

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MADHU JAIN,	§	
	§	
Appellant Below,	§	No. 116, 2013
Appellant,	§	
	§	Court Below: Superior Court of
v.	§	the State of Delaware, in and for
	§	New Castle County
	§	
DELAWARE BOARD OF	§	C.A. No. N12A-04-002
NURSING,	§	
	§	
Appellee Below,	§	
Appellee.	§	

Submitted: July 3, 2013

Decided: July 16, 2013

Before **STEELE**, Chief Justice, **BERGER** and **JACOBS**, Justices.

ORDER

This 16th day of July 2013, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. Madhu Jain, the appellant-below (“Jain”), appeals from a Superior Court order affirming a decision of the Delaware Board of Nursing (“Board”), finding that Jain’s conduct had violated the Board’s enabling statute and regulations. The Board suspended her license for three years.

2. Jain, a charge nurse at the Delaware Psychiatric Center (“DPC”), was charged with violating the Board’s regulations (“Board Rules”) by having failed to assess properly the medical condition of a patient, who died minutes later of a

pulmonary embolism or blood clot. Jain claims, among other things, that because she did not cause the patient's death, she cannot be found negligent under the Board Rules. The Board, by contrast, argues that under the Board Rules, unlike under common law negligence, causation is not a required element of negligence, and that Jain may therefore be found negligent. We agree with the Board and affirm.

3. Jain had been a Board-licensed, registered nurse for seventeen years and worked at the DPC for fifteen years. On April 4, 2009, Jain was working as the charge nurse, or supervisory nurse, at the DPC when a female patient¹ walked out of her room and collapsed in the hallway. The patient was lying face-down on the floor in a puddle of her own urine, and was undressed from the waist down. Jain approached within three feet of the patient to see if she was still breathing, and yelled out the patient's name two or three times, but received no response. Jain did not touch or physically assess the patient in any way.

4. Jain testified that she did not believe that the patient was in medical distress because the patient was breathing. Jain concluded that, based on a lack of response from the patient, the patient was undergoing a psychiatric episode, and that to approach the patient without assistance could be dangerous. Jain also

¹ The Board did not disclose the name of the patient in order to preserve her confidentiality. We similarly do not use the patient's name in this Order and simply refer to her as "the patient."

testified that she did not fear that the patient was going to “act out” on her, and that other nurses were nearby who could have rendered emergency care, if necessary, to the patient. Because the patient was physically larger than she, Jain knew she needed help to move the patient. Jain therefore returned to the nursing station to call for assistance in changing and bathing the patient.

5. Three or four minutes after Jain visually examined the patient and returned to the nursing station, another nurse informed Jain that the patient’s condition was worsening. Jain then returned to the patient and could not locate a pulse. She then left the patient’s side to retrieve an oxygen tank. By the time Jain returned, other nurses had already begun CPR on the patient, who died shortly thereafter of a pulmonary embolism (blood clot).

6. In October 2010, the Delaware Department of Justice filed a disciplinary complaint against Jain with the Board. At the September 2011 hearing before a Panel of the Board, various nurses and other DPC employees testified to the standard of care and whether, in their opinion, Jain had breached her duty by failing to conduct a physical examination of the patient when she first approached the patient.

7. The Panel found that Jain had violated four Board Rules—7.3.1.4.3, 10.4.1, 10.4.2.12, and 10.4.2.27²— promulgated by the Board under the Delaware Nurse Practice Act, 24 *Del. C.* § 1906. Those Board Rules relevantly provided that:

- 7.3.1.4.3: Registered Nurses shall participate in the implementation of the strategy of care by: providing an environment conducive to safety and health.³
- 10.4.1: Nurses whose behavior fails to conform to legal and accepted standards of the nursing profession and who thus may adversely affect the health and welfare of the public may be found guilty of unprofessional conduct.⁴
- 10.4.2.12: Unprofessional conduct shall include but is not limited to the following: failing to take appropriate action to safeguard a patient from incompetent, unethical or illegal health care practice.⁵
- 10.4.2.27: Unprofessional conduct shall include but is not limited to the following: failing to take appropriate action or to follow policies and procedures in the practice situation designed to safeguard the patient.⁶

8. The Panel also ruled that it “did not consider the fact that this patient died in any of its deliberations, *as nothing Jain did in any way contributed to this*

² Some of those Board Rules were renumbered after the Board amended its regulations. The amendment did not include any substantive changes to the regulations. The current version of the Board Rules can be found at: <http://regulations.delaware.gov/AdminCode/title24/1900.shtml>.

