SUPERIOR COURT OF THE STATE OF DELAWARE

RICHARD R. COOCH RESIDENT JUDGE NEW CASTLE COUNTY COURTHOUSE 500 North King Street, Suite 10400 Wilmington, Delaware 19801-3733 (302) 255-0664

Kamlesh B. Arya 9 Briars Lane Wilmington, Delaware 19807 Appellant

Patricia Davis Oliva, Esquire Jennifer L. Singh, Esquire Deputy Attorneys General Delaware Department of Justice 102 W. Water Street Dover, Delaware 19904 Attorneys for Appellee

> Re: Kamlesh B. Arya v. Delaware Board of Occupational Therapy Practice C.A. No. N13A-06-008 RRC

> > Submitted: November 19, 2013 Decided: February 14, 2014

Upon Consideration of Appellant's Appeal of a Decision of the Delaware Board of Occupational Therapy Practice.

AFFIRMED.

Dear Ms. Arya, Ms. Oliva, and Ms. Singh:

This appeal stems from a decision of the Appellee Delaware Board of Occupational Therapy Practice ("the Board") on May 17, 2013 to discipline Kamlesh B. Arya ("Appellant"), a Board-licensed occupational therapist, for failure to comply with continuing education requirements and false attestation that

she had completed them. Appellant has appealed the decision and requests the discipline be removed. Because Appellant has failed to show that the Board committed legal error or that its decision was not otherwise supported by substantial evidence, the decision of the Board is hereby AFFIRMED.

FACTUAL AND PROCEDURAL HISTORY

Appellant applied for a renewal of her occupational therapy license on August 21, 2012 through a State of Delaware website created to allow Delaware professionals to renew their licenses online.² On her online application, Appellant attested to having properly completed the continuing education requirements.³

Appellant's application was selected for a post-renewal documentation audit and she submitted her verification log and related paperwork to the Board.⁴ After the audit, it became apparent that while Appellant had completed the required number of continuing education credit hours for license renewal, she failed to complete them in more than one of seven permitted categories, as required by the Board. ⁵ As a result, a Rule to Show Cause Hearing was held March 5, 2013 to determine if discipline was warranted.⁶

At the hearing, Appellant offered that the mistakes were "partly" her fault, but blamed confusion regarding the rules and the web program for her false attestation and failure to complete the continuing education requirements.⁷ Appellant partially explained this confusion by asserting that she had never worked in Delaware.8 The Hearing Officer found that Appellant failed to satisfy the continuing education requirements without justification, and recommended discipline to the Board. A letter notifying Appellant of the recommendation and the Board's impending decision was sent to her containing the following passages:

> Please note that if you have any exceptions, comments or arguments regarding the enclosed recommendation, you must file them in writing to the attention of the Board ... within twenty (20) days of March 20, 2013...

Superior Court has jurisdiction to hear a direct appeal from the Delaware Board of Occupational Therapy Practice pursuant to 29 Del. C. §10142 and 29 Del. C. §10102 (4).

Appellant's Opening Br. at 1.

³ Recommendation of Hrg. Officer (Mar. 20, 2013) at 1.

⁴ Appellee's Ans. Br. at 2; Appellant's Opening Br. at 1.

⁵ Recommendation of Hrg. Officer at 5. Those categories include: course work, professional meetings and activities, publications, presentations, research/grants, specialty certification, and field work supervision. All of Appellant's credits were in course work. Appellee's Ans. Br. at 5-6, 8.

Appellee's Ans. Br. at 3.

⁷ Recommendation of Hrg. Officer at 5.

⁹ Appellee's Ans. Br. at 3.

Please note this is a recommendation to the Board. No action is required on your part at this time. The Board will review the recommendation and make the final decision. 10

Appellant did not submit any additional exceptions, comments, or arguments to the Board. Subsequently, the Board accepted the Hearing Officer's recommendation and issued an order to discipline Appellant on May 17, 2013.¹¹ Appellant was required to earn "at least 1 acceptable continuing education credit in a category other than coursework and submit acceptable proof thereof ... within 75 days..." to be applied as "make up" credit. 12 Failure to do so would result in her license being suspended without further notice or hearing. 13 Additionally Appellant was issued a letter of reprimand for her false attestation and was "flagged for audit" in the next reporting period. ¹⁴ Appellant failed to provide proof of the required one credit of additional continuing education, and her license was suspended on August 16, 2013.¹⁵

Appellant filed a timely appeal of the Board's decision to this Court.

