[Cite as *Beach v. Ohio Bd. of Nursing*, 2011-Ohio-3451.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Lori A. Beach, R.N.,	:	
Appellant-Appellant,	:	
		No. 10AP-940
v.	:	(C.P.C. No. 09CVF10-15484)
Ohio Board of Nursing,	:	(ACCELERATED CALENDAR)
Appellee-Appellee.	:	

D E C I S I O N

Rendered on July 12, 2011

Graff & McGovern, James M. McGovern and *Levi J. Tkach,* for appellant.

Michael DeWine, Attorney General, and *Melissa L. Wilburn,* for appellee.

APPEAL from the Franklin County Court of Common Pleas.

BRYANT, P.J.

{¶1} Appellant-appellant, Lori A. Beach, R.N., appeals from a judgment of the Franklin County Court of Common Pleas affirming an order of appellee-appellee, the Ohio Board of Nursing ("board"), that permanently revoked appellant's license to practice nursing as a registered nurse in Ohio. Because (1) the common pleas court did not err in denying appellant's motion to admit additional evidence, (2) the board was not required to

serve appellant's attorney with a copy of the notice informing appellant of the violations with which she was charged, (3) no evidence in the record supports appellant's contentions that a board employee coerced appellant to orally rescind her request for a hearing, and (4) reliable, probative and substantial evidence supports the board's order, we affirm.

I. Facts and Procedural History

{¶2} Appellant became an Ohio registered nurse in 1996 and at some unspecified later time she began working as a nurse at the Mansfield Correctional Institution in Mansfield, Ohio. On January 15, 2008, appellant resigned from her position in lieu of termination after prison investigators confronted her with evidence she engaged in an inappropriate personal relationship with an inmate at the prison for whom appellant provided nursing care. Appellant admitted to a board investigator she engaged in "telephone sex" with the inmate and overstepped her bounds as a nurse when she established a relationship with the inmate. On May 16, 2008, the board issued appellant a notice of opportunity for a hearing regarding disciplinary action the board proposed to take against her license due to her actions at the prison.

{¶3} In lieu of a hearing, appellant entered into a consent agreement with the board in November 2008. Pursuant to the agreement, the board suspended appellant's nursing license retroactively from January 2008 to January 2009. Appellant agreed to submit to psychiatric treatment and a sexual health evaluation. According to the terms of the agreement, appellant could request after January 1, 2009 the reinstatement of her license, provided she had complied fully with the agreement. On January 7, 2009 appellant wrote to the board and asked the board to reinstate her license.

{¶4} Appellant's letter prompted a February 5, 2009 meeting where appellant met with Attorney Bowman, who served as a supervising attorney at the board, and with a board monitoring agent. At the meeting, appellant informed the board representatives she not only had been working as a nurse in Michigan for the past several months but she continued her relationship with the patient-inmate whom she planned to marry.

{¶5} Based on those admissions, the board sent appellant a notice of opportunity for a hearing on March 20, 2009, informing her it proposed to take disciplinary action against her license as a result of false, misleading and deceptive statements she made to the board in the consent agreement. The notice informed appellant of her right, within 30 days of the notice's being mailed, to request a hearing on the matter. Appellant timely requested a hearing on March 30, 2009. The board notified appellant it received her request for a hearing, set the hearing for April 13, 2009, and continued the hearing on its own motion.

{¶6} On April 6, 2009, the board received the evaluation of appellant that the Center for Marital and Sexual Health in Beachwood, Ohio performed. The evaluation indicated appellant suffered from mental illness to such an extent the center concluded it could not recommend appellant's nursing license be restored. Based on the recommendation from the center, the board, acting through Attorney Bowman, spoke with appellant over the telephone on May 5 or 6, 2009 in an attempt to have appellant surrender her nursing license; appellant refused.

{¶7} The board sent appellant another notice of opportunity for a hearing dated May 15, 2009. The notice informed appellant the board received the center's evaluation and proposed to take disciplinary action against her for violating a restriction placed on

her license. On May 20, 2009, appellant left a voicemail message with her board monitoring agent requesting a hearing on the May 15, 2009 notice. In response, the board mailed appellant a letter stating it had received her voicemail message, set the hearing for June 3, 2009, and continued the hearing on its own motion.

