

STATE OF VERMONT  
BOARD OF MEDICAL PRACTICE

In re Stephanie H. Taylor, M. D.

Docket No. MPS – 45-0304  
MPS – 48-0304

Vermont Supreme Court  
Docket No. 2014-283  
REMAND

Background

This matter is before the Vermont Board of Medical Practice (Board) on remand from the Vermont Supreme Court (Court). In its July 17, 2015 order, the Court reversed the Board's July 2, 2014 decision which had denied the request of Stephanie Taylor, M. D. (Petitioner) to remove two conditions from a 2005 Stipulation and Order which she had agreed to.

The Court remanded the case to the Board for "further findings and conclusions." *In re Stephanie Taylor, M.D.*, 2015 Vt. 95 ¶23 The Court pointed out that the July 2, 2014 hearing, which led to the decision Petitioner appealed from, was authorized under Board Rule 17.2. This rule permits a person who has been disciplined by the Board to petition for reinstatement of his/her license.

The Court went on to explain:

The evidentiary hearing held by the Board was thus clearly in the nature of a regular contested-case hearing for which findings were required. See 3 V.S.A. § 812(a) (agency decisions "shall include findings of fact and conclusions of law").

*In re Stephanie Taylor, M.D.*, 2015 Vt. 95 ¶19

The Petitioner is represented by Attorney Edward Adrian. The State of Vermont (State) is represented by Assistant Attorney General Jacob Humbert. Atty. Robert Simpson served as hearing officer.

The parties submitted proposed findings of fact and conclusions of law (findings) on September 17, 2015. The Board was given access to the parties' findings, exhibits and transcripts of the November 6, 2013 and July 2, 2014 hearings in this matter on September 28, 2015. The attorneys made oral arguments before the Board on October 7, 2015. The eligible Board members<sup>1</sup> went into deliberation immediately after the attorneys' arguments.

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<sup>1</sup> The "eligible Board members" consisted of all current Board members except those who were part of the South Investigative Committee which considered Petitioner's request in 2013.

### Evidence Considered By The Board

The Vermont Supreme Court said that on remand the Board could “rely on the existing record”<sup>2</sup> in making the additional findings and conclusions that were required. *In re Stephanie Taylor, M. D.*, 2015 Vt. 95 ¶ 20. The Board interpreted the “existing record” to mean transcripts of the hearings on November 6, 2013 and July 2, 2014 as well as records the Board was entitled to take official notice of under 3 VSA § 810 (4).

As noted above, the parties filed proposed findings and exhibits on September 17. The parties were then given an opportunity to file motions to exclude certain evidence and exhibits referred to in the opposing party’s findings. Petitioner filed a motion to bar the Board from considering (1) the Specification of Charges filed against her in September 2004 because they were never proven and (2) “any actions, findings or positions of the Massachusetts Board of Registration of Medicine that have not been proven by the State by a preponderance of the evidence.” Petitioner’s Motion in Limine, September 21, 2015.

Petitioner’s Motion<sup>3</sup> was denied for the reasons set out below.

#### A. Specification of Charges

It is important to point out that the Board did not consider the 2004 Charges as proven. Petitioner and the State agreed that charges had not been proven and could not be considered as proven.

The Board did, however, consider the charges in the manner authorized by the Vermont Supreme Court in its order remanding this case. That is, it considered the nature and gravity of the 2004 charges as well as Petitioner’s current request to remove Conditions 11 and 12 in light of Petitioner’s agreement in 2005 that the Stipulation and Order was “an acceptable means of resolving this matter and is in the best interests of all the parties.”<sup>4</sup> *In re Stephanie Taylor, MD*, 2015 Vt. 95 ¶ 20

In fact, the Board considered the charges as they were described in a letter to the Board from Petitioner’s Attorney. Board Finding (F) ¶ 25 (below) quoting a letter from Atty. Edward Adrian to the Vermont Board of Medical Practice dated March 14, 2014 –admitted into evidence as Petitioner’s Exhibit G at p. 2

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<sup>2</sup> The existing record included Petitioner’s testimony at hearings on November 6, 2013 and July 2, 2014 as well as the records the Board was entitled to take official notice of under 3 VSA § 810 (4).

