

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

MICHAEL J. PRAVETZ,)	
)	
Appellant,)	
)	
v.)	C.A. No: 02A-08-010 RSG
)	
STATE BOARD OF MEDICAL PRACTICE,)	
)	
Appellee.)	

Submitted: April 5, 2003
Decided: May 21, 2003

Upon Appeal from a Decision of the State Board of Medical Practice.
AFFIRMED.

Michael J. Pravetz, Philadelphia, Pennsylvania, Appellant, *pro se*.
Thomas H. Ellis, Esquire, Deputy Attorney General, Wilmington, Delaware, for the State.
Michael M. Tischer, Esquire, Deputy Attorney General, Dover, Delaware, for the State Board of
Medical Practice.

MEMORANDUM OPINION

Gebelein, J.

This matter is before the court on a *pro se* appeal which Appellant, Michael J. Pravetz, has brought from a decision of the Board of Medical Practice of the State of Delaware. For the reasons set forth below, the decision of the Board is affirmed.

PROCEDURAL POSTURE

Michael J. Pravetz (“Appellant” or “Pravetz”) applied for licensure to be a medical doctor in the State of Delaware. On July 31, 2002, the Board of Medical Practice of the State of Delaware (“Board”) issued a written Decision and Order denying Appellant a Certificate to Practice Medicine and Surgery in the State of Delaware. The decision of the Board denied Appellant a medical licence on the grounds that he did not meet the statutory qualifications for such licensure pursuant to title 24, section 1720(a)(4) of the Delaware Code.¹ Appellant also failed to obtain the minimum of twelve affirmative votes of the Board necessary to waive the statutory requirements pursuant to title 24, section 1720(d) of the Delaware Code.² Appellant filed a timely appeal to this Court and briefing by the parties is complete.

STATEMENT OF FACTS

On October 2, 2001, the Board met and reviewed the application of Appellant for a license to practice medicine and surgery in the State of Delaware. The Board proposed to deny Appellant’s application for licensure based upon information filed with his application and other

¹DEL. CODE ANN. tit. 24, § 1720(a)(4) provides that: “(a) Any person not having a certificate to practice medicine in this State, and desiring to have such a certificate, must:

(4) Submit to the Board a sworn statement by the applicant that the person has not been convicted of a felony, been professionally penalized or convicted of drug addiction, violated the Medical Practice Act of another state, engaged in the practice of medicine without a license, prescribed narcotic drugs unlawfully, wilfully violated the confidence of a patient or has been professionally penalized or convicted of fraud...”

²DEL. CODE ANN. tit. 24, § 1720(d) provides that: “[t]he Board, by the affirmative vote of 12 of its members, may waive any of the above provisions if it finds all of the following:

- (1) The applicant’s education, training, qualifications, and conduct have been sufficient to overcome the deficiency or deficiencies in meeting the requirements of this section; and
- (2) The applicant is capable of practicing medicine and surgery in a competent and professional manner; and,
- (3) The granting of the waiver will not endanger the public health, safety or welfare.”

information available to the Board.³ Appellant was notified by letter dated October 19, 2001, from the Executive Director of his right to request a hearing concerning the proposed denial pursuant to title 29, section 10131 of the Delaware Code.⁴

The reason for the proposed denial was that Appellant could not properly comply with the requirements of section 1720(a)(4)⁵ of the Delaware Code because he had violated the Medical Practice Act of the State of Kentucky and entered into an Agreed Order of Surrender of his Kentucky Medical License.⁶ Appellant was notified that the information available to the Board established that the Commonwealth of Pennsylvania had indefinitely suspended his medical license for violation of the Pennsylvania Medical Practice Act and that the State of New Jersey had revoked his New Jersey license to practice medicine for violation of the New Jersey Medical Practice Act. The Board also noted in the letter that Appellant indicated that he had sought or had been granted a medical license under another name and that he had failed to disclose such name. Based upon the above mentioned reasoning, the Board indicated that Dr. Pravetz could

³The Board received and marked as Board Exhibit No. 1 an information packet consisting of 119 pages of printed material that included the following: (1) a copy of the “Agreed Order of Surrender” that was executed on November 12, 1998 by Dr. Pravetz and his attorney that provides for the surrender of his Kentucky medical license; (2) the “Final Order Adopting Provisional Order of Discipline and Revoking Licensure” from the State of New Jersey dated December 26, 2000, by which Dr. Pravetz’ medical license to practice medicine and surgery was revoked; (3) the “Adjudication and Order” issued by the Commonwealth of Pennsylvania Board of Medicine that indefinitely suspended the medical license of Dr. Pravetz.

