20 of the Regulations.

Discussion and Conclusions of Law

Section 20-440-5(b) of the Regulations states that “[n]o individual shall provide services as an asbestos abatement site supervisor or as an asbestos abatement worker in this state without a certification to do so issued by the department”

Pursuant to §§ 19a-14, 19a-14a, and 19a-17 of the Statutes, the Department has the authority to discipline an asbestos abatement worker's certificate. Further, pursuant to § 19a-17 of the Statutes and § 20-440-6(b) of the Regulations, the Department may assess an asbestos abatement worker a penalty for conduct that violates § 20-440-1 to 20-440-9 of the Regulations that may include: the issuance of a civil penalty of up to \$25,000 per incident, a reprimand, placing Respondent on a period of probation, and revocation of Respondent's asbestos abatement worker's certificate.

In establishing the underlying violations to support such discipline, the Department bears the burden of proof by a preponderance of the evidence. *Goldstar Medical Services, Inc., v. Department of Social Services*, 288 Conn. 790, 821 (2008).

In accordance with Section 19a-9-20 of the Regulations of Connecticut State Agencies, a hearing shall proceed, "at the time and place specified in the notice of hearing, notwithstanding any failure of the respondent to file an answer within the time provided. If no answer has been timely filed, the allegations shall be deemed admitted." In this case, Respondent failed to file an answer to the complaint or appear for the hearing. Thus, the allegations were deemed admitted.

In view of the granting of the Department's Motion to Deem Allegations Admitted, the Department established the violations noted above by a preponderance of the evidence.¹ The evidence also established that the Department commenced its investigation and initiation of disciplinary action within eighteen months of when Respondent held the certificate, as required by § 19a-14a of the Statutes.

The Department has requested that Respondent's license be revoked. Rec. Exh. 1. This remedy is fully supported by the record. In or about June 2012, Respondent

¹ The undersigned is aware that the Connecticut Supreme Court is reviewing the issue of whether the standard of proof in cases before the Connecticut Medical Examining Board involving physicians should be the preponderance of evidence standard or the clear and convincing standard (*Charles Ray Jones, M.D., v. Connecticut Medical Examining Board*, S.C. 18843). In the present case, the undersigned finds that even if the standard of proof was clear and convincing evidence, the Department met its burden with respect to all of the allegations contained in the Charges.

presented a falsified and/or altered certificate in connection with asbestos abatement work performed at Wapping Elementary School in South Windsor, Connecticut. Dept. Ex. 1 and 2; Tr. pp. 8-12. Thereby, Respondent engaged in fraud and deceit in violation of the standards of his profession. *Id.* Respondent's certificate is therefore revoked.

Order

Based on the record in this case, the above Findings of Fact and Conclusions of Law, this Hearing Officer orders that Respondent's asbestos worker certificate number 011302 is hereby revoked.



Olinda Morales, Esq.
Hearing Officer



Date

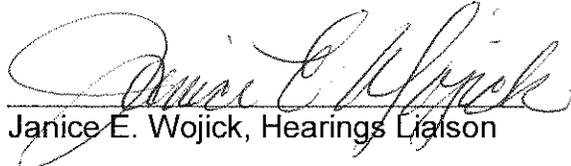
CERTIFICATION

I hereby certify that, pursuant to Connecticut General Statutes Section 4-180(c), a copy of the foregoing Final Memorandum of Decision was sent this 6th day of June 2013 certified mail return receipt requested and first class mail to:

Lech Skiba
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and E-Mail to:

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Janice E. Wojick, Hearings Liaison