

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

GREGORY N. VILLABONA, M.D. :
 :
 Respondent Below - : C.A. No. 03A-09-007 WLW
 Appellant, :
 :
 v. :
 :
 BOARD OF MEDICAL PRACTICE :
 OF THE STATE OF DELAWARE, :
 :
 Appellee. :

Submitted: January 9, 2004
Decided: April 28, 2004

ORDER

Upon Appeal of Decision of the Board of
Medical Practice. *Affirmed.*

Victor F. Battaglia, Esquire of Biggs & Battaglia, Wilmington, Delaware, attorneys
for Appellant.

Gregory E. Smith, Esquire, Department of Justice, Wilmington, Delaware,
attorneys for Appellee.

WITHAM, J.

Villabona v. Board of Medical Practice

C.A. No. 03A-09-007 WLW

April 28, 2004

Introduction

Before this Court is Gregory N. Villabona, M.D.’ s appeal of a decision of the Board of Medical Practice (“ the Board”) finding that he had engaged in unprofessional conduct as defined in 24 Del. C. § 1731 and imposing conditions on his license to practice medicine in the State of Delaware. The State has answered the appeal.

Background

Dr. Villabona graduated from medical school in 1989 and has been licensed to practice psychiatry in Delaware for approximately eleven years. On September 30, 2002 in the Circuit Court for Queen Anne’ s County, Maryland, Dr. Villabona entered a plea of guilty to two criminal counts: Third Degree Sex Offense (felony) on a female minor between January 1, 1978 and December 31, 1978 and Fourth Degree Sex Offense (misdemeanor involving moral turpitude) on a female minor between January 1, 1983 and December 31, 1983. Both of the offenses occurred prior to Dr. Villabona’ s enrollment in medical school. At the time of the first offense, Dr. Villabona was thirty years old and the victim, his niece, was eleven years old. At the time of the second offense, Dr. Villabona was thirty-five and the victim, another niece, was eleven. After a hearing in the Circuit Court for Queen Anne’ s County, the Court sentenced Dr. Villabona to probation before judgment, placing him on probation for five years, ordering that he have no unsupervised contact with minor children and ordering him to seek mental health counseling.

Villabona v. Board of Medical Practice

C.A. No. 03A-09-007 WLW

April 28, 2004

Pursuant to the probation before judgment, if Dr. Villabona violates his probation, he may then be convicted of the offenses and sentenced accordingly.

As a result of his guilty plea in Maryland, the Delaware Division of Professional Regulation conducted an investigation of Dr. Villabona. Initially the State filed a motion to temporarily suspend Dr. Villabona's medical license, but the Board denied the motion. Three charges were then brought against Dr. Villabona in a formal complaint prepared by the Board-appointed investigative committee: mental incompetence, failure to report a change in hospital privileges, and engaging in unethical conduct likely to cause harm to the public. A three-member hearing panel ("the Panel") was appointed by the Board to hear all of the evidence relating to the allegations in the complaint. An evidentiary hearing was conducted before the Panel on March 5 and March 25, 2003. At the conclusion of the medical testimony presented to the Panel, it concluded that there was no credible evidence to support the charges of mental incompetence and failure to report a change in hospital privileges. Thus, those charges were dismissed. However, at the conclusion of all of the evidence the Panel determined that Dr. Villabona's guilty plea to a felony and a misdemeanor involving moral turpitude before the Maryland court constituted unprofessional conduct likely to harm the public in violation of 24 Del. C. § 1731(b)(3). Although the Panel heard extensive testimony from Dr. Villabona's accusers and additional witnesses, it based its decision on the fact that Dr. Villabona expressly stated in the Maryland court that he had actually committed two of the acts

Villabona v. Board of Medical Practice

C.A. No. 03A-09-007 WLW

April 28, 2004

with which he was charged.¹

The Panel recommended to the Board to require Dr. Villabona to notify present and future patients concerning the guilty plea, treat minors only with adult supervision, be supervised by another physician, and be placed on probation concurrent with the probation imposed by the State of Maryland. The Board adopted the findings of the Panel but made a minor change to one of the Panel's conclusions and agreed with the conditions placed on Dr. Villabona's license to practice medicine.² Dr. Villabona is now appealing the Board's decision.