<sup>3</sup> The State filed a Motion to Exclude Petitioner’s Exhibits G and J. The request to exclude Exhibit G (Atty. Adrian’s March, 2014 letter to the Board) was denied because it was relevant and the State had notice of the assertions in it well before the July 2, 2014 hearing. The request to exclude Exhibit J was granted. Exhibit J was a letter written in 2004 by Petitioner’s advisor at the Tufts University family practice residency. The State had no notice of the letter at the time of July 2, 2014 hearing.

<sup>4</sup> Petitioner said in Condition 8 of the 2005 Stipulation that the agreement was “was an acceptable means of resolving this matter and is in the best interest of all parties.” The Vermont Supreme Court said in its July 2015 order that: “Fairness also permits the Board, in evaluating Dr. Taylor’s motion, to take account of her admission that the stipulation was ‘in the best interests of all the parties,’ and to consider the nature and gravity of the original charges and the pattern of behavior over time that they may reveal.” *In re Stephanie Taylor, M.D.*, 2015 Vt. 95 ¶ 20

Moreover, the New Hampshire Supreme Court decision - *Appeal of Dell*, 668 A2d 1024 (1995) - which was heavily relied on by Petitioner, does not support her position. In fact, it supports permitting the Board to consider the 2004 Specification of Charges in the manner they were eventually considered by the Board.

Dr. Dell appealed to the New Hampshire Supreme Court after the New Hampshire Board of Registration of Medicine (New Hampshire Board) denied his application for relicensure. One of his claims on appeal was that he had been denied due process because the New Hampshire Board based its decision to deny relicensure, in part, “on past conduct which was the subject of charges marked *nolle prosequi* under the 1990 consent order.” 668 A2d 1034. It is true, then, that Dr. Dell’s claim is similar to Petitioner’s here in the sense that Dr. Dell was claiming he was treated unfairly because the New Hampshire Board considered unproven allegations of misconduct when it decided against him.

The fact is, however, the New Hampshire Supreme Court rejected Dr. Dell’s claim for reasons that also apply here. The New Hampshire Supreme Court said:

We find nothing in the statutory language prohibiting consideration of these factors in a reinstatement proceeding. . . . In the absence of a showing by the petitioner that he has been prejudiced by the passage of time through a loss of evidence or other event which renders him unable to defend against these claims, *Plantier*, 126 N.H. at 508-09, 494 A.2d at 274-75, we hold that the board properly considered the allegations of negligence misconduct marked *nolle prosequi* pursuant to the consent order. 668 A2d 1034-35 (emphasis added)

*Dell* stands for the proposition that licensing Boards are entitled to consider “unproven misconduct” in making their decisions, unless the Petitioner can prove s/he was “prejudiced by the passage of time through a loss of evidence or other event which renders (her) unable to defend (herself).” 668 A2d 1035 In other words, the New Hampshire Supreme Court held that the New Hampshire Board was lawfully authorized to consider the “unproven misconduct” because Dr. Dell had not proven he was prejudiced by the passage of time between the time of unproven misconduct and the time he was given an opportunity to defend himself.

The *Appeal of Plantier*, 126 N.H. 500 (1985), cited by the New Hampshire Supreme Court in the passage from *Dell* cited above, helps explain what the New Hampshire Supreme Court meant when it referred to a Petitioner being “prejudiced” in the ability to defend himself/herself because of the “passage of time.”

The New Hampshire Board found that Dr. Plantier had engaged in unprofessional conduct because of his sexual misconduct with a patient – misconduct that was alleged to have taken place nine years before Dr. Plantier was finally charged. The New Hampshire Supreme Court reversed. It found that Dr. Plantier had proven he had been prejudiced by the delay in bringing the case against him:

“Dr. Plantier has demonstrated that the delay in bringing the complaint has prejudiced his ability to defend the charges. 126 NH 509 (emphasis added)

#### Applying the Principles in the New Hampshire Cases In This Case

If the principles in the New Hampshire cases (*Dell*, *Plantier*) are applied here, then the Board is clearly authorized to consider the allegations in the 2004 Specification of Charges.

