

## IN THE OHIO RESPIRATORY CARE BOARD

IN THE MATTER OF:

JENNIFER A. RAKOCY Case No. 2002ORCB007

License No. \_\_\_\_\_

### DECISION

This matter came before the presiding officer of the Board on licensee's motion for continuance. The officer makes the following findings of fact, conclusions of law, and order:

#### FINDINGS OF FACT

1. OAC 4761-11-10(A) requires all motions to be filed in writing no later than fourteen (14) days before the date of hearing unless express exception is granted by the hearing officer.
2. Licensee's motion was filed on or about February 1, 2002, only four (4) days before the hearing date.
3. Because this is a motion for continuance, the hearing officer hereby grants leave for the motion to be received and the motion will be considered in accordance with the standards set forth below.
4. On or about December 17, 2001 the Board advised Ms. Rakocy of her right to request a hearing.
5. On or about January 14, 2002 the Board set Ms. Rakocy's hearing for February 6, 2002 at 9:00 A.M.
6. Ms. Rakocy did not retain counsel until February 1, 2002.
7. Counsel immediately contacted the Board and requested a continuance.
8. The Ohio Respiratory Care Board is composed of five (5) members who come from Cleveland, Strongsville, West Carrollton, Portsmouth, and Urbana respectively.
9. The Board meets only six (6) times per year.
10. Hotel reservations for several Board members were made for February 5 in anticipation of having this hearing on February 6.
11. The reservations were able to be canceled up until February 4 at 11:00 A.M.

12. Opposing counsel was not opposed to a continuance.

#### CONCLUSIONS OF LAW

1. Whether or not to grant a continuance in a judicial proceeding is committed to the sound discretion of the Court. State v. Unger (1981), 67 Ohio St. 2d 65. The same standards apply to an administrative hearing. Herman v. State Medical Board (decided Nov. 8, 2000), Case No. 99 AP-967, Franklin App., unreported.

2. Factors to consider in determining whether or not to grant a continuance include:

- a. length of delay requested;
- b. whether other continuances have been sought or granted;
- c. inconvenience to litigants, witnesses, opposing counsel, and the Board;
- d. whether the request for continuance is legitimate or for purposes of delay;
- e. whether the licensee contributed to the need for continuance; and,
- f. other legitimate reasons. State v. Unger supra.

3. Factors militating against continuance in this case include:

- a. The licensee had ample time to obtain counsel and was inexcusably dilatory in obtaining said counsel.
- b. The continuance is a great inconvenience to the Board since all five (5) members scheduled the entire day away from their occupations solely for this hearing.
- c. The filing of the request was late, under OAC 4761-11-10(A), although this was solely the fault of licensee, and not her lawyer.
- d. A minimum delay of approximately sixty (60) days is necessary since the Board only meets six (6) times per year and meetings are scheduled one (1) year in advance.

4. Factors militating in favor of continuance in this case include:

- a. Opposing counsel does not object to the request for continuance.
- b. There is no inconvenience to witnesses.
- c. This is the only request for continuance.

- d. Counsel was very prompt in requesting a continuance upon being retained.
  - e. Opposing counsel and licensee are available on April 10, 2002 for the next scheduled meeting of the Board.
5. The factors in favor of continuance outweigh the factors against continuance.

ORDER

IT IS THEREFORE ORDERED that licensee's motion for continuance is granted and this matter is rescheduled for hearing on April 10, 2002 at 9:00 A.M. Further continuances are unlikely.

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Darrell L. Heckman

Presiding Officer

Ohio Respiratory Care Board

February 4, 2002