

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Craig Robert Bardell, M.D., :
Petitioner :
 :
v. :
 :
 :
State Board of Medicine, : No. 2339 C.D. 2007
Respondent : Argued: September 8, 2008

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE JOHNNY J. BUTLER, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McGINLEY

FILED: November 6, 2008

Craig Robert Bardell, M.D. (Dr. Bardell) petitions for review from an order of the State Board of Medicine (Board) which rejected the proposed adjudication and order of Chief Hearing Examiner John F. Alcorn¹ (Hearing Examiner Alcorn) and revoked the medical license of Dr. Bardell because of unprofessional conduct and a failure to provide proper medical treatment.

On August 5, 2005, the Pennsylvania Department of State (Department) issued an eighteen count order to show cause why the Board should not “suspend, revoke or otherwise restrict Respondent’s (Dr. Bardell’s) license, certificate, registration or permit, or impose a penalty” based upon Dr. Bardell’s failure “to take a full medical history of [Ms. Finley] when she first became an

¹ On July 3, 2007, Hearing Examiner Alcorn issued a proposed adjudication and order that Dr. Bardell be reprimanded and complete twenty hours of continuing medical education related to the treatment of asthma in addition to the required continuing medical education for license renewal.

inmate at SCI Muncy”; Dr. Bardell’s failure “to establish by objective criteria, spirometry^[2] or pulse oximetry^[3], the extent and severity of . . . [Ms. Finley’s] asthma”; Dr. Bardell’s failure “to examine . . . [Ms. Finley] properly and on multiple occasions, fail[ure] to examine . . . [Ms. Finley] at all”; Dr. Bardell’s failure “to understand the affect of abruptly stopping steroids in a steroid-dependent asthmatic patient”; and Dr. Bardell’s breach of the accepted standard of care “by practicing with reckless indifference to the interests of a patient when he discontinued orders for steroids written for . . . [Ms. Finley]; and . . . ignored the recommendation of P.A. Day to hospitalize . . . [Ms. Finley] for exacerbation of her asthma” Order To Show Cause, August 5, 2005, Paragraphs 96, 98, 100, 102, 106, 108, 112, 116, 120, 124, and 128 at 12-18; Reproduced Record (R.R.) at 12a-18a.

On September 30, 2005, Dr. Bardell responded to the order to show cause and asserted new matter: that “[a]t all times relevant hereto, Dr. Bardell complied with the applicable standard of care”; that “Dr. Bardell followed the precepts of a respected school of thought that putting a patient with the clinical parameters of Finley on systemic (oral) steroids on a chronic basis posed a situation where the known risks outweighed the potential benefits”; that “[b]y August 29, Finley had amply demonstrated that she was non-compliant with her treatment regimen and an untruthful medical historian”; that “[h]er non-compliance caused or contributed to her death to such an extent that Finley’s contributory

² The term “spirometry” is defined as “[m]aking pulmonary measurements with a spirometer.” Steadmen’s Medical Dictionary, 25th Edition 1990 at 1452.

³ The term “oximetry” is defined as the “[m]easurement with an oximeter of the oxygen saturation of a sample of blood.”

negligence surpasses the negligence of Dr. Bardell as a causative factor in producing Finley's death"; that "Dr. Bardell did not authorize Finley to have any medication in her cell"; that "Dr. Bardell was receiving reports from registered nurses that Finley was faking her symptoms in order to obtain more asthma medications, including oral Prednisone"; and that "Day and Martin were writing orders for oral Prednisone which was an overuse" Answer With New Matter To The Show Cause Order Dated August 5, 2005, Paragraphs 131-136, 138, 140, 146, and 150 at 31-34 and 36-38; R.R. at 54a-57a and 59a-61a.

On October 20, 2005, the Department responded to the new matter and denied the averments and demanded strict proof at the time of hearing. Reply To New Matter, October 20, 2005, Paragraphs 131-156 at 1-5; R.R. at 66a-70a.

At a hearing, Susan E. Day (P.A. Day), a physician's assistant, Abdulai Bukari, M.D. (Dr. Bukari), an expert in internal medicine, David H. Martin (P.A. Martin), a physician's assistant, and Kathryn McCarty (McCarty), a healthcare administrator, testified on behalf of the Department.