Petitioner here is like Dr. Dell and unlike Dr. Plantier. That is, like Dr. Dell, she was not prejudiced by any delay in bringing the complaint/ Specification of Charges. This is because, unlike Dr. Plantier, Petitioner had the opportunity to defend herself (in 2004) not long after the misconduct alleged

in the charges had taken place. Moreover, she cannot claim prejudice for the delay between 2005 and 2015 because, in effect, she bargained for it. That is, she bargained for the State's agreement to "noll pross" the Charges in 2005, thereby relieving herself of the need/ "opportunity" to defend herself. In exchange, she agreed to the irrevocable surrender of her license.

The Vermont Board of Medical Practice was lawfully authorized to consider the charges in the manner it did.

B. "Actions, Findings or Positions of the Massachusetts Board of Registration of Medicine"

Petitioner argues the Board should be precluded from considering the "actions, findings or positions" of the Massachusetts Board of Registration of Medicine (Massachusetts Board) in this case because the State of Vermont has not proven any such "actions, findings or positions." Petitioner's Motion in Limine, p.5.

The Board took official notice of the Final Decision and Order of the Massachusetts Board of Registration in Medicine<sup>5</sup> dated June 20, 2007 which revoked Petitioner's "inchoate right" to re-apply for a Massachusetts medical license. F 31-34.

As noted earlier, the Vermont Supreme Court ruled that this matter is a "contested case" under Vermont's version of the Administrative Procedures Act (Vermont APA). 3 VSA §§800-849. The Vermont Supreme Court discussed the process involved when an administrative agency takes official notice of "judicially cognizable fact" in a "contested case" when it decided *In Re Handy*, 481 A2d 1051, 1053 (Vt., 1984) The appellant, a convenience store, challenged the fact that the Vermont Department of Liquor Control had considered the fact that there had been three prior warnings against the appellant when the Department imposed discipline against the store.

The Court explained:

3 V.S.A. § 810(4) of the Administrative Procedure Act provides that a state agency may take official notice of "judicially cognizable facts" in contested cases. . . (citation omitted) ("[a]dministrative agencies, as a necessary adjunct to their quasi-judicial duties, have the authority to take official notice of "judicially cognizable facts"). 3 V.S.A. § 810(1) provides that "[f]he rules of evidence as applied in civil cases ... shall be followed" in contested cases. Under V.R.E. 201(b) "[a] judicially noticed fact must be one not subject to reasonable dispute in that it is ... (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." (emphasis added)

The Final Decision and Order of the Massachusetts Board of Registration in Medicine is an official record of the Massachusetts Board of Registration in Medicine. Its accuracy can be readily determined. A certified copy of the document was in the Board's files approximately one month before the July 2, 2014 hearing in this matter.

The Board properly considered the Final Decision and Order of the Massachusetts Board of Registration in Medicine dated June 20, 2007 which revoked whatever right Petitioner had to re-apply for a Massachusetts medical license.

**Findings of Fact**<sup>6</sup>

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<sup>5</sup> The 2007 "Final Decision and Order" of the Massachusetts Board consists of ten pages. According to the records of the Vermont Board of Medical Practice, a certified copy of the Massachusetts Decision and Order was received, and became a part of the Vermont Board's records on June 6, 2014.

1. Petitioner was first licensed to practice medicine in Massachusetts. She was granted her Massachusetts license on May 20, 1987 under registration number 57687. Final Decision and Order of the Massachusetts Board of Registration in Medicine<sup>7</sup> dated June 20, 2007 (Massachusetts Final Order) ¶ 1
2. Petitioner was granted her Vermont medical license (number 042-008406) by the Vermont Board of Medical practice on September 9, 1991. State's Proposed Findings of Fact (SF) ¶ 1