⁴DEL. CODE ANN. tit. 29 1013 1(c) (1997) provides that: “[w]henver an agency proposes to deny an application for a license, timely and properly made...it shall first give written notice to the applicant of the intended action and the reasons therefor. The form of notice shall comply as far as practicable with § 10122 of this title, except that instead of setting a hearing date, it may afford the party at least 10 days to request a hearing.”

⁵See DEL. CODE ANN. tit. 24 § 1720(a)(4) (1997).

⁶Dr. Pravetz entered into the Agreed Order of Surrender in lieu of revocation of his Kentucky Medical License.

not submit a sworn statement that he has not violated the Medical Practice Act of another state.⁷

Upon Appellant's timely request, a hearing was conducted on June 4, 2002, before fifteen members of the Board of Medical Practice. At the hearing, Dr. Pravetz was advised of his right to appear with legal counsel and made the determination to proceed *pro se*.⁸ Both the State of Delaware and the Board were represented by counsel at the hearing.

A full hearing was held at which Appellant testified under affirmation on his own behalf.⁹ The Board also heard the sworn testimony of three witnesses on Appellant's behalf: (1) Mr. Mark D. Sparkman of Morehead, Kentucky who worked with Dr. Pravetz at the eastern Kentucky Correctional Complex;¹⁰ (2) John Campagna who met Dr. Pravetz while working as the Chief Psychologist for the Department of Corrections at Graterford in Pennsylvania;¹¹ and, (3) Mark S. Friedlander, M.D. who attended medical school with Dr. Pravetz in South Africa.¹²

Appellant testified that he had previously been certified to practice medicine in the State

⁷See DEL. CODE ANN. tit. 24 § 1720(a)(4) (1997).

⁸Board Tr. at 3.

⁹Dr. Pravetz testified that he had checked the wrong box on his application form in reference to his indication that he had been granted a license under another name. It should be noted that the Board did not address Appellant's deficiency with respect to that issue any further. Board Tr. at 11-12.

¹⁰Mr. Sparkman testified on direct examination that he had observed Appellant in both correctional and private practice settings. He opined that Appellant was no threat to his patients. He also expressed criticism of the Kentucky Medical Board's investigation against Dr. Pravetz. Board Tr. at 20-22.

¹¹Mr. Campagna unreservedly recommended Pravetz based upon his opinion that Appellant's practice was exemplary; however, he had no personal knowledge of him prior to 1998. He opined, that Appellant was not a threat to the health, safety or welfare of his patients. Board Tr. at 29-33.

¹²Dr. Friedlander testified that he had known Pravetz for twenty five years and had observed him as a medical student, as a resident, and as a practicing psychiatrist. He also observed Appellant perform complex procedures during his three years of postgraduate training in anesthesiology. While both men were residents of the Medical College of Pennsylvania, Dr. Friedlander characterized Pravetz's professional and clinical work as being of the highest standard. He further testified that Appellant had a reputation of being conservative in his prescription of controlled substances and that he would hire him without reservation. Board Tr. at 34-38, 42.