P.A. Day testified that on July 2, 2002, Ms. Finley was "[a]dmitted to SCI Muncy as new commitment . . . [she] [d]enies signs or symptoms of communicable diseases . . . history of asthma . . . subject to complaints of asthma, having trouble breathing complaints of wheezing . . . [and] [t]he medication that she was given that day in the nebulizer was Proventil." Hearing Transcript, April 3, 2006, (H.T. 4/3/06) at 43-44; R.R. at 83a. P.A. Day examined Ms. Finley on July 3, 2002, and found that she had "asthma, secondary to sinusitis." H.T. 4/3/06

at 58; R.R. at 87a. P.A. Day prescribed “Prednisone 80 milligrams PO^[4] QD now, then QD times three days, 60 milligrams PO QD times three days, 20 milligrams PO QD times three days . . . Albuterol MDI^[5] two puffs times three months, vancericil MDI two puffs PO Qid^[6] times three months, Keflex 500 milligrams PO Qid times seven days . . . start stock Motrin 800 PO Qid prn times seven days.” H.T. 4/3/06 at 60; R.R. at 87a. P.A. Day elaborated that with the Prednisone, an oral steroid, “I start them at a high dose and break them down relatively quickly [because] I didn’t think that the 10 milligrams twice a day was going to be enough medication to alleviate her symptoms.” H.T. 4/3/06 at 62; R.R. at 88a. P.A. Day saw Ms. Finley on July 8, 2002, for complaints of a shoulder injury and again on July 17, 2005, for sinusitis and exacerbation of asthma. H.T. 4/3/06 at 70 and 74; R.R. at 90a and 91a. P.A. Day “determined that she may have decreased breathing because of the Prednisone being discontinued.” H.T. 4/3/06 at 74; R.R. at 91a.

P.A. Day stated that on July 15, 2002, Dr. Bardell countermanded P.A. Martin’s order to start “Prednisone 10 milligrams by mouth twice daily for thirty days” and discontinued the Prednisone because of “steroid abuse . . . risks of treatment chronically . . . with Prednisone outweighs benefits.” H.T. 4/3/06 at 83-84; R.R. at 93a. On August 29, 2002, Ms. Finley was brought in on an emergency visit and “I knew she was in trouble . . . she need to go out to a hospital . . . I went to Dr. Bardell . . . [h]e said something to the effect that she’s probably faking it . . . [p]ut her on the ward and let [Nurse] Chiciello take care of her.” H.T. 4/3/06 at

⁴ “PO” is a Latin term that “means by mouth.” H.T. at 63; R.R. at 88a.

⁵ “MDI” is an abbreviation for “metered dose inhaler.” H.T. at 63; R.R. at 88a.

⁶ “QID” “means four times a day.” H.T. at 63; R.R. at 88a.

133; R.R. at 106a. At approximately 3:00 p.m., Ms. Finley was receiving breathing treatment when she became “verbally unresponsive, dropped the nebulizer mouth piece and arms and hands contracted . . . [s]he appeared to lose consciousness . . . ordered 911 immediately.” H.T. at 135; R.R. at 106a. P.A. Day concluded her testimony that Dr. Bardell was responsible for Ms. Finley’s death. H.T. 4/3/06 at 140; R.R. at 107a.

Dr. Bukari stated that asthma “is a chronic inflammatory disease of the airways, which the airways will be hyper responsive to things such as dust, cool air, viral infections . . . [i]t can manifest in very different ways clinically.” H.T. 4/3/06 at 202; R.R. at 123a. Dr. Bukari stated that the standard of care for an asthma patient’s initial visit:

You need to take a detailed history, conclusion, finding patient symptoms. This will include the past history of the patient. You want to know has the patient been hospitalized for asthma before, has this patient been intubated before, what are the medications you were taking, who are your previous treating physicians.

Then you will do a physical examination of the patient. You will also want to do objective measurements to determine the severity of the patient’s asthma.

Normally, . . . in the prison, I would do a peak flow meter to determine the peak flow of the patient.