#### 1996 Stipulation and Consent Order

3. "On or about July 17, 1995, Copley Hospital indefinitely suspended Petitioner's medical privileges "after concluding that there was a substantial likelihood that her continued exercise of those privileges would cause injury or damage to the health or safety of patients." 1996 Stipulation and Order approved by the Board on November 7, 1996, admitted as Petitioner's Exhibit A (1996 Order), ¶5
4. On July 7, 1995, the Board summarily suspended Petitioner's Vermont medical license. 1996 Order ¶7
5. Petitioner admitted that "she suffers from the disease of chemical addiction" and admitted "that her disease potentially poses a threat to the health, safety and welfare of her patients." 1996 Order ¶8
6. Petitioner admitted that "she suffers a mental impairment which affects her competency to render professional services to her patients." 1996 Order ¶ 9
7. Petitioner admitted that "she evidenced a lack of comprehension of or disregard for the fundamental principles of doctor-patient boundaries as they must exist within the psychiatric therapeutic setting and further admits that she failed to recognize the detrimental effects that a breach of these boundaries might have on the patient, failed to appreciate the phenomena of transference and counter-transference and their effects upon the doctor-patient relationship, and created an inappropriate psychological and financial dependency relationship between some patients and herself." 1996 Order ¶ 10
8. Petitioner agreed to the indefinite suspension of her license to practice medicine. 1996 Order ¶ 13 A

#### Pre-Reinstatement Requirements

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<sup>6</sup> As noted above, both parties filed Proposed Findings of the Fact and Conclusions of Law. To the extent the Board's Findings of Fact and Conclusions of Law (below) do not adopt the substance of a Proposed Finding or Conclusion of a party, that Proposed Finding or Conclusion is rejected.

9. In addition, Petitioner agreed to complete five “Pre-Reinstatement Requirements” before applying for reinstatement of her license. These requirements included 12 months of weekly psychotherapy and a satisfactory completion of a Board-approved course “on the proper prescribing and dispensing of controlled substances.” 1996 Order ¶ 13 C, (1). (5)

#### Reinstatement Requirements

10. The Board further ordered that in the event her license was reinstated, that license would be subject to twenty-one terms and conditions for a minimum of five years. These terms and conditions included:
- Petitioner was barred from returning to the practice of clinical psychiatry. 1996 Order ¶ 13 C (1)
  - Petitioner was ordered to continue weekly psychotherapy with a board-approved psychiatrist. 1996 Order ¶ 13 C (2)
  - Petitioner could practice medicine only in a “structured group practice setting.” 1996 Order ¶ 13 C (3)
  - Petitioner was ordered to “abstain from ingesting any mind or mood altering substances” except as prescribed by her primary physician” after consultation with Petitioner’s “monitoring physician.” 1996 Order ¶ 13 C(5)
  - Petitioner was barred from “self-prescribing or prescribing to family members.” 1996 Order ¶ 13 C (6)
  - Petitioner consented to “the taking of body fluid and/or breath samples for analysis, the results of which will be provided to the Board, at Board-recommended intervals and according to Board protocols.” 1996 Order ¶ 13 C(9)

#### May, 2000-Board Loosens Condition on Petitioner’s License to Permit Her to Engage in a Family Practice Residency at Tufts University in Massachusetts

11. On May 19, 2000, the Board agreed to a limited amendment to the indefinite suspension of Respondent’s medical license – an amendment which enabled her to: (1) enroll in a three year “family practice residency at Tufts University” and (2) engage in practice activities that were “directly related to” the Tufts residency. Petitioner’s Exhibit B, May 19, 2000 Stipulation and Consent Order ( May, 2000-Order) , ¶ ¶4-7
12. The May 19, 2000 Order, expressly provided that Petitioner could not practice medicine in Vermont without “express written Board approval.” May 2000 Order ¶4
13. The May, 2000 Order provided further that all other conditions that had been imposed on Petitioner’s license to practice medicine in Vermont under the 1996 Order remained in effect. May, 2000 Order ¶ 8

#### 2000-2003 Family Practice Residency in Massachusetts

14. On July 12, 2000, the Massachusetts Board of Registration in Medicine (Massachusetts Board) indefinitely suspended Petitioner’s license to practice medicine in Massachusetts “based upon the

Respondent's discipline by the Vermont Board of Medical Practice." Massachusetts Final Order ¶ 2

15. Petitioner immediately entered into a probation agreement with the Massachusetts Board and the suspension of her license to practice medicine in Massachusetts was "stayed." Id.
16. From July 2000 through June 30, 2003, Petitioner "worked solely in a residency program at Tufts University." Massachusetts Final Order ¶3

