

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Philip G. Romanelli,	:	
	:	
Petitioner	:	
	:	No. 2701 C.D. 2010
v.	:	
	:	
	:	Submitted: April 29, 2011
Bureau of Professional and	:	
Occupational Affairs,	:	
	:	
Respondent	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge  
          HONORABLE PATRICIA A. McCULLOUGH, Judge  
          HONORABLE JOHNNY J. BUTLER, Judge

**OPINION NOT REPORTED**

MEMORANDUM OPINION  
BY JUDGE McCULLOUGH

FILED: November 1, 2011

Philip G. Romanelli (Petitioner) petitions pro se for review of the October 28, 2010, final order of the State Board of Nursing (Board), revoking his license to practice professional nursing. We affirm.

Petitioner was originally issued a license to practice as a registered nurse, No. RN-325215L, in the Commonwealth of Pennsylvania on September 25, 1992. (Certified Record (C.R.) at Item No. 1.) Petitioner later relocated to California and was issued a registered nurse license, No. 578227, by that state on March 6, 2001. Id. On April 22, 2009, California's Board of Registered Nursing (California Board) filed an accusation against Petitioner alleging that he had violated California's Business and Professions Code and its accompanying regulations. (R.R. at 8a-12a.) The California Board alleged that Petitioner engaged in sexual abuse, misconduct, or

relations with two former patients and that his actions constituted both gross negligence and unprofessional conduct.<sup>1</sup> Id.

On August 7, 2009, Petitioner executed a stipulated surrender of his California license, acknowledging that, at a hearing, the California Board “could establish a factual basis for the charges in the accusation sufficient to constitute cause for disciplinary action.” (R.R. at 15a.) This stipulation indicated that the California Board’s acceptance of the surrendered license constituted the imposition of discipline against Petitioner in the form of a loss of all rights and privileges as a registered nurse in California. (R.R. at 16a-17a.) By order dated December 3, 2009, the California Board adopted the stipulation as its decision in the matter. (R.R. at 13a.)

On April 5, 2010, the Board issued a rule to show cause why Petitioner’s Pennsylvania license should not be suspended, revoked, restricted, or a civil penalty imposed, for his violations of The Professional Nursing Law (Law), Act of May 22, 1951, P.L. 317, as amended, 63 P.S. §§211-225.5. (C.R. at Item No. 1.) Specifically, the Board alleged that such action was authorized under section 14(a)(6) of the Law, 63 P.S. §224(a)(6) (relating to disciplinary action taken by the proper licensing authority in another state), section 14(a)(3), 63 P.S. §224(a)(3) (relating to willful violation of any of the provisions of the Law or the Board’s regulations), and section 11.1, added by the Act of December 20, 1985, P.L. 409, as amended, 63 P.S. §221.1 (relating to failure to report disciplinary action taken in another state on biennial

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<sup>1</sup> Specifically, the California Board alleged that while employed as a traveling nurse for Fastaff Nursing and on assignment at the Behavioral Health Center at Enloe Medical Center in Chico, California, Petitioner was assigned to care for two female psychiatric patients between April 1 and 10, 2004. One of the patients suffered from depression with suicidal gesture and the other suffered from chronic severe psychotic depression. Upon the patients’ release from this medical center, Petitioner either called them or gave them his phone number, went on dates with them, and spent time with each patient in his motel room. (C.R. at Item No. 1.)

registration or within 90 days of final disposition). Id. Petitioner filed an answer requesting leniency, contending that he was unaware that he was required to report the surrender of his California nursing license to the Pennsylvania Board within 90 days and believed that the California Board would do so. (C.R. at Item No. 2.) Alternatively, Petitioner requested a hearing. Id.

The Board subsequently issued a notice of hearing scheduled for June 25, 2010. (C.R. at Item No. 4.) Petitioner requested a continuance indicating that he was awaiting the conclusion of a background check for a potential registered nurse position in Colorado, which would be a 13-week position beginning June 14, 2010, and ending September 11, 2010. (C.R. at Item No. 6.) The prosecuting attorney for the Commonwealth filed a reply asserting that the charges in California were “extremely serious allegations of sexual abuse and gross negligence” and that the seriousness of those charges should preclude any further or extended delay. (C.R. at Item No. 7.) By order dated June 3, 2010, the hearing examiner denied Petitioner’s request for a continuance. (C.R. at Item No. 8.)

