

On November 10, 1993, Petitioner was found guilty of one count of racketeering conspiracy, one count of racketeering, thirteen counts of mail fraud, and ten counts of money laundering in the United States District Court for the Southern District of New York. (Finding of Fact No. 3; C.R. at Tab 5, Commonwealth Exhibit C-3.) Petitioner was sentenced to a term of imprisonment of forty-one months, and she was ordered to pay restitution to the New York State Department of Social Services in the amount of \$1,931,992.00. (Finding of Fact No. 4.) On April 17, 1995, the State of New York, Department of Health, Administrative Review Board for Professional Medical Conduct revoked Petitioner's license to practice medicine in New York based upon these criminal convictions. (Finding of Fact No. 5.)

On June 13, 1995, the Commonwealth of Pennsylvania, Bureau of Professional and Occupational Affairs (Bureau) filed an order to show cause charging that Petitioner had violated sections 41(3) and (4) of the MPA, 63 P.S. §422.41(3) and (4), because she had been convicted of crimes related to the health profession and her New York license to practice medicine had been revoked. (Finding of Fact No. 6.) The matter was assigned to a hearing examiner. Petitioner failed to file an answer to the Bureau's order to show cause and the hearing examiner granted a motion by the Bureau to deem the facts admitted. (Finding of Fact No. 7.) On February 13, 1996, the hearing examiner issued an Adjudication and Order concluding that Petitioner had violated sections 41(3) and (4) of the MPA and revoking her medical license in Pennsylvania. (Finding of Fact No. 8.)

In 1998, Petitioner was released from incarceration after serving thirty-six months of her sentence. (Finding of Fact No. 11.) Petitioner has not practiced medicine in any jurisdiction since 1995, and has not been able to acquire gainful employment since 1998. (Findings of Fact Nos. 13, 16.) She later attempted to reinstate her New York medical license, but she failed to complete the reinstatement

process. (Finding of Fact No. 14.) Nevertheless, Petitioner has stayed up-to-date with current medical practices by completing continuing medical education work in medical journals. (Finding of Fact No. 17.) However, Petitioner has not taken the Special Purpose Examination (SPEX)² because she does not have the financial means to do so. (Finding of Fact No. 18.) Petitioner is seeking the reinstatement of her Pennsylvania medical license to pursue her goal of receiving a fellowship to study pain. (Finding of Fact No. 20.)

On May 12, 2009, Petitioner sent a letter to the Board requesting the reinstatement of her Pennsylvania license. The matter was assigned to a hearing examiner, who conducted hearings on August 12, 2009, and January 22, 2010. At these hearings, Petitioner testified that she has not practiced medicine since 1995 and has not held a job of any type in the healthcare field since her release from incarceration in 1998. (C.R. at Tab 15, pp. 17-20.). Petitioner stated during the hearing that she has completed some Continuing Medical Education (CME) work, which involved reading journals and answering questions, and she has received certificates from her CME work, but has not attended any CME seminars. (C.R. at Tab 15, pp. 20-22.) When questioned about the examination requirement for the restatement of her medical license, Petitioner acknowledged that she had not taken the SPEX Examination. (C.R. at Tab 15, p. 23.)

² The Board's regulations describe the SPEX as a single-day examination focusing on a core of clinical knowledge and relevant, underlying basic science principles necessary to form a reasonable foundation for the safe and effective practice of medicine. 49 Pa. Code §17.12d. The SPEX was developed as a cognitive examination to assist the assessment of current competence requisite for medical practice by physicians who hold or have held a valid license in a United States jurisdiction. Id. When the Board determines that an examination is required for a medical doctor coincident to a disciplinary or corrective measure, the requirement may be satisfied by passing the SPEX. Id.

By proposed adjudication and order dated August 13, 2010, the hearing examiner denied Petitioner's petition for reinstatement. (C.R. at Tab 16.) On October 6, 2010, the Board issued a final order adopting the hearing examiner's proposed adjudication and order in its entirety. (C.R. at Tab 22.) The Board recognized that the reinstatement of a license to practice medicine is governed by section 43 of the MPA, which states as follows:

(a) In general.--Unless ordered to do so by Commonwealth Court or on appeal therefrom, the board shall not reinstate the license, certificate or registration of a person to practice medicine and surgery or other areas of practice requiring a license, certificate or registration from the board pursuant to this act which has been revoked. Except as provided in subsection (b), any person whose license, certificate or registration has been revoked may apply for reinstatement, after a period of at least five years, but must meet all of the licensing qualifications of this act for the license applied for, to include the examination requirement, if he or she desires to practice at any time after such revocation.