Vermont Board Agrees to Permit Petitioner to Renew Her Practice in Vermont Under a Conditioned License

17. On April 2, 2003, the Board approved an agreement between Petitioner and the State which permitted Petitioner to practice in Vermont but only in a "structured group practice." Petitioner's Exhibit C, Stipulation and Consent Order entered April 2, 2003 ( 2003 Order), ¶¶ 4-6
18. The agreement approved by the Board removed several of the conditions the Board imposed in its 1996 Order, while at the same time retaining several others. 2003 Order ¶6
19. The Board did not remove Condition 13 C (6) of the 1996 Order which said: "No self-prescribing or prescribing to family members." 1996 Order (Petitioner's Exhibit A) 13 C (6).
20. In addition, the Board retained conditions requiring Petitioner to: continue with her psychotherapy, follow all reasonable recommendations of the Vermont Practitioner Health Program and practice only in a structured group setting under the monitoring or a supervising physician. State's Proposed Findings of Fact and Conclusions of Law (State's Findings) ¶6

February 2004-Massachusetts Reimposes Petitioner's License Suspension in Massachusetts

21. On February 19, 2004, the Massachusetts Board voted to reimpose the suspension of Petitioner's license to practice medicine in Massachusetts that the Board had stayed in July 2000 after finding Petitioner had violated a term of her probation agreement with the Massachusetts Board by failing to comply with "material terms" of her contract with Massachusetts Physician Health Services. Massachusetts Final Order ¶4

2004 – Petitioner's Marital Issues

22. At some time in 2004, Petitioner "was having serious difficulty with her soon-to-be ex-husband and at the same time caring for her teenage son." Petitioner's Exhibit G , p. 2
23. Petitioner remarried in 2004. Petitioner, her new husband and Petitioner's son obtained a restraining order against Petitioner's ex-husband. Shortly, after that, Petitioner's ex-husband filed a complaint with the Vermont Board of Medical Practice. Petitioner's Exhibit F at p. 1

September 2004 –State of Vermont Charges Petitioner With 25 Counts of Unprofessional Conduct

24. On September 3, 2004, the State of Vermont charged Petitioner with twenty-five counts of unprofessional conduct in a Specification of Charges (Charges) filed with the Board. Petitioner's Exhibit D

25. Petitioner described the allegations in the Charges in a March 14, 2014 letter to the Board:

“1) Prescribing to a family member; 2) Improper prescribing and illegal practice in Vermont; 3) Prescribing and practice violations in Massachusetts (where she was involved a family practice residency); 4) Prescription of controlled substances to an inappropriate patient in Vermont; 5) Prescription to an inappropriate patient in Massachusetts; 6) Testing positive for Hydrocodone on February 20, 2002; 7) Improper prescription for a patient in Vermont; 8) Boundary violations and violating patient confidentiality; 9) Making False statements to the Board investigator; 10) Failing to notify the Board of a suspension in Massachusetts and 11) Failing to maintain a good faith involvement with the Vermont Practitioner Health Program.”

Letter of Atty. Edward Adrian to the Vermont Board of Medical Practice dated March 14, 2014 – Petitioner's Exhibit G at p. 2

2005-Stipulation and Consent Order

26. On August 3, 2005, the Board approved a Stipulation and Consent Order entered into by the State and Petitioner, who was represented by counsel. Petitioner's Exhibit E

27. The agreement provided that no further action would be taken on the Specification of Charges and that the matter would be “administratively closed.” Petitioner's Exhibit E ¶ 13

28. For her part, Petitioner agreed to surrender her license to practice medicine in Vermont:

“11. . . Respondent understands and agrees that such action by her of surrender of her medical license shall be final and irrevocable.” Petitioner's Exhibit E ¶ 11

29. Petitioner agreed further:

“12. Respondent agrees and warrants that at no time hereafter shall she seek by any means licensure, reinstatement, or relicensure as a physician in the State of Vermont, regardless of circumstances or the passage of time. Respondent expressly agrees that hereinafter the Board may and shall return to her without action or obligation of due process of any kind any application, motion, petition, or other writing from her with regard to licensure, reinstatement, or relicensure.”