{¶8} Contrary to her May 20 message, appellant left a voicemail message with the board on May 22, 2009 stating she no longer wished to have a hearing. Attorney Bowman spoke with appellant on June 2, 2009, confirmed appellant had withdrawn her hearing requests for both the March and May 2009 notices, and sent appellant a letter on June 5, 2009 memorializing their conversation of June 2. Bowman finished the letter by stating, "If I have misinterpreted our telephone conversation, please contact me by June 9, 2009. Thank you." (C.R. 19.) Appellant phoned Attorney Bowman on or about June 5. When Bowman asked appellant "if she was rescinding her withdrawal of her request for a hearing, [appellant] hung up the telephone." Appellant's June 5 call was the last contact Bowman had with appellant.

{¶9} The board sent appellant a letter on August 3, 2009 informing appellant it would consider her case at the board's regularly scheduled meeting on September 24-25, 2009. The letter further informed appellant the board would not permit her to present evidence or testimony on her behalf because she had withdrawn her hearing requests. After consolidating the charges against appellant contained in the March and May 2009 notices, the board, according to the minutes, found appellant committed the charges alleged in the notices and ordered her license to practice nursing as a registered nurse be permanently revoked. On October 1, 2009 the board mailed to appellant, by certified mail, a copy of the adjudication order revoking appellant's nursing license. Appellant timely

appealed from the order to the Franklin County Court of Common Pleas on October 15, 2009.

{¶10} Appellant's brief supporting her appeal to the common pleas court argued (1) the board's failure to serve her attorney with a copy of the March 2009 notice invalidated the board's subsequent order, (2) the board allowed Attorney Bowman to manipulate, intimidate, coerce, and otherwise discourage appellant from proceeding with the hearing, (3) the board violated appellant's right to due process, (4) the board gave Bowman unbridled discretion, (5) the board erred by failing to provide appellant with a copy of the "No Request Packet," the materials concerning appellant's case submitted to the board members prior to the September 24-25, 2009 meeting, and (6) the evidence in the record did not support the board's order. On March 10, 2010, appellant moved to admit additional evidence consisting of her own affidavit and the approved minutes from the board's September 24-25, 2009 meeting; she contended fairness required the court to consider her affidavit since she was not able to present evidence to the board.

{¶11} Following submission of the board's brief and response to appellant's motion, the common pleas court issued its decision on September 13, 2010 denying appellant's motion to admit additional evidence and affirming the board's order permanently revoking appellant's license to practice nursing as a registered nurse in Ohio. From the common pleas court decision and entry, appellant appeals.

II. Assignments of Error

{¶12} Appellant assigns the following errors:

> 1. The lower court Decision and Entry affirming the Ohio Board of Nursing Order was an abuse of discretion and not in accordance with law, because the lower, [sic] in denying

Ms. Berry's Motion to Admit Additional Evidence, utilized an overly strict construction of R.C. 119.12 and failed to account for the fact that no hearing took place.

2. The lower court Decision and Entry affirming the Ohio Board of Nursing Order was an abuse of discretion and not in accordance with law, because the Board failed to serve Ms. Berry's attorney with a copy of the March 2009 Notice of Opportunity, which should invalidate the Board's Order.

3. The lower court Decision and Entry affirming the Ohio Board of Nursing Order was an abuse of discretion and not in accordance with law, because [sic] allowed its employee (Tara Bowman) to manipulate, intimidate, coerce and otherwise discourage Ms. Berry from proceeding with the hearing that she timely requested and then by allowed [sic] Ms. Bowman to pursue and process Ms. Berry's oral request to withdraw her hearing requests regarding the March and May 2009 Notices of Opportunity for Hearing.

4. The lower court Decision and Entry affirming the Ohio Board of Nursing Order was an abuse of discretion and not in accordance with law, because the Board allowed its employee (Tara Bowman) unbridled discretion in deciding that Ms. Berry would not be permitted to exercise her R.C. Chapter 119 hearing rights.