H.T. 4/3/06 at 208; R.R. at 124a. Dr. Bukari continued that if a physician suspects that a patient is less than candid the standard of care is “you request the whole records from previous treating physicians.” H.T. 4/3/06 at 213; R.R. at 126a. Dr. Bukari noted that Dr. Bardell failed to request Ms. Finley’s medical records and must have been unaware that Ms. Finley was on 10 milligrams of Prednisone twice

a day and that she was hospitalized for asthma. H.T. 4/3/06 at 230-31 and 235; R.R. at 130a-31a. Dr. Bukari stated that Dr. Bardell failed to categorize Ms. Finley's asthma and as a result he treated her with inhaled steroids that were "grossly insufficient." H.T. 4/3/06 at 241 and 248; R.R. at 133a-34a. The proper course of treatment utilized was "[t]he patient was on Prednisone 10 milligrams twice a day prior to coming into the state institution . . . [s]o . . . if you want to wean her off the steroid first . . . I would examine this patient, do a peak flow to objectively assess the patient." "I see this patient is good enough for me to start to wean the patient off, so I will cut this Prednisone by say 50 percent or 25 percent, so go to 7.5 milligrams and keep the patient about a month or two . . . [w]hen I review, you come back again and gradually wean you off." "It means I have moved you from the top level to the next level." H.T. 4/3/06 at 271-72; R.R. at 140a. Dr. Bukari opined that because Dr. Bardell "failed to understand the severity of the patient's asthma . . . he under treated the patient . . . and the treatment is one course of morbidity and mortality of asthma." H.T. 4/3/06 at 286; R.R. at 285.

P.A. Martin testified that when he saw Ms. Finley on July 25, 2002, "her symptoms of asthma were actually worsening . . . she was having more problems breathing at the time." Hearing Transcript, April 4, 2006, (H.T. 4/4/06) at R.R. at 42; R.R. at 160a. P.A. Martin stated that the Prednisone was discontinued on July 15, 2002, by Dr. Bardell. H.T. at 43; R.R. at 160a. P.A. Martin stated "there was a meeting . . . in Jennifer Johnson's office [with] Dr. Bardell, Miss Day, myself, possibly Jen Johnson [and] . . . that we talked about our concern . . . about [our] orders being discontinued and specifically the oral Prednisone orders." H.T. 4/4/06 at 46; R.R. at 161a. P.A. Martin stated that no

administrative action was taken concerning Dr. Bardell's countermand of their orders. H.T. 4/4/06 at 48; R.R. at 161a.

McCarty testified that on August 29, 2002, "I originally went back to the ward to check on Erin [Ms. Finley] in the room, she was huffing and puffing . . . I came back to the office where Dr. Bardell and Nurse Chiciello were sitting." H.T. 4/4/06 at 128; R.R. at 181a. "I did say to Dr. Bardell, she's huffing and puffing . . . [h]e replied back pink puffer, blue bloater . . . [p]ink puffer is an asthmatic, blue bloater refers to a COPD⁷." H.T. 4/4/06 at 128; R.R. at 181a. McCarty said that "[a]ccording to the medical record" Dr. Bardell did not examine Ms. Finley. H.T. 4/4/06 at 129; R.R. at 182a.

Howard R. Cohen, M.D. (Dr. Cohen), board-certified in internal medicine, testified on behalf of Dr. Bardell. "I think there are basically two schools of thought." Hearing Transcript, May 16, 2006, (H.T. 5/16/06) at 12; R.R. at 241a. "The first . . . would be Dr. Bakari's presentation that an aggressive initial approach to gain immediate control and then a tapering down to the least amount of medication . . . the second would be to start with lower doses of medication and work your way up to control as long as an acute mortality situation was not at hand." H.T. 5/16/06 at 12; R.R. at 241a. Dr. Cohen stated that because Ms. Finley was not a compliant patient "it is very difficult to know what she was taking . . . she missed medications in Med-Line . . . [s]he also was alleged to have an inhaler in her cell" H.T. 5/16/06 at 33; R.R. at 247a. Dr. Cohen continued that "[t]he goal in using steroids in any condition, not only asthma, is to use the

⁷ "COPD" is the acronym for chronic obstructive pulmonary disease.

smallest amount possible and for the shortest amount of time possible.” H.T. 5/16/06 at 38; R.R. at 248a. “The side effects of steroids include death, as a maximum . . . [t]hey cause diabetes . . . cataracts . . . acroscopic of the hips and shoulders . . . a marked increase in infections with bacteria, a marked exacerbation of infections with tuberculosis.” H.T. 5/16/06 at 41; R.R. at 249a. Dr. Cohen opined that Dr. Bardell’s “appreciation of the clinical course, the dynamic variables of Erin Finley’s was adequate [and] within the standard of care” H.T. 5/16/06 at 45; R.R. at 250a.