2007 Massachusetts Board Bars Petitioner from Attempting to Renew Her Massachusetts  
Medical License

30. On September 20, 2006, the Massachusetts Board of Registration in Medicine (Massachusetts Board) filed a complaint in the Massachusetts Division of Administrative Law Appeals alleging that Petitioner had “issued prescriptions” in violation of Massachusetts law and “failed to keep medical records in regards to those prescriptions.” Order of Default Recommended Decision<sup>8</sup>, dated February 26, 2007 (Recommended Decision) p. 1
31. Petitioner, whose license had been suspended in February, 2004 (F-20), filed an initial response to the allegations but failed to attend hearings scheduled in the matter. The Administrative Law Judge found that Petitioner had defaulted and that the allegations against her were deemed proven. Recommended Decision p. 2
32. On June 20, 2007, the Massachusetts Board found that on multiple occasions from September 2002 and June 25, 2003, Petitioner improperly prescribed “controlled substances”, including Oxycodone, for two people who Petitioner had a personal relationship with and that this conduct had occurred in Vermont as well as Massachusetts. It found that Petitioner had repeatedly “failed to take and maintain a proper written medical history” and failed to “document the prescription in the patient’s medical record or perform an appropriate physical examination” of the patient.” Massachusetts Final Order ¶¶ 1-18
33. The Massachusetts Board concluded, after noting that Petitioner had been sanctioned in the past, that it was “apparent that (Petitioner) cannot practice medicine within appropriate standards.” The Massachusetts Board also concluded that Petitioner had committed violations of five Massachusetts laws or regulations and revoked her “inchoate right to renew her medical license.” Massachusetts Final Order - Conclusions of Law ¶¶ A-E

2008-2012

34. Petitioner graduated with a Masters of Architecture from Norwich University *cum laude* in 2008. Petitioner’s Exhibit G, p. 3
35. Petitioner began working for Morris Switzer Environments for Health in Williston, Vermont upon her graduation in 2008 and by 2012 had become Director of Infection Control “concentrating on making healthcare facility design and configuration less prone to healthcare associated infections (HAIs).” Id
36. In 2012 Petitioner found Taylor Healthcare Commissioning, Inc. which provides “assessment of HAIs in renovations and new construction of healthcare facilities.” Id

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<sup>8</sup> The Order of Default Decision was incorporated in the Final Decision and Order of the Massachusetts Board of Registration in Medicine at pp 9-10.

May-November, 2013: Petitioner Requests an Opportunity to Apply for “Reinstatement” of Her Vermont Medical License

37. In a letter to the Board in May, 2013, Petitioner said: “I would like to re-instate my medical license not only because it would increase opportunities in my present work, but also because I would like to combine consulting with disaster relief. I would like to work in settings where people are particularly vulnerable to poor sanitation and infectious disease.” Petitioner’s Exhibit F at p.1.
38. On November 6, 2013, Petitioner asked for an opportunity to begin a “dialogue” with the Board “or the Vermont Physicians Health Association” to allow her “to move forward in some way to a medical license.” Transcript<sup>9</sup> of Petitioner’s Testimony before the Board on July 2, 2014 and November 6, 2013 (Tr.) at p. 38
39. Petitioner made no mention of her “chemical addiction”, her “mental impairment” or her failure recognize “boundaries” – failings that she had admitted to in 1996 when she agreed to an indefinite suspension of her license. Tr. 36-40
40. Petitioner made no mention of the fact that her license to practice in Massachusetts had been indefinitely suspended in 2004- nor did she mention that whatever “inchoate right” she had to reapply for her Massachusetts medical license had been revoked; Id
41. The Board voted to require Petitioner to “abide by the terms” (conditions 11 and 12) of the 2005 Order. Petitioner’s Exhibit H

March- July, 2014: Petitioner Asks the Board to Strike Conditions 11 and 12 of the 2005 Order

42. Petitioner was the only witness at her hearing before the Board on July 2, 2014.
43. Petitioner offered no specific evidence concerning the current status of her “chemical addiction”, her “mental impairment” or her failure to recognize “boundaries” – conditions that she had admitted to in 1996 when she agreed to an indefinite suspension of her license. Tr. 1-32
44. Petitioner made no mention of the fact that the Massachusetts Board had revoked her “inchoate right” to apply for license reinstatement in that state. Id
45. The Board voted to reject Petitioner’s request to strike conditions 11 and 12 from the 2005 Order.

