

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Richard P. Glunk, M.D.,	:	
Petitioner	:	
	:	
v.	:	
	:	
State Board of Medicine,	:	No. 2730 C.D. 2010
Respondent	:	Submitted: May 6, 2011

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE BUTLER

FILED: June 15, 2011

Richard P. Glunk, M.D. (Glunk), petitions this Court for review of the December 2 and 28, 2010 orders of hearing examiners on behalf of the State Board of Medicine (Board) suspending his license for 60 days, and denying his motion to open the record. Glunk presents four issues for this Court's review: (1) whether the Commonwealth proved that Glunk's conduct adversely affected the health, welfare or safety of the citizens of the Commonwealth, (2) whether the delegation of this matter from the Board to a hearing examiner deprived Glunk of his right to a Medical Board Review of the prior hearing examiner's decision, (3) whether the hearing examiner improperly denied Glunk's motion to open the record, and (4) whether the presiding hearing examiner erred in finding that Glunk wrote a check to Congregation Beth Solomon Community Center. For the following reasons, we affirm the orders of the Board.

Glunk has held a license to practice medicine and surgery in Pennsylvania since July 8, 1983. In November of 2006, Glunk was a defendant in a

medical malpractice case filed by the parents of Amy Fledderman, an 18 year old patient who died on May 23, 2001, following liposuction performed by Glunk. Glunk's medical malpractice insurance carrier tendered the policy limits in the lawsuit, and advised Glunk that if a verdict was returned in excess of the policy limits, he would be responsible for the excess. On August 8, 2005, Glunk filed for bankruptcy to protect his assets. On November 22, 2006, the Commonwealth filed an Order to Show Cause against Glunk charging that he was subject to disciplinary action as a result of the treatment of Amy Fledderman and two other patients. On May 23, 2008, a jury returned a verdict for the plaintiffs in the Fledderman matter. On September 22, 2008, the Order to Show Cause against Glunk was dismissed.

On September 11, 2009, the Commonwealth filed another Order to Show Cause against Glunk charging that he was subject to disciplinary action as a result of unprofessional and immoral conduct consisting of meeting with a Board member, making a contribution to a political campaign supported by and through the Board member, and making a contribution to the Board member's synagogue with intent to influence the Board member in a matter pending before the Board wherein Glunk was the Respondent. A formal hearing was held on February 16 and 17, 2010 before a hearing examiner. On December 1, 2010, the Board issued an order suspending Glunk's license to practice medicine in Pennsylvania for a period of 60 days. Glunk's appeal of that order is now before this Court.¹

¹ This Court's scope of review in an appeal of an order of the State Board of Medicine is limited to determining whether necessary findings of fact are supported by substantial evidence, whether constitutional rights have been violated, or whether an error of law was committed. *Telesford v. Bureau of Prof'l and Occupational Affairs, State Bd. of Med.*, 916 A.2d 1218 (Pa. Cmwlth. 2007).

Glunk also filed a Motion to Stay, and a Motion to Open the Record to Allow Presentation of Additional Limited Evidence and for Ancillary Interim Relief. The Board ordered a limited stay, sufficient to allow this Court to decide the matter, and, on December 28, 2010, denied the motion to open the record. Glunk amended his Petition for Review to include the denial of his motion to open the record, and filed a motion for stay with this Court. On January 31, 2011, this Court granted Glunk's motion to stay pending the resolution of this matter.

Glunk argues that the Commonwealth did not sufficiently prove that his conduct adversely affected the health, welfare or safety of the citizens of the Commonwealth as required by 49 Pa. Code § 16.61(b)(2). We disagree.

Initially, Section 16.61 of the Board's regulations states in relevant part:

(a) A Board-regulated practitioner who engages in unprofessional or immoral conduct is subject to disciplinary action under section 41 of the act (63 P.S. § 422.41).^[2]

....

b) Immoral conduct includes, but is not limited to, the following:

....

(2) The commission of an act involving moral turpitude, dishonesty or corruption when the act directly or indirectly affects the health, welfare or safety of citizens of this Commonwealth.

49 Pa. Code § 16.61. Glunk contends that although the prosecution may have proved that he committed an act of moral turpitude, dishonesty or corruption, it did not prove that his conduct directly or indirectly affected the health, welfare or safety of the citizens of this Commonwealth.

² Section 41 of the Medical Practice Act of 1985, Act of December 20, 1985, P.L. 457, *as amended*, 63 P.S. § 422.41.

Here, Glunk was attempting to influence a Board member regarding a disciplinary action against him for standard of care issues. This Court fails to see how such an action cannot at least indirectly affect the health, welfare or safety of the citizens of this Commonwealth. Clearly, the notion of finding a doctor to be fit and competent to practice medicine based on nothing other than the doctor's contributions to a Board member's political affiliations or his synagogue is one that implicates the health, welfare and safety of this Commonwealth. Given that "[t]he Board is the agency charged with the responsibility and authority to oversee the medical profession and to determine the competency and fitness of an applicant to practice medicine within the Commonwealth," the hearing examiner did not err in finding that the Commonwealth proved Glunk engaged in immoral conduct. *Barran v. State Bd. of Med.*, 670 A.2d 765, 767 (Pa. Cmwlth. 1996).

