

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

M.H.,
:
:
Petitioner :
:
v. : No. 2036 C.D. 2008
:
Department of State, Bureau of : Submitted: August 7, 2009
Professional and Occupational Affairs, :
State Board of Social Workers, :
Marriage and Family Therapists and :
Professional Counselors, :
:
Respondent :

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE JOHNNY J. BUTLER, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE COHN JUBELIRER**

FILED: January 12, 2010

M.H. petitions for review of an adjudication and order of the Department of State, Bureau of Professional and Occupational Affairs (BPOA), State Board of Social Workers, Marriage and Family Therapists and Professional Counselors (Board). Acting pursuant to Section 11(a)(8) of the Social Workers, Marriage and Family Therapists and Professional Counselors Act (Act),¹ the Board indefinitely

¹ Act of July 9, 1987, P.L. 220, as amended, 63 P.S. § 1911(a)(8). Section 11(a)(8) of the Act provides, in pertinent part:

(a) Grounds.—The board may refuse, suspend, revoke, limit or restrict a license or reprimand a licensee for any of the following:

suspended M.H.’s clinical social work license because it concluded that she suffers from mental conditions which affect her ability to practice with reasonable skill and safety. However, the Board immediately stayed the suspension in favor of probation, subject to numerous terms and conditions.² M.H. argues that: (1) the Board erred in suspending her license and in imposing probationary restrictions under Section 11(a)(8) because BPOA failed to prove that her mental conditions currently render her unable to practice with reasonable skill and safety; (2) even if the Board did not err in suspending her license and in imposing probationary restrictions, the probationary conditions imposed by the Board were excessively harsh and constituted an abuse of discretion; and (3) she did not receive adequate notice of the charges against her.

....

(8) Being unable to practice with reasonable skill and safety by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals or any other type of material, or as a result of any mental or physical condition. In enforcing this paragraph, the board shall, upon probable cause, have authority to compel a licensee to submit to a mental or physical examination by a physician approved by the board.

63 P.S. § 1911(a)(8).

² Subsection (b) of Section 11 sets forth the disciplinary actions that the Board may take if one of the conditions set forth in subsection (a) is satisfied. Subsection (b) provides, in pertinent part:

(b) Board action.—When the board finds that the license or application for license of any person may be refused, revoked, restricted or suspended under the terms of subsection (a), the board may:

....

(5) Suspend enforcement of its findings thereof and place a licensee on probation with the right to vacate the probationary order for noncompliance.

63 P.S. § 1911(b)(5).

I. Facts and Procedural Posture

M.H. is a licensed clinical social worker. On May 23, 2006, while working for a company providing mental health services (the Company), M.H. conducted a therapy session with K.F. and her 12-year-old daughter, A.F. During the therapy session, A.F. revealed to M.H. that “her father, who had committed suicide on February 3, 2006, had molested her.” (Final Adjudication and Order, Findings of Fact (FOF) ¶ 19.) After A.F. revealed this information, M.H., K.F., and A.F. determined that A.F. should tell the rest of her family what her father had done to her. Shortly thereafter, K.F. called A.F.’s paternal grandparents, T.F. and P.F., as well as other family members, and asked them to come to the Company that evening to participate in a meeting regarding A.F. K.F. did not provide T.F. and P.F. with any specific information about the subject matter of the meeting. Thereafter, T.F. called M.H. attempting to get more information about the meeting. Although M.H. advised T.F. that the meeting pertained to A.F., she would not reveal any more information.

Before T.F. and P.F. arrived at the Company, M.H. convened the meeting with the other family members who were called, and A.F. told them that “her father had sexually molested her.” (FOF ¶ 26.) When T.F. and P.F. arrived at the Company, T.F. initially remained in their car because he was upset about the meeting being scheduled on short notice. T.F. and P.F. had dinner plans with friends that evening, which they had to cancel because of the emergency meeting. T.F. subsequently entered the Company’s waiting room, and one of A.F.’s family members reported to him what had been said during the meeting. As a result, T.F. “became very angry and began shouting.” (FOF ¶ 28.) T.F. indicated to M.H. that “he felt blindsided by [the] meeting,” and he “continued to shout.” (FOF ¶ 29.)

