

**SUPERIOR COURT  
OF THE  
STATE OF DELAWARE**

RICHARD R. COOCH  
RESIDENT JUDGE

NEW CASTLE COUNTY COURTHOUSE  
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***Re: Todd Bezilla, D.O., v. Board of Medical Licensure and Discipline***  
**C.A. No. 11A-11-013 RRC**

Submitted: April 3, 2012  
Decided: June 29, 2012

On Appeal from a Decision of the Board of Medical Licensure and Discipline  
of the State of Delaware.

**AFFIRMED.**

Dear Counsel:

**I. INTRODUCTION**

Appellant physician Todd Bezilla, D.O., (“Appellant” or “Dr. Bezilla”) appeals a determination of the Board of Medical Licensure and Discipline of the State of Delaware (“the Board”) that Appellant had acted unprofessionally and had violated

the Medical Practice Act, pursuant to 24 *Del. C.* § 1735. In so finding, the Board accepted the Recommendation of a Hearing Officer to permanently revoke Appellant's Delaware medical license. Administrative review by the Board originated from patient allegations of Appellant's sexual misconduct during medical treatment, and nondisclosures discovered in his Delaware medical license application. This Court finds that the Board's upholding of the Hearing Officer's recommendation is supported by substantial evidence and is free from legal error. Therefore, the Board's determination is **AFFIRMED**.

## II. FACTUAL AND PROCEDURAL HISTORY<sup>1</sup>

In 2010, a female patient accused osteopathic practitioner Dr. Bezilla of unprofessional sexual misconduct during a 2003 medical examination. Jean Betley, ("Betley") an investigator for the State Division of Professional Regulation, investigated the victim's allegations. While investigating the victim's claims, Betley obtained information that triggered opening a second investigation against Appellant regarding sexual misconduct allegations from 2001. The 2001 allegations occurred while Appellant was employed at the Philadelphia College of Osteopathic Medicine ("PCOM"). During Betley's investigation into the PCOM allegations, Betley acquired Dr. Bezilla's Delaware medical license application, dated May 2002. Betley discovered that Dr. Bezilla failed to disclose entirely details regarding the PCOM allegations to both the Board and to the Pennsylvania State Board of Medicine ("Pennsylvania Board").

A two day hearing was held before Chief Hearing Officer Roger A. Akin ("Hearing Officer") addressing the complaints and alleged application nondisclosures. The Hearing Officer issued a Recommendation that Appellant's medical license be revoked, concluding by a preponderance of the evidence that (1) Dr. Bezilla had made incomplete disclosures in his medical license application and (2) had sexually assaulted the 2003 patient.<sup>2</sup> The Hearing Officer determined

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<sup>1</sup> This case's voluminous factual history was provided at length in Chief Hearing Officer Roger A. Akin's 85 page Recommendation. The facts included in the Recommendation are incorporated by reference at length herein. *Board of Medical Licensure and Discipline Hearing Officer Recommendation, No. 10-64-09* (Aug. 25, 2011). The Board did not set forth a similarly extensive fact recitation in its Order and this Court also need not do so.

<sup>2</sup> Two patients filed complaints with the Board alleging unprofessional sexual misconduct by Dr. Bezilla, only one of which the Hearing Officer found to have been proven by a preponderance of the evidence. Because the Hearing Officer, and therefore the Board only found substantial evidence regarding the one victim, the Court reviews only the Board's finding as to that victim.

that both the second patient’s complaints and the nondisclosures constituted Medical Practice Act violations. By “Public Order” dated November 1, 2011, the Board upheld the Hearing Officer’s conclusion, noting *inter alia* that the Board was bound by the Hearing Officer’s factual findings. The Board determined that Appellant’s incomplete disclosures violated 24 *Del. C.* § 1731(b)(1), (3), (11), (15), and (17). Specifically, the Board found that Appellant engaged in the following unprofessional conduct: (1) “The use of any false, fraudulent, or forged statement . . . in connection with a . . . licensing requirement . . .”<sup>3</sup>; (2) “Any dishonorable, unethical, or other conduct likely to deceive, defraud, or harm the public”<sup>4</sup>; (3) “Misconduct, including but not limited to sexual misconduct . . .”<sup>5</sup>; (4) “Wilful failure to report to the Board as required . . .”<sup>6</sup>; and (5) “The violation of a provision of this chapter or the violation of an order or regulation of the Board related to medical procedures . . . the violation of which more probably than not will harm or injure the public or an individual.”<sup>7</sup>

Additionally, the Board found that Appellant violated 24 *Del. C.* § 1730(c) by failing to properly inform the Board of the medical malpractice action resulting from the PCOM allegations. “Every person to whom a certificate to practice medicine is issued has a duty to report to the Board, within 60 days, all information concerning medical malpractice claims settled or adjudicated to final judgment . . .”<sup>8</sup>

The Board unanimously voted (with one abstention) to revoke Appellant’s license to practice medicine in Delaware.<sup>9</sup> This appeal followed.