5. The lower court Decision and Entry affirming the Ohio Board of Nursing Order was an abuse of discretion and not in accordance with law, because the Board erred by imposing its Order, based upon charges set forth in the March 2009 and May 2009 Notices of Opportunity for Hearing, when the administrative hearing record did not contain anything to support; 1) the factual allegations set forth in numbered sections 3 and 4 of the March 2009 Notice; 2) the factual allegations set forth in numbered section 2 (paragraphs 2 of 3 and 3 of 3) of the May 2009 Notice; or 3) the applicability of R.C. 4723.28(B)(17) (which authorizes the Board to discipline a licensee for "violation of any restrictions placed on a nursing license by the Board") to what is alleged in numbered sections 1 and 2 of the May 2009 Notice.

III. Standard of Review

{¶13} Under R.C. 119.12, a common pleas court, in reviewing an order of an administrative agency, must consider the entire record to determine whether reliable, probative, and substantial evidence supports the agency's order and the order is in accordance with law. *Univ. of Cincinnati v. Conrad* (1980), 63 Ohio St.2d 108, 110-11. The common pleas court's "review of the administrative record is neither a trial de novo nor an appeal on questions of law only, but a hybrid review in which the court 'must appraise all the evidence as to the credibility of the witnesses, the probative character of the evidence, and the weight thereof.' " *Lies v. Veterinary Med. Bd.* (1981), 2 Ohio App.3d 204, 207, quoting *Andrews v. Bd. of Liquor Control* (1955), 164 Ohio St. 275, 280. The common pleas court must give due deference to the administrative agency's resolution of evidentiary conflicts, but "the findings of the agency are by no means conclusive." *Conrad* at 111. The common pleas court conducts a de novo review of questions of law, exercising its independent judgment in determining whether the administrative order is "in accordance with law." *Ohio Historical Soc. v. State Emp. Relations Bd.* (1993), 66 Ohio St.3d 466, 471.

{¶14} An appellate court's review of an administrative decision is more limited than that of a common pleas court. *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, 621. The appellate court is to determine only whether the common pleas court abused its discretion. Id.; *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219 (" 'abuse of discretion' connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable"). Absent an abuse of discretion, a court of appeals may not substitute its judgment for that of an administrative

agency or the common pleas court. *Pons* at 621. An appellate court, however, has plenary review of purely legal questions. *Big Bob's, Inc. v. Ohio Liquor Control Comm.,* 151 Ohio App.3d 498, 2003-Ohio-418, ¶15.

IV. First Assignment of Error – Additional Evidence

{¶15} Appellant's first assignment of error contends the trial court erred in denying her motion to admit as additional evidence her own affidavit and the minutes of the board meeting. R.C. 119.12 provides, in pertinent part, that "[u]nless otherwise provided by law, in the hearing of the appeal, the court is confined to the record as certified to it by the agency." The court may, however, "grant a request for the admission of additional evidence when satisfied that the additional evidence is newly discovered and could not with reasonable diligence have been ascertained prior to the hearing before the agency." R.C. 119.12.

{¶16} "Newly discovered" evidence under R.C. 119.12 pertains to evidence that existed at the time of the administrative hearing; the term does not refer to newly created evidence, such as evidence created after the hearing. *Golden Christian Academy v. Zelman* (2001), 144 Ohio App.3d 513, 517, citing *Cincinnati City School Dist. v. State Bd. of Edn.* (1996), 113 Ohio App.3d 305, 317; *Diversified Benefit Plans Agency, Inc. v. Duryee* (1995), 101 Ohio App.3d 495, 501-02, citing *Steckler v. Ohio State Bd. of Psychology* (1992), 83 Ohio App.3d 33, 38. "The decision to admit additional evidence lies within the discretion of the court of common pleas, but only after the court has determined that the evidence is newly discovered and that it could not with reasonable diligence have been ascertained prior to the agency hearing." *Cincinnati City School Dist.* at 317, citing *Ganley, Inc. v. Ohio Motor Vehicle Dealers Bd.* (Sept. 29,

1994), 10th Dist. No. 93APE12-1646. The common pleas court determined both items appellant sought to admit did not exist at the time of the September 24-25, 2009 hearing. Concluding neither item thus met the definition of newly discovered evidence for purposes of R.C. 119.12, the court denied appellant's motion. The common pleas court properly so decided.