T.F.'s behavior disrupted other therapy sessions that were taking place at the Company, and M.H. asked T.F. to control his behavior; however, T.F. refused to do so. As a result, M.H. called the police, but T.F. left before the police arrived.

The Company subsequently terminated M.H.'s employment in June of 2006. The reasons that the Company provided for terminating M.H.'s employment included "absenteeism, financial issues, paperwork concerns, instability in her personal behavior, and issues with respect to unnamed clients." (FOF ¶ 31.)

In December of 2006, BPOA's Bureau of Enforcement and Investigation (BEI) began investigating M.H. because a complaint had been filed with regard to the emergency meeting involving the "F" family. As part of this investigation, M.H. released her medical records to BEI. M.H.'s medical records revealed that "she suffers from major depression, with a history of past suicide attempts." (FOF ¶ 34.) The medical records also revealed that M.H. has a history of "alcohol abuse, bingeing and purging, disabling depressive episodes, and self mutilation." (FOF ¶ 35.) After reviewing these records, the Board's Probable Cause Screening Panel directed M.H. to submit to a mental and physical examination with Pogos H. Voskanian, M.D. Dr. Voskanian examined M.H. on August 11, 2007, and diagnosed her with "major depressive disorder, borderline personality disorder and histrionic traits." (FOF ¶ 38.)

The Board issued an Order to Show Cause (OSC) to M.H. on November 6, 2007, which set forth two counts. In Count I, the Board asserted that M.H. is subject to adverse licensing action under Section 11(a)(2) of the Act, 63 P.S. §

1911(a)(2),³ because she “has been found guilty of immoral or unprofessional conduct when she departed from or failed to conform to the standards of acceptable and prevailing social work practice with respect to her conduct involving [A.F.] as well as [T.F.] and his family.” (OSC ¶ 18, November 6, 2007.) In Count II, the Board asserted that M.H. is subject to adverse licensing action under Section 11(a)(8) of the Act because she “is unable to practice the profession with reasonable skill and safety to patients by reason of illness, addiction to drugs or alcohol, or mental impairment.” (OSC ¶ 28, November 6, 2007.) M.H. filed an Answer denying the allegations set forth in the OSC and raising numerous affirmative defenses.

On March 11, 2008 and April 4, 2008, the Board conducted formal hearings on the matter. The BPOA presented the testimony of several witnesses, including: B.F., A.F.’s uncle; the owner of the Company; P.F.; T.F.; Lydia Welles, the BEI investigator who investigated M.H.; and Dr. Voskanian. M.H. testified on her own behalf and presented the testimony of K.F.

Following the hearing, the Board issued its Final Adjudication and Order. The Board dismissed Count I, concluding that M.H. “did not engage in

³ Section 11(a)(2) of the Act provides, in pertinent part:

(a) Grounds.—The board may refuse, suspend, revoke, limit or restrict a license or reprimand a licensee for any of the following:

••••

(2) Being found guilty of immoral or unprofessional conduct. Unprofessional conduct shall include any departure from or failure to conform to the standards of acceptable and prevailing practice. In proceedings based on this paragraph, actual injury to the client need not be established.

unprofessional conduct by failing to conform to the standards of acceptable and prevailing social work practice with respect to her conduct involving [A.F.] as well as [T.F.] and his family.”⁴ (Final Adjudication and Order, Conclusions of Law (COL) ¶ 3.) However, with regard to Count II, the Board concluded that M.H. “is unable to practice the profession with reasonable skill and safety to patients by reason of illness, addiction to drugs or alcohol, or mental impairment.” (COL ¶ 4.) In reaching this conclusion, the Board reviewed M.H.’s medical history, stating:

At the hearing, the evidence established that [M.H.] was hit by a tractor trailer at the age of 22 or 23 and has had severe episodes of pain and depression ever since. [M.H.] attempted suicide on two occasions in March and April, 2006 and was hospitalized for each. In March 2006, her admitting diagnosis was major depressive disorder recurrence and severe bulimia. The April, 2006 suicide attempt involved the use of alcohol and pills. Her admitting diagnosis in April, 2006, was major depressive disorder recurrence, severe bulimia, and alcohol abuse.

