

2IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Jamie Brzuz, :
 :
 Petitioner :
 :
 v. :
 :
 Bureau of Professional :
 and Occupational Affairs, :
 State Board of Nursing, : No. 2291 C.D. 2010
 Respondent : Submitted: February 4, 2011

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
 HONORABLE P. KEVIN BROBSON, Judge
 HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
 BY JUDGE McGINLEY

FILED: March 17, 2011

Jamie Brzuz (Brzuz), *pro se*, challenges the order of the Bureau of Professional and Occupational Affairs, State Board of Nursing (Board) which reinstated her nursing license contingent on her enrollment in the Disciplinary Monitoring Unit of the Professional Health Monitoring Program of the Bureau of Professional and Occupational Affairs for a period of no less than three years subject to the terms and conditions of the order.

Brzuz worked as a psychiatric nurse at the psychiatric inpatient unit of St. Vincent Hospital in Erie, Pennsylvania from January 9, 2006, until January 4, 2007. A patient was hospitalized from November 24, 2006, until December 13, 2006. Brzuz was assigned to care for this patient. When he was discharged, Brzuz gave the patient her phone number. From December 13, 2006, until December 21,

2006, when the patient was readmitted to the hospital, Brzuz visited the patient at his home and had sexual contact with him.

In a consent decree entered into by Brzuz and the prosecuting Department of State, Brzuz admitted violating Section 14(a)(9) of the Professional Nursing Law (Law),¹ 63 P.S. §224(a)(9), in that she engaged in conduct defined as a sexual violation in the course of a professional relationship with a patient and Section 14(a)(2) of the Law, 63 P.S. §224(a)(2), in that Brzuz was unable to practice with reasonable skill and safety to patients by reason of her mental illness. As part of the consent order, Brzuz's license as a registered nurse was indefinitely suspended as of July 28, 2008. Brzuz could apply for reinstatement after a period of not less than one year. As part of the reinstatement process, Brzuz was required to provide the following:

- (1) Record of treatment with a psychiatrist, psychologists, therapist or other mental health care provider for a period of no less than one (1) year and documented compliance with his/her treatment recommendations;
- (2) An assessment, from a provider, dated no less than thirty (30) days prior to petition for reinstatement that Respondent [Brzuz] is fit to safely practice as a nurse. The Bureau of Professional and Occupational Affairs Health Monitoring Programs case manager shall select the provider from list of approved providers; and upon request of the Respondent [Brzuz], a copy of that list shall be applied to the Respondent [Brzuz] by the Board;
- (3) A current Criminal History Record Information (a/k/a Criminal Record Check) from the state-wide

¹ Act of May 22, 1951, P.L. 317, *as amended*.

governmental agencies of all states where Respondent [Brzuz] has resided since the suspension, compiled no more than three months prior to the petition for reinstatement and

(4) A signed verification that Respondent [Brzuz] has not practiced nursing since her suspension.

Consent Agreement and Order, August 4, 2008, at 5.

By letter dated, September 22, 2009, Brzuz applied for reinstatement. Brzuz submitted a verification that she had not practiced nursing during her suspension. She also submitted a letter from her therapist, Karen Dimalanta, Ph.D, a licensed clinical psychologist at Western Psychological & Counseling Services, P.C. (Western), which stated:

I have given you the diagnosis of Generalized Anxiety Disorder. . . . Symptoms included anxiety and worry, high level of tension, physical symptoms of anxiety, feeling on edge, lack of confidence, being easily discouraged, defensiveness, feeling ashamed, and sadness related to anxiety symptoms. The focus of therapy as [sic] been on addressing your suspension of your nursing license, the actions that lead [sic] up to your suspension, and readiness to practice nursing.

. . . . Based on your work with me to this point, your prognosis for significantly decreasing your anxious and depressive symptoms has been good. With your move to Oregon, change in employment, change in social support and development of a new long-term relationship, you have adjusted well. However, you should note that I am only able to give a prognosis on your progress to this point. . . .