### **III. THE PARTIES’ CONTENTIONS**

#### **A. Appellant’s Contentions**

Appellant contends the Board misconstrued the Hearing Officer’s fact findings by concluding that the Appellant’s nondisclosures constituted the various violations. Appellant asserts the Board’s conclusions are unsupported by the facts

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<sup>3</sup> 24 *Del. C.* § 1731(b)(1).

<sup>4</sup> 24 *Del. C.* § 1731(b)(3).

<sup>5</sup> 24 *Del. C.* § 1731(b)(11).

<sup>6</sup> 24 *Del. C.* § 1731(b)(15).

<sup>7</sup> 24 *Del. C.* § 1731(b)(17).

<sup>8</sup> 24 *Del. C.* § 1730(c).

<sup>9</sup> Prior to the Board’s decision to revoke Appellant’s license to practice medicine in Delaware, Appellant voluntarily “retired” his Delaware medical license.

because, Appellant claims he properly disclosed all details regarding the Pennsylvania allegations. Appellant criticizes the factual record, in part, because only one witness testified about the Board's investigation. Separately, Appellant asserts the Board's determination that Appellant acted unprofessionally with a female patient in November 2003, was based upon insufficient evidence. Appellant argues that the victim's psychological history, inconsistent recollection, the time lapse before the victim's incident report, and the limited witness corroboration, all suggest the victim's statement is implausible. Conversely, Appellant contends that substantial corroboration supported Appellant's position, including Appellant's wife and colleagues' testimony. Appellant asserts these factors undermine the victim's credibility such that the victim's testimony cannot satisfy substantial evidence.

## **B. Appellee's Contentions**

The Board contends it did not misconstrue the Hearing Officer's factual findings and that the findings were supported by substantial evidence. Specifically, the Board argues that substantial evidence supported the Hearing Officer's finding that Appellant failed to disclose details regarding the PCOM allegations to both the Board and the Pennsylvania Board. Additionally, the Board contends that substantial evidence also exists supporting the Hearing Officer's conclusion that Appellant sexually assaulted a female patient in November 2003. Therefore, on both grounds, the Board asserts that its determination requires affirmance.

## **IV. STANDARD OF REVIEW**

The Supreme Court and this Court have repeatedly emphasized the limited appellate review of an administrative agency's factual findings. In appeals to the Board of Medical Licensure and Discipline, "the findings of fact made by a hearing officer are binding upon the board or commission."<sup>10</sup> The reviewing court's function is to determine whether the agency's decision is supported by substantial evidence.<sup>11</sup> Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.<sup>12</sup> The appellate court does

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<sup>10</sup> 29 Del. C. § 8735(v)(1)d.

<sup>11</sup> *General Motors Corp. v. Freedman*, 164 A.2d 686, 688 (Del. 1960); *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66-67 (Del. 1965).

<sup>12</sup> *Oceanport Ind. v. Wilmington Stevedores, Inc.*, 636 A.2d 892, 899 (Del. 1994); *Battista v. Chrysler Corp.*, 517 A.2d 295, 297 (Del. Super. 1986) *app. disp.*, 515 A.2d 397 (Del. 1986).

not weigh evidence, resolve credibility questions, or make its own factual findings.<sup>13</sup> The Court merely determines if the evidence is legally adequate to support the agency's factual findings.<sup>14</sup> The Court must defer to administrative board expertise.<sup>15</sup> As such, the Court must uphold a Board's decision that is supported by substantial evidence even if, in the first instance, the reviewing judge might have decided the case differently.<sup>16</sup> The record must be viewed in the light most favorable to the prevailing party below.<sup>17</sup>

## V. DISCUSSION

### A. **Substantial evidence supports the Board's determination that Appellant failed to entirely disclose information regarding the PCOM sexual misconduct allegations**

Appellant challenges the Board's determination that Appellant failed completely to disclose the PCOM sexual misconduct allegations in his medical license application. The Hearing Officer's Recommendation was thorough, reasonable, well reasoned, and free from the factual errors asserted by Appellant. The Board did not misconstrue the Hearing Officer's fact findings. "The findings of fact made by a hearing officer are binding upon the board or commission."<sup>18</sup> The Board was bound to accept the Hearing Officer's Recommendation and only reviewed the "recommended conclusions of law and proposed sanctions based upon the written record."<sup>19</sup> This Court only reviews the Board's order to determine whether it was "supported by substantial evidence and free from legal error."<sup>20</sup>

Substantial evidence supports the Board's finding that Appellant failed to disclose information in his Delaware medical licensure application. When

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<sup>13</sup> *Johnson*, 213 A.2d at 66.

