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

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Re: Camtech School of Nursing and Technological Sciences v. Delaware Board of Nursing C.A. No. N13A-05-004 RRC

Submitted: November 1, 2013 Decided: January 31, 2014

Upon Consideration of Appellant's Appeal of a Decision of the Delaware Board of Nursing. **AFFIRMED.**

Dear Counsel:

INTRODUCTION

This appeal stems from a decision of the Appellee Delaware Board of Nursing ("the Board") on April 10, 2013 to withdraw state approval of Appellant Camtech School of Nursing and Technological Sciences ("Camtech"), effectively closing the school. Camtech has appealed the decision and essentially requests more time to implement procedures to comply with Board requirements. Because Camtech 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

In August 2005, Camtech applied to the Board to open a School of Licensed Practical Nursing.² Applicants are subject to a three-step approval process which includes:

- 1) Phase I: 1 year before admitting students, prospective program submits complete application package and the Board conducts a site visit to validate the application. With approval, prospective program moves to Phase II.
- Phase II: At least 9 months before students may be admitted, prospective program identifies a program director and completes second part of application package. If successfully completed, the program may admit students. With approval, prospective program moves to Phase III.
- 3) Phase III: Prospective program submits progress reports every six months reporting various criteria. At least 4 months before first day of classes, qualified faculty appointed to assist formation of analytical framework, curriculum plan, and course content. Board will conduct a second site visit after first graduating class to determine whether program is granted full approval.³

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¹ Superior Court has jurisdiction to hear a direct appeal from the Delaware Board of Nursing pursuant to 29 *Del. C.* §10142 and 29 *Del. C.* §10102(4).

² Appellant's Opening Br. at 2.

³ Appellee's Response at 1-2.

Camtech proceeded through the first two phases of the process and its first class of students enrolled in September 2006.⁴ Camtech was never able to progress out of Phase III of the program for full approval.⁵

The Board has the power to withdraw approval of a nursing education program under 23 *Del. C.* §1919(b):

If the Board determines that any approved nursing education program is not maintaining the standards required by this chapter and by the Board, written notice thereof, specifying the deficiency and the time within which the same shall be corrected, shall immediately be given to the program. The Board shall withdraw such program's approval if it fails to correct the specified deficiency, and such nursing education program shall discontinue its operation; provided, however, that the Board shall grant a hearing to such program upon written application and extend the period for correcting specified deficiency upon good cause being shown.

The first signs of trouble began in February 2009, when Camtech was informed it was being put on probation and would continue to be held in Phase III. The Board did not categorize them as "deficiencies" but noted several issues of "significant concern," including its National Council Licensure Exam ("NCLEX") pass rate (61.20%) "far below the 80% threshold," turnover in its nursing director position, and changes in its philosophy and requirements that were not handled according to protocol. The Board requested documents to substantiate that Camtech would address these issues. Camtech submitted a "Corrective Action Plan" to the Board in March 2009 that at that time satisfied the Board's concerns.

Camtech remained in Phase III on probation for the next two years. In February 2011 Camtech received another letter from the Board, this time again finding issues of "significant concern." The Board, again, cited Camtech's NCLEX pass rate (42.22%) and the fact that this was the third year below the 80% threshold. The other noted issues were a mix of new and old concerns including an incomplete annual report, issues with its graduates securing employment and

⁴ Appellant's Opening Br. at 2.

⁵ Id

⁶ App. to Appellant's Opening Br. at A-1.

⁷ "[Delaware] Board [of Nursing] Rule 2.5.10.6.7 outlines that one deficiency justifying placing a program on probation is the '[f]ailure to attain an eighty percent pass rate on the licensure examination for first time candidates in any three consecutive calendar years.'...The NCLEX pass rate is calculated from October 1 through September 30 of the following year by the National Council of State Boards of Nursing and is a standard calculation reported *viz a viz* all schools." *Id.* at A-191.

⁸ *Id*.at A-1.

⁹ *Id*.

¹⁰ *Id.* at A-3.

¹¹ *Id.* at A-18.

¹² Ltr. dated Feb. 21, 2011 from Delaware Board of Nursing to Camtech School of Nursing and Technological Services.

¹³ *Id*.

registering to take the NCLEX, errors in its programs that made them difficult to understand, turnover in the nursing director, and a lack of accreditation. ¹⁴ Another Corrective Action Plan was requested. ¹⁵ The record is not completely clear about the resolution of the 2011 issues, but the Court assumes that Camtech continued on probation as it continued to operate.