{¶17} Appellant signed her affidavit on January 25, 2010, four months after the September 2009 board meeting and even longer from the dates scheduled for the hearings on her notices. Although appellant contends all the facts set forth in her affidavit occurred before the September 2009 board meeting, appellant nevertheless created the affidavit well after that, and it thus fails to meet the definition of newly created evidence. *Lluberes, Inc. v. Ohio Liquor Control Comm.*, 10th Dist. No. 02AP-1326, 2003-Ohio-5943, ¶7, 9 (determining a common pleas court did not abuse its discretion in failing to admit additional evidence in the form of two affidavits that "were not executed until after the administrative hearing," although the facts contained in the affidavits pertained to facts in existence at the time of the hearing).

{¶18} Appellant also sought to admit the approved minutes from the board's September 24-25, 2009 meeting. The approved minutes are the same as the draft minutes of the board meeting in the certified record. See *Jain v. Ohio State Med. Bd.*, 10th Dist. No. 09AP-1180, 2010-Ohio-2855, ¶19 (concluding that where a doctor in an administrative appeal moved to admit the minutes from the medical board's meeting as additional evidence, the common pleas court properly denied the motion because "the board's minutes from the July 8, 2009 meeting, [were] already included as part of the

board's record"). Because the documents are identical, appellant suffered no prejudice when the approved minutes were not included in the official record.

{¶19} In the end, the board complied with procedural due process by affording appellant notice and an opportunity to be heard. Appellant's failure to take advantage of her opportunity for a hearing did not require the common pleas court to grant her motion to admit additional evidence. *Jain* at ¶20 (deciding that "[i]f appellant had wanted to ensure certain evidence would be included in the record both before the board and the trial court, she should have taken the proper steps to procure a hearing").

{¶20} Appellant alternatively contends that if her affidavit and the approved minutes must be excluded pursuant to R.C. 119.12, the draft minutes of the September 24-25, 2009 board meeting and Bowman's affidavit also must be excluded. Appellant claims the draft minutes should be excluded because they did not exist at the time of the September 2009 meeting. The standard governing what the agency must include in the certified record differs from the standard the common pleas court applies in determining whether to admit additional evidence.

{¶21} After a notice of appeal from an agency's order is filed with the trial court, the agency must, within 30 days after receipt of the notice, "prepare and certify to the court a complete record of the proceedings in the case." R.C. 119.12. "A complete record of proceedings' in a case is "a 'precise history' of the administrative proceedings from their commencement to their termination." *Checker Realty Co. v. Ohio Real Estate Comm.* (1974), 41 Ohio App.2d 37, 42. *Checker* concluded the agency failed to comply with R.C. 119.12 when it did not include the complaint in the record, deciding "[t]o constitute a 'precise history' of the case from its 'commencement to its termination,' that

which commenced the case necessarily is a part of the record." Id. at 42. So too here, a record of that which ended the case, the draft minutes of the September 24-25, 2009 meeting where the board voted to permanently revoke appellant's license, was necessarily a part of the record.

{¶22} Appellant also contends the Bowman affidavit must be excluded from the record because no transcribed record reflects the affidavit was admitted into evidence at a hearing. R.C. 119.09 contemplates an adversarial proceeding involving the licensee and the agency before a hearing officer. See R.C. 119.09 (stating "[t]he agency shall pass upon the admissibility of evidence, but a party may at the time make objection to the rulings of the agency thereon, and if the agency refuses to admit evidence, the party offering the same shall make a proffer thereof"). Because appellant withdrew her request for a hearing, the evidence the board was to consider in addressing the charged violations against appellant was presented outside of an adversarial hearing and instead was contained in the "No Request Packet" distributed to the board members prior to the September 2009 meeting. Because Bowman's affidavit was part of the history of the proceedings in the case as an element of the "No Request Packet," it properly was included in the certified record.