Discussion

Parties' Contentions

Dr. Villabona contends that the Board committed legal error and violated his due process rights when it found him guilty of unprofessional conduct due to his participation in a plea agreement in Maryland which did not result in conviction of a crime. He further argues that the Board's finding that his actions constituted dishonorable or unethical conduct likely to harm the public is not supported by substantial evidence. In addition, he contends that the investigative and hearing

¹ See Appendix to State's Answering Brief, Transcript of the September 30, 2002 plea colloquy in *State v. Villabona*, Case No. CR 5312 in the Circuit Court for Queen Anne's County, Maryland, pp. 17-18 (quoted below).

² The Panel's conclusion stated, "[W]e conclude that his behavior has harmed the public in a general sense." The Board changed this sentence to read, "[W]e conclude that his behavior has harmed the public." However, it is important to note that this was in the Panel's Conclusions, not its Findings of Fact.

Villabona v. Board of Medical Practice

C.A. No. 03A-09-007 WLW

April 28, 2004

process undertaken by the Board did not comply with statutory standards and violated his due process right to a fair hearing. Finally Dr. Villabona argues that the Board committed legal error by imposing a sanction which was designed to punish him rather than protect the public.

The State asserts that because Dr. Villabona admitted his guilt as part of his plea agreement in Maryland, he cannot collaterally attack the admission in a proceeding before the Board. In addition the State argues that Dr. Villabona's admission of guilt constituted sufficient evidence from which the Board could conclude that he engaged in dishonorable or unethical conduct likely to deceive, defraud, or harm the public. Further, the State contends that the Board's actions complied with statutory requirements and due process. Finally the State insists that the sanctions imposed by the Board were designed to protect the public and were rationally related to the conduct in which Dr. Villabona admitted he engaged.

Standard of Review

A decision of the Board may be appealed to the Superior Court within 30 days of the issuance of the Board's written decision and order.³ On appeal from the Board, the role of the Superior Court is to determine whether there was substantial competent evidence to support the finding of the Board.⁴ Substantial evidence is

³ 24 Del. C. § 1736(b) (2004) and 29 Del. C. § 10142 (2004).

⁴ *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

Villabona v. Board of Medical Practice

C.A. No. 03A-09-007 WLW

April 28, 2004

such relevant evidence that a reasonable mind may accept to support a conclusion.⁵ The Court is not the trier of fact and does not have the authority to weigh the evidence or make its own factual findings.⁶ Thus, the Court will defer to the Board in its assessment of demeanor and credibility of witnesses and the weight to be given to their testimony.⁷ However, the Court's review of questions of law is *de novo*.

The Board did not commit legal error when it concluded that the plea agreement in Maryland constituted unprofessional conduct

The Board concluded that Dr. Villabona judicially admitted in the Maryland court that he committed acts of sexual misconduct against minors prior to becoming a licensed physician. The Board went on to find that his guilty plea to a felony and a misdemeanor of moral turpitude constituted dishonorable and unethical conduct which harmed the public in violation of 24 Del. C. §1731(b)(3). The Board expressly concluded that Dr. Villabona's admission of guilt to the sexual offenses constituted dishonorable and unethical conduct, even though the guilty plea did not result in a conviction.

Dr. Villabona contends that the Board committed legal error because, although the Board heard other testimony, it relied solely upon his guilty plea before

⁵ *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981).

⁶ *Johnson*, 213 A.2d at 66.

⁷ *General Motors Corp. v. Cresto*, 265 A.2d 42, 43 (Del. Super. Ct. 1970).