[M.H.]’s medical history indicates that she did not receive consistent therapy or treatment until she began seeing [her Treating P]sychiatrist, in May, 2006. [Treating Psychiatrist] was concerned about her alcohol consumption and believed that [M.H.] used alcohol every night for a “quick fix.” [Treating Psychiatrist] prescribed [M.H.] pscytropic [sic] medications to monitor her pain and depression.

(Final Adjudication and Order at 16-17 (citations omitted).) Moreover, the Board noted that M.H.’s “termination from her employment at the Company on June 8, 2006, was soon after [her] suicide attempts and around the time that she began seeing [Treating Psychiatrist] for treatment. [M.H.’s] termination from the

⁴ The Board explained this conclusion by stating that “it is unclear what conduct [M.H.] actually engaged in that rises to the level of unprofessional conduct” and that “[m]any of the factual allegations [contained in the OSC] were actually disputed by evidence in the record and found not to be true.” (Final Adjudication and Order at 14.)

Company was based in part on absenteeism and instability in her personal behavior.” (Final Adjudication and Order at 17.) Furthermore, the Board explained that it was “rel[ying] heavily on Dr. Voskanian’s expert report and testimony,” which it summarized as follows:

Dr. Voskanian testified that, based upon a review of [M.H.]’s medical records as well as his own examination of [M.H.], he believes [M.H.] can safely practice as a clinical social worker so long as she continues in therapy and is monitored by a psychiatrist. He also believes that [M.H.] must resolve her issues relating to alcohol consumption.

(Final Adjudication and Order at 17.) Finally, the Board explained that, “[b]ased upon all of the evidence, the Board believes that [M.H.] can continue to practice so long as she practices under supervision and is monitored with respect to her medications. The Board also believes that [M.H.] must obtain appropriate therapy for her depression, eating disorders and alcohol consumption.” (Final Adjudication and Order at 17.) Accordingly, the Board indefinitely suspended M.H.’s license for no less than three years, but immediately stayed the suspension in favor of probation subject to approximately 15 pages of terms and conditions.

The terms and conditions imposed required M.H. to, among other things: “fully and completely comply and cooperate with the [BPOA], Professional Health Monitoring Program (‘PHMP’), Disciplinary Monitoring Unit (‘DMU’) and its agents and employees in their monitoring of [M.H.]’s impairment,” (Board Order ¶ 1); “cease or limit . . . her practice if the PHMP case manager directs that [she] do so,” (Board Order ¶ 10); submit to an “assessment/treatment evaluation” with a “PHMP-approved provider,” and obtain any treatments recommended by the PHMP-approved provider, (Board Order ¶¶ 11, 14); “arrange and ensure that

written treatment reports from all PHMP-approved providers are submitted to the PHMP upon request or at least every sixty (60) days,” (Board Order ¶ 15); “not practice unless a PHMP-approved treatment provider recommends that practice in writing and the PHMP case manager gives written permission to practice,” (Board Order ¶ 21); give any employer or prospective employer a copy of the Board’s order, (Board Order ¶¶ 24-25); “ensure that [her] supervisor submits to the PHMP . . . [v]erification” of receipt and understanding of the Board’s order, “[a]n evaluation of [M.H.’s] work performance on a 60-day or more frequent basis as requested by the PHMP,” and “[i]mmediate notification of any suspected violation of [her] probation,” (Board Order ¶¶ 27(a)-(c)); “completely abstain from the use of controlled substances, mood altering drugs or drugs of abuse including alcohol in any form” except under limited circumstances (Board Order ¶ 19); “submit to random unannounced and observed body fluid toxicology screens (‘ROBS’) for the detection of substances prohibited . . . as directed by the PHMP,” (Board Order ¶ 28); “be responsible for all costs incurred in complying with [the Board’s] Order,” (Board Order ¶ 33); and “[u]pon request . . . submit to mental or physical evaluations, examinations or interviews by a PHMP-approved treatment provider or the PHMP,” (Board Order ¶ 34). M.H. now petitions this Court for review of the Board’s adjudication and order.^{5,6}

