

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

SUSSEX COUNTY COURTHOUSE
1 THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947
TELEPHONE (302) 856-5264

November 7, 2013

Karen Decker, *Pro Se*
24371 Reynolds Pond Road
Milton, DE 19968

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

RE: *Karen Decker v. Del. Bd of Nursing*,
C.A. No. S13A-07-002 RFS
Date submitted: October 8, 2013

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

Before the Court is the appeal of Karen Decker (“Decker”) from a decision of the Delaware Board of Nursing (“Board”). For the reasons that follow, the Court **AFFIRMS** the Board’s decision.

Facts¹ and Procedural Background

Decker held a practical nurse's license from 1982 to 2010, and a registered nurse's license from 2010 to 2013, when her license was suspended. In 2010, she practiced nursing at Beebe Medical Center ("Beebe") in Lewes, Delaware. In May of that year, over the course of three work shifts, Decker did not record sixteen separate drug withdrawals from Beebe's Accudose cabinet onto her patients' charts. During that time, Beebe's electronic recording system for tracking patients' drug intake was not functioning properly, but nothing prevented Decker from recording the drugs on her patients' charts manually, which she did not do. In June 2010, Decker removed a Vicodin pill, but neither distributed it to a patient nor recorded its removal or disposal. Decker placed the pill in her pocket.² Decker admitted these incidents, which resulted in her termination from Beebe and issuance of a letter of reprimand from the Board in November 2011.³

¹ The facts are taken from the hearing officer's opinion. The Board relied on the same set of facts, other than certain impermissible factual inferences, discussed *infra*, which the Board rejected.

² The State's Complaint explains that Decker removed the pill for a patient, but found the patient sleeping. Compl. at 1. Decker therefore pocketed the pill in order to give it to the patient at a later time, but never recorded it. *Id.*

³ See Letter from Karen Decker at 1 (affirming her termination from Beebe).

Decker then practiced nursing at Sussex Correctional Institute (“SCI”) in Georgetown, Delaware. In June 2011, the prison pharmacy saw an exponential increase in the ordering of Soma, a muscle relaxant. This increase seemed odd because during that time, only two patients at the facility were prescribed the drug. Eventually, Jill Mosser (“Mosser”), the Health Services Administrator for Correct Care Solutions, SCI’s health services provider, began an investigation. SCI kept Soma in a certain drawer. While Decker was on duty, two cards of Soma, each containing sixty pills, disappeared. Therefore, Decker became the prime suspect. Decker subsequently was captured on film opening the drawer and then closing it quickly upon Mosser’s entrance, and then again opening the drawer and removing two cards containing Soma and another drug.

In a meeting with Mosser and SCI’s Warden, Decker at first denied the theft, but then, according to Mosser, is claimed to have stated “I’m sorry. I took [the pills] for myself, not selling them or giving them to patients. I guess I have a problem and maybe I need to get out of nursing.”⁴ Mosser offered Decker help with her drug issues, but Decker “stated that she would seek help on her own.”⁵ Decker was then terminated from SCI. She requested that Mosser not report the incident to the Board,

⁴ Recommendation of hearing officer at 11 (quoting Mosser).

⁵ *Id.* at 11.

which Mosser did in July 2011. Mosser testified that the day after meeting with SCI's Warden and Decker, Mosser contacted Decker to check on her. Decker told Mosser that she was well, but "did not mention treatment."⁶

Once Mosser reported the incident, David Tetrault ("Tetrault") began an investigation for the Division of Professional Regulation. Tetrault informed the hearing officer that, while questioning Decker in 2012, she at first denied both the Soma theft and having any issues with drugs. She also denied to Tetrault her statement to Mosser admitting her drug problem. Tetrault then stated that Decker eventually admitted to the theft. He also stated that "he ha[d] a 'sense' that . . . Decker [was] aware of her problems with drugs."⁷ According to Tetrault, Decker told him that she was not seeking professional drug treatment.

On September 11, 2012, the State filed a complaint against Decker. The State first cited the Board's November 2011 letter of reprimand regarding the May 2010 Acudose incidents and the June 2010 Vicodin incident, claiming that Decker's failure to properly record the medications constituted unprofessional conduct, in violation of 24 *Del. C.* § 1922(a)(8)⁸ and Board Rules 10.4.1,⁹ 10.4.2.4,¹⁰ and 10.4.2.27.¹¹

⁶ *Id.* at 4.