Villabona v. Board of Medical Practice

C.A. No. 03A-09-007 WLW

April 28, 2004

the Maryland court in making its determination that he was guilty of dishonorable and unethical conduct. Dr. Villabona argues that because he received probation before judgment for the crimes to which he pleaded guilty, the Board is not permitted to use his guilty plea as the sole basis for finding that he committed dishonorable and unethical conduct. His argument centers on the idea that he was not actually convicted of the crimes because he received probation before judgment. In support of this contention, he cites *Myers v. Maryland*⁸ and *Mannan v. District of Columbia Board of Medicine*.⁹ In addition, Dr. Villabona contends that he was denied his due process rights because the Panel and the Board failed to base its conclusion on the evidence presented at the hearing.¹⁰

In *Myers*, the Maryland Court of Appeals concluded that probation before judgment was not a conviction, and a person who receives probation before judgment is not convicted of the crime for which he or she was found guilty, unless the person violates the probation order and the court enters a judgment on the finding of guilt.¹¹ In *Mannan*, the District of Columbia Court of Appeals found that the Board of Medicine improperly relied almost exclusively on documents from a Maryland court proceeding as proof that Dr. Mannan had committed a willful

⁸ 496 A.2d 312 (Md. App. 1985).

⁹ 558 A.2d 329 (D.C. App. 1989).

¹⁰ This will be discussed below with Dr. Villabona's other due process arguments.

¹¹ *Myers*, 496 A.2d at 316.

Villabona v. Board of Medical Practice

C.A. No. 03A-09-007 WLW

April 28, 2004

violation of D.C. law. Dr. Mannan entered a not guilty (statement of facts) plea in a Maryland court to charges that he had over billed the Maryland Medicaid Assistance Program. The Maryland court found Dr. Mannan guilty and placed him on probation before judgment. As a result of this finding of guilt, the D.C. Board of Medicine refused to renew Dr. Mannan's license to practice medicine in D.C. Upon appeal of the Board's decision, the D.C. court concluded that the documentary evidence from the Maryland proceeding, upon which the Board relied, did not establish a willful violation of the law because Dr. Mannan had not admitted guilt or willfulness and the statement of facts from the proceeding was not before the board. Thus, the court concluded it was inappropriate for the Board to find that Dr. Mannan willfully violated the law when the evidence did not demonstrate this conclusion.

The State contends that the present case is distinguishable from the two cases cited by Dr. Villabona, because Dr. Villabona actually acknowledged his guilt in the Maryland criminal proceeding, rather than entering a not guilty plea. The following exchange took place during that criminal proceeding:

THE COURT: Other than the sentence, and there is no one in this world that knows what the sentence is going to be at this time, is there anything about the consequences of the plea that you don't understand?

THE DEFENDANT: No, sir, I understand.

Villabona v. Board of Medical Practice

C.A. No. 03A-09-007 WLW

April 28, 2004

THE COURT: Are you pleading guilty because you are, in fact, guilty or because you believe that, as I said before, you think it is in your best interests because there is a possibility of your being convicted and the evidence on which that conviction is based could be held to be sufficient.

THE DEFENDANT: That would be both, sir.

THE COURT: Both?

THE DEFENDANT: Yes, sir.¹²

MR. ROSS: Your Honor, we don' t want to quibble with the State' s case. We understand that would be the State' s evidence. Dr. Villabona would point out, however, that he never lived with either of the two girls. In addition, we would dispute a number of the allegations, even for those two years, but clearly Dr. Villabona is admitting to the Court that at least a specific act of fourth degree sex offense occurred with respect to [C.K.] in the year 1981, and a specific act that would constitute third degree sex offense occurred with [L.H.] in 1978.¹³

¹² Appendix to State' s Answering Brief, Transcript of the September 30, 2002 plea colloquy in *State v. Villabona*, Case No. CR 5312 in the Circuit Court for Queen Anne' s County, Maryland, pp. 17-18.

¹³ *Id.* at 21.

Villabona v. Board of Medical Practice

C.A. No. 03A-09-007 WLW

April 28, 2004

MR. ROSS: Your Honor, Dr. Villabona simply wants me to point out to the Court that he denies the frequency with which the State's allegations have been made, with respect to all these years. As I pointed out to the Court, what he is pleading to, in fact, is a single act in 1981 with respect to [C.K.] and a single act in 1978 with respect to [L.H.]. Nothing more and nothing less. I mean, that's clearly his admission here before the Court.¹⁴

Based upon this, the State argues that it was appropriate for the Board to conclude that Dr. Villabona's guilty plea constituted "dishonorable or unethical conduct likely to deceive, defraud or harm the public,"¹⁵ even though he was not actually convicted of the crimes charged. In addition, the State contends that Dr. Villabona's attempts before the Board to attack his guilty pleas were inappropriate on the basis of collateral estoppel, comparing this case to *Albertson v. Delaware Board of Nursing*.¹⁶

A plea of guilty is admissible as evidence.¹⁷ When a witness is confronted with a guilty plea, he or she is afforded an opportunity to explain why the guilty plea was entered and the trier of fact must then determine the weight to give the evidence

¹⁴ *Id.* at 25.