³ This provision has since been renumbered Board Rule 7.4.4.3.

⁴ This provision was not renumbered and remains as Board Rule 10.4.1.

⁵ This provision has since been renumbered Board Rule 10.4.2.14.

⁶ This provision has since been renumbered Board Rule 10.4.2.28.

patient's death."⁷ The Panel then decided that "Jain's failure to follow proper nursing procedures as discussed herein leads the [P]anel to conclude that she is unfit and incompetent by reason of negligence, in violation of 24 *Del. C.* § 1922(a)(3)." That statutory provision provides that "the Board may impose [a sanction] when it finds a licensee or former licensee is guilty of any offense described herein, [such as when a licensee] is unfit or incompetent by reason of negligence, habits or other causes."⁸

9. By order dated in February 2012, the Board adopted the Panel's findings. The Board decided, however, that although Jain did not contribute to the patient's death, she was nevertheless negligent. The Board reasoned that negligence, "as that term is used in this Board's statute and regulations," differs from common law negligence (requiring a duty, breach of duty, causation, and damages). Under the Board's definition, negligence under Restatement (Second) of Torts § 284 is defined as either: (1) an act involving an unreasonable risk, or (2) a failure to perform a necessary act that the actor was under a duty to perform.⁹ The Board then determined that Jain violated the four Board Rules referenced

⁷ Italics added.

⁸ 24 *Del. C.* § 1922(a)(3).

⁹ RESTATEMENT (SECOND) OF TORTS § 284 (1965).

above, and suspended her nursing license for three years, followed by probation for an additional two years. Jain then appealed to the Superior Court.

10. On appeal to the Superior Court, Jain raised four claims. She argued that: (1) the Board's negligence finding was not supported by substantial evidence; (2) the Board committed reversible legal error by failing to establish the relevant standard of care; (3) the Board's sanction was disproportionate to the sanction it had imposed upon another, non-supervisory nurse for conduct arising out of the same incident; and (4) the Board's failure to provide a certified copy of the record to the Superior Court in a timely manner violated Superior Court Civil Rule 72(e) and was prejudicial to her.

11. The Superior Court reviewed the record and found there was substantial evidence to support the Board's negligence finding.¹⁰ The court did not, however, specifically address Jain's argument that the Board had erroneously ignored the Panel's finding that her actions did not cause the patient's death. Stated differently, the court did not address Jain's specific argument that she was not negligent because no causation of harm was established. Second, the court held that because the Board's findings were supported by substantial evidence, the Board did not commit legal error.¹¹ Third, the court held that the Board's sanction

¹⁰ *Jain v. Del. Bd. of Nursing*, C.A. No. N12A-04-002, slip op. at 18 (Del. Super. Feb. 13, 2013).

¹¹ *Id.* at 20.

against Jain was not disproportionate to the three-year probation imposed on another nurse, because, unlike Jain, the other nurse was not a supervisory charge nurse.¹² Finally, the Superior Court held that the Board's (admittedly) untimely certification of the record did not prejudice Jain, because any harm Jain had suffered by losing a potential opportunity for alternative employment due to the Board's delay did not constitute "actual prejudice" under the Superior Court Civil Rules.¹³ By opinion and order dated February 13, 2013, the Superior Court affirmed the Board's decision. This appeal followed.