Dr. Bardell, board-certified in family medicine and a graduate from medical school in 1986, testified that his practice included the treatment of asthma patients and patients with other pulmonary illnesses. H.T. 5/16/06 at 128; R.R. at 270a. Dr. Bardell stated that “my main focus was to attempt to get her [Ms. Finley] away from what was reported . . . to be a chronic use of steroids [and] . . . [t]he goal was to get her on an inhaled steroid rather than an oral steroid.” H.T. 5/16/06 at 131; R.R. at 271a. “In the process of that, I would encompass using a short-acting beta agonist four times a day and inhaled steroid twice the recommended dose along with a taper dose of an oral steroid.” H.T. 5/16/06 at 131; R.R. at 271a. Dr. Bardell commented that Ms. Finley “[f]requently was noncompliant with the medications even though it was noted that she had taken her medication.” H.T. 5/16/06 at 136; R.R. at 272a. Dr. Bardell also stated that he never experienced an expeditious response to a request for medical records. H.T. 5/16/06 at 168; R.R. at 280a. However, Dr. Bardell stated his treatment of Ms. Finley would have remained the same even if he had her medical records. H.T. 5/16/06 at 170; R.R. at 281a. Further, on August 29, 2002, P.A. Day came to me

and “said that she was examining the inmate [Ms. Finley] . . . [s]he wasn’t sure whether or not she was faking the symptoms that she was experiencing.” H.T. 5/16/06 at 194; R.R. at 287a. “I told her that we should put her in . . . for 23-hour observation in the infirmary, have her monitored routinely, and continue treatments as appropriately needed.” H.T. 5/16/06 at 194; R.R. at 287a. Dr. Bardell was alerted that Ms. Finley had “an inhaler in her room against the DOC policy . . . [P.A. Day] . . . asked if I would go and look at her.” H.T. 5/16/06 at 197; R.R. at 288a. “The patient [Ms. Finley] was sitting on a bench outside of the nurse’s station . . . [s]he was seated comfortably . . . [s]he appeared to be in no distress . . . I observed her respiratory status . . . [s]he was breathing normally . . . [s]he was not using any accessory muscles.” H.T. 5/16/06 at 198; R.R. at 288a. Dr. Bardell concluded that his treatment of Ms. Finley was not inadequate “because it never had a chance” due to Ms. Finley’s noncompliance and the P.A.s’ “approach to the way they were attempting to treat her versus how I was attempting to treat her.” H.T. 5/16/06 at 231-32; R.R. at 296a.

On November 27, 2007, the Board issued a final adjudication and order and found:

12. Ms. Finley was twenty-six years old when she died on August 29, 2002 (emphasis added).

13. Ms. Finley was diagnosed as a severe asthmatic in early childhood . . . Ms. Finley suffered from several related respiratory ailments . . . including chronic sinusitis, post-nasal drip, depression and pneumonia (emphasis added).

. . . .

16. In order to treat her asthma and respiratory ailments, Ms. Finley’s personal physicians prescribed oral steroids

and recommended that she use hand-held inhalers
(emphasis added).

....

23. At the time she entered SCI Muncy, Ms. Finley's medications included a Proventil inhaler, an Azmacort inhaler and Prednisone . . . a hand-held nebulizer, with Albuterol on a needed basis, and that she had been hospitalized in the past for pneumonia, bronchitis and asthma (emphasis added).

....

25. [Dr. Bardell] did not make any notations with regard to Ms. Finley's asthma

26. The history taken by Nurse Brouse and the history taken by [Dr. Bardell] did not contain any information concerning the frequency of Ms. Finley's asthma attacks during the past month, the past year, or throughout her life time

27. . . . [T]he history taken by [Dr. Bardell] did not contain any notation regarding the date of the hospitalization

....

29. The history taken by . . . [Dr. Bardell] did not contain any information regarding the history of Ms. Finley's Prednisone use

....