¹⁵ 24 Del. C. § 1731(b)(3) (2004).

¹⁶ 1985 Del. Super. LEXIS 1284 (Ms. Albertson was estopped from her collateral attack before the Board of Nursing on the pleas accepted in Superior Court).

¹⁷ *Insurance Company of North America v. Dubroff*, 1984 Del. Ch. LEXIS 520, *3 (citing D.R.E. 803(22)).

Villabona v. Board of Medical Practice

C.A. No. 03A-09-007 WLW

April 28, 2004

of the guilty plea.¹⁸ Here, the Panel was properly informed of Dr. Villabona's guilty plea and received a transcript of the plea colloquy as evidence. Testimony was provided by Dr. Villabona, his accusers and family members, as well as additional witnesses for the State and Dr. Villabona. At the conclusion of the testimony, the Panel found that the fact that Dr. Villabona stood in open court and stated that he had actually committed the acts with which he was charged was sufficient to establish dishonorable or unethical conduct.

The Court finds that the Board did not commit legal error in reaching this conclusion. The Panel properly admitted the evidence of Dr. Villabona's guilty plea and heard additional testimony. However, the Panel chose to place greater weight on Dr. Villabona's guilty plea in the Maryland court than on his denial of guilt before the Panel. It is not the role of this Court to weigh the evidence or assess the credibility of the witnesses or evidence.

Unlike the Maryland and District of Columbia decisions relied upon by Dr. Villabona, in this case he expressly stated to the Maryland court that he committed the charged acts. The Board received a transcript of his plea colloquy, which included the presentation of the facts made by the State of Maryland at the proceeding. In addition, unlike in *Mannan*, Dr. Villabona's guilty plea to the charges was sufficient to establish unprofessional and dishonorable conduct in violation of Delaware statute. Therefore, the Board's decision will not be

¹⁸ *Hawkins v. Schreiber*, 2000 Del. Super. LEXIS 416, *5-6.

Villabona v. Board of Medical Practice

C.A. No. 03A-09-007 WLW

April 28, 2004

overturned on this basis.

The Board' s decision was supported by substantial evidence

The Board concluded that Dr. Villabona' s guilty plea to sexual offenses against minors constituted unprofessional or dishonorable conduct likely to deceive, defraud or harm the public. The basis of the Board' s decision was that the conduct to which Dr. Villabona pleaded guilty, a felony and a misdemeanor involving moral turpitude, was dishonorable conduct likely to harm the public. Dr. Villabona contends that the Board did not hear any evidence supporting its decision that the entry of the guilty pleas was conduct likely to deceive, defraud, or harm the public. The State asserts that the Board did hear evidence regarding the charges made against Dr. Villabona and, further, that the Board should be able to rely on judicial admissions made by licensees in criminal proceedings, rather than having to re-try the criminal case before the Board.

After reviewing the transcript of the proceeding below, it is clear to this Court that the Board' s findings were supported by substantial evidence. First, the Panel received a copy of the plea colloquy in which Dr. Villabona acknowledges that he actually committed the acts to which he was pleading guilty. Second, the Panel heard testimony from Dr. Neil Kaye, who testified as an expert witness for the State. Dr. Kaye testified that, in his expert opinion, Dr. Villabona' s conduct was likely to harm the public, particularly his patients. Third, the Panel heard the testimony of Dr. Karl McIntosh, an investigator for the Board of Medical Practice,

Villabona v. Board of Medical Practice

C.A. No. 03A-09-007 WLW

April 28, 2004

who testified that he believed public safety was an issue with respect to the crimes to which Dr. Villabona pleaded guilty. Finally, the Board heard testimony from Dr. Villabona's accusers and family members regarding the offenses with which he was charged. The Court finds that this is substantial evidence supporting the Board's decision.