<sup>14</sup> 29 *Del. C.* § 10142(d).

<sup>15</sup> *See id.* ("The Court, when factual determinations are at issue, shall take due account of the experience and specialized competence of the agency and of the purposes of the basic law under which the agency has acted.").

<sup>16</sup> *Kreshtool v. Delmarva Power and Light Co.*, 310 A.2d 649, 653 (Del. 1973).

<sup>17</sup> *Thomas v. Christiana Excavating Co.*, 1994 WL 750325, at \*5 (Del. Super. Nov. 19, 1994).

<sup>18</sup> 29 *Del. C.* § 8735 (v)(1)d.

<sup>19</sup> *Id.*

<sup>20</sup> *Stoltz Management Co. v. Consumer Affairs Bd.*, 615 A.2d 1205, 1208 (Del. 1992); *see also* 29 *Del. C.* § 10142(d).

Appellant applied for a Delaware medical license, he was under investigation by the Pennsylvania Board of Medicine for the PCOM allegations. Appellant failed to fully disclose the incident's details in correspondence between Appellant and the Pennsylvania Board. While Appellant was submitting incomplete disclosures to the Pennsylvania Board, Appellant was a licensed and practicing physician in Delaware. In September 2002, Appellant advised the Board that he had been sued for malpractice stemming from the PCOM allegations. However, the Board reasonably concluded that Appellant minimized the suit's seriousness and omitted obviously relevant details. Appellant never informed the Board that the malpractice suit settled in 2003, nor did Appellant inform the Board that his prior employer had instituted a chaperone policy because of the sexual misconduct allegations against him. Instead, the Hearing Officer found that Appellant simply explained he was terminated for an alleged chaperone policy violation.

Substantial evidence is not unfulfilled simply because only Investigator Betley testified regarding the PCOM allegations. The Hearing Officer reasonably found that Betley's investigation and testimony were thorough and comprehensive. The Court must defer to administrative agency expertise, and notes the Board also found Betley's testimony persuasive.<sup>21</sup> The Board's determination was reasonable, the Board's factual findings are supported by "legally adequate" evidence, and the Court must affirm the Board's decision. Substantial evidence also supports the Board's conclusion that Appellant violated 24 *Del C.* § 1730(c) by failing to fully disclose the PCOM malpractice claims in his medical license application, and later by failing to update the Board upon the claim's settlement. Substantial evidence additionally supports the Board's finding that Appellant violated 24 *Del C.* § 1731(b)(1), (3), (11), (15), and (17) by failing to completely disclose the PCOM allegations in his application.

**B. Substantial evidence supports the Board's finding of Appellant's sexual misconduct with a female patient in November 2003.**

The Hearing Officer and the Board reasonably concluded that Appellant had sexually assaulted his patient in November 2003. Appellant correctly argues that the victim's statement is the only proffered evidence of the 2003 sexual misconduct allegations. Appellant attempts to discredit the victim's statement by highlighting various perceived victim credibility flaws; however, the Board's conclusion that the victim's testimony was credible is reasonable. Nothing in the victim's limited

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<sup>21</sup> See *supra* note 13.

psychological history before the Hearing Officer and the Board suggested that the victim suffered from memory deficiencies or disassociation. Considering the time lapse, the Hearing Officer and the Board reasonably concluded that the victim only inconsistently recollected inconsequential aspects of her testimony.

It is not dispositive that the victim did not report the incident for several years. The Hearing Officer correctly noted that Delaware public policy supports the right of sexual abuse victims to confront assailants despite time lapse.<sup>22</sup> While Appellant properly counters that this policy protects only minor sexual abuse victims, victim claims can potentially be valid despite time lapse. Moreover, it is common for sexual abuse victims, not just minor victims, to first report abuse long after the incident. Furthermore, the Hearing Officer reasonably noted that unlike cases contemplated by 10 *Del. C.* § 8145, no direct financial remuneration is available for the instant victim. Without remuneration, the victim lacks financial incentive to fabricate.<sup>23</sup> The Hearing Officer reasonably determined the victim's testimony is due additional credence because financial remuneration is impossible through this administrative review.