34. During Ms. Finley's incarceration . . . [Dr. Bardell] did not attempt to obtain Ms. Finley's prior medical records to determine the extent and severity of Ms. Finley's asthma

....

36. [Dr. Bardell] did not categorize Ms. Finley's asthma as mild, moderate or severe, during her incarceration

37. [Dr. Bardell] did not establish a personal peak flow for Ms. Finley

38. None of the six different peak flow readings that were taken of Ms. Finley met the predicted average peak flow of 485, established by a woman of Ms. Finley's age and height

39. Indicators that would place Ms. Finley in the category of being a severe asthmatic included her peak flow measurements, the frequency of her exacerbations, the frequency of her hospitalizations and low pulse oximeter measurements on various occasions

40. [Dr. Bardell] did not do any objective tests such as a peak flow or a pulse oximeter during his examination of Ms. Finley on July 9, 2002

41. On July 2, 2002 . . . Ms. Finley's oxygen saturation level ("SaO2") was 88%. Following a Proventil treatment, Ms. Finley's SaO2 increased to 97%

42. On July 3, 2002 . . . Ms. Finley was in distress, and that her SaO2 was 88% with a "peak flow" of 180

. . . .

44. . . . Ms. Finley was suffering from asthma exacerbation due to sinusitis and the fact that she had received no medication for her asthma since her transfer to SCI Muncy the previous day

. . . .

46. [Dr. Bardell] changed the [P.A. Day's] order regarding the Albuterol SVA treatments by adding the requirement that Ms. Finley only receive treatments if her SaO2 level was below 92%

. . . .

49. [Dr. Bardell] wrote an order on July 15, 2002, discontinuing Prednisone [ordered by P.A. Martin]

50. On July 18, 2002 . . . Ms. Finley was quoted as saying "I can't breathe." Her SaO2 was 91%, her pulse was weak and thready, and her lungs sounded distant with faint expiratory wheezes

51. . . . P.A. Day ordered SVA treatments as needed for five days, whenever Ms. Finley's SaO2 was less than 95%

. . . .

52. After examining Ms. Finley . . . [Dr. Bardell] lowered the SaO2 on P.A. Day's order to 90%

. . . .

56. In July 25, 2002 . . . Ms. Finley's SaO2 was recorded to be 87% and respiration was recorded to be 34

57. On July 27, 2002, [Dr. Bardell] ordered that Ms. Finley was to receive SVA treatments only two times-per day if her SaO2 was less than 90% after resting

. . . .

63. Ms. Finley's July 30th hospitalization was her second hospitalization for asthma within a year

. . . .

66. Ms. Finley returned to SCI Muncy on August 14, 2002

67. On August 19, 2002, P.A. Martin prescribed Prednisone 10 mg daily, for fourteen days and requested a reorder of Ms. Finley's asthma medications

68. On August 20, 2002, [Dr. Bardell] noted that Ms. Finley "had clinical symptoms consistent with overuse and abuse of drugs" and discontinued P.A. Martin's order for Prednisone

69. On August 21, 2002, P.A. Day prescribed Prednisone, 10 mg daily for fourteen days for Ms. Finley.

. . . .

70. On August 22, 2002, [Dr. Bardell] discontinued P.A. Day's Prednisone order for Ms. Finley without seeing Ms. Finley or conducting any type of evaluation of her condition

. . . .

72. On August 24, 2002, [Dr. Bardell] canceled P.A. Day's referral, noting that he had already seen Ms. Finley for steroid abuse and overuse, and reaffirmed that Ms. Finley would not be allowed to obtain any type of steroids for her asthma

73. P.A. Day examined Ms. Finley on August 28, 2002 . . . [and] noted that Ms. Finley, "can't breathe" and her SaO2 was 83% . . . Ms. Finley had "diffuse inspiratory and expiratory wheezing" and an "exacerbation of asthma due to post nasal drip/allergies"

. . . .

75. Katherine McCarty, R.N., the Correctional Health Administrator at SCI Muncy requested that [Dr. Bardell] perform a physical examination of Ms. Finley

76. [Dr. Bardell] performed a visual assessment of Ms. Finley. [Dr. Bardell] ordered Ms. Finley to be placed on 23-hour observation

. . . .