⁷ *Id.* at 5.

⁸

[T]he Board may impose any of the following sanctions . . . singly or in combination

Second, the State cited the June 2011 SCI incident, claiming that Decker's diversion of Soma from the prison pharmacy for personal use also constituted unprofessional conduct, in violation of 24 *Del. C.* § 1922(a)(8) and Board Rules 10.4.1, 10.4.2.14,¹² 10.4.2.15,¹³ and 10.4.2.27. The State further contended that Decker's diversion of

when it finds a licensee or former licensee is guilty of any offense described herein, . . . [i]s guilty of unprofessional conduct as shall be determined by the Board, or the wilful neglect of a patient

24 *Del. C.* § 1922 (a)(2).

⁹ "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." Delaware Dept. of State, Div. of Professional Regulation, 1900 Bd. of Nursing, Reg. No. 10, § 4.1, *available at* <http://regulations.delaware.gov/AdminCode/title24/1900.shtml>.

¹⁰ "Unprofessional conduct shall include but is not limited to the following: . . . [i]naccurately and willfully recording, falsifying or altering a patient or agency record related to patient care, employment, or licensure." *Id.* at Reg. No. 10, § 4.2.4.

¹¹ This Rule has been renumbered as Board Rule 10.4.2.28. "Unprofessional conduct shall include but is not limited to the following . . . [f]ailing to take appropriate action or to follow policies and procedures in the practice situation designed to safeguard the patient." *Id.* at Reg. No. 10, § 4.2.28.

¹² This Rule has been renumbered as Board Rule 10.4.2.16 "Unprofessional conduct shall include but is not limited to the following . . . [d]iverting or misappropriating . . . drugs . . . of a patient agency or government program." *Id.* at Reg. No. 10, § 4.2.16.

¹³ This Rule has been renumbered as Board Rule 10.4.2.17. "Unprofessional conduct shall include but is not limited to the following . . . [d]iverting, possessing, obtaining, supplying or administering prescription drugs to any person, including self, except as directed by a person authorized by law to prescribe drugs." *Id.* at Reg. No. 10, § 4.2.17.

drugs for personal use and knowingly practicing nursing with a substance abuse problem constituted a violation of 24 *Del. C.* § 1922(a)(3)¹⁴ and (4).¹⁵

On January 24, 2013, the Chief Hearing Officer for the Division of Professional Regulation heard Decker's case. At the hearing, the State's evidence included, along with several documents, the testimony of Mosser, Tetrault, and Decker herself, who offered a letter from Fresenius Medical Care ("Fresenius") confirming Decker's employment, praising Decker's work quality, confirming Decker's admittance of her past problems, and stating that "[f]ew medications" were funneled through the facility.¹⁶ Decker also "admitted she ha[d] a substance abuse problem."¹⁷ She also described her one-year absence from nursing during which she utilized self-help tools, such as books and tapes, and was prescribed medications for her blood pressure by a doctor who was unaware of her drug incidents. Decker reiterated that Fresenius was aware of her past problems. Decker's evidence included

¹⁴ "The Board may impose any of the following sanctions . . . singly or in combination when it finds a licensee or former licensee is guilty of any offense described herein, . . . [i]s unfit or incompetent by reason of negligence, habits or other causes" 24 *Del. C.* § 1922(a)(3).

¹⁵ "The Board may impose any of the following sanctions . . . singly or in combination when it finds a licensee or former licensee is guilty of any offense described herein, . . . [i]s habitually intemperate or is addicted to the use of habit-forming drugs" 24 *Del. C.* § 1922(a)(4).

¹⁶ Recommendation of hearing officer at 5-6.