Petitioner opted not to attend the June 25, 2010, hearing.<sup>2</sup> The prosecuting attorney proceeded to admit the order to show cause, Petitioner’s answer thereto, and the certified record from the California Board, after which the Commonwealth rested. (C.R. at Item No. 10.) The prosecuting attorney sought a revocation of Petitioner’s license, averring that the Board has consistently revoked licenses in Pennsylvania for similar conduct. Id. The hearing examiner thereafter

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<sup>2</sup> On June 15, 2010, the Board received a letter from Petitioner stating that he would not appear at the June 25 hearing in order to pursue a position as a full-time, traveling registered nurse. (C.R. at Item No. 9.) Petitioner reiterated that he was unaware of the 90-day reporting requirement for out-of-state disciplinary action and that he was deeply sorry for his failure to report the California action. Id.

issued a proposed adjudication and order revoking Petitioner's license. (C.R. at Item No. 11.) The hearing examiner found that Petitioner had incurred disciplinary action in California in the nature of the surrender of his nursing license in that state and failed to report that action to the Board. Id. The hearing examiner cited the seriousness of the California charges, i.e., sexual abuse, misconduct, or relations with a patient, gross negligence, and unprofessional conduct, and Petitioner's failure to appear to offer mitigating evidence, as support for her revocation recommendation. Id.

On July 12, 2010, the Board issued a notice of its intent to review the record of this case established before the hearing examiner and the proposed sanction, regardless of whether exceptions are filed. (C.R. at Item No. 12.) Petitioner then filed what he titled a "Brief on Exceptions," reiterating his previous allegation that he was unaware of any reporting requirement and further asserting that his failure to report the California action to the Board did not warrant revocation. (C.R. at Item No. 13.) In this regard, Petitioner noted that his alleged violation of the Pennsylvania statute is not at all similar to the charges in California, and he asserted that the Board should not equate the charges and penalties. Id.

On October 28, 2010, the Board issued its final adjudication and order, adopting the findings of fact, conclusions of law, and discussion of the hearing examiner and revoking Petitioner's license. (C.R. at Item No. 14.) The Board, however, included further discussion holding that the hearing examiner properly concluded that Petitioner was subject to disciplinary action under sections 14(a)(6), 14(a)(3), and 11.1 of the Law. The Board indicated that Petitioner does not dispute that he was properly disciplined by the California Board and that each licensee has a responsibility to comply with the Law and the Board's regulations. Id. Further, the

Board characterized Petitioner’s California charges as “serious ethical violations and a breach of the nurse-patient boundary” and noted that the “rules of reciprocal discipline expressly allow states to treat decisions reached in the disciplinary proceedings of other jurisdictions as a rebuttable conclusion that the licensee has engaged in conduct that violates ethical rules.” Id.

On appeal to this Court,<sup>3</sup> Petitioner first argues that the hearing examiner abused her discretion and violated his right to due process in denying his request for a continuance of the June 25, 2010, hearing. We disagree.

The law is well settled that the grant or denial of a continuance is within the sound discretion of the administrative agency, and the court will not disturb the exercise of that discretion except in cases where it has clearly been abused. Hainsey v. Pennsylvania Liquor Control Board, 529 Pa. 286, 602 A.2d 1300 (1992); D.Z. v. Bethlehem Area School District, 2 A.3d 712 (Pa. Cmwlt. 2010); Hartman v. State Board of Optometry, 554 A.2d 579 (Pa. Cmwlt. 1989). In this case, Petitioner requested a continuance in order to pursue a registered nurse position in Colorado, and given this extended delay, he would not be available for a hearing until some date after September 11, 2010. After considering the seriousness of the California charges which directly related to Petitioner’s job and his contact with patients, the hearing

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<sup>3</sup> Our scope of review of the Board’s decision is limited to determining whether constitutional rights were violated, errors of law were committed, or whether findings of fact are supported by substantial evidence. Bethea-Tumani v. Bureau of Professional and Occupational Affairs, 993 A.2d 921 (Pa. Cmwlt. 2010).

examiner denied Petitioner's request.<sup>4</sup> Based upon these facts, we cannot conclude that the hearing examiner's denial constituted a clear abuse of discretion.

