

Licensee holds a license to practice dentistry in Pennsylvania, but the address he has filed with the Board is in Virginia. (Findings of Fact, Nos. 1, 4, S.R.R. at 57b.) In June 2008, the Virginia Board of Dentistry (Virginia Board) issued a Consent Order, stating in Findings of Fact, Nos. 2 through 7, that Licensee violated certain provisions of Virginia’s law and the Virginia Board’s regulations. (Findings of Fact, Nos. 5-6, S.R.R. at 57b; Consent Order, Findings, ¶¶ 2-7, R.R. at 24.)

Paragraph 5 of the “Consent” portion of the Consent Order states that Licensee “neither admits nor denies the truth of the Findings of Fact numbered 2 through 7; however, he waives the right to contest the foregoing findings of fact in any subsequent proceeding before the Board” (Findings of Fact, No. 7, S.R.R. at 57b; Consent Order, Consent, ¶ 5, R.R. at 27.)

The order portion of the Consent Order states that the order was issued with the consent of Licensee. (Findings of Fact, No. 8, S.R.R. at 57b; Consent Order at 5, R.R. at 28.) The order: (1) assesses a \$6,000 penalty against Licensee; (2) orders Licensee to enroll in and successfully complete not less than eleven hours of continuing education contact hours in specified subjects; and (3) orders Licensee to be subject to unannounced records inspections for a specified period. (Findings of Fact, No. 9, S.R.R. at 57b-58b; Consent Order at 5-6, R.R. at 28-29.)

The Board subsequently issued an order to show cause why the Board should not, *inter alia*, impose a civil penalty on Licensee because of the Consent Order. (Order to Show Cause, R.R. at 2.) Licensee filed a response, and the Board delegated the matter to a hearing examiner. At the hearing, the Commonwealth

presented its evidence, but Licensee presented none. Licensee argued that, under *Khan v. State Board of Auctioneer Examiners*, 577 Pa. 166, 842 A.2d 936 (2004), the Consent Order was not a disciplinary action upon which the Board could base any reciprocal discipline.² (Proposed Adjudication at 2.)

After considering the matter, the hearing examiner issued a proposed adjudication and order, rejecting Licensee's argument. The hearing examiner pointed out that, in *Khan*, our supreme court overturned reciprocal discipline levied against a licensed auctioneer by the State Board of Auctioneer Examiners because there was no finding or admission of guilt in the consent order issued by the other state **and** because section 20(a)(11) of the Auctioneer and Auction Licensing Act³ authorized the board to impose reciprocal discipline only where the licensee is found to have been **guilty** in a disciplinary action taken against him by another state. The hearing examiner then noted that section 4.1(a)(5) of the Dental Law authorizes the Board to impose reciprocal discipline without a finding or admission of guilt in the other state. The hearing examiner proposed levying a \$1,000 civil penalty, and the Board adopted that proposal. Licensee now petitions this court for review.⁴

² Counsel for Licensee informed the hearing examiner that counsel in Virginia had filed a motion to vacate the Consent Order; however, because Licensee presented no evidence in that regard, the hearing examiner did not consider it. (Proposed Adjudication at 3 n.2.)

³ Act of December 22, 1983, P.L. 327, 63 P.S. §734.20(a)(11).

⁴ Our scope of review is limited to determining whether constitutional rights were violated, whether an error of law was committed or whether the necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704.

In his statement of questions involved, Licensee raises one question: “Whether the Board can sanction [Licensee] based on the entry of a consent order in Virginia which was not a disciplinary action?”⁵ However, there can be no question that the Virginia Consent Order, which levied a \$6,000 civil penalty and imposed other requirements on Licensee, was a disciplinary action taken by the Virginia Board against him. Indeed, although Licensee did not admit or deny the violations in the Consent Order, Licensee waived any right to contest the violations in a subsequent proceeding before the Virginia Board.⁶ Thus, in a future matter, the violations would be deemed to have occurred.

In the argument portion of his brief, Licensee also argues that allowing the Board to sanction Licensee based on the Virginia Consent Order would violate his procedural due process rights. We disagree.

Initially, we note that Licensee did not raise this issue before the hearing examiner, where Licensee was given the opportunity to present evidence but did not do so. Moreover, in *Khan*, our supreme court stated:

In the instant matter, [the licensee] was provided with notice of the charges against him, an opportunity to respond

⁵ Because the Dental Law authorizes the Board to impose reciprocal discipline for a “disciplinary action” taken by another state, Licensee contends that the Virginia Consent Order was not a “disciplinary action.” (*See* Licensee’s Brief at 14.)

⁶ Likewise, there was no question that the consent order in *Khan* constituted a disciplinary action. *See Khan*, 577 Pa. at 187, 842 A.2d at 948 (pointing out that this court “concluded that the Virginia Consent Agreement constituted a disciplinary action but that, without either an admission or a finding of guilt, [it] could not form the basis for imposing sanctions on [the licensee] in Pennsylvania”).

to those charges, and the opportunity to testify and present evidence on his behalf. This is all the procedural due process that is required.

The Commonwealth Court, however, perceived that, because there was no finding of guilt, the Virginia Consent Agreement could not form the basis for disciplinary action in Pennsylvania and that the absence of an admission or finding of guilt violated the [substantive] due process rights of [the licensee].

577 Pa. at 188-89, 842 A.2d at 949. Here, as in *Khan*, the Board did not violate Licensee's procedural due process rights. The Board gave Licensee notice of the charges, an opportunity to respond and an opportunity to testify and present evidence on his behalf. No more procedural due process was required, and Licensee does not raise a substantive due process issue.

Accordingly, we affirm.

ROCHELLE S. FRIEDMAN, Senior Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Jeffrey R. Leidy, D.M.D.,	:	
Petitioner	:	
	:	
v.	:	No. 973 C.D. 2010
	:	
Bureau of Professional and	:	
Occupational Affairs, The State Board	:	
of Dentistry,	:	
Respondent	:	

ORDER

AND NOW, this 9th day of November, 2010, the order of the Bureau of Professional and Occupational Affairs, The State Board of Dentistry, dated April 26, 2010, is hereby affirmed.

ROCHELLE S. FRIEDMAN, Senior Judge