. . . .
I have recommended for you have [sic] an assessment with our Chemical Dependency Program given the recent DUI you received. Chemical Dependency falls outside

the scope of my practice and I suggest you have a full assessment to address recent events. . . .

If you do return to your nursing duties, I recommend you be [sic] seek support from a supervisor and continue therapy and medication management. Duties of a nurse cover a wide spectrum that I do not feel fully qualified to assess. If the board is requesting more information that [sic] what I have provided here, I recommend you seek what specific measurements that [sic] are requesting regarding your licensure.

Letter from Karen Dimalanta, Ph.D., September 1, 2009, at 1-2.

Brzuz submitted to a chemical dependency evaluation by Western and was diagnosed as alcohol dependent. Western Psychological and Counseling Services, P.C., Two Part Adult Chemical Dependency Evaluation, September 12, 2009, at 12.

Brzuz also submitted a Criminal Record Check from the Pennsylvania State Police which indicated that Brzuz had no criminal record in Pennsylvania. A similar check obtained from the Oregon Department of State Police indicated that she was arrested on August 15, 2009, for a misdemeanor driving under the influence. She also submitted certificates that indicated completion of continuing education regarding “professional boundaries.”

The hearing examiner for the Board proceeded to hearing on December 4, 2009. Brzuz testified that she moved to Portland, Oregon and requested the Board reinstate her license so that she could apply for a license there. Notes of Testimony, December 4, 2009, (N.T.) at 13. Brzuz testified that she started mental health treatment in September 2008, once she could afford it. She

moved to Oregon on May 1, 2009, and obtained a position as a disease management coordinator on May 18, 2009. N.T. at 14-15. Brzuz explained that she was in a physically and emotionally abusive relationship with her husband until their separation in April 2006. Her grandfather died around that time. In the fall of 2006, she learned that her mother again had cancer. At the time Brzuz was not taking anti-depressants. She admitted that it was wrong to give the patient her telephone number and to engage in a short relationship with him. N.T. at 16-17.

With respect to her DUI arrest in Oregon, Brzuz explained:

I was arrested on August 15th of 2009 and this was the first time I had ever gone out in Portland since I moved there two-and-a half months prior and I was trying to make friends. And I met a woman through a young women's group in Portland and had decided to meet up and have some drinks and appetizers. . . . We met up, we shared an appetizer, we each had two drinks and I thought I was okay and I drove home and I was pulled over for speeding. And I was taken to the police station, where I was given a breathalyzer test and it read .07, which is below the legal limit. However, I was told that it is the officer's discretion and that they can prosecute for .05, .06, .07, even though it's below the legal limit.

So I was still charged with that and I consulted with an attorney and he told me that it could go either way if I challenge it. And I decided to err on the side of safety and complete the Diversion Program and . . . after one year, it will be wiped off my record.

N.T. at 18-19.

Brzuz completed one month of the four months of group therapy required under the Diversion Program, sixty credits of continuing education, and

7.5 hours of continuing education on the subject of “professional boundary violations” and professional ethics. N.T. at 19. On cross-examination, Brzuz admitted that in 2007 and 2008, she drank five times per week with six to seven drinks per time. N.T. at 40. Brzuz also admitted that she had ingested alcohol three times since her DUI arrest, consuming one to two drinks at a time. N.T. at 46. She was receiving medication for anxiety and depression. N.T. at 46. In reference to the evaluation from Western which indicated she was alcohol dependent, Brzuz stated, “She told me that she would say that for 2008, she would say that it’s alcohol dependence, but she said currently, she would diagnose me as substance abuse because she didn’t know whether or not I was abusing substances. That’s what I was told.” N.T. at 47.