Dr. Villabona's due process right to a fair hearing was not violated

Dr. Villabona contends that the Board violated his due process rights in a number of different ways. He argues that the Panel failed to base its conclusion on the evidence presented at the hearing and that the State has operated in a manner inconsistent with its statutory authority depriving him of a fair hearing. Specifically Dr. Villabona contends that the State erred by announcing its intent to investigate Dr. Villabona in the newspaper and that the Board failed to appoint special investigators as was required by the statute. In addition, Dr. Villabona contends that the Board inappropriately allowed the testimony of his two accusers because the Board dismissed the two charges upon which it believed the accusers' testimony was relevant. Finally, Dr. Villabona argues that the Board committed error when it struck four words from the Hearing Panel's statement of conclusion.

The State asserts that the entire argument lacks merit because Dr. Villabona received notice and was given an opportunity to be heard.

To prevail on a due process claim, Dr. Villabona must prove the existence of a protected property interest and demonstrate that he was deprived of that interest

Villabona v. Board of Medical Practice

C.A. No. 03A-09-007 WLW

April 28, 2004

without notice and an opportunity to be heard.¹⁹ A professional license is property within the Fourteenth Amendment to the United States Constitution and thus is afforded due process protection.²⁰ Thus, Dr. Villabona must receive proper notice of the hearing and “be heard ‘at a meaningful time and in a meaningful manner.’”²¹ Dr. Villabona does not dispute that he received proper notice of the hearing. However, he contends that he was not given an opportunity to be heard in a meaningful manner.

The Panel heard two days of testimony from a number of witnesses. Dr. Villabona testified before the Panel on two separate occasions and had an opportunity to call witnesses and cross-examine the State’s witnesses. The State presented its case on the first day of the hearing, after which Dr. Villabona had twenty days to prepare his case before presenting it to the Panel. At the conclusion of the hearing, the Panel found that Dr. Villabona’s guilty plea was sufficient to establish that he committed unprofessional conduct. As stated above, the Court found that the Board’s conclusion was supported by substantial evidence. Therefore, the Court finds that the Panel and Board did base their decisions on evidence presented at the hearing.

¹⁹ *Pravetz v. State Board of Medical Practice*, 2003 Del. Super. LEXIS 183, *25.

²⁰ *Cain v. Delaware State Board of Accountancy*, 1989 Del. Super. LEXIS 427, *5.

²¹ *Slawik v. State*, 480 A.2d 636, 645 (Del. 1984) (citing *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)).

Villabona v. Board of Medical Practice

C.A. No. 03A-09-007 WLW

April 28, 2004

None of the additional allegations made by Dr. Villabona rise to the level required to demonstrate a due process violation. Generally, an agency is required to follow its rules and regulations.²² However, an exception exists when there is no harm from the violation because no substantial rights are involved.²³ The allegations Dr. Villabona has raised with respect to the Board violating its statutory authority do not involve substantial rights and he has failed to establish that he was prejudiced by the alleged violations. The newspaper article was written about Dr. Villabona's plea in the Maryland court. The comments made by the Director of the Division of Professional Regulation state that the Division would investigate the charges in order to protect the public. The Director requested that anyone with concerns regarding the investigation contact the Board of Medical Practice, but did not disclose any details of the investigation and did not solicit complainants. In addition, no complainants came forward as a result of the article. Further, pursuant to its statutory authority, the Board appointed Dr. McIntosh to investigate the alleged conduct of Dr. Villabona. No evidence has been presented demonstrating that the investigative process was undertaken improperly. Without any showing that the investigation was improper, the Court must conclude that it was conducted as required by statute.

Finally, Dr. Villabona's argument that the Panel improperly heard testimony

²² *Richards v. Delaware Harness Racing Commission*, 1998 Del. Super. LEXIS 511, *7.