Conclusions of Law

Petitioner seeks to convince the Board to remove conditions 11 and 12 from the 2005 agreement she and her attorney negotiated with the State. This Stipulation and Order (Petitioner’s E) was approved by the Board on August 3, 2005. F-26

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<sup>9</sup> Petitioner’s statement before the Board on November 6, 2013 begins on p. 36 of the transcript. Her testimony before the Board on July 2, 2014 begins on p. 4 of the transcript.

Condition 11 says that Petitioner's surrender of her Vermont medical license is "final and irrevocable." Condition 12 says that if Petitioner seeks in any way to have her license reinstated, the Board may reject that request without providing her with "due process of any kind." Findings (F) 28 and 29

The parties agree that Petitioner has the burden of proof (i.e. "burden of persuasion"). They also agree that the standard proof is preponderance of the evidence.

There is no agreement, however, on what Petitioner must prove in order to meet her burden.

#### State's Position

The State argues that the Legislature has given the Board the authority to make physician disciplinary, oversight and licensing decisions in order to protect the public and maintain the integrity of the medical profession. State's Proposed Conclusions of Law (State's Conclusions) ¶ 1, *Perry v. Medical Practice Board*, 169 Vt. 399, 404 (1999).

According to the State, in order to meet her burden and convince the Board to remove conditions 11 and 12, Petitioner must introduce evidence which proves by a preponderance that conditions 11 and 12 are no longer necessary to protect the public and maintain the integrity of the profession. State's Conclusions ¶¶ 15-17

#### Petitioner's Position

Petitioner maintains she has a lesser burden. Petitioner says she "need only prove, by a preponderance of the evidence that less restrictive means other than a continued loss of her license can protect the public." Petitioner's Proposed Findings of Fact and Conclusions of Law (Petitioner's Findings) p. 9

She cites 26 VSA § 3101 in support of her position:

"It is the policy of the state of Vermont that regulation be imposed upon a profession or occupation solely for the purpose of protecting the public. The legislature believes that all individuals should be permitted to enter into a profession or occupation unless there is a demonstrated need for the state to protect the interests of the public by restricting entry into the profession or occupation. If such a need is identified, the form of regulation adopted by the state shall be the least restrictive form of regulation necessary to protect the public interest. If regulation is imposed, the profession or occupation may be subject to periodic review by the legislature to insure the continuing need for and appropriateness of such regulation."

Section 3101 requires State regulators who write regulations setting standards for "entry into the profession or occupation" to use "the least restrictive form of regulation" necessary to permit entry into the profession while at the same time protecting the public.

Petitioner Must Prove Irrevocable Surrender of Her Medical License Is No Longer Necessary to  
Protect the Public

The Board is not limited to determining whether there is a less restrictive means of protecting the public than Conditions 11 and 12. The Board's statutory authority in disciplinary matters is set out in 26 VSA§ 1361 (b):

(b) In such order, the board may reprimand the person complained against, as it deems appropriate; condition, limit, suspend, or revoke the license, certificate, or practice of the person complained against; or take such other action relating to discipline or practice as the board determines is proper . . . (emphasis added)

The Board agreed to the 2005 Stipulation and Order including Conditions 11 and 12 because it found the irrevocable surrender of Petitioner's license was necessary to protect the public. Petitioner must prove that Conditions 11 and 12 are no longer necessary to protect the public.