On February 13, 2012, the Board sent another letter to Camtech. ¹⁶ The letter stated, for the first time, that "[a]fter much analysis, the committee recommended withdrawal of initial approval for the Camtech Practical Nursing program." After seven paragraphs detailing issues with the program, the letter concluded "[t]his letter serves as written notice of deficiencies and you must submit an action plan to the [B]oard." Highlighted among the issues was, again, the school's failing NCLEX pass rate. ¹⁹ Camtech was given another opportunity to submit a report to propose its plan to improve these issues and remain open. ²⁰ Camtech submitted a report addressing "the discrepancies/deficiencies mentioned" on April 25, 2012. ²¹ The school then retained counsel for the first time. ²²

On September 12, 2012, the Board notified the school that it "finds that the corrective plan of action is insufficient to address the deficiencies previously identified and thus...the Board proposes to withdraw Camtech's approved nursing program status."²³ The letter listed several reasons for its decision in detail, and offered Camtech the opportunity to request a hearing "to argue [that] good cause exists for extending the period of time to correct these deficiencies, or that the program's approved status should otherwise not be withdrawn."²⁴

Camtech's Board Hearing occurred on November 14, 2012, where the Board reviewed a revised Proposed Corrective Plan of Action, several exhibits, and testimony from the Executive Director and President of Camtech.²⁵ Following the hearing and a second meeting for Board deliberation, it decided on April 10, 2013 to withdraw approval for Camtech's nursing program.²⁶ An opinion and order were sent to Camtech, who timely appealed to this Court.

Camtech then filed a Motion to Stay the Board's action in this Court on May 13, 2013.²⁷ This motion was opposed by the Board and denied by the Court on June 11, 2013.²⁸

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¹⁴ *Id*.

¹⁶ App. to Appellant's Opening Br. at A-19.

¹⁷ *Id*.

¹⁸ *Id*.

¹⁹ *Id*.

²⁰ *Id*.

²¹ *Id.* at A-22.

²² Appellant's Opening Br. at 4.

²³ App. to Appellant's Opening Br. at A-29.

²⁵ Appellant's Opening Br. at 4.

²⁶ App. to Appellant's Opening Br. at A-195.

²⁷ Appellant's Mot. for Stay Pending Review.

THE PARTIES' CONTENTION

1. <u>Camtech's Contentions</u>²⁹

Camtech contends that the Board's opinion withdrawing approval violated its due process rights to proper notice and a meaningful hearing.³⁰ Camtech argues the Board violated its own procedures, putting Camtech on notice that the Board might withdraw approval only shortly before Camtech had to defend its program.³¹ "Only after Camtech retained counsel and inquired did the Board finally notify Camtech in writing of its sudden proposal to withdraw approval."³² Camtech also argues the lack of notice made it impossible for the school to implement its Corrective Action Plan designed to remedy the deficiencies pointed out by the Board.³³ The school argues the Board failed to specify the deficiencies, inform Camtech of how much time it would have to resolve them, or give the school a proper amount of time to do so.³⁴ Camtech asserts that any "second and third 'chances'" provided it by the Board that could constitute notice were the result of the school being in compliance, not constant struggling.³⁵

Camtech also contends that the Board erred as a matter of law because it did not articulate or apply a standard for "good cause" in its Opinion. ³⁶ It argues the Board improperly focused on whether or not it should withdraw approval, as opposed to considering whether there was "good cause" to provide an extension. ³⁷ Camtech argues that the Board "never articulated what constitutes 'good cause'" and it "is not defined by statute or in the nursing regulations." This, Camtech argues, provides "no objective measures or factors for the Board to weigh, leaving a school attempting to show 'good cause' at the mercy of the whim of the Board." Camtech asserts not only was it unable to provide guidance as to what constituted "good cause" but the Board failed to apply any of the evidence presented to that standard. While the Board makes specific findings, Camtech argues that it never

²⁸ Camtech Sch. of Nursing and Technological Sciences v. Del. Bd. of Nursing, C.A. No. N13A-05-004 RRC; Trans. ID 52810118 (Del. Super. June 11, 2013) (ORDER).

²⁹ See infra note 78 for a discussion of certain of Appellant's original contentions this Court considers now abandoned. In addition, Camtech's arguments discussing issues with its student handbook are brought up for the first time in its Reply Brief and will therefore not be considered. *Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993) ("The failure to raise a legal issue in the text of the opening brief generally constitutes a waiver of that claim on appeal.") (citations omitted).