of Delaware, but upon his relocation to Kentucky, his license was retired in 1993. Pravetz unsuccessfully filed for reinstatement of his Kentucky medical license in January 2001.¹³ Appellant also testified that both the Commonwealth of Pennsylvania and the State of New Jersey's actions revoking his medical license were based upon them acting in comity with the violation in Kentucky rather than independent violations of the Medical Practices Act of each state.¹⁴ Pravetz argues that the actions taken by the Medical Board in Kentucky were the result of an overzealous investigator and groundless allegations.¹⁵ Because it was in the best interest of his patients and due to a lack of financial resources, Pravetz claims that he opted to sign the Agreed Order of Surrender with the advice and consent of his attorneys.¹⁶ He testified that he only entered into the agreement because it specifically stated that he was not in violation of any law or the Medical Practice Act of the Commonwealth of Kentucky.¹⁷ In closing, the State agreed that the settlement agreement in Kentucky did not constitute a violation of the Medical Practice Act.¹⁸ However, because Appellant failed to appeal the orders of record that he had violated the Medical Practices Acts of Pennsylvania and New Jersey,¹⁹ the State encouraged the

¹³Board Tr. at 56.

¹⁴Pravetz testified that he did not appeal the Pennsylvania decision because he ran out of money. He also indicated that he had surrendered his New Jersey license in 1993 and that his license was revoked pursuant to a hearing at which he was not present due to lack of notification. Pravetz also did not appeal the decision of the State of New Jersey. Board Tr. at 56-62.

¹⁵Board Tr. at 73.

¹⁶Board Tr. at 75, 82.

¹⁷Board Tr. at 75.

¹⁸Board Tr. at 77.

¹⁹Board Tr. at 78. The Order and Decision of the Commonwealth of Pennsylvania is marked as State's Exhibit number 2. The Updated Order and Report and Recommendation is marked as State's Exhibit number 1.

Board to make a condition of the renewal of his license in the State of Delaware the reinstatement of his medical license in Kentucky.²⁰

The Board unanimously found that Appellant did not meet the statutory requirements for licensure set forth in section 1720(a)(4) because he cannot validly submit an affidavit stating that he has not violated the Medical Practice Act of another state.²¹ The Board found that Dr. Pravetz has violated the medical practice acts of Pennsylvania and New Jersey. While the State had not urged such a finding, the Board also found it probable that Dr. Pravetz has violated the Medical Practice Act of Kentucky.²² Accordingly, the Board concluded that, in the absence of a waiver of his disqualification, Dr. Pravetz's application for a certificate to practice medicine and surgery in the State of Delaware must be denied.²³

Upon consideration of the evidence presented, the fifteen Board members present at Appellant's hearing determined, by a vote of eight to four, that Appellant failed to meet his burden of proving his entitlement to a waiver of the provisions set forth in section 1720(a)(4).²⁴ In the Board's discussion of Dr. Pravetz's entitlement to a waiver of his disqualification, it was indicated that a significant majority of the Board members found that: "...his presentation did not speak well for his candor, credibility, or professionalism..."²⁵ The Board indicated that

²⁰Board Tr. at 80.

²¹Board Decision at 13.

²²*Id.* The Board noted that it need not find that Appellant had violated the Medical Practice Act of Kentucky to determine that he fails to meet the qualifications provided in section 1720(a)(4).

²³*Id.*

²⁴Three Board members abstained (with the understanding that abstention equated to a NO vote). Board Decision at 16.

²⁵Board Decision at 15.

Appellant’s credibility suffered because his presentation of personal patient psychiatric diagnosis and treatment was in marked contrast with his ardent concern for patient record privacy. The Board also expressed concern over Appellant’s refusal to acknowledge the independent findings of statutory violations, particularly in the State of New Jersey, his characterization that the stipulation of facts and the Kentucky Agreed Order of Surrender contain no facts evidencing misconduct, and his jaded view of the emergency suspension of his license in Kentucky.²⁶ The Board found that Dr. Pravetz failed to demonstrate conduct that overcame his statutory deficiency and, as a result, expressly denied his request for a waiver under the provisions of section 1720(d).²⁷

SUMMARY OF THE ARGUMENTS

Appellant raises seven assignments of error that are logically condensed into the following four arguments:

1. The Board erred by finding that Appellant failed to satisfy the licensure requirements pursuant to title 24, section 1720(a)(4) of the Delaware Code since he can validly submit the required affidavit stating that he did not violate the Medical Practice Acts of Kentucky, Pennsylvania and New Jersey.
2. The Board erred by finding that he was statutorily disqualified; therefore, the waiver provisions of title 24, section 1720(d) of the Delaware Code are not applicable.
3. The Board violated the due process rights of Appellant when the Board “went behind the judgment in Kentucky” and “precluded defense of issues which the Board relied upon for its

²⁶*Id.*

²⁷*Id.* at 15-16. *See also* DEL. CODE ANN. tit. 24, § 1720(d) (1997).

decision.”²⁸

4. The Board is collaterally estopped from relitigating issues of fact previously adjudicated.

The Board defends its decision that it did not err in determining that Dr. Pravetz was disqualified for licensure pursuant to section 1720(a)(4) and that Appellant did not show by a preponderance of the evidence that he was entitled to a waiver pursuant to section 1720(d).

STANDARD OF REVIEW

The function of the reviewing Court is to determine whether the agency’s decision is supported by substantial evidence.²⁹ Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.³⁰ Substantial evidence requires “more than a scintilla but less than a preponderance” to support the finding.³¹ The appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings.³² It merely determines if the evidence on the record is legally adequate to support the agency’s factual findings.³³ If the record below contains substantial evidence to support the findings of the Board, then that decision will not be disturbed.³⁴

²⁸See Appellant’s Opening Brief at 7.

²⁹*General Motors Corp. v. Freeman*, 164 A.2d 686, 688 (Del. 1960); *Johnson v. Chrysler Corp.*, 231 A.2d 64, 66-67 (Del. Super. 1985).

³⁰*Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994); *Battisa v. Chrysler Corp.*, 517 A.2d 295, 297 (Del. Super Ct. 1986), *app. disp.*, 515 A.2d 397 (Del. 1986).

³¹*Onley v. Cooch*, 425 A.2d 610, 614 (Del. 1981) (quoting *Cross v. Califano*, 475 F.Supp. 896, 898 (D. Fla. 1979)).

³²*Johnson v. Chrysler Corp.*, 231 A.2d at 66.

³³DEL. CODE ANN. tit. 29 § 10142(d) (1997).

³⁴*Adams v. Nabisco*, 1995 WL 653435 (Del Super.).

DISCUSSION

I. SECTION 1720(a).

Appellant claims that he can validly submit the required affidavit stating that he did not violate the Medical Practice Acts of Kentucky, Pennsylvania and New Jersey. Accordingly, his first argument is that the Board erred by finding that he failed to satisfy the licensure requirements pursuant to section 1720(a)(4). Appellant's second argument is that, as a result of the Board's error in finding that he was statutorily disqualified, the waiver provisions of section 1720(d) are not applicable.³⁵

The Board unanimously found as a matter of fact that Appellant failed to meet the qualifications for licensure because he cannot validly submit the affidavit required by section 1720(a)(4) stating that he has not violated the Medical Practice Act of another State. The Board considered a vast amount of testimonial and documented evidence relevant to the issue of whether Appellant had violated the Medical Practice of another State, specifically Kentucky, New Jersey and Pennsylvania. The two most poignant documents to support the Board's decision are detailed below:

(1) The Pennsylvania Board ("PA Board") Adjudication and Order concluded that Pravetz was subject to disciplinary action in Pennsylvania pursuant to title 63, section 422.41(4) of the Pennsylvania Statute³⁶ as a result of the Kentucky Board of Medical Licensure taking

³⁵The Court will address Appellant's first two arguments conjunctively.

³⁶PA. STATUTE ANN. tit. 63, § 422.42(4) (1996) provides in relevant part: §422.41 REASONS FOR REFUSAL, REVOCATION, SUSPENSION OR OTHER CORRECTIVE ACTIONS AGAINST A LICENSEE OR CERTIFICATE HOLDER. The board shall have authority to impose disciplinary or corrective measures on a board-regulated practitioner for any or all of the following reasons:

(4) Having a license or other authorization to practice the profession revoked or suspended or having other disciplinary action taken, or an application for a license or other authorization refused, revoked or suspended by a

disciplinary action against his license to practice medicine.³⁷ In the discussion section of Pennsylvania's order, it is clear that the PA Board was acting on the fact that Appellant was disciplined in Kentucky rather than the underlying events, thus rendering the substance of the charges immaterial.³⁸ Pravetz was sanctioned by the Pennsylvania Board as a result of the Kentucky Board of Medical Licensure suspending his license and entering into an Agreed Order of Surrender (in lieu of revocation). In the order dated April 26, 2001, the Commonwealth of Pennsylvania indefinitely suspended Appellant's license to practice medicine. The PA Board indicated that it may consider reinstatement of Pravetz's license upon a showing of his fitness to practice, which shall include the reinstatement of his Kentucky medical license.³⁹

(2) The State of New Jersey Board of Medical Examiners hearing committee ("NJ Board" or "committee") issued a Report and Recommendation in October of 2001. Appellant's case was initially opened in New Jersey upon the filing of a Provisional Order of Discipline on March 20, 2000.⁴⁰ The NJ Board filed a final Order of Licensure Revocation on December 28, 2000.⁴¹ On January 16, 2001, Pravetz submitted a written request to the NJ Board requesting that the action

proper licensing authority of another state, territory, possession or country, or a branch of the Federal Government.

³⁷State's Exhibit No. 2 at 6-7.

³⁸*Id.* at 10.

³⁹*Id.* at 15.

⁴⁰State's Exhibit No. 1 at 3-4. The NJ Board provisionally found that Pravetz had signed an agreed order of surrender in lieu of revocation on November 13, 1998 in the State of Kentucky, thereby surrendering his license to practice. A provisional conclusion of law was made that as a result of the surrender of his Kentucky license, grounds existed to take action against Pravetz's New Jersey license pursuant to N.J.S.A. 45:1-21(g). The NJ Board provisionally ordered the revocation of Appellant's license to practice medicine and surgery in the State of New Jersey.

⁴¹*Id.* at 5.

be rescinded. His correspondence was presented to the NJ Board on May 9, 2001, and was considered to be a petition for reconsideration.⁴² A hearing was conducted on July 25, 2001 and the committee ultimately concluded that independent causes of action existed for disciplinary sanction pursuant to N.J.S.A 45:1-21(g)⁴³ based upon: (1) the Agreed Order of Surrender in Kentucky because it was tantamount to his agreeing to the revocation of his licensure; (2) the Emergency Order of Suspension entered on July 31, 1998 and affirmed on August 21, 1998 and the finding of facts set forth therein; (3) the indisputable fact that the Commonwealth of Pennsylvania entered an order on April 26, 2001 indefinitely suspending Pravetz's medical license.⁴⁴ The committee recommended that Appellant's license be revoked and that he be explicitly precluded from applying for reinstatement for a minimum of one year after the effective date of revocation.⁴⁵

On appeal, the review of the Court is limited to a determination of whether there is substantial evidence on the record to support the conclusion of the Board.⁴⁶ It is clear that there is substantial evidence on the record to support the Board's conclusion that Appellant has not met the requirements for licensure pursuant to section 1720(a)(4). Consequently, Appellant's

⁴²*Id.* at 5-6.

⁴³N.J. STATUTE ANN. tit 45, § 1-21(g) provides that: 45:1-21 GROUNDS FOR REFUSAL TO ADMIT TO EXAMINATION OR DENIAL, SUSPENSION OR REVOCATION OF ANY CERTIFICATE, REGISTRATION OR LICENSE; DEFINITIONS A board may refuse to admit a person to an examination or may refuse to issue or may suspend or revoke any certificate, registration or license issued by the board upon proof that the applicant or holder of such certificate, registration or license:

(g) Has had his authority to engage in the activity regulated by the board revoked or suspended by any other state, agency or authority for reasons consistent with this section.

⁴⁴State's Exhibit No. 1 at 19-23.

⁴⁵*Id.* at 25.

⁴⁶DEL. CODE ANN. tit. 29, § 10142(d) (1997).

second argument that the waiver provisions of section 1720(d) are not applicable is without merit.