79. At approximately, 3:00 p.m., Ms. Finley lost consciousness and stopped breathing

. . . .

82. Ms. Finley was pronounced dead at approximately 4:11 p.m.

83. The cause of Ms. Finley’s death was Acute Asthmatic Paroxysm (emphasis added).

Final Adjudication and Order, November 27, 2007, Findings of Fact (F.F.) Nos. 12-13, 16, 23, 25-27, 29, 34, 36-42, 44, 46, 49-52, 56-57, 63, 66-70, 72-73, 75-76, 79, and 82-83 at 3-10; R.R. at 361a-68a.

The Board concluded that Dr. Bardell breached the standard of care when he “failed to properly treat and provide appropriate medical care to Ms. Finley for the maintenance of her asthma.” See Final Adjudication and Order, Conclusions of Law (C.L.) Nos. 3-7, 9-10, and 12 at 11-12; R.R. at 369a-70a. The Board revoked Dr. Bardell’s medical license.

I. Was The Board’s Adjudication And Order Supported By Substantial Evidence?⁸

⁸ This Court’s review is limited to a determination of whether constitutional rights were violated, and whether the Board’s decision is in accordance with law and supported by substantial evidence. Mostatab v. State Board of Dentistry, 881 A.2d 1271 (Pa. Cmwlth. 2005). In the absence of bad faith, fraud, capricious action or flagrant abuse of discretion, a reviewing court will not inquire into the wisdom of an administrative agency’s discretionary action or into **(Footnote continued on next page...)**

First, Dr. Bardell contends that the Board's revocation of his license was not supported by substantial evidence because it failed to cite in the record those accepted standards of medical care that Dr. Bardell breached.⁹

Initially, this Court notes that Section 41 of the Medical Practice Act of 1985 (Medical Act)¹⁰, 63 P.S. § 422.41, (**Reasons for refusal, revocation, suspension or other corrective actions against a licensee or certificate holder**) provides:

The board shall have the authority to impose disciplinary or corrective measures on a board-regulated practitioner for any or all of the following reasons:

....

(8) Being guilty of immoral or unprofessional conduct. Unprofessional conduct shall include the departure from or failing to conform to an ethical or quality standard of the profession. In proceedings based on this paragraph, actual injury to a patient need not be established.

(continued...)

the details or manner of executing that action. Slawek v. Pennsylvania State Board of Medical Education and Licensure, 526 Pa. 316, 586 A.2d 362 (1991).

⁹ Specifically, Dr. Bardell asserts: 1) that the Board relied upon misstatements during his testimony when it found that Dr. Bardell breached the standard of care in failing to take a full medical history regarding Ms. Finley's asthma (F.F. No. 25); 2) that Dr. Bardell did examine Ms. Finley and assess her asthma even though he noted that he heard "fine crackles throughout" Ms. Finley's lungs; 3) that Dr. Bardell in fact requested medical records from Dr. Mark Bohn and Dr. Scott Prince which was contrary to the Board's F.F. No. 34; 4) that "[a]t approximately 4:00 a.m. on July 24, 2002, Ms. Finley reported that she was unable to breathe" was based on the Commonwealth's order to show cause which allegation was denied by Dr. Bardell and therefore does not constitute a fact of record; and 5) that Dr. Bardell indicated that he wanted Ms. Finley to receive inhaled steroids and approved orders by the P.A.'s for inhaled steroids (contrary to F.F. No. 72) because Dr. Bardell believed oral steroids were addictive and caused health problems.

¹⁰ Act of December 20, 1985, P.L. as amended.

(i) The ethical standards of a profession are those ethical tenets which are embraced by the professional community in this Commonwealth.

(ii) A practitioner departs from, or fails to conform to, a quality standard of the profession when the practitioner provides a medical service at a level beneath the accepted standard of care In the event the board has not promulgated an applicable regulation, the accepted standard of care for a practitioner is that which would be normally exercised by the average professional of the same kind in this Commonwealth under the circumstances, including locality and whether the practitioner is or purports to be a specialist in the area. (emphasis added).

Further, Section 905 of the Medical Care Availability and Reduction of Error Act (MCARE)¹¹, 40 P.S. § 1303.905, provides that “[i]f the licensure board determines, based on the actions taken pursuant to section 904, that a physician has practiced negligently, the licensure board may impose disciplinary sanctions or corrective measures.”