³⁰ Appellant's Opening Br. at 17.

Appellant's Opening Br. at 18; Appellant's Reply Br. at 2.

³² Appellant's Opening Br. at 18.

 $^{^{33}}$ *Id*.

³⁴ *Id.* at 19.

³⁵ Appellant's Reply Br. at 1.

³⁶ Appellant's Opening Br. at 21.

^{3/} *Id*.

³⁸ *Id*.

³⁹ *Id*.

⁴⁰ Appellant's Reply Br. at 6.

applied the "good cause" standard to them, nor did it provide "examples of what type of showing would be required."⁴¹ Camtech contends that this lack of guidance and application is an error as a matter of law and requires the case be remanded. 42

2. The Board's Contentions

The Board contends that it satisfied due process concerns with the process of its adjudication and its decision to withdraw Camtech's approval. 43 It maintains that Camtech was given "more than adequate notice" and a "meaningful opportunity to be heard."44 The Board argues that Camtech was supplied with plenty of notice in the form of correspondence and the fact that Camtech was on probation for several years. 45 The Board contends it provided Camtech with "second and third 'chances'... to cure its program deficiencies and come into compliance with Board Rules."46 The Board contends these chances account for the periods of time with little correspondence from the Board. ⁴⁷ The Board maintains the Camtech is unable to provide any evidence to support this claim or the assertion that the Board's decision was "predetermined.",48 The Board also details an extensive list of deficiencies that were outlined in its correspondence with Camtech and its subsequent failure to correct them. 49

The Board takes the position that Camtech's claims that the Board failed to articulate or apply the "good cause" standard are "unsupported by the record, contrary to established controlling case law, and ... must fail."⁵⁰

The Board suggests that Camtech is not presenting a full picture of the Delaware Board of Nursing rules in its "good cause" arguments.⁵¹ It cites *Chevron*, U.S.A., Inc. v. Natural Resource Defense Council, Inc. 52 to support its proposition that the Board properly "interpreted its own statute and rules in furtherance of its legislative mandate to protect the public as it is the singular public body established to regulate the practice of nursing."⁵³ It argues that Camtech was not "at the mercy of the whim of the Board" but was legally regulated by an administrative body. It contends "[t]he Board's decision encapsulates its deliberative process of evaluating Camtech's historical inability to comply with the Board's Rules and weighing the

⁴¹ *Id*.

⁴² *Id.* at 6-7.

⁴³ Appellee's Response at 11.

⁴⁴ *Id*. at 12.

⁴⁵ *Id.* at 16.

⁴⁶ *Id.* at 11.

⁴⁷ *Id.* at 14.

⁴⁸ *Id.* at 13.

⁴⁹ *Id.* at 15-16.

⁵⁰ *Id.* at 20.

⁵² 467 U.S. 837 (1984) ("We have long recognized that considerable weight should be accorded to an executive department's construction of a statutory scheme it is entrusted to administer, and the principle of deference to administrative interpretations.").

⁵³ Appellee's Response at 24.

safety of the public against Camtech's proposed corrective plan of action, ultimately deciding good cause does not exist to permit Camtech to remain open any longer."

The Board refutes Camtech's claim it failed to properly apply the facts to the "good cause" standard, again citing the multiple deficiencies it outlined to Camtech in its correspondence and Order withdrawing approval.⁵⁴ The Board also denies Camtech's claim that its withdrawal was primarily and unfairly based on its failure to meet the 80% NCLEX pass rate.⁵⁵ The Board maintains:

"[w]here, as here, a nursing program was allowed to operate on probation for over four years and when specifically notified of precise program failures submitted not one, but two corrective plans of action that both 1) failed to demonstrate any reasonable likelihood of bringing the program into compliance; and 2) completely lacked any timeline by which the program *itself* expected to see measurable results, the decision to withdraw that program's approval status should be affirmed."

The Board concluded that Camtech "was placed on probation for four years, notified repeatedly of its short-comings, and could never quite bring its program into compliance with the Board's rules." It argues Camtech's "trajectory of falling just short of acceptable" mandates the school be closed and the Board's decision be affirmed.

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. 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. As such, the Court must

⁵⁴*Id.* at 21-22 ("The Board continued on, identifying *six single spaced pages* of areas in which Camtech's program was not complying with Board's rules.") (emphasis in original).

⁵⁵ *Id.* at 23.

⁵⁶ *Id.* at 32.

⁵⁷ Munyan v. Daimler Chrysler Corp., 909 A.2d 133, 136 (Del. 2006).