{¶23} Appellant lastly asserts R.C. 119.12 requires judgment in her favor because the board failed "to transcribe the deliberations and submit a complete Administrative Record for the lower court to consider." (Appellant's brief, 8.) The board's failure to transcribe the deliberations does not require judgment in appellant's favor. "An agency's omission of items from the certified record of an appealed administrative proceeding does not require a finding for the appellant, pursuant to R.C. 119.12, when the omissions in no

way prejudiced him in the presentation of his appeal." *Lorms v. State Dept. of Commerce, Div. of Real Estate* (1976), 48 Ohio St.2d 153, syllabus. See *Barlow v. Ohio Dept. of Commerce, Div. of Real Estate & Professional Licensing*, 10th Dist. No. 09AP-1050, 2010-Ohio-3842, ¶11-13 (concluding a broker suffered no prejudice from the agency's failure to include in the record the transcript of the agency members casting their votes, because the order suspending the broker's license adequately reflected the commissioners' votes); *Gahm v. Ohio St. Bd. of Cosmetology* (Dec. 10, 1992), 4th Dist. No. 92CA2074 (noting that although the certified record contained neither a transcript of the proceedings before the board, nor minutes of the proceedings, the court could not detect any prejudice because the order itself stated a vote of the agency approved it). The draft minutes from the board's September 2009 meeting state the board consolidated the March and May 2009 notices and voted, by majority vote with one member abstaining, to permanently revoke appellant's license to practice nursing as a registered nurse. In the absence of appellant's explaining how the board's failure to include a transcribed record of its deliberations prejudiced her ability to present an appeal, her argument is not persuasive.

{¶24} In the final analysis, the trial court properly denied appellant's motion to admit additional evidence. Appellant's first assignment of error is overruled.

V. Second Assignment of Error – Failure to Serve Attorney

{¶25} Appellant's second assignment of error asserts the board's failure to serve her attorney with a copy of the March 2009 notice of opportunity for a hearing invalidates the charges set forth in that notice.

{¶26} No adjudication order is valid unless the subject of the order has been given an opportunity for a hearing in accordance with R.C. 119.01 to 119.13. R.C. 119.06. The agency typically must give the party notice informing the party of his or her right to a hearing. R.C. 119.07 (specifying what the notice must contain and the method by which the agency must mail the notice to the party, and directing the agency to mail "[a] copy of the notice * * * to attorneys or other representatives of record representing the party").

{¶27} Appellant had considerable interaction with the agency, but only in connection with the consent agreement was an attorney involved. In that instance, appellant, the president of the board, and appellant's attorney, each signed the November 2008 consent agreement. After that point, appellant acted without counsel in requesting by letter of January 7, 2009 that the board reinstate her license. According to Bowman's affidavit, Bowman and appellant's board monitoring agent became aware on or about January 8, 2009 that the attorney who participated in the consent agreement no longer represented appellant.

{¶28} Appellant neither suggesting nor pointing to anything in the record to the contrary, apparently appeared without counsel at the February 5, 2009 meeting with Bowman and her board monitoring agent. In response to the March 2009 notice, appellant personally requested a hearing, and the board confirmed, through email on May 8, 2009, that appellant's former attorney no longer represented her. Apart from his signature on the November 2008 consent agreement, the attorney did not sign, prepare, or receive any document contained in the certified record. Nor does the certified record evidence any other attorney of record for appellant. In the absence of an attorney or

other representative of record, the language of R.C. 119.07 regarding service to the licensee's attorney or representative does not apply.