¹⁷ *Id.* at 6.

the testimony of her former SCI supervisor Barbara Showell ("Showell"), who also sang Decker's praises. Decker stressed her readiness to be agreeable with the Board on anything short of "eliminat[ing] her from nursing."¹⁸ The State cross-examined Showell on issues such as Showell's own disciplinary issues at SCI and how Showell was not asked to renew her nursing duties when the prison's healthcare contract changed. Decker again admitted pilfering Soma pills, "but not the cards," and admitted her dishonesty when Tetrault questioned her.¹⁹ Showell held firm to her admiration of Decker, but "admitted that effectively dealing with [substance] abuse usually involves more than simply talking with friends."²⁰

Factually, the hearing officer concluded that "Decker has admitted on more than one occasion that she has a drug problem. However, there is no evidence in this case that she has sought out professional assistance addressing the problem."²¹ Legally, the hearing officer concluded that it was "beyond dispute" that Decker's theft and use of Soma constituted legal and professional misconduct, and that "drug

¹⁸ *Id.*

¹⁹ *Id.* at 7.

²⁰ *Id.*

²¹ *Id.* at 11. The hearing officer also found that the State met its burden in establishing that Decker stole several cards of Soma at SCI, although Decker admitted to only stealing two cards. This conclusion was based on the enhanced ordering of the drug in the short time before June 2011.

addiction and the practice of nursing in an impaired state” constituted endangering the public.²² These issues, he noted, were particularly problematic in that Decker continued to practice nursing while making no attempt to seek help. The hearing officer also found that Decker’s theft and use equated to failing to protect her patients from substandard nursing practices. Additionally, the hearing officer found Decker’s “presumed impairment while practicing” equated to practicing as a nurse while dependent on drugs.²³ He also ruled that Decker violated the rules of her employment because, “[alt]hough not in evidence,” the officer inferred that both SCI and the prison’s healthcare contractor maintained rules prohibiting drug diversion, practicing while impaired, or not seeking drug abuse treatment.²⁴ Lastly, the officer concluded that, based on the SCI incident alone, Decker’s habits made her unfit to be a nurse²⁵ and that Decker was a drug addict.²⁶ Thus, the hearing officer recommended that the Board suspend Decker’s nursing license for a period of two years, with no subsequent reinstatement until Decker could prove that she had been evaluated by and fully

²² *Id.* at 13.

²³ *Id.* at 14.

²⁴ *Id.*

²⁵ *Id.* at 15 (stating that such conduct violated 24 *Del. C.* § 1922(a)(3)).

²⁶ *Id.* (stating that such conduct violated 24 *Del. C.* § 1922(a)(4)).

complied with an approved substance abuse entity, all subject to any rehabilitative measures the Board might impose.

Decker excepted from the hearing officer's recommendation by issuing to the Board a letter which she authored, an intake assessment note from Brandywine Counseling & Community Service, Inc. ("Brandywine") regarding a February 13, 2013 substance abuse evaluation performed on Decker, and the results of a random drug test from Brandywine, which came back negative.²⁷ Decker's letter requested that the Board place her license on probation, rather than suspension, so as to allow her to continue working.²⁸ It also stated that after the hearing officer made his recommendation, Decker received a drug and alcohol evaluation, and conferred with a counselor who decided that Decker "did not need to be placed in a treatment program," but felt rather that she was appropriately handling her issues on her own.²⁹ The letter additionally discussed the hardship that resulted from Decker's termination

²⁷ The State claims that the Brandywine note, and assumedly the random drug test results, both submitted on March 18, 2013, constituted evidence that the Board should not have considered. *See* Answering Br. at 4-5 (quoting and citing 29 *Del. C.* § 8735(v)(1)(d) ("The findings of fact made by a hearing officer on a complaint are binding upon the board or commission. The board or commission may not consider additional evidence.")).

²⁸ "I have been a nurse for 31 years and ask that I can remain working as a nurse and fulfill any obligation the [B]oard feels is necessary. My current employer has stated that she is willing to work with me and also work with the [B]oard complying with any recommendations that are made." Letter from Karen Decker at 1.

²⁹ *Id.* at 2.

from Beebe and how she "felt defeated" while working at SCI, which led to her Soma use, and how she utilized self-help during her sabbatical from nursing and "learned to forgive [her]self for the mistakes that [she] ha[d] made and move forward."³⁰

The Brandywine note concluded that Decker did not require any further assistance.³¹ It also stated that Decker was "seeking treatment as a result of the advice from the Board of nursing."³² For "substance use" history, the only notation that appeared was "[a]lcohol, has not drank alcohol in over 2 years. Age of first use was 17."³³ For "[a]ttitude toward AOD[,]"³⁴ the only notation that appeared was "I don't have any reason to drink."³⁵ For "previous TX" history, two periods of