After review of this extensive record, this Court must agree that there was substantial evidence that Dr. Bardell’s medical treatment of Ms. Finley fell below the accepted standard of medical care in Pennsylvania:

Dr. Bukari, the Commonwealth’s expert, testified that the standard of care when taking the medical history of a patient with asthma, is to include a detailed history including, symptoms, prior hospitalization and dates of hospitalization, previous and current medications, previous treating physicians, and to take objective

¹¹ Act of March 20, 2002, P.L. 154, as amended.

measurements to determine the severity of an individual's asthma. Respondent's [Dr. Bardell's] treatment did not meet the standard of care when he failed to take a full medical history of Ms. Finley upon her arrival at SCI Muncy. This lack of attention to something as critical as an initial history and physical of a patient when they first come under the care of a physician is grossly inadequate and falls below the standard of acceptable care in the Commonwealth.

Respondent [Dr. Bardell] breached the standard of care by failing to establish by objective criteria, spirometry, or pulse oximetry, the extent and severity of Ms. Finley's asthma. Dr. Bukari testified that one of the first steps in the treatment of asthma is the establishment of the extent and severity of the disease utilizing objective criteria, in order to determine the proper course of treatment. (N.T. 208) Respondent [Dr. Bardell] admitted that he did not establish a personal best peak flow for Ms. Finley during her incarceration at SCI Muncy. (N.T. 5/17/06, 15-16) Respondent's [Dr. Bardell's] rationale was that Ms. Finley was not incarcerated at SCI Muncy for the appropriate amount of time to establish the severity of her asthma through objective criteria. Dr. Cohen, Respondent's [Dr. Bardell's] expert, testified that the Respondent [Dr. Bardell] had enough time to determine an objective baseline for Ms. Finley's peak flow readings. (N.T. 5/16/06, 114) The experts agree that establishing the severity of Ms. Finley's asthma is essential for treatment purposes. As Respondent [Dr. Bardell] had adequate time to make an objective determination and admittedly failed to do so, Respondent's [Dr. Bardell's] actions fell egregiously below the standard of care.

The Commonwealth alleged and the Board agrees, that Respondent [Dr. Bardell] further failed to examine Ms. Finley properly on multiple occasions and failed to reassess Ms. Finley during her incarceration at SCI Muncy. Both Dr. Cohen and Dr. Bukari agree that asthma is a dynamic disease that can change over short periods of time. Although Respondent [Dr. Bardell] testified that he was aware that asthma is a dynamic

disease that can change on a daily basis, he apparently chose not to incorporate that information in his treatment of Ms. Finley. After Ms. Finley's initial examination, Respondent [Dr. Bardell] did not examine Ms. Finley for over two weeks, and chose not to rely on P.A. Day's or P.A. Martin's medication and treatment recommendations, when the physician assistants were the individuals who had direct contact with Ms. Finley on multiple occasions Respondent [Dr. Bardell] further breached the standard of care by practicing with reckless indifference to the interest of Ms. Finley when he discontinued orders for steroids written for Ms. Finley on multiple occasions Respondent [Dr. Bardell] apparently failed to rely on, or trust the judgment of his physician assistants, as evidenced by his frequent countermanding of their treatment orders for Ms. Finley. Further, Respondent's [Dr. Bardell's] expert Dr. Cohen, testified that Respondent [Dr. Bardell] had adequate time to provide the appropriate care for Ms. Finley Due to the dynamic nature of the disease, Respondent's [Dr. Bardell's] intentional, ongoing failure to reassess Ms. Finley fell grossly below the standard of care.

Respondent [Dr. Bardell] failed to appropriately examine Ms. Finley on at least four occasions: July 9, 10, 22, and 29, 2002. During his examination of Ms. Finley on July 22 and 29, Respondent [Dr. Bardell] failed to record any abnormal findings or notation in the chart which indicated her declining physical condition. In fact, his notes are not reflective of the seriousness of her condition, and indicate that Respondent [Dr. Bardell] did not perform more than a perfunctory physical examination of Ms. Finley. On July 30, Ms. Finley had to be hospitalized for asthma, sinusitis, postnasal drip and pneumonia. It is clear from the record that Respondent's [Dr. Bardell's] cavalier disregard of Ms. Finley's condition, his failure to provide Ms. Finley with high doses of steroids, his failure to conduct a thorough review of all of Ms. Finley's medical symptoms, and to conduct objective tests fell grossly below the standard of care in examining and treating her.