{¶29} Moreover, appellant communicated with the board, both in writing and by telephone, after the board mailed the March 2009 notice, and she pro se requested a hearing on the March 2009 notice. Appellant thus necessarily received the notice. Cf. *Kellough v. Ohio State Bd. of Edn.*, 10th Dist. No. 10AP-419, 2011-Ohio-431, ¶36 (noting that R.C. 119.07 comports with due process by ensuring the party will receive notice and "the additional notice to the party's attorney is merely a courtesy, not a constitutional prerequisite") (emphasis omitted); *Fogt v. Ohio State Racing Comm.* (1965), 3 Ohio App.2d 423, 425, quoting 41 Ohio Jurisprudence 2d 47, Section 28 (concluding that " '[a] person entitled to statutory notice may waive it, or any feature of it, or may, by his conduct, acknowledge the giving of notice to him, so as to be precluded from afterward challenging the proceeding for want of notice' ").

{¶30} In none of her communications did appellant raise an issue about serving her attorney with the March 2009 notice. The lack of an attorney of record, coupled with appellant's plainly receiving the notices and her not objecting to service on only her reveals the agency did not commit reversible error by serving the notice on no one but appellant. Cf. *Jefferson Cty. Child Support Enforcement Agency v. Harris*, 7th Dist. No. 02 JE 22, 2003-Ohio-496 (concluding Harris waived any objection to the form of the notice, even though he never attended the hearing, because he telephoned the agency prior to the hearing and thus indicated he received actual notice of the hearing).

{¶31} Appellant's second assignment of error is overruled.

VI. Third & Fourth Assignments of Error – Bowman's Conduct

{¶32} Appellant's third and fourth assignments of error are interrelated and will be discussed together. Appellant's third assignment of error contends Bowman manipulated, intimidated, coerced and otherwise discouraged appellant from proceeding with her hearing requests. Appellant's fourth assignment of error contends the board gave Bowman unbridled discretion to determine whether appellant would be allowed to exercise her R.C. Chapter 119 hearing rights. The common pleas court determined that because appellant's affidavit was inadmissible, no evidence in the record supported appellant's allegations against Bowman.

{¶33} The evidence before the board and the court of common pleas indicated Bowman spoke with appellant on May 5 or 6 about surrendering her license, but appellant refused to do so. When appellant received the May 15, 2009 notice of opportunity for a hearing, she called the board on May 20 and left a voicemail message requesting a hearing; the board sent appellant a letter on May 21 confirming the board received appellant's voicemail. On May 22, appellant called the board and left a voicemail message stating she no longer wished to have a hearing; Bowman telephoned appellant on June 2 and confirmed by letter that appellant was rescinding her requests for a hearing on both the March and May 2009 notices. Although appellant responded to Bowman's June 2 letter by telephoning Bowman on June 5, appellant hung up the phone when Bowman asked her if she was rescinding her withdrawals. Contrary to appellant's contentions, the record indicates Bowman acted with restraint. Although appellant contends Bowman coerced her and exercised unbridled discretion, no evidence of record supports her contention.

{¶34} Appellant also contends Bowman acted outside the scope of her duties as a supervising attorney at the board when she spoke with appellant after the board mailed appellant the May 15, 2009 notice. Bowman's affidavit indicates her duties, as a supervising attorney, required her to be involved in investigations of licensees and in licensees' compliance with license restrictions. Appellant contends that after the May notice, Bowman's duties ceased and the board should have communicated with her through the assistant attorney general assigned to represent the board or through the board member assigned to preside over the hearing. According to appellant, the board, in not so restraining Bowman, allowed Bowman to exercise both investigatory and adjudicatory authority when it permitted her to decide appellant would not be entitled to exercise her R.C. Chapter 119 hearing rights. Bowman, however, did not decide whether appellant could exercise her right to a hearing, was not a board member, and had no authority to issue the final adjudicative order. The board did not invest Bowman with adjudicatory power.

{¶35} Appellant suggests that in any event the common pleas court should have remanded the case to the board to consider whether appellant validly withdrew her hearing requests, as the board was not fully aware of the scope of Bowman's coercive communications. Apart from the fact the record does not support appellant's contentions about Bowman's coercive interaction with appellant, the board was aware, through the documents contained in the "No Request Packet," of appellant's requests for hearings, her rescission of those requests, and her communications with Bowman. Further, pursuant to appellant's admissions in the November 2008 consent agreement and the findings from the center, the board was aware of appellant's various mental health issues.