Next, we note that in an administrative proceeding, the essential elements of due process are notice and an opportunity to be heard. Goslin v. State Board of Medicine, 949 A.2d 372 (Pa. Cmwlth. 2008). Petitioner does not dispute that he received notice of the administrative hearing. Following the denial of his continuance request, Petitioner had the opportunity to attend the June 25, 2010, hearing, but he chose not to exercise that opportunity with full knowledge of the potential disciplinary consequences with respect to his Pennsylvania license. Accordingly, we conclude that Petitioner's right to due process was not violated.

Petitioner also argues that the Board erred in concluding that he was subject to discipline under section 14(a)(3) of the Law, 63 P.S. §224(a)(3), for a willful violation of the biennial reporting requirement (section 11.1). Again, we disagree.

Section 14(a)(3) of the Law provides for disciplinary action where the licensee willfully violates any of the provisions of the Law or the Board's regulations. Petitioner reiterates his contention that he was unaware of the Law's reporting requirement and, thus, his violation was not willful. However, this Court has previously held that individuals with professional licenses are charged with the knowledge of statutes and regulations affecting those licenses. Heckert v. Department of State, 476 A.2d 481 (Pa. Cmwlth. 1984). Thus, Petitioner was subject

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<sup>4</sup> Petitioner contends that the prosecuting attorney for the Commonwealth, in his reply to Petitioner's request for a continuance, mischaracterized the California decision as involving sexual abuse and gross negligence. However, contrary to Petitioner's assertion, the accusation filed by the California Board did include charges of "Gross Negligence" and "Sexual Abuse, Misconduct, or Relations with a Patient," noting that two former patients accompanied Petitioner back to his motel room following dinner dates. (R.R. at 10a-11a.)

to discipline under section 14(a)(3) for failing to report the California disciplinary action either on his biennial registration application or within 90 days of final disposition, in violation of section 11.1 of the Law.<sup>5</sup>

Finally, Petitioner argues that the hearing examiner abused her discretion in issuing an unduly harsh punishment. Once more, we disagree.

A state licensing board exercises considerable discretion in policing its licensees. Ake v. Bureau of Professional and Occupational Affairs, 974 A.2d 514 (Pa. Cmwlth.), appeal denied, 604 Pa. 708, 987 A.2d 162 (2009). Unless the occupational licensing board is accused of bad faith or fraud, an allegation not made by Petitioner here, our scope of review of the board's disciplinary sanction is limited to determining 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; Ake.

Petitioner stresses that the California charges did not describe any sexual conduct between himself and his former patients. However, that does not diminish the seriousness of the charges brought against him. Petitioner provided two female psychiatric patients with his personal telephone number, talked with these former patients after their discharges from the medical facility where he was working, arranged dinner dates, and brought each back to his motel room. Petitioner stipulated that the California Board could establish a factual basis to support the charges sufficient to constitute cause for disciplinary action. As noted above, the Board in

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<sup>5</sup> While Petitioner correctly notes that his Pennsylvania biennial registration application was filed in October 2009 and the California Board did not issue a formal order until December 3, 2009, the California Board filed its accusation in April 2009 and Petitioner executed the stipulation surrendering his California license in August 2009. The stipulation clearly stated that the surrender of this license constituted the imposition of discipline. Thus, Petitioner was certainly aware of the disciplinary action in California approximately two months prior to renewing his Pennsylvania license.

Pennsylvania characterized these charges as serious ethical violations and a breach of the nurse-patient boundary.

Moreover, the Board has a duty to determine the fitness of an individual to enjoy a licensed privilege and to ensure that ethical rules are followed to protect the public from unscrupulous operators. Khan v. State Board of Auctioneer Examiners, 577 Pa. 166, 842 A.2d 936 (2004). In this regard, the rules of reciprocal discipline expressly allow states to treat decisions reached in the disciplinary proceedings of other jurisdictions as a rebuttable conclusion that the licensee has engaged in conduct that violates ethical rules. Id. In light of Petitioner's admission to the facts underlying the California charges and his failure to report the California disciplinary action to the Board, we conclude that the sanction imposed in this case does not reflect an abuse of the hearing examiner's discretion.

Accordingly, the order of the Board is affirmed.

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PATRICIA A. McCULLOUGH, Judge



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	:	
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**ORDER**

AND NOW, this 1<sup>st</sup> day of November, 2011, the final order of the State Board of Nursing, dated October 28, 2010, is hereby affirmed.

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PATRICIA A. McCULLOUGH, Judge