On August 23, three weeks subsequent to Respondent's [Dr. Bardell's] perfunctory examination of Ms. Finley, despite P.A. Day's request, Respondent [Dr. Bardell] failed to examine Ms. Finley. Respondent [Dr. Bardell] also twice cancelled P.A. [Martin's] order for 14 days of oral Prednisone from August 19 and August 21, and had not discussed the cancellation, nor examined Ms. Finley in conjunction with so doing Respondent [Dr. Bardell] undertook this conduct despite his knowledge that Ms. Finley had been hospitalized for an exacerbation of her asthma in the three-week period which had elapsed since he last saw her On August 24, 2002, Respondent [Dr. Bardell] again cancelled P.A. Day's referral, noting that he had already seen Ms. Finley for steroid abuse and overuse, and reaffirmed that Ms. Finley would not be allowed to obtain any steroids for her asthma Respondent's [Dr. Bardell's] failure to examine Ms. Finley on August 24, 2002, constituted a breach of care.

Respondent [Dr. Bardell] breached the standard of care when he failed to reassess Ms. Finley after new complaints and changes in her condition Ms. Finley's demise from acute asthmatic paroxysm within less than two hours of Respondent's [Dr. Bardell's] departure from SCI Muncy, and Respondent's [Dr. Bardell's] concomitant failure to perform an appropriate medical examination or reassess Ms. Finley was a serious breach of the standard of care, and a contributing factor in her death. (emphasis added).

Final Adjudication and Order, Discussion at 14-16; R.R. at 372a-73a.

II. Whether The Board's Revocation Of Dr. Bardell's License Was Arbitrary, Capricious, And An Abuse Of Discretion?

Dr. Bardell next contends that the Board previously issued lesser degrees of penalties based on similar conduct. Dr. Bardell asserts that the appropriate penalty based upon the factual situation was for the Board to issue a

public reprimand and order additional continuing medical education in the field of asthma as proposed by Hearing Examiner Alcorn.

Section 3 of the Medical Act, 63 P.S. § 422.3, provides:

The State Board of Medicine shall consist of the commissioner . . . the Secretary of Health . . . two members appointed by the Governor who shall be persons representing the public at large and seven members appointed by the Governor, six of whom shall be medical doctors with unrestricted licenses to practice medicine and surgery in this Commonwealth for five years immediately preceding their appointment and one who shall be . . . [a] physician assistant , certified registered nurse practitioner, respiratory care practitioner (emphasis added).

Also, “[t]he Board is the agency charged with the responsibility and authority to oversee the medical profession and to determine the competency and fitness of an applicant to practice medicine within the Commonwealth.” Barran v. State Board of Medicine, 670 A.2d 765 (Pa. Cmwlth. 1996). “Furthermore, an individual has no vested right to practice medicine within the Commonwealth.” Id. at 768.

Here, the Board possessed the medical expertise to properly evaluate Dr. Bardell’s conduct and determine the appropriate penalty; not Hearing Examiner Alcorn. The Board viewed Dr. Bardell’s conduct as egregiously unprofessional. Specifically, the Board found that Dr. Bardell breached the accepted standard of care in Pennsylvania concerning his treatment, assessment, examination, and overall handling of Ms. Finley’s care who had a long medical history of asthma. The Board concluded that to adequately protect the public and

maintain the integrity of the medical profession the proper penalty was revocation. Although Dr. Bardell asserts that the Board's revocation of his license was unreasonably harsh, the Board's decision was in accordance with the Law. Zook v. State Board of Dentistry, 683 A.2d 713 (Pa. Cmwlth. 1996).¹²

Accordingly, this Court affirms.

BERNARD L. McGINLEY, Judge

¹² This Court's review was limited to whether the Board's decision was in accordance with the Law and not whether it was reasonable. Zook, citing Slawek. Therefore, this Court will not address the equal protection violation argument based upon the Board's prior issuance of a less severe penalty for similar conduct.