Because the board thus had the necessary information before it, a remand to the board was unnecessary.

{¶36} Appellant lastly asserts her attempt to orally withdraw her request for a hearing is ineffective. Relying on *Black v. Ohio Bd. of Psychology*, 160 Ohio App.3d 91, 2005-Ohio-1449, appellant claims a party must rescind a hearing request in writing. Although *Black* states a written rescission of a request for a hearing waives the right as if it never were requested, it does not address the issue appellant raises. Appellant correctly notes "there are no statutes, rules or cases directly on point" regarding whether "the withdrawal of [a] hearing request [must] be in writing." (Appellant's brief, 12.) Appellant, however, contends R.C. 119.09, which requires a party to submit an application to postpone or continue an adjudication hearing, indicates by analogy that a written rescission of a hearing request must be in writing.

{¶37} Appellant orally requested a hearing on the May 2009 notice when she called her board monitoring agent on May 20 and left a voicemail message. The board accepted appellant's oral request, sent appellant a letter confirming it received her voicemail, and scheduled the hearing. Neither R.C. 119.07 nor 4723.28(D) require that a hearing request be in writing, the record contains no evidence appellant submitted a written hearing request on the May 2009 notice, and the board scheduled a hearing based on appellant's oral request only. Because the statute similarly omits any provision that rescission of a requested hearing must be in writing, allowing the board to rely on appellant's oral request for a hearing, but not on appellant's oral rescission of that request, seems incongruous. More consistent is the conclusion that in the absence of a statutory provision to the contrary, a hearing may be requested and rescinded orally. Nor

do R.C. 2945.05, Crim.R. 11(C)(2) and 44(C) require a withdrawal of an administrative hearing request to be in writing or on the record as appellant suggests. "Neither the Rules of Criminal Procedure nor the Ohio Rules of Evidence strictly apply to administrative proceedings under R.C. 119." *Huntsman v. State Bd. of Edn.*, 5th Dist. No. 2003CA00249, 2004-Ohio-3258, ¶59, citing *Jones v. State Med. Bd. of Ohio* (May 7, 1981), 4th Dist. No. 1451; *Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 74 Ohio St.3d 415, 417, 1996-Ohio-282.

{¶38} Appellant's third and fourth assignments of error are overruled.

VII. Fifth Assignment of Error - Reliable, Probative, and Substantial Evidence Supports Order

{¶39} Appellant's fifth assignment of error contends the record lacks reliable, probative, and substantial evidence to support the factual allegations in paragraphs three and four of the March 2009 notice, as well as the factual allegations in paragraphs two and three of the May 2009 notice. She further asserts R.C. 4723.28(B)(17) does not appear to apply to what is alleged in sections one and two of the May 2009 notice. The trial court found no merit to appellant's argument, stating "[t]he evidence in the record * * * more than amply supports the Board's Order." (Decision, 14.)

{¶40} The board may revoke a nurse's license to practice nursing, by a quorum vote of its members, upon a finding of any violation of R.C. 4723.28(B). The March 2009 notice of opportunity for a hearing informed appellant the board intended to discipline her pursuant to R.C. 4723.28(B)(16) and Ohio Adm.Code 4723-4-06(P). R.C. 4723.28(B)(16) authorizes the board to revoke a nurse's license for a violation of R.C. Chapter 4723 or any of the rules adopted under it. Ohio Adm.Code 4723-4-06(P), a rule adopted under

R.C. Chapter 4723, states a licensed nurse shall not make any false, misleading, or deceptive statements, or submit or cause to be submitted any false, misleading or deceptive information or documentation to the board or any representative of the board.