⁵ This Court’s review “is limited to determining whether there has been a violation of constitutional rights, errors of law committed, or whether necessary findings of fact are supported by substantial evidence.” Kepler v. State Board of Physical Therapy, 720 A.2d 496, 498 n.3 (Pa. Cmwlth. 1998). “Substantial evidence is defined as such relevant evidence which a reasonable mind might accept as adequate to support a conclusion.” Morris v. State Board of Psychology, 697 A.2d 1034, 1037 (Pa. Cmwlth. 1997).

⁶ We note that the BPOA does not appeal the Board’s determination that M.H. did not violate Section 11(a)(2) of the Act.

II. Discussion

M.H. first argues that the Board erred in suspending her license and in imposing probationary restrictions upon her because the record lacks substantial evidence to support the Board's finding that she is currently unable to practice with reasonable skill and safety due to her mental conditions. M.H. contends that, under Section 11(a)(8), the Board is only permitted to take adverse licensing action where a licensee is currently unable to practice with reasonable skill and safety due to one of the reasons listed therein, and that the BPOA's evidence only establishes that her mental conditions may render her unable to practice with reasonable skill and safety at some point in the future.

In relevant part, Section 11(a)(8) allows the Board to take adverse licensing action against a licensee for “[b]eing unable to practice with reasonable skill and safety by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals or any other type of material, or as a result of any mental or physical condition.” 63 P.S. § 1911(a)(8). Essentially, M.H. argues that the Board is seeking to impose penalties on her based only on the evidence that she suffers from mental conditions which might, in the future, impact her ability to practice. If this was the case, we would agree with M.H. By its language, Section 11(a)(8) does not allow the Board to penalize a licensee for merely suffering from a mental condition. Indeed, to do so would be grossly inequitable. Rather, Section 11(a)(8) requires that a licensee's mental condition render her unable to practice with reasonable skill and safety before the Board may restrict her license; in other words, there must be a sufficient link between the mental condition and her competence to practice. M.H. argues that, at the time of the hearing, there was no

evidence that she was not able to practice with reasonable skill and safety. We disagree.

Like other licensing boards, the Board here is the ultimate finder of fact. See Section 6(3)-(4) of the Act, 63 P.S. § 1906(3)-(4) (giving the Board the power to conduct hearings regarding violations of the Act); Cohen v. State Board of Medicine, 676 A.2d 1277, 1279 (Pa. Cmwlth. 1996) (State Board of Medicine is the ultimate finder of fact in hearings pursuant to the Medical Practice Act of 1985⁷). As such, issues of credibility and the weight to be given to the evidence are within the sole province of the Board. Carr v. State Board of Pharmacy, 409 A.2d 941, 944 (Pa. Cmwlth. 1980). In reviewing the record for substantial evidence, this Court is required to review the record as a whole. Bethenergy Mines v. Workmen’s Compensation Appeal Board (Skirpan), 531 Pa. 287, 292, 612 A.2d 434, 436-37 (1992). We also note that “effect must be given to the expertise of an administrative agency, which may draw on this expertise and experience in factual inquiries.” Shrader v. Bureau of Professional and Occupational Affairs, 673 A.2d 1, 2 (Pa. Cmwlth. 1995).