⁵⁸ *Id*.

⁵⁹ Oceanport Ind. v. Wilmington Stevedores, Inc., 636 A.2d 892, 899 (Del. 1994).

⁶⁰ Johnson v. Chrysler Corp. 213 A.2d 64, at 66 (Del. 1965).

^{61 29} Del. C. § 10142(d).

⁶² Histed v. E.I. DuPont de Nemours & Co., 621 A.2d 340, 342 (Del. 1993). See also 29 Del. C. § 10142(d).

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. 63 The record must be viewed in the light most favorable to the prevailing party below.⁶⁴

DISCUSSION

A. There is substantial evidence that the Board provided proper notice and a meaningful opportunity to be heard before its decision to withdraw Camtech's approval status.

The Supreme Court of Delaware, in *Vincent v. Eastern Shore Markets*, 65 described the due process requirements for administrative hearings as follows:

'In the exercise of quasi-judicial or adjudicatory administrative power, administrative hearings, like judicial proceedings, are governed by fundamental requirements of fairness which are the essence of due process, including fair notice of the scope of the proceedings and adherence of the agency to the stated scope of the proceedings.' Due process, unlike some legal rules, is not a technical notion with a fixed content unrelated to time, place, and circumstances; rather it is a flexible concept which calls for such procedural protections as the situation demands. As it relates to the requisite characteristics of the proceeding, due process entails providing the parties with the opportunity to be heard, by presenting testimony or otherwise, and the right of controverting, by proof, every material fact which bears on the question of right in the matter involved in an orderly proceeding appropriate to the nature of the hearing and adapted to meet its ends. Further, due process requires that the notice inform the party of the time, place, and date of the hearing and the subject matter of the proceedings.⁶⁶

The Board provided more than adequate notice to Camtech about deficiencies in its program. While Camtech seeks in its Reply Brief to exclude all correspondence between the school and the Board prior to February 2012 when withdrawal was first discussed,⁶⁷ alleging that such correspondence was not part of the administrative record, a review of the official record of the proceedings provided by the Board reflects a history of correspondence stretching back until 2009. In that early correspondence there were already discussions about the issues that eventually became the basis of the Board's decision. At the time, the Board categorized these issues as being of "significant concern." Camtech cannot argue that it was blindsided by the Board's decision to withdraw approval. It is true, as Camtech argues, that some issues arose later in the process, but the primary

⁶³ Kreshtool v. Delmarva Power & Light Co., 310 A.2d 649, 652 (Del. Super. July 9, 1973).

⁶⁴ Thomas v. Christiana Excavating Co., 1994 WL 750325, at *4 (Del. Super. Nov. 15, 1994).

^{65 970} A.2d 160 (Del. 2009) (citations omitted).

⁶⁶ *Id.* at 163-64.

⁶⁷ Appellant's Reply at 3.

problem of Camtech's NCLEX pass rate was consistent over the multiple years it was placed on probation. Camtech was given more than one opportunity to solve this problem and continued to submit programs that failed to adequately address its issues.

The Board, going back to its 2009 correspondence, articulated concerns in detail for Camtech to address. Both the February 2012 and the September 2012 letters take multiple pages to discuss perceived deficiencies. The majority of these problems were familiar to Camtech through the years of correspondence. There is substantial evidence to show that Camtech had more than enough time and information for it to construct a Corrective Action Plan that addressed the Board's concerns.

The Board also provided Camtech with an adequate opportunity to be heard on the issues leading to the withdrawal of its approval. Camtech provided the Board with multiple Corrective Action Plans to explain and attempt to solve deficiencies with the program. The Board also held a hearing on November 14, 2012, giving Camtech the opportunity to provide additional information on its plan, to argue there was good cause to allow more time to implement it, or otherwise to argue that approval should not be withdrawn. This meeting not only went over the allotted time ⁶⁸ but the Board extended its deliberations to a second meeting so it would have more adequate time to review Camtech's submissions during the hearing. ⁶⁹ This substantial evidence supports the decision that an adequate opportunity to be heard was provided.

The Court here finds no errors of law or abuse of discretion that requires the decision to be reversed. The Board provided both adequate notice and a meaningful opportunity to be heard. Camtech's argument that it was denied adequate due process by the Board fails. Faithful adherence to the proper standard of review on this appeal from a decision of an administrative agency mandates affirmance of the Board decision.

B. There is substantial evidence to support the Board's finding that Camtech failed to provide "good cause" to extend its probation.