II SECTION 1720(d).

Appellant has not challenged the Board's conclusion that he was not entitled to a waiver of the statutory requirements pursuant to section 1720(d) due to his steadfast position that he meets the licensure requirements of section 1720(a)(4). As a result, the Court is not obligated to address the merits of the Board's refusal to grant Appellant a waiver as set forth in section 1720(d). The Board may waive any of the statutory provisions by the affirmative vote of twelve members, if it finds all of the following: (1) the applicant's education, training, qualifications, and *conduct* have been sufficient to *overcome the deficiency or deficiencies* in meeting the requirements of this section [Emphasis added]; and (2) the applicant is capable of practicing medicine and surgery in a competent and professional manner; and (3) the granting of a waiver will not endanger the public health, safety or welfare.⁴⁷ The Board must find the applicant fulfills all three of the criteria before it can grant a waiver pursuant to this section because the criteria set forth in section 1720(d) are conjunctive.⁴⁸ Notwithstanding the fact that the applicant bears the burden of proof,⁴⁹ the Court in *Weinfeld* took issue with Board's failure to sufficiently articulate the applicant's fulfillment of the three waiver criteria.⁵⁰ The Court draws a similar conclusion in the instant case. Upon reviewing the Board's decision, the Court may imply findings of fact

⁴⁷DEL. CODE ANN. tit. 24, § 1720(d) (1997).

⁴⁸*Weinfeld v. Delaware Board of Medicine*, 1999 WL 743803 (Del. Super.).

⁴⁹See DEL. CODE ANN. tit. 29, § 10125(c) (1997).

⁵⁰See *Weinfeld*, at *9.

from conclusions, but may not imply conclusions from facts.⁵¹

The Board found, with respect to the first requirement for waiver, that Appellant did set forth education, training and qualifications in his Curriculum Vitae. However, despite finding that Pravetz *may* be capable of practicing medicine in a competent and professional manner, as detailed in the second requirement, the Board found numerous indications that he has not always done so.⁵² The Board expressed concern about Pravetz's candor and professionalism and found that his credibility suffered during his Delaware licensure proceedings. From these findings the Court can imply that the Board found that Pravetz's conduct was not sufficient to overcome the fact that he had been found to have violated the Medical Practices Act of the State of New Jersey and the Commonwealth of Pennsylvania. It is the role of the Board, and not the Court, to resolve conflicts in testimony, determine credibility, and assign weight to the evidence presented.⁵³ On the record before it, the Court cannot conclude that the Board abused its discretion in finding that the Appellant failed to satisfy the conditions set forth in section 1720(d)(1) or (d)(2). Because the three criteria set forth in section 1720(d) are conjunctive, Appellant's failure to satisfy section 1720(d)(1) or 1720(d)(2) renders him ineligible for a waiver of the requirements of section 1720(a)(4). Accordingly, the Court need not address the criteria set forth in section 1720(d)(3).⁵⁴

⁵¹*Id.* (citing *Haveg Industries, Inc. v. Humphrey*, 456 A.2d 1220 (Del. 1983); *Board of Public Education in Wilmington v. Rimlinger*, 232 A.2d 98 (Del. 1967); *Johnson Controls v. Haines*, Del. Super., C.A. No. 95A-10-21, Gebelein, J. (Sept. 19, 1996); *Guy v. State of Delaware*, Del. Super., C.A. No. 95A-08-012, Barron, J. (March 6, 1996), *aff'd*, Del. Supr., No. 280, 1996 (Nov. 7, 1996); *Lindsay v. Chrysler Corporation*, Del. Super., C.A. No. 94A-04-005, Barron, J. (Dec. 7, 1994).

⁵²The Board noted the finding of the New Jersey Board that there was substantial evidence of a pattern of outrageous misconduct with insufficient mitigating evidence to temper the recommendation to revoke Pravetz's license. Board Decision at 15.

⁵³*Bash v. Board of Medical Practice*, 579 A.2d 1145, 1152 (Del. Super. Ct. 1989).

⁵⁴*See generally Weinfeld v. Delaware Board of Medicine*, 1999 WL 743803 (Del. Super.).