In finding that M.H.’s mental conditions rendered her unable to practice with reasonable skill and safety, the Board relied heavily on the report and testimony of BPOA’s medical expert, Dr. Voskanian. Dr. Voskanian opined that:

In order for her to safely practice her profession, without causing distress to self and others, [M.H.] would require continuous psychiatric treatment. However, exacerbations in her conditions should be reported to the Board. . . .

⁷ Act of December 20, 1985, P.L. 457, as amended, 63 P.S. § 422.41(5)

In summary, it is my opinion that [M.H.] at the present time is fit for duty and can practice her profession safely, however, given her history of disabling depressive episodes, unpredictability of her reactions especially at times of stress, likely history of substance abuse, numerous reported physical and mental health issues, on a long run it cannot be stated that she would be able to maintain a level of functioning required for practice of her profession in a safe manner and when and how acutely she would experience another episode of depression. Therefore, she requires treatment and monitoring by a psychiatrist. Additionally, [M.H.] requires treatment for her “self-medicating” with [a]lcohol.

(Dr. Voskanian’s Report at 42-43, Ex. C-10(A).) Dr. Voskanian expressed his concern about the possibility of M.H. “fall[ing] apart at some point” and “prevent[ing] future crisis.” (Board Hr’g Tr. at 197, 208, March 11, 2008.) Moreover, when asked by a Board member to clarify whether “without the psychiatric treatment that you have outlined and the therapy would she be duly fit to practice,” Dr. Voskanian unequivocally answered “No, because she, herself, states that when she could not afford her medications she fell apart,” and M.H., “herself, indicated she is not functioning well and is at a higher risk of falling apart when she is not treated. *Therefore, no.*” (Board Hr’g Tr. at 221-22 (emphasis added).) Dr. Voskanian further explained that M.H.’s mental conditions currently cause her difficulty in separating her personal issues from client issues. (Dr. Voskanian’s Report at 42, Ex. C-10(A); Board Hr’g Tr. at 194-95.) Dr. Voskanian based this opinion on his extensive examination of M.H. as well as his review of M.H.’s medical records, which indicate that her Treating Psychiatrist recorded in his progress notes on June 5, 2007 that M.H. “[s]truggles [with] marriage [and that her] job [with] juvenile sexual offenders is tough for her to separate from her life.” (Treating Psychiatrist Progress Note, June 5, 2007, Ex. C-10 at 5.)

M.H. argues that Dr. Voskanian’s testimony and report shows only that she had the potential to be unable to practice with reasonable skill and safety at some future time, not that she was currently unable to practice with reasonable skill and safety. We disagree. While we again emphasize that it would be unjust to allow a licensing board to take action against a licensee solely because the licensee suffered from a mental illness, such is not the case here. As cited above, when questioned by a Board member, Dr. Voskanian testified that M.H. was not fit to practice without psychiatric treatment and therapy. Additionally, the Board noted in its analysis that M.H. was discharged from the Company, in part, due to “absenteeism and instability in her personal behavior.” (Final Adjudication and Order at 17.) While such behavior does not, itself, appear to be cited as professional misconduct, it is evidence that M.H.’s mental conditions were negatively affecting her practice of social work.⁸

M.H. also argues that Dr. Voskanian’s opinion regarding her fitness to practice was incompetent because he was accepting as true facts alleged against her, regarding the “F” family, that were later found not to be true by the Board. Dr. Voskanian does recount in his report the allegations against M.H. (Dr.

⁸ M.H. argues that Finding of Fact 31, which states that she “was terminated from her employment with [the Company] as a result of absenteeism, financial issues, paperwork concerns, instability in her personal behavior, and issues with respect to unnamed clients,” is unsupported by substantial evidence in the record. (FOF ¶ 31.) M.H. argues that she was actually terminated due to her request for more working hours and more pay. We agree that M.H.’s pay does appear to have been a major issue in her termination; however, this issue would fall within the category of “financial issues” and, therefore, the Board’s finding, as stated, is not incorrect. Moreover, in its analysis, the Board acknowledges that M.H. was discharged “*in part*” due to “absenteeism and instability in her personal behavior.” (Final Adjudication and Order at 17.) This is supported by the testimony of the Company’s owner, as well as the language in the termination letter to M.H.. (Board Hr’g Tr. at 42-48; Letter from the Company’s owner to M.H. (June 9, 2006) at 1-2, Ex. C-5.)