12. This Court reviews a Superior Court ruling that, in turn, has reviewed a ruling of an administrative agency, by examining directly the decision of the agency.¹⁴ We review the Board's decision to determine if the decision is supported by substantial evidence and free from legal error.¹⁵ Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.¹⁶ On appeal, this Court will not weigh the evidence, determine

¹² *Id.* at 22.

¹³ *Id.* at 22-23.

¹⁴ *Pub. Water Supply Co. v. DiPasquale*, 735 A.2d 378, 380-81 (Del. 1999).

¹⁵ *Olney v. Cooch*, 425 A.2d 610, 613 (Del. 1981); *UIAB v. Duncan*, 337 A.2d 308, 308-09 (Del. 1975).

¹⁶ *Olney*, 425 A.2d at 614.

questions of credibility, or make its own factual findings.¹⁷ We review questions of law *de novo*.¹⁸ Absent an error of law, we review a Board’s decision for abuse of discretion.¹⁹ The Board will be found to have abused its discretion only where its decision has exceeded the bounds of reason in view of the circumstances.²⁰

13. On appeal, Jain advances before us the four claims that she raised in the Superior Court. We analyze each in turn. First, the Superior Court correctly held that the Board’s untimely certification of the record, although in violation of Superior Court Civil Rule 72(e), was not prejudicial to Jain. The type of “actual prejudice” that must be established to challenge the validity of an administrative agency’s determination must relate to an individual’s due process rights and to his or her ability to obtain a “fair administrative hearing.”²¹ Jain’s claim—that the Board’s procedural violation “prejudiced” her ability to obtain alternative employment—did not constitute “actual prejudice” as would merit reversal of a Board’s decision. Therefore, despite the Board’s procedural violation, Jain has not shown that she was actually prejudiced. We therefore reject this claim.

¹⁷ *Person-Gaines v. Pepco Hldgs., Inc.*, 981 A.2d 1159, 1161 (Del. 2009).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* (quotation omitted).

²¹ *Walker v. Bd. of Exam’rs of Psychologists*, 2011 WL 1045634, at *5 & nn.45-46 (Del. Super. Mar. 22, 2011).

14. Also without merit is Jain's second argument, that the Board erred by failing to set forth the applicable standard of care. The record reflects that the Board properly considered testimony by various nurses and other professionals, as well as the relevant legal standards. In fact, the Board did determine the applicable standard of care and Jain's breach thereof.

15. The third issue is whether the Board erred in finding that Jain was negligent. The record establishes that under the Board Rules, Jain had a duty to her patient, which Jain breached by failing to examine the patient physically. The Board adopted the recommendations of the Panel, which found that "nothing Ms. Jain did in any way contributed to this patient's death," or put differently, that no causation was established.

16. Jain argues that absent this element of causation, she cannot be found negligent. The Board responds that Section 284 of the Restatement (Second) of Torts establishes Jain's negligence. According to the Board, Section 284 provides that negligence is either: (1) an act involving an unreasonable risk, or (2) a failure

to perform a necessary act that an actor was under a duty to perform.²² Therefore, the Board argues, Jain was negligent despite the absence of proof of causation. The Board determined that negligence under the Board Rules need not require proof of the same four elements as common law negligence. Therefore, the Board's finding that Jain was negligent did not mandate a showing of causation and was properly supported by substantial evidence.

17. Finally, Jain argues that the Board's three-year suspension and the additional two-year probation against her were disproportionate to the three-year probation that another nurse received for conduct arising out of the same incident. Because Jain was acting in a supervisory capacity, her duties differed from those of the other non-supervisory nurse. Therefore, the stricter sanction was appropriate, and Jain's proportionality argument is without merit.

²² Section 284 provides:

Negligent conduct may be either:

- (a) an act which the actor as a reasonable man should recognize as involving an unreasonable risk of causing an invasion of an interest of another, or
- (b) a failure to do an act which is necessary for the protection or assistance of another and which the actor is under a duty to do.

RESTATEMENT (SECOND) OF TORTS § 284 (1965).

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/ Jack B. Jacobs
Justice