III. DUE PROCESS

Appellant's third argument is that the Board violated his due process rights when it "went behind the judgment in Kentucky" and "by precluding defense of issues which the Board relied upon for its decision." The Board found as a matter of fact that Appellant violated the medical practice acts of Pennsylvania and New Jersey. It is clear to the Court that, based upon the language of the relevant portions of each statute and the decision rendered by the Medical Board of each state revoking Pravetz's license to practice medicine, there is substantial evidence to support the Board's finding. The Board did not conclude as a matter of fact that Appellant violated the medical practice act of Kentucky.

It is well settled law that to prevail on a procedural due process claim Appellant must prove two essential elements: (1) a protected life, liberty or property interest and (2) that interest was deprived without notice and an opportunity to be heard.⁵⁵ Procedural due process requires that "[p]arties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified."⁵⁶ Appellant's due process argument is that he was precluded from "defense of issues" which is not supported by the record. Appellant was afforded a full hearing at which he presented evidence, legal argument and witnesses on his behalf. The Court finds no violation of Appellant's due process rights.

IV. COLLATERAL ESTOPPEL

Finally, Defendant claims that the Board is collaterally estopped from relitigating issues

⁵⁵*Pond v. New Castle County Planning Board*, 2001 WL 1221685 (Del. Super.) (citing *Mullane v. Central Hanover Bank & Trust Co.*, 399 U.S. 306, 313 (1950)).

⁵⁶*Tsipouras v. Tsipouras*, 677 A.2d 493, 496 (Del. 1996) (quoting *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972) (citations omitted)).

of

fact previously adjudicated. In support of his argument, Defendant claims that the Board found that he had not violated the Medical Practice Act of Kentucky and must be collaterally estopped from applying findings to the contrary made by Pennsylvania and New Jersey. The doctrine of collateral estoppel prohibits the Government from relitigating an issue of ultimate fact that has been determined by a valid and final judgment, but does not bar the later use of evidence in all circumstances.⁵⁷ The burden is on a defendant to demonstrate that the issue subject to relitigation was actually decided in the first proceeding.⁵⁸

In order for the doctrine of collateral estoppel to apply and bar consideration of an issue, the Court must determine that: (1) the issue previously decided is identical with the one presented in the action in question, (2) the prior action has been finally adjudicated on the merits, (3) the party against whom the doctrine is invoked was a party or in privity with a party to the prior adjudication, and (4) the party against whom the doctrine is raised had a full and fair opportunity to litigate the issue in the prior action.⁵⁹ The Delaware Medical Board was not a party or in privity with a party to the prior adjudications in New Jersey, Pennsylvania or Kentucky. Due to the conjunctive nature of the elements, the doctrine of collateral estoppel is not applicable.

CONCLUSION

⁵⁷*Dowling v. United States*, 493 U.S. 342 (1990); *Ashe v. Swenson*, 397 U.S. 436, 441 (1970).

⁵⁸*State v. Machin*, 642 A.2d 1235, 1237 (Del. Super. 1993) (citing *Dowling v. United States*, 493 U.S. 342 (1990)).

⁵⁹*City of Newark v. Unemployment Insurance Appeal Board*, 802 A.2d 318, 323 Del. Super. 2002); *Betts v. Townsends, Inc.*, 765 A.2d 531, 535 (Del. 2000); see also *Machin*, 642 A.2d at 1239 (citing *United States v. Rogers*, 960 F.2d 1501, 1508 (10th Cir. 1992)).

The Court finds that there is substantial evidence to support the finding of the Board. Based on the foregoing reasons, the Board's decision denying Appellant a certificate to practice medicine in the State of Delaware is **AFFIRMED**.

IT IS SO ORDERED.

The Honorable Richard S. Gebelein

Orig: Prothonotary
cc: Michael J. Pravetz, Philadelphia, Pennsylvania.
Thomas H. Ellis, Deputy Attorney General, Wilmington, Delaware.
Michael M. Tischer, Deputy Attorney General, Dover, Delaware.