Voskanian's Report at 2-3.) However, when questioned by M.H.'s counsel as to whether Dr. Voskanian accepted these facts as true, Dr. Voskanian stated:

I am not the – I am always clear in my mind that I am not the fact finder. I am not the person who is determining truth and untruth. I don't have that level of narcissism to say that this is true and this is not true. I am taking it as what is reported to me that she has done.

(Board Hr'g Tr. at 217.) Dr. Voskanian does hypothesize as to how the behavior M.H. was alleged to, but was found not to have, engaged in with the F family could have been influenced or engendered by her mental conditions. Dr. Voskanian's summary of M.H.'s condition, in which he renders his overall recommendation, however, does not mention the "F" family at all but, instead discusses M.H.'s medical records and his observations of M.H. during his interview with her. (Dr. Voskanian's Report at 38-43.) Therefore, we do not agree that Dr. Voskanian assumed the allegations against M.H. to be true, or that his opinion is incompetent because he was aware of those allegations.

We next turn to M.H.'s argument that the conditions of probation imposed by the Board are unreasonably harsh given the circumstances of M.H.'s violation of the Act. M.H. argues that the conditions of her probation, which this opinion outlines above, are so severe that she will be unable to reasonably practice her profession. M.H. argues that these conditions are particularly harsh in light of the fact that she was already seeking treatment for her mental conditions before the Board initiated its investigation and that Dr. Voskanian's opinion essentially stated that, in order to practice safely, M.H. simply needed to continue the treatment she was already undergoing. (Dr. Voskanian's Report at 43 (stating that M.H. "requires treatment and monitoring by a psychiatrist").) Relying on Sweeny v.

State Board of Funeral Directors, 666 A.2d 1137, 1140 (Pa. Cmwlth. 1995), M.H. contends that this Court may overturn a penalty that is “excessively harsh, i.e., unreasonable in light of the violation.”

However, as correctly noted by the Board, our Supreme Court rejected the standard suggested by M.H. in Slawek v. State Board of Medical Education and Licensure, 526 Pa. 316, 586 A.2d 362 (1991), stating:

What this court stated in Blumenschein [v. Pittsburgh Housing Authority], 379 Pa. 566, 109 A.2d 331 (1954),] is as valid in 1990 as it was in 1954. In the absence of bad faith, fraud, capricious action or abuse of power, reviewing courts will not inquire into the wisdom of the agency’s action or into the details or manner of executing agency action. It is conceivable, of course, that our requirement that the agency not act capriciously might, in a given case, be coterminous with Commonwealth Court’s requirement in its Hendrickson [v. State Board of Medicine], 529 A.2d 78 (Pa. Cmwlth. 1987),] case that the penalty be reasonable in light of the violation. As a general rule, however, Commonwealth Court’s statement of its rule is overbroad in that it invites the court to substitute its view of what it [sic] reasonable for that of the agency. For that reason, we believe that the proper review of the agency’s action, assuming that it is not defective under the self-explanatory requirements of the Administrative Agency Law, is *not* whether its order was reasonable, but whether it was made in “accordance with law” (i.e., whether it was made in bad faith, and whether it was fraudulent or capricious). As the Blumenschein court put it, a reviewing court may interfere in an agency decision only when “there has been a manifest and flagrant abuse of discretion or a purely arbitrary execution of the agency’s duties or functions.”

Id. at 322, 586 A.2d at 365 (emphasis in original) (quoting Blumenschein, 379 Pa. at 573, 109 A.2d at 335) (footnotes omitted). Thus, pursuant to Slawek, this Court may overturn the penalties imposed by an agency only where there is bad faith, fraud, capricious conduct, or a manifest and flagrant abuse of discretion. Id. at 322, 586 A.2d at 365. The Board contends that the probationary conditions that it

imposed were warranted because of M.H.'s mental conditions and were not a flagrant abuse of discretion in that the probationary terms that it imposed are similar to those imposed against other licensees with a mental condition and/or a physical addiction and are intended to safeguard the public.