THE PARTIES' CONTENTIONS

1. Appellant's Contentions

Appellant contends that a deficient website and confusing correspondence are to blame for her discipline. 16 She argues the website she was required to use to renew her license did not give her the opportunity to note that her continuing education credits were in a single category as opposed to the two required. ¹⁷ She argues she did not falsify information, but was simply unable to offer it due to the limitations of the online form. ¹⁸ Appellant claims she contacted the Board for guidance using the website and she "was advised to check 'yes'" so that she could continue the application. 19 She continued with the application because "[t]he system does not allow one to complete the renewal application any other way."20

Further, Appellant argues that the language of the letter informing her of the Hearing Officer's recommendation of discipline was "confusing" and the reason she did not submit anything further to the Board. 21 When the Board issued its final

¹⁰ App. to Appellee's Ans. Br. at A43 (emphasis in original). ¹¹ App. to Appellee's Ans. Br. at A51. ¹² *Id.* at A52. ¹³ *Id*. ¹⁵ Appellee's Ans. Br. at 11 n.6. ¹⁶ Appellant's Opening Br. at 1; Appellant's Reply Br. at 1. ¹⁷ Appellant's Opening Br. at 1. ¹⁸ Appellant's Reply Br. at 1. ²⁰ Appellant's Opening Br. at 1. ²¹ *Id.* at 2.

decision to discipline her, Appellant contends that discipline was based on her failure to respond to the Hearing Officer's recommendations. ²² Appellant asserts she felt "shocked" and "harassed" that she was "reprimanded in an arbitrary manner."²³ Appellant claims she is "being punished for a confusing and contradictory order."²⁴ Appellant also contends she "was not given the opportunity to carry out the recommended disciplinary action" before the reprimand was issued.²⁵ Appellant requests that this Court "Revert back the decision of issuing a letter of Reprimand and **Reinstate** [her] professional license in good standing."²⁶

2. The Board's Contentions

The Board disputes Appellant's assertion that it disciplined her based upon her failure to respond to the Hearing Officer's letter.²⁷ The Board takes the position that its decision was based on the "undisputed fact on the record" that Appellant failed to satisfy the continuing education requirements.²⁸ It points to Appellant's admission during the Rule to Show Cause Hearing as well as her admission in her Opening Brief to this Court.²⁹ Further, the Board argues that Appellant provided no justification for her failure to meet these requirements, blaming it on confusion of the State's rules, forms, and correspondence. 30 The Board asserts that Appellant's inexperience working in Delaware is "irrelevant to whether she must comply with the Board's rules for maintaining her Delaware license in good standing."³¹ The Board also points out that Appellant admitted she knew the rules were available for review online if she needed to consult them.³²

The Board contends that Appellant "freely admits she did not successfully complete the required continuing education...freely admits being aware that the applicable regulations are available online, and freely admits that she falsely attested to having fulfilled the continuing education requirement when she completed the online license renewal form."³³ It asserts that this is more than substantial evidence to support its decision to discipline Appellant. The Board contends that Appellant misread the letter from the Hearing Officer and interpreted a recitation of the case's procedural history as the reason for her discipline.³⁴ The Board maintains her

²² *Id*.

²³ *Id*. ²⁴ *Id*.

²⁶ Appellant's Reply Br. at 1 (emphasis in original). ²⁷ Appellee's Ans. Br. at 14.

²⁸ *Id.* at 16.

²⁹ *Id*.

³⁰ *Id.* at 17-18.

³¹ *Id.* at 18.

³² *Id.* at 19.

³⁴ *Id.* at 23.

discipline has always been based on the evidence presented that she failed to meet the continuing education requirements.³⁵

The Board also disputes Appellant's claim that issuing a letter of reprimand was in legal error or an abuse of discretion and that she was not given the opportunity to comply before the letter was issued. The Board contends it made its decision based upon Appellant's actions "nearly a year earlier" when she failed to meet continuing education requirements. It also contends that even if Appellant had completed the one hour continuing education credit recommended by the Hearing Officer before the Board adopted it, the basis of the Board's decision would not have changed. The board is a claim that issuing a letter of reprimand was in legal error or an abuse of discretion and that she was not given the opportunity to comply before the letter was issued. The Board contends it made its decision based upon Appellant's actions "nearly a year earlier" when she failed to meet continuing education credit recommended by the