On February 3, 2010, the hearing examiner issued the proposed adjudication and order. The proposed order reinstated Brzuz’s license with the proviso that the license be immediately suspended for a period of three years with the suspension stayed contingent on Brzuz’s enrollment in the Disciplinary Monitoring Unit of the Professional Health Monitoring Program (PHMP) of the Bureau of Professional and Occupational Affairs. The reinstatement was also subject to terms and conditions regarding Brzuz’s cooperation with PHMP, an evaluation by a provider approved by PHMP assessing Brzuz’s fitness to actively practice nursing, attendance at any support group programs recommended by the provider or PHMP, abstention from alcohol and drugs, drug testing, and restrictions regarding “monitored practice.” Violation of the terms and conditions of the order would result in the immediate vacating of the stay order, immediate

termination of the period of probation, and activation of the suspension of her license to practice nursing.

Brzuz filed exceptions to the proposed order:

The reason I am filing for an exception on this proposed order is: lack of evidence that I suffer from drug or alcohol dependence, or that I require any further treatment. Furthermore, and this cannot be overstated, I would like to remind the Board of Nursing that alcohol played absolutely no part in the lapse of judgment that resulted in my original RN license suspension.

Exceptions of Jamie Brzuz, February 23, 2010, at 2. Brzuz included an alcohol and drug assessment dated February 11, 2010, from Sandy Counseling Center which indicated that Brzuz did not meet the “DSM-IV criteria for substance abuse or dependency.” Sandy Counseling Center, Alcohol and Drug Assessment, February 11, 2010, at 1.

On September 16, 2010, the Board issued its final adjudication and order. The Board essentially adopted the hearing examiner’s order effective October 18, 2010.

Brzuz contends that the Board erred when it determined that she suffered from alcohol dependence and that the Board erred when it based its final decision on two very limited pieces of information which lacked validity and reliability to determine the existence of alcohol dependence.²

² This Court’s review is limited to determining whether the Board committed constitutional violations, errors of law or whether any necessary findings of fact are unsupported by substantial evidence. Wittorf v. State Board of Nursing, 913 A.2d 956 (Pa. Cmwlth. 2006). **(Footnote continued on next page...)**

Brzuz asserts that she accepts responsibility for the DUI charge and feels remorse. How remorseful Brzuz feels does not alter the fact that it is undisputed that she was arrested for DUI and placed into the diversion program and that this fact helps support a determination that she was alcohol dependent. Brzuz also admitted she drank heavily in 2007 and 2008, but did so in an attempt to alleviate an underlying condition such as depression or anxiety. Once again, her explanation does not alter the undisputed fact that in 2007 and 2008 she drank five times per week, six to seven drinks at a time. This fact supports the finding that Brzuz was alcohol dependent.

Also, Brzuz asserts that the chemical dependency counselor met with her for one hour and discussed a different diagnosis than the one given to the Board. Brzuz asserts that the diagnosis of alcohol dependence was a libelous misrepresentation. However, that was the diagnosis submitted into evidence before the Board. The Board, as factfinder, was free to determine whether to credit the report and what weight to assign to it. Barran v. State Board of Medicine, 670 A.2d 765 (Pa. Cmwlth.), *petition for allowance of appeal denied*, 544 Pa. 685, 679 A.2d 230 (1996).³

(continued...)

The scope of appellate review of the Board's disciplinary sanction is "limited to the determination of whether there has been a manifest and flagrant abuse of discretion or a purely arbitrary execution of the agency's duties or functions." Bethea-Tumani v. Bureau of Professional and Occupational Affairs, 993 A.2d 921 (Pa. Cmwlth. 2010).

³ Brzuz also asserts that a subsequent evaluation from Michael Luna stated that Brzuz was not alcohol dependent. This evaluation was not before the Board and is not part of the record. This Court may not consider it.

Accordingly, this Court must affirm.

BERNARD L. McGINLEY, Judge

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Petitioner	:
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Bureau of Professional	:
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State Board of Nursing,	:
	:
Respondent	:

No. 2291 C.D. 2010

ORDER

AND NOW, this 17th day of March, 2011, the order of the Bureau of Professional and Occupational Affairs, State Board of Nursing in the above-captioned matter is affirmed.

BERNARD L. MCGINLEY, Judge