Glunk next argues that the delegation of this matter from the Board to the presiding hearing examiner was improper because it deprived Glunk of his right to a Medical Board Review of the prior hearing examiner's decision as permitted by 49 Pa. Code § 16.57. We disagree.

Section 16.57(a)(1) of the Board's regulations states in relevant part: "(a) *Unless otherwise ordered by the Board*, the decision of the hearing examiner becomes final 20 days after its issuance. (1) Upon application for review by any party or upon the Board's own motion, the Board will review the hearing examiner's decision." 49 Pa. Code § 16.57(a)(1) (emphasis added). However, Section 3(d) of the Licensing Boards and Commissions Act,³ provides "that a board or commission may delegate to a hearing examiner the authority to render a final adjudication or decision in such cases as deemed appropriate."

³ Act of July 2, 1993, P.L. 345, 63 P.S. § 2203(d).

On March 24, 2010, the Board issued an order delegating this matter to a hearing examiner appointed to the Bureau of Professional and Occupational Affairs for final adjudication and order. The order specifically stated that “[d]uring the course of its discussions, the Board determined that recusal of the entire Board is appropriate in this matter. One of its members, Rabbi Solomon Isaacson has previously recused himself, and the Commissioner of the Bureau of Professional and Occupational Affairs, Basil L. Merenda (Commissioner), has already recused himself.” Reproduced Record at 6a. Although the order did not specify the reason for the Commissioner’s recusal, Glunk stated in his brief that it is suspected that the Commissioner had heard about the facts of the case prior to the matter being filed. Glunk’s Br. at 19.

Given that the Board had authority to delegate this matter to a hearing examiner, and had a rational reason for doing so, i.e., one of the Board’s members was intricately involved in the matter and in fact testified as a witness in the matter, the Board’s delegation of the matter to a hearing examiner was proper. Accordingly, the Board did not commit an error of law in doing so.

Glunk next argues that the presiding hearing examiner improperly denied his Motion to Open the Record to Allow Presentation of Additional Limited Evidence and for Ancillary Interim Relief. Specifically, Glunk contends that the hearing examiner abused her discretion in not considering 49 Pa. Code § 16.57(a)(2).⁴ We disagree.

Section 16.57(a)(2) of the Board’s regulations states: “The Board will review the entire record and, *if it deems it advisable, may* hear additional testimony from persons already deposed or from new witnesses as well as arguments of counsel

⁴ Glunk refers to sub-section 16.57(a)(1) in his brief, however he is referencing sub-section (a)(2) as evidenced by his quoting this section of the regulation in this portion of his brief.

to make a Board decision.” 49 Pa. Code § 16.57(a)(2) (emphasis added). “A decision whether to reopen the record in an administrative proceeding is within the discretion of the presiding officer and on review an exercise of that discretion will not be reversed unless a clear abuse is shown.” *Al Hamilton Contracting Co. v. Dep’t of Env’tl. Res.*, 659 A.2d 31, 35 (Pa. Cmwlth. 1995).

Here, Glunk wanted to reopen the record to present his own testimony to explain his contributions to the political campaign. Given that Glunk had a full and fair opportunity to present his own testimony at a hearing before a hearing examiner and chose not to, we hold that the presiding hearing examiner did not abuse her discretion or commit an error of law in denying Glunk’s motion to open the record.

Lastly, Glunk argues the presiding hearing examiner erred in finding that Glunk wrote a check to Congregation Beth Solomon Community Center. Specifically, Glunk contends this finding is not supported by substantial evidence. We disagree.

“Substantial evidence is such relevant evidence that a reasonable mind might accept as adequate to support [a] conclusion.” *Taterka v. Bureau of Prof’l and Occupational Affairs*, 882 A.2d 1040, 1044 n.4 (Pa. Cmwlth. 2005). Here, Rabbi Solomon Isaacson testified at the hearing that the synagogue received a check in the mail from Glunk for \$5,000.00 within two weeks of his meeting with Glunk. “The Board is the ultimate fact finder and may accept or reject the testimony of any witness in whole or in part, and this Court is bound by the Board’s credibility determinations.” *Gleeson v. State Bd. of Med.*, 900 A.2d 430, 435 (Pa. Cmwlth. 2006). The Board delegated the final adjudication to the presiding hearing examiner who found Isaacson credible. Clearly, his testimony was such relevant evidence that a reasonable mind might accept as adequate to support the conclusion that Glunk

wrote a check to the synagogue. Accordingly, that finding was supported by substantial evidence.

For all of the above reasons, the orders of the hearing examiners on behalf of the Board are affirmed.

JOHNNY J. BUTLER, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Richard P. Glunk, MD.,	:	
Petitioner	:	
	:	
v.	:	
	:	
State Board of Medicine,	:	No. 2730 C.D. 2010
Respondent	:	

ORDER

AND NOW, this 15th day of June, 2011, the December 2 and 28, 2010 orders of the hearing examiners on behalf of the State Board of Medicine are affirmed.

JOHNNY J. BUTLER, Judge