

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

LAURIE ANN DENHAM	)	
	)	
Appellant,	)	
	)	
v.	)	C.A. No. N17A-02-009 FWW
	)	
DELAWARE BOARD of MENTAL	)	
HEALTH and CHEMICAL	)	
DEPENDENCY PROFESSIONALS,	)	
	)	
Appellee.	)	

Submitted: April 13, 2017  
Decided: April 20, 2017

Upon Appellant's Motion for Stay Pending Appeal of the Order of the Delaware  
Board of Mental Health and Chemical Dependency Professionals from  
Commissioner's Order,

**DENIED.**

Gary W. Alderson, Esquire, Elzufon Austin & Mondell, P.A., 300 Delaware  
Avenue, Suite 1700, P.O. Box 1630, Wilmington DE 19899, Attorney for  
Appellant Laurie Ann Denham.

Zoe Plerhoples, Esquire, Deputy Attorney General, 820 N. French Street,  
Wilmington, DE 19801, Attorney for Appellee Delaware Board of Mental Health  
and Chemical Dependency Professionals.

**WHARTON, J.**

## ORDER

This 20<sup>th</sup> day of April, 2017, upon consideration of Appellant Laurie Ann Denham's Motion for Stay Pending Appeal of the Order of the Delaware Board of Mental Health and Chemical Dependency Professionals and Appellee Delaware Board of Mental Health and Chemical Dependency Professional's Response in Opposition and the record in this case, it appears to the Court that:

1. Appellant Laurie Ann Denham ("Denham") moves to stay the order of the Delaware Board of Mental Health and Chemical Dependency Professionals ("Board") revoking her license pending appeal of that order to this Court.<sup>1</sup> Denham's license as a professional mental health counselor was revoked by the Board on January 12, 2017.<sup>2</sup> Denham appealed the Board's order on February 10, 2017.<sup>3</sup> She filed this Motion on April 7, 2017.<sup>4</sup> The Board responded in opposition on April 13, 2017.<sup>5</sup> Briefing has not begun.

2. Enforcement of an agency's decision may be stayed by the Court "only if it finds, upon a preliminary hearing, that the issues and facts presented for review are substantial and the stay is required to prevent irreparable harm."<sup>6</sup> In analyzing this question, the Court balances all of the equities together - that is, the

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<sup>1</sup> D.I. 6.

<sup>2</sup> *Id.*

<sup>3</sup> D.I. 1.

<sup>4</sup> D.I. 6.

<sup>5</sup> D.I. 7.

<sup>6</sup> 29 *Del. C.* § 10144.

Court balances the likelihood of the appellant being successful on appeal; whether the appellant will suffer irreparable harm; and whether any other interested party or the public will be harmed.<sup>7</sup>

3. Here, Denham has not provided the Court with sufficient information to assess her likelihood of success on appeal – she merely alleges, without specification, a denial of due process and a lack of substantial evidence to support the Board’s decision.<sup>8</sup> Denham also contends that she will suffer irreparable harm if a stay is not granted, because without a stay, she has no practice, and without a practice, she has no livelihood.<sup>9</sup> The Board responds that Denham can still earn a living counseling clients, she just cannot call herself a “licensed professional counselor of mental health.”<sup>10</sup> It appears then that Denham, having received the Board’s imprimatur to continue counseling as long as she does not hold herself out to be licensed, may continue to counsel clients and, therefore, maintain her livelihood. Accordingly, she will not suffer irreparable harm without a stay. Additionally, the Court notes that Denham’s license apparently expired on September 30, 2016.<sup>11</sup> If so, it raises the question of whether Denham would be able to hold herself out as licensed even with a stay. Finally, the Court addresses

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<sup>7</sup> *Kirpat, Inc. v. Delaware Alcoholic Beverage Control Comm’n*, 741 A.2d 356, 357-59 (Del. 1998).

<sup>8</sup> D. I. 6 at ¶ 4.

<sup>9</sup> *Id.* ¶ 7.

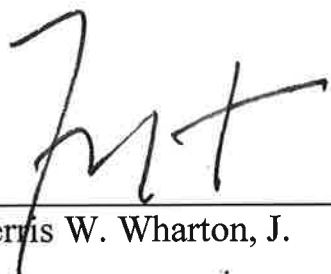
<sup>10</sup> D.I. 7 at ¶ 12.

<sup>11</sup> *Id.* at n. 1.

the issue of whether the Board or the public will be harmed. Since the Board acknowledges that Denham may continue to see clients even without stay, there is no evidence that the public would be harmed by a stay. Further, the only harm a stay would cause the Board is minor reputational harm at most.

Therefore, the Court finds that Denham has not shown that the issues on appeal are substantial and that she will suffer irreparable harm. Further, the Court finds that the public will not be harmed by a stay and that a stay would cause the Board only insignificant harm. Accordingly, after balancing all of those factors, Appellant Laurie Ann Denham's Motion for Stay Pending Appeal of the Order of the Delaware Board of Mental Health and Chemical Dependency Professionals is **DENIED.**

**IT IS SO ORDERED.**



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Ferris W. Wharton, J.