This Court recognizes that it may only overturn or amend the Board's penalty when the Board abuses its discretion. Indeed, "this Court is 'required to correct abuses of discretion in manner or degree of penalties imposed.'" Ake v. Bureau of Professional and Occupational Affairs, State Board of Accountancy, 974 A.2d 514, 519 (Pa. Cmwlth. 2009) (quoting Foose v. State Board of Vehicle Manufacturers, Dealers, and Salespersons, 578 A.2d 1355, 1359 (Pa. Cmwlth. 1990)). However, this Court also recognizes that it lacks the expertise to craft an administrable framework of probation conditions in a case such as this. Nevertheless, where, as here, the Board provides no rationale explaining why it has imposed the conditions of probation it has, and why these conditions are necessary to protect the public, we are left with no basis upon which to review whether the Board has abused its discretion. Not all mental conditions that render a licensee unable to practice with reasonable skill and safety are the same and, therefore, the Board's argument that these are the same conditions it imposes on other licensees who are found to be unfit to practice is not convincing. While we can not say that the Board abused its discretion in imposing these conditions, neither can we say, without further explanation in its order, that the Board did not abuse its discretion.⁹

⁹ We note that the conditions imposed by the Board appear to be boilerplate and are, to a degree, absurd insofar as some of these conditions would not apply to social workers at all. For instance, the Board's order includes conditions that preclude M.H. from: "[p]ractic[ing] in any capacity that involves the administration of controlled substances"; "[w]ork[ing] in an emergency room, operating room, intensive care unit, cardiac catheterization laboratory, or coronary care unit"; "[p]ractic[ing] as an agency nurse"; or "work[ing] in any practice setting,

We must, therefore, vacate that part of the Board’s order imposing the conditions of M.H.’s probation, and remand this matter to the Board to either provide a rationale for these conditions, or, if it cannot do so, craft conditions of probation that more closely fit M.H.’s circumstances.

For these reasons, we affirm the Board’s order insofar as it finds that M.H. violated Section 11(a)(8) of the Act and imposed a three-year suspension of M.H.’s license, stayed in favor of probation. However, we vacate that part of the Board’s order imposing the conditions of M.H.’s probation and remand this matter to the Board to either explain its rationale for the conditions it seeks to impose or to impose conditions of probation more closely suited to M.H.’s circumstances.

RENÉE COHN JUBELIRER, Judge

including attendance at a nursing clinical course, without direct supervision.” (Board Order ¶¶ 22-23.) As far as this Court is aware, none of these activities are duties that a social worker would undertake in the course of her practice.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

M.H.,	:	
	:	
Petitioner	:	
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v.	:	No. 2036 C.D. 2008
	:	
Department of State, Bureau of	:	
Professional and Occupational Affairs,	:	
State Board of Social Workers,	:	
Marriage and Family Therapists and	:	
Professional Counselors,	:	
	:	
Respondent	:	

ORDER

NOW, January 12, 2010, that part of the order of the Department of State, Bureau of Professional and Occupational Affairs, State Board of Social Workers, Marriage and Family Therapists and Professional Counselors (Board) finding that M.H. violated Section 11(a)(8) of the Act and imposing a three-year suspension of M.H.'s license, stayed in favor of probation, is hereby **AFFIRMED**. That part of the Board's order imposing the conditions of M.H.'s probation is hereby **VACATED**, and this matter is hereby **REMANDED** to the Board to issue, within 60 days of the date of this Order, a new adjudication setting forth conditions of probation and an explanation of the Board's rationale for such conditions based on the current record.

Jurisdiction relinquished.

RENÉE COHN JUBELIRER, Judge