The Board's decision that Camtech failed to provide "good cause" to extend its probation is supported by substantial evidence and legally sound. While "Delaware courts do not accord agency interpretations of the statutes which they administer so-called *Chevron* deference," administrative "conclusions of law are reviewed on a *de novo* basis, but with a deferential bent, which recognizes the expertise of the [agency] in adjudicating disputes in [that] field...." For factual findings the Court is required by statute to defer to its expertise and competence.

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⁶⁸ App. to Appellant's Opening Br. at A-117.

⁶⁹ *Id.* at A-148-49.

⁷⁰ Del. Compen. Rating Bureau, Inc. v. Ins. Commr, 2009 WL 2366009, at *4 (Del. Ch. July 24, 2009).

Recognizing the expertise of the Board in adjudicating these types of disputes, the Court finds that their use of the "good cause" standard was appropriate. Even if this Court might have decided the factual issues differently in the first instance, the Board's decision that Camtech failed to provide "good cause" must stand because it is supported by substantial evidence.

The Board lays out in its opinion several reasons why it decided to withdraw approval, chief among them Camtech's substandard NCLEX pass rate for the past five years. It found Camtech's plan "in toto does not demonstrate good cause for extending Camtech's time period to correct this deficiency." The Board found Camtech's proposed requirement that students take the exam within 90 days of graduation fails when it is pointed out that a similar requirement was in effect for three years the school was in operation and had no effect on the pass rate. The Board found Camtech also failed to address other situations (financial obligations and criminal background issues) that the Board highlighted as issues with Camtech's NCLEX pass rate. Camtech, according to the Board, also appeared not to have had a proper way to evaluate the effectiveness of its proposed solutions to the pass rate issue. The substant is proposed solutions to the pass rate issue.

The Board also found repeated unnecessary confusion in Camtech's curriculum regarding credit hours. The Board held that issues with the curriculum were not addressed, despite repeated requests. The school's handbook also "contains internal discrepancies," including ones that were not even adjusted for submission with its Corrective Action Plan.

The Board held Camtech's plea that "whatever the Board needs to be done will be done" to remain open was not enough to establish "good cause." There were no errors of law or an abuse of discretion in this case. The Board's decision is supported by ample substantial evidence. The Court must defer to the Board's expertise and affirms its decision that Camtech did not demonstrate "good cause" to extend its probation.

⁷² *Id.* at A-192.

⁷³ *Id*.

⁷⁴ *Id*.

 $^{^{75}}Id$

⁷⁶ *Id.* at A-84.

⁷⁷ *Id.* at A-194.

CONCLUSION

For the foregoing reasons, Appellant's Appeal of the Decision of the Delaware Board of Nursing is **AFFIRMED.**⁷⁸

If the practitioner files a reply brief that does not address all of the issues that were discussed in the opening brief, the practitioner should include some sort of disclaimer in the reply brief to indicate that the petitioner is still contesting all of the issues discussed in the opening brief and that the petitioner has not abandoned or conceded anything. In other words, the practitioner should somehow indicate that the reply brief is dedicated only to clarifying certain issues or discussing matters not previously discussed in the opening brief.

Robert E. McKenzie et al., Representation Before the United States Tax Court § 8:2 (updated 2013) (Westlaw).