(b) Reinstatement after felony conviction.--Any person whose license, certificate or registration has been suspended or revoked because of a felony conviction under the act of April 14, 1972 (P.L. 233, No. 64), known as The Controlled Substance, Drug, Device and Cosmetic Act, or similar law of another jurisdiction, may apply for reinstatement after a period of at least ten years has elapsed from the date of conviction. The board may reinstate the license if the board is satisfied that the person has made significant progress in personal rehabilitation since the conviction such that his reinstatement should not be expected to create a substantial risk of harm to the health and safety of his patients or the public or a substantial risk of further criminal violations and if the person meets all other licensing qualifications of this act, including the examination requirement.

63 P.S. §422.43(a), (b).

The Board concluded that Petitioner had not demonstrated the necessary qualifications required for the reinstatement of her medical license, stating as follows:

Neither the MPA nor the regulations provide further guidance or criteria to determine when reinstatement should be granted or denied in the case of a revocation. Section 43(b) of the MPA, 63 P.S. §422.43(b), relating to reinstatement following a suspension or revocation for a felony drug conviction states that the Board must be satisfied that the person has made significant progress in personal rehabilitation since the conviction such that his reinstatement should not be expected to create a substantial risk of harm to the health and safety of his patients or the public or a substantial risk of further criminal violations and if the person meets all other licensing qualifications of this act. Because the revocation order in this case sets forth no conditions of reinstatement, the hearing examiner looks to Section 43(b). The hearing examiner believes following revocation [sic] must show personal rehabilitation and a current ability to resume the practice of medicine.

The positive evidence for Petitioner is as follows. She has testified that she has not had further criminal proceedings against her since the conviction and that she has never been the subject of a malpractice action in any jurisdiction. She has also presented evidence [sic] completion of continuing education acquired by home study. Petitioner testified that after she was released from prison she was not able to find employment and was forced to be dependent on relatives. She wishes to regain a medical license in some jurisdiction and has attempted to have her license reinstated in New York or New Jersey but did not have the money to pursue either effort.

The hearing examiner is not persuaded that this evidence is of sufficient quality and quantity to show that Petitioner's license to practice medicine and surgery in the Commonwealth should be reinstated, particularly at this time. Although the MPA does not require passing an examination before reinstatement, the facts of this case

militate against doing so. Petitioner has stated no interest in practicing medicine in Pennsylvania and as far as the record discloses has no interest in obtaining a fellowship to study in Pennsylvania. Petitioner testified that she has no immediate plans to take the SPEX examination because she does not have the money to pay for it. Indeed the entire thrust of her testimony regarding her current fitness or ability to practice appears to be a plea to the Board to meet with her personally to assess her fitness to practice medicine and to waive any fees of refresher courses. (N.T. 11, 23, 28, 34)

Finally, the hearing examiner observes that Pennsylvania appears to be the most inappropriate jurisdiction for Petitioner to seek reinstatement of his [sic] license. Petitioner has not had a current license to practice medicine in Pennsylvania for almost 20 years. The offenses that call into question for fitness to practice occurred in New York. In all the documents of record, from her 1993 conviction through her petition for reinstatement it appears that Petitioner has been [sic] and is a resident of New Jersey. New York, not Pennsylvania, was the place where Petitioner's criminal conduct took place and where her license was originally revoked. New York, more so than Pennsylvania, is the jurisdiction more capable of weighing these offenses against evidence in support of reinstatement.

(C.R. at Tab 22.) Petitioner thereafter filed a petition for review with this Court.

On appeal,³ Petitioner argues that the Board erred in denying her petition for reinstatement of her medical license. We disagree.

Initially we note that an applicant for licensure has the burden to demonstrate that he or she meets all of the qualifications necessary for obtaining a license to practice an occupation or profession. Barran v. State Board of Medicine,

³ This Court's scope of review of the Board's decision is limited to determining whether constitutional rights were violated, whether an error of law was committed, or whether the findings of fact are supported by substantial evidence. Pisanonnt v. State Board of Medicine, 680 A.2d 911 (Pa. Cmwlth. 1996).

670 A.2d 765 (Pa. Cmwlth. 1996). Any physician who has had his or her license to practice medicine revoked must comply with section 43(a) of the MPA when seeking reinstatement of his or her license.⁴ Section 43(a) states that:

Except as provided in subsection (b), any person whose license, certificate or registration has been revoked may apply for reinstatement, after a period of at least five years, **but must meet all of the licensing qualifications of this act for the license applied for, to include the examination requirement**, if he or she desires to practice at any time after such revocation.

63 P.S. §422.43(a) (emphasis added).

Section 22(b) of the MPA, 63 P.S. §422.22(b), sets forth general licensing qualifications,⁵ and section 24(a), 63 P.S. §422.24(a), specifically authorizes the Board to require an applicant to take and pass an examination. The Board's

⁴ In its decision, the Board relied on section 43(b) of the MPA in denying Petitioner's petition for reinstatement. However, Section 43(b) is only applicable to an individual whose license has been revoked or suspended "because of a felony conviction under the act...known as The Controlled Substance, Drug, Device and Cosmetic Act, or similar law of another jurisdiction" and Petitioner was not convicted under this Act. Hence, section 43(b) is not applicable here and the Board should have relied upon section 43(a). Because Petitioner did not meet the requirements of section 43(a), we must still affirm the Board's order. See Belitskus v. Hamlin Township, 764 A.2d 669 (Pa. Cmwlth. 2000) (this Court is permitted to affirm on other grounds where such grounds for affirmance exist).

⁵ This section provides, in pertinent part, as follows:

(b) Qualifications.—The board shall not issue a license or certificate to an applicant unless the applicant establishes with evidence, verified by an affidavit or affirmation of the applicant, that the applicant is of legal age, is of good moral character and is not addicted to the intemperate use of alcohol or the habitual use of narcotics or other habit-forming drugs and that the applicant has completed the educational requirements prescribed by the board and otherwise satisfies the qualifications for the license or certificate contained in or authorized by this act.

regulations detail at length these licensing and examination requirements. Further, as noted above, section 17.12d of the Board's regulations specifically addresses the SPEX examination, which also satisfies the examination requirement of section 43(a) of the MPA.

Petitioner first challenges several of the Board's findings of fact and asserts that she did not file an answer because she was incarcerated. However, Petitioner does not contend that she can satisfy the licensing requirements established by Pennsylvania law. Indeed, the record herein is devoid of any evidence demonstrating Petitioner's compliance with the requirements of the MPA and the Board's regulations relating to reinstatement of her medical license. Petitioner failed to present proof that she has taken any of the required licensing examinations and even admitted before the hearing examiner that she had not taken the SPEX Examination. (C.R. at Tab 15, p. 23.) Thus, Petitioner has not met her burden under section 43(a) of the MPA and a denial under that section is appropriate.

Petitioner also argues that the Board erred in adopting the Proposed Adjudication and Order of the hearing examiner as the Final Adjudication and Order in this case. However, our Supreme Court has previously held that the Board has the authority to adopt the decision and order of a hearing examiner. Telang v. Commonwealth, Bureau of Professional and Occupational Affairs, 561 Pa. 535, 751 A.2d 1147 (2000) (the Board has prerogative to conclude that additional evidence and argument were unwarranted and to adopt the hearing examiner's decision). Thus, Petitioner's argument in this regard is without merit.

Petitioner next argues that the Board erred as a matter of law by observing that Pennsylvania appears to be the most inappropriate jurisdiction for Petitioner to seek reinstatement of her license. However, we need not address this contention because, whether or not the Board erred, the fact remains that Petitioner

failed to meet the necessary requirements for reinstatement of her license under the MPA and its accompanying regulations.

Accordingly, the order of the Board is affirmed.⁶

PATRICIA A. McCULLOUGH, Judge

⁶ We note that Petitioner raises numerous issues in her brief to this Court regarding her New York case, her criminal convictions, and the original revocation of her Pennsylvania medical license. However, these issues are not relevant to Petitioner's present petition for reinstatement and, thus, are not appropriately before this Court. Additionally, Petitioner raises numerous arguments regarding her purported fitness to practice medicine. However, these arguments were considered by the Board and were properly deemed insufficient to meet the current requirements for reinstatement of her medical license.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Rosaly Isaac Saba, M.D.,	:	
a/k/a Rosaly I. Saba-Khalil, M.D.,	:	
Petitioner	:	
	:	No. 2346 C.D. 2010
v.	:	
	:	
Bureau of Professional and Occupational	:	
Affairs, State Board of Medicine,	:	
Respondent	:	

ORDER

AND NOW, this 31st day of August, 2011, the final order of the State Board of Medicine, dated October 6, 2010, is hereby affirmed.

PATRICIA A. McCULLOUGH, Judge