The Court's substantial evidence review is not a simple corroborative testimony comparison. While Appellant provided more witness testimony, the Board concluded reasonably that the combined testimony did not rebut the victim's veracity, nor fully overcome the victim's allegations. As the Hearing Officer reasonably found, simply because Appellant's witnesses testified they never witnessed sexual misconduct by Appellant does not mean that no such acts ever occurred. Appellant's corroborative testimony, even analyzed together, did not comprehensively address each patient appointment. While the Hearing Officer found that Appellant's colleagues' testimony was credible, he noted it failed to establish any material fact, because the testimony did not address each of the victim's medical visits, nor the specific incident. In the Hearing Officer's balancing of the victim's testimony against the Appellant and his wife's, the Hearing Officer found greater credibility in the victim. The Hearing Officer reasonably questioned the testimony of Appellant and his wife. While Appellant's wife testified she was present during the alleged incident, and testified that no unprofessional behavior

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<sup>22</sup> See 10 *Del. C.* § 8145 (Statutory cause of action permitting minor sexual abuse victims to file suit in Superior Court at any time following sexual abuse.).

<sup>23</sup> Appellant argued during administrative hearings that the current challenges to his medical license stem from a conspiracy arising from a rivalry with another osteopath. However, no evidence supports that assertion and no connection exists between the victim and the rival osteopath other than the victim's initial referral to Appellant. Appellant's assertion that the entire controversy stems from a rivalry infused conspiracy strains credulity.

occurred, the Hearing Officer and the Board both reasonably found the victim's testimony more credible.

Appellant's contention that the victim's testimony was unreliable because none of the victim's therapists reported the victim's allegations pursuant to their duty to report is similarly unconvincing.<sup>24</sup> It is not this Court's role to speculate why evidence was not proffered during administrative review, or why professionals with an obligation to report such behavior presumably shirked that responsibility. The Court agrees with the Board's conclusion regarding Appellant's unprofessional sexual misconduct. As mentioned *supra*, substantial evidence means evidence as a reasonable mind might accept as adequate to support a conclusion. The Hearing Officer's findings and those of the Board are reasonable, adequate, and support a well reasoned conclusion.

## **VI. CONCLUSION**

As noted, the Court must defer to the Board's expertise.<sup>25</sup> This Court does not weigh evidence, resolve credibility questions, or make its own factual findings.<sup>26</sup> The Court must uphold a Board's decision that is supported by substantial evidence even if, in the first instance, the reviewing judge might have decided the case differently.<sup>27</sup> An administrative appeal record must be viewed in the light most favorable to the prevailing party below.<sup>28</sup> The Board's order properly concluded that the Hearing Officer's Recommendation was supported by substantial evidence and is otherwise free from legal error. Furthermore, the Court finds the Hearing Officer's Recommendation thorough, well reasoned, and extensive. The Board's findings and conclusion require affirmance.

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<sup>24</sup> 24 *Del. C.* § 3018(a) provides: "Every person to whom a license to practice has been issued under this chapter has a duty to report to the Division of Professional Regulation in writing information that the licensee reasonably believes indicates that any other practitioner licensed under this chapter or any other healthcare provider has engaged in or is engaging in conduct that would constitute grounds for disciplinary action under this chapter or the other healthcare provider's licensing statute."

<sup>25</sup> *See supra* note 13.

<sup>26</sup> *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

<sup>27</sup> *Kreshtool v. Delmarva Power and Light Co.*, 310 A.2d 649, 653 (Del. 1973).

<sup>28</sup> *Thomas v. Christiana Excavating Co.*, 1994 WL 750325, at \*5 (Del. Super. Nov. 19, 1994).



For all the reasons stated in this Opinion, the Board of Medical Licensure and Discipline of the State of Delaware's determination that Appellant acted unprofessionally and violated 24 *Del. C.* § 1730(c), 24 *Del. C.* § 1731(b)(1), (3), (11), (15), and (17) is **AFFIRMED**. The Board's order that Appellant's medical license be permanently revoked is also **AFFIRMED**.

**IT IS SO ORDERED.**

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Richard R. Cooch, R.J.

cc: Prothonotary  
Board of Medical Licensure and Discipline