Delaware attorneys have been advised that "[a]lthough the purpose of the reply brief is rebuttal, the appellant need not comment upon every point made by the appellee. Rather the focus should be only upon the major contentions and most telling points." The Delaware Appellate Handbook (2d ed. 1996), http://courts.delaware.gov/forms/download.aspx?id=39398. Delaware Courts, likewise, hold that "the purpose of the reply brief is to respond to matters raised in the answering brief." Chase Bank USA, N.A. v. Hess, 2012 WL 5463127, at *1 (D. Del. Nov. 8, 2012). As long ago as 1930, the Delaware Supreme Court held that arguments that were not further argued in the reply brief were "abandoned." Phoenix Oil Co. v. Mackenzie Oil Co., 154 A. 894, 903 (Del. 1930) ("This point was made in defendant's main brief, but it is not mentioned in its reply brief which contains a general summary of the exceptions relied on and we, therefore, conclude that it was abandoned." (The Delaware Supreme Court, nevertheless, and apparently based on the circumstances of that particular case, elected to "briefly consider" the argument not further argued in the reply brief; "[n]evertheless, because the question was argued on both sides the Court will briefly consider it.")). See also Beam ex rel. Martha Stewart Living Omnimedia, Inc. v. Stewart, 845 A.2d 1040, 1052 n.33 (Del. 2004) ("In her reply brief in this Court the plaintiff appears to have abandoned any serious contention that she has properly alleged a reasonable doubt that Martinez is independent ... Accordingly, we do not analyze separately the allegations concerning Martinez."); Leffler v. Allstate Ins. Co., 1998 WL 961768 (Del. Super. Oct. 13, 1998) ("With regard to the PIP issue, I continue to hold that defendant abandoned the issue. Defendant did not develop it in the opening brief, plaintiff argued that he was entitled to PIP benefits in his answering brief, and defendant did not respond to the argument in its reply brief."); Wiener v. Southern Co., 1992 WL 12801, n.4 (Del. Ch. Jan. 24, 1992) ("Plaintiff opposed that position, which did not reappear in defendants' reply brief, and was not reasserted at oral argument. Thus, I consider the defendants' alternative limitations argument to have been abandoned, and defendants to be predicating their limitations defense solely upon the one-year statute of limitations."). Cf. Schmalhofer v. Bd. of Adjustment of City of Newark, 2000 WL 703510, at *2 n.2 (Del. Super. May 9, 2000) ("Moreover, it appears that Mr. Schmalhofer has abandoned this argument in his reply brief. Therefore, the Court will not entertain any detailed discussion of this claim in this Letter Opinion."). But see Mennen v. Wilmington Trust Co., 2013 WL 5288900 (Del. Ch. Sept. 18, 2013) ("Although this argument does not

⁷⁸ Under the facts of this particular case, the Court, in its discretion, finds that Camtech has abandoned some of its original arguments by failing to have re-addressed them in any way in its Reply Brief. Black's Law Dictionary defines a reply brief as "[a] brief that responds to issues and arguments raised in the brief previously filed by one's opponent," Black's Law Dictionary (9th ed. 2009). The Bar Association for The Third Federal Circuit advises that "a good reply brief should ... respond to specific points made by the appellee." U.S. Court of Appeals For The Third Circuit Practice Guide, http://thirdcircuitbar.org/documents/third-circuit-bar-practice-guide.pdf (last visited Jan. 30, 2014). The American Bar Association's Litigation Section advises that a "reply brief should highlight the strength of your case." Damon Thayer, How to Write an Effective Reply Brief, ABA Section of Litigation, Feb. 6, 2012, http://apps.americanbar.org/litigation/committees/pretrial/email/winter2012/winter2012-ten-commandmentswriting-effective-reply-brief.html. "The focus of any reply brief should be to respond to opposing counsel's arguments ...[and] the important, winnable issues." It is discouraged to "throw every conceivable issue and argument into an opening brief and hope that something sticks. That is bad enough, but [one should] not make matters worse by revisiting [a] flimsy argument[] in the reply brief." *Id.* Attorneys practicing before the United States Tax Court are offered the following Practice Tip:

IT IS SO ORDERED.

		Richard R. Cooch, R.J.
cc:	Delaware Board of Nursing	
	Prothonotary	

reappear in [Appellant's] reply brief, it is not clear whether [Appellant] has abandoned it, and I therefore briefly will address it.")

Camtech made some original arguments in its Opening Brief that it failed to address in any way, even superficially, in its Reply Brief. As such, this Court will deem Camtech's following original arguments, not addressed in its Reply Brief, as abandoned and not warranting further discussion: 1) that the Board's Opinion was procedurally improper due to the signatures of two Board members who were not present at the hearing; 2) that the Board's Opinion was arbitrary, capricious, and an abuse of discretion; 3) that the Board failed to consider evidence of improved NCLEX pass rates; 4) that Camtech presented evidence to rebut the Board's stated grounds to withdraw (including discussion of the microscope issue, clinical experience, and 90-day rule arguments); 5) that the Board's Opinion was based on new issues and deficiencies, articulated for the first time and outside of the scope of the proceedings. The Board had addressed each of these five issues in its Answering Brief. This Court simply will not guess whether or not Appellant still is pursuing these claims but, as stated, deems them abandoned. The preferred practice is that, if a particular argument is no longer to be pursued, that the Court be advised of same in the Reply Brief. If a weaker argument is still to be pursued, some minimal discussion of same should appear in the Reply that addresses Appellee's counter arguments in the Answering Brief. Finally, this Court, *in dicta*, does note that above five abandoned arguments, even if considered on the merits, seem unlikely to change this Court's decision.