{¶41} In the November 2008 consent agreement appellant represented, under "Basis for Action" paragraph (E), that she had not worked as a nurse since resigning from the Mansfield Correctional Institution on January 15, 2008. Under paragraph (F) of the same section appellant represented she understood "any continued relationship with [the inmate] is inappropriate." (C.R. 13.) Paragraphs three and four of the March 20, 2009 notice state appellant informed board staff at the February 2009 meeting that she maintained contact with the patient-inmate and planned to marry him. Appellant also informed board staff she had worked as a nurse in Michigan from August 2008 until January 2009. (C.R. 13.) The information in the record supporting the allegations came from Bowman's affidavit in which Bowman stated she was present at the February 2009 meeting with appellant and heard appellant make the noted statements. Bowman's affidavit also indicated appellant called her monitoring agent in March 2009 and informed her she married the patient-inmate as planned.

{¶42} Appellant made a deceptive statement in representing to the board she understood a continued relationship with the patient-inmate was inappropriate when at the time she made that statement, she was still in a relationship with him, if not engaged to marry him. Appellant also made a false, or at least misleading, statement to the board in stating she had not worked as a nurse since resigning from the prison when, at the time she signed the agreement, she was working as a nurse in Michigan. Appellant's reply brief in the court of common pleas states she, at the time of the November 2008 consent

agreement, "was under the impression that the Ohio Board only had jurisdiction over her practice in Ohio." Despite appellant's impression of the board's jurisdiction, the information in the certified record, specifically Bowman's affidavit, supports the factual allegations in paragraphs three and four of the March 2009 notice.

{¶43} Appellant next contends not only that the evidence in the record does not support the factual allegations in paragraphs two and three of numbered section two of the May 2009 notice but that R.C. 4723.28(B)(17) does not appear to apply to what is alleged in sections one and two of the May 2009 notice. The May 2009 notice informed appellant the board proposed to take disciplinary action against her license based upon R.C. 4723.28(B)(17), which provides the board may sanction a nurse for a "[v]iolation of any restrictions placed on a nurses license * * * by the board." The November 2008 consent agreement stated the terms and conditions of the agreement would "constitute 'restrictions placed on a license' for purposes of Section 4723.28(B), ORC." (C.R. 13.)

{¶44} Numbered section two noted that under the November 2008 consent agreement appellant agreed to submit to an examination at the center, following which the center would submit a written opinion to the board that might recommend additional restrictions to be placed on appellant's license. In addition, the center would assess whether appellant was capable of practicing nursing according to acceptable and prevailing standards of safe nursing care. The section further recites the portion of the consent agreement where appellant agreed the board could use the center's recommendations and conclusions as a basis for additional limitations on appellant's license. The second paragraph of section two recites the center's conclusion it could "not recommend restoration of her nursing license." (C.R. 16.) The third paragraph of section

two states that "[d]espite the provisions in Paragraphs 8 and 9 of the November 2008 Consent Agreement, on or about May 6 and 8, 2009, you refused to surrender your nursing license." (C.R. 16.)

{¶45} Appellant contends the evidence in the record does not support the center's recommendation or the allegation she refused to surrender her nursing license. The center's conclusion, sealed in the common pleas court, recommends that the board not restore appellant's license based upon appellant's psychiatric issues, relationship issues, boundary violations, and rationalizations for her actions. Bowman's affidavit indicated she spoke to appellant on May 5 or 6 to discuss appellant's surrendering her license due to the center's recommendation, but appellant refused to do so. Accordingly, the center's report and Bowman's affidavit support the allegations in paragraphs two and three of section two in the May 2009 notice.

{¶46} Paragraph nine of the November 2008 consent agreement stated a restriction on appellant's license allowed the board to use the center's recommendation to place additional limitations on her license. The center recommended that the board not restore appellant's license. When appellant refused to surrender her license to a board employee, she violated the restriction placed on her license. Accordingly, R.C. 4723.28(B)(17) applied to the allegations in section two of the May 2009 notice because appellant violated restrictions placed on her license under the November 2008 consent agreement. Section one of the May 2009 notice contains only background information and does not contain allegations of misconduct.

{¶47} Because the trial court did not abuse its discretion in determining reliable, probative, and substantial evidence supported the board's decision to revoke appellant's license, we overrule appellant's fifth assignment of error.

VIII. Disposition

{¶48} Having overruled appellant's five assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

KLATT and SADLER, JJ., concur.

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