²³ *Id.*

Villabona v. Board of Medical Practice

C.A. No. 03A-09-007 WLW

April 28, 2004

from the accusers is without merit. An administrative agency is not strictly bound by the rules of evidence. It was appropriate for the Panel to hear the testimony from the accusers and other witnesses as it was relevant to the charges made in the complaint. Dr. Villabona was given the opportunity to cross-examine the accusers, as well as all of the other witnesses. Therefore, the Court finds that Dr. Villabona's due process rights were not violated.

Dr. Villabona's final contention is also without merit. The Board adopted the Panel's findings of fact as is required by 24 Del. C. § 1734(a). However, rather than adopting the Panel's conclusions in their entirety, the Board made minor modifications which did not substantially change the Panel's conclusions.²⁴ Again, Dr. Villabona has not established any prejudice by this alleged violation of statute.

Based on the above discussion, Dr. Villabona has failed to establish that his due process rights were violated in the course of the investigation and hearing.

The sanction imposed by the Board was appropriate given the circumstances

Dr. Villabona's final contention is that the sanction imposed by the Board results in punishing him rather than protecting the public. His argument centers on one statement made by the Board, in which they say they believe it is unlikely that Dr. Villabona will commit transgressions in the future. However, the State contends that the Board was within its discretion when it placed the restrictions on Dr. Villabona's license.

²⁴ The modifications are set by the Court above.

Villabona v. Board of Medical Practice

C.A. No. 03A-09-007 WLW

April 28, 2004

The choice of a penalty by an administrative agency is a matter of discretion to be exercised solely by the agency, as long as it is based on substantial evidence and not outside of its statutory authority.²⁵ In reviewing the penalty imposed by the Board, the question for the Court is not whether this Court would have imposed the same penalty as that imposed by the Board, but whether such punishment is so disproportionate to the offense in light of all the circumstances as to be shocking to one's sense of fairness.²⁶

The Board's decision that Dr. Villabona violated 24 Del. C. § 1731(b)(3) was supported by substantial evidence, as this Court previously concluded. Pursuant to 24 Del. C. § 1735, the Board may restrict, suspend or revoke a license to practice medicine as the Board deems appropriate. Here, the restrictions placed on Dr. Villabona's license are reasonable under the circumstances. Dr. Villabona acknowledged his guilt with respect to sexual offenses against minors. The restrictions imposed by the Board appear to be designed to protect the public by placing Dr. Villabona's patients on notice of his guilty pleas and by requiring adult supervision when he is treating minor patients. Further, the requirement that another physician supervise Dr. Villabona's practice appears to be reasonably related to protecting the public by permitting the Board of Medical Practice to

²⁵ *Crocco v. Board of Medical Practice*, 1990 Del. Super. LEXIS 271, *8 (citing *Warmouth v. Delaware State Board of Examiners in Optometry*, 514 A.2d 1119, 1123 (Del. Super. Ct. 1985)).

²⁶ *Id.* at *8.

Villabona v. Board of Medical Practice

C.A. No. 03A-09-007 WLW

April 28, 2004

continue monitoring Dr. Villabona' s compliance with the restrictions.

The Board considered mitigating factors in imposing the restrictions, including the fact that no allegations had been made involving his conduct as a psychiatrist. In addition the Board' s statement that they believed Dr. Villabona would not commit future transgressions is an indication to the Court that mitigating factors were considered.

Dr. Villabona' s contention that the restrictions were designed to punish him, rather than protect the public, is not supported by the evidence. Given the seriousness of the crimes to which he pleaded guilty, it appears that the restrictions imposed by the Board are the minimum restrictions required to protect the public.

Under the circumstances presented, the Court finds that the restrictions placed on Dr. Villabona' s license to practice medicine are designed to protect the public and are supported by substantial evidence.

Villabona v. Board of Medical Practice

C.A. No. 03A-09-007 WLW

April 28, 2004

Conclusion

Based upon a careful and thorough review of the record below and the briefs of the parties, the Court finds that the Board did not commit legal error and that its decision is supported by substantial evidence. Therefore, the decision of the Board of Medical Practice is *affirmed*.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.

J.

WLW/dmh

oc: Prothonotary

xc: Order Distribution

File