The Board also dismisses her argument that the Hearing Officer's letter was confusing, claiming the bolded language in the letter clearly placed her on notice of her right to respond.³⁸ The Board takes the position that "it was incumbent upon [Appellant] to seek clarification for what she perceived to be confusing" following receipt of the letter.³⁹

The Board asserts its decision is supported by substantial evidence and is free of legal error and should therefore be affirmed.⁴⁰

STANDARD OF REVIEW

The Supreme Court and this Court have repeatedly emphasized the limited appellate review of an administrative agency's factual findings. The Court's role is limited to determining whether substantial evidence supported the Board's findings, and whether the decision was legally correct. If substantial evidence supports the administrative decision, it must be affirmed unless there is an abuse of discretion or clear error of law. An administrative agency with discretionary power cannot act arbitrarily or capriciously. Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. The appellate court does not weigh evidence, resolve credibility questions, or make its own factual findings. The Court merely determines if the evidence is legally adequate to support the Board's factual findings. When considering the facts, the court defers to the Board's expertise and competence.

³⁵ *Id*.

 $^{^{36}}$ *Id.* at 25.

³⁷ *Id.* at 26.

³⁸ *Id.* at 24.

³⁹ *Id*.

⁴⁰ Id at 15

⁴¹ Munyan v. Daimler Chrysler Corp., 909 A.2d 133, 136 (Del. 2006).

⁴² *Id*.

⁴³ Kreshtool v. Delmarva Power & Light Co., 310 A.2d 649, 652 (Del. Super. July 9, 1973).

⁴⁴ Oceanport Ind. v. Wilmington Stevedores, Inc., 636 A.2d 892, 899 (Del. 1994) (internal quotation marks omitted).

⁴⁵ *Johnson v. Chrysler Corp.*, 213 A.2d 64, at 66 (Del. 1965).

⁴⁶ 29 *Del. C.* § 10142(d).

⁴⁷ Histed v. E.I. DuPont de Nemours & Co., 621 A.2d 340, 342 (Del. 1993). See also 29 Del. C. § 10142(d).

As such, the Court must uphold a Board's decision that is supported by substantial evidence even if, in the first instance, the reviewing judge might have decided the case differently. The record must be viewed in the light most favorable to the prevailing party below. 49

DISCUSSION

Appellant acknowledged that she failed to comply with the continuing education requirements and she subsequently falsely attested to having completed them on the internet application. Her excuses that she did not understand the process and that the forms and correspondence from the Board were inadequate were found by the Board to not be valid justification for her failure. Appellant was aware that the Board rules were available online for her to consult and, while Appellant alleges consulting the Board is one of the reasons she answered yes on the application, the Board maintains she could have continued to contact the Board if she had issues understanding the process. The Board discusses substantial evidence that supports its decision to discipline her and therefore this Court must defer to its expertise and the decision must stand.

Despite the Board's substantial evidence supporting discipline, Appellant's contention that her failure to understand the letter from the Hearing Officer resulted in her discipline still fails. Appellant would have had to disregard the obvious bolded paragraph above the "no action is required" language she relies on in her brief to support her argument. It is clear that if she had any "exceptions, comments or arguments" they "must" be filed in writing "within twenty (20) days of March 20, 2013." It was her responsibility to clarify any confusion on her part regarding the alleged "contradictory" language.

The Court likewise finds no clear errors of law or abuses of discretion that require the decision to be reversed. Appellant provides no evidence that the Board's actions were anything but proper. Its decision was based on the substantial evidence on record and not, as Appellant asserts, her failure to respond to the Hearing Officer letter. Appellant's apparent continued misapprehension of Board rules does not warrant the Court to reverse the Board's decision. Faithful adherence to the proper standard of review on this appeal from a decision of an administrative agency mandates affirmance of the Board decision.

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⁴⁸ *Kreshtool*, 310 A.2d at 652.

⁴⁹ Thomas v. Christiana Excavating Co., 1994 WL 750325, at *4 (Del. Super. Nov. 15, 1994).

CONCLUSION

For the foregoing reasons, Appellant's Appeal of the Decision of the Delaware Board of Occupational Therapy Practice is **AFFIRMED.**

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	Richard R. Cooch, R.J.					
cc:	Delaware Board of Occupational Therapy Practice					
	Prothonotary					