This case is not about setting the least restrictive standards for entry into the medical profession; it is about discipline imposed by the Board after Petitioner had already engaged in conduct which posed a threat to the health, safety and welfare of her patients. Petitioner is asking here that the Board lift disciplinary conditions that the Board had imposed (with her agreement) after:

- (1) Petitioner had admitted to violations of essential standards of acceptable and prevailing practice resulting from chemical addiction, mental impairment and a "lack of comprehension or disregard for doctor-patient boundaries," which caused the Board to add more than twenty conditions to her license in 1996, including a condition banning her permanently from practicing psychiatry in Vermont ; Findings (F) 3-10
- (2) Petitioner had convinced the Board in 2000 to amend disciplinary conditions imposed 1996 in order to allow her to pursue a three year family practice residency at Tufts University from July 2000 –June 30, 2003; F 11-13
- (3) Petitioner had convinced the Board in 2003 to permit her to resume practice in Vermont after agreeing to abide by several conditions of her license which were designed to protect the public F 17-20
- (4) Petitioner had engaged in conduct during a period between September 2002 and the 25<sup>th</sup> of June 2003, which violated conditions she had agreed to in 2000 when the Vermont Board and Massachusetts Board attempted to assist her in her efforts to retrain in a family residency program at Tufts - conduct which later led to the indefinite suspension of her Massachusetts license and led, ultimately, to revocation of whatever "inchoate" right she had to renew her medical license in Massachusetts; F 21, 30-33
- (5) Petitioner had been charged, in September, 2004, with twenty-five counts of unprofessional conduct involving allegations that she had violated several of the very license conditions that she had consistently agreed to abide by since her license was summarily suspended 1995. F 24-25

Under these circumstances- circumstances involving broken commitments and allegations of further broken commitments- the Board is obligated to require Petitioner to prove that Conditions 11 and 12 are no longer necessary to (1) protect the public and (2) maintain the integrity of the profession. To do

this, Petitioner must, at the very least, prove by a preponderance of the evidence that she is rehabilitated to the extent she is capable of honoring conditions that were in effect during the nine years that preceded the State's 2005 agreement to drop twenty-five counts of unprofessional conduct in exchange for Petitioner's agreement to the "final and irrevocable" surrender of her Vermont license.

#### Petitioner Has Failed to Meet Her Burden of Proof

Petitioner says that "what the Board should focus on in 2015 is whether there has been sufficient passage of time and sufficient rehabilitation such that there is a less restrictive means of protecting the public. Petitioner's Findings, p. 13. Yet, Petitioner offered no specific evidence of her "rehabilitation" – no evidence, for instance, that she is free from the "chemical addiction" or the "mental impairment" that were the focus of the conditions on her license in the years prior to her 2005 agreement to surrender that license. Nor has she pointed to any "least restrictive means of protecting the public" that she has proven or even attempted to prove.

Petitioner did testify in response to a question from a Board member that while she was "confident," that she could resume the practice of medicine, she thought the board could reasonably require "ongoing monitoring, you know, body fluid monitoring" ... restricted prescription writing, co-signatures. Any of that kind of thing I'm absolutely fine with." Tr. 12. But, this proves nothing more than that Petitioner is willing to give the Board another chance to impose conditions that she has violated in the past and was accused of violating before she surrendered her license.

The law required her to do more. Petitioner has not proven by a preponderance of the evidence that she has made sufficient progress in her rehabilitation to insure the public will be protected if Conditions 11 and 12 are removed.

Petitioner has also failed to prove that removing conditions 11 and 12 will not undermine the integrity of the medical profession in Vermont.

The Massachusetts Board revoked any "inchoate right" she might have to apply for license reinstatement in Massachusetts. It did so after finding that by improperly prescribing controlled substances, including Oxycodone, Petitioner had violated five laws or regulation in Massachusetts. The Massachusetts Board concluded: "It is "apparent that (Petitioner) cannot practice medicine within appropriate standards<sup>10</sup>." F 32-33

Petitioner cannot apply for reinstatement of her medical license in Massachusetts. Yet, Petitioner made no effort to explain why a decision by this Board which would permit her to apply for reinstatement of her Vermont license, would not undermine the integrity of the medical profession here in Vermont.

For the reasons set out above, Petitioner's request to remove conditions 11 and 12 from the August 3, 2005 Stipulation and Order is DENIED.

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<sup>10</sup> Vermont law - 26 VSA § 1354 (a) - says: "The board shall find that any one of the following, or any combination of the following, whether or not the conduct at issue was committed within or outside the state, constitutes unprofessional conduct.

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(23) revocation of a license to practice medicine or surgery in another jurisdiction on one or more of the grounds specified in this section;"

Robert A. Maynard M.D.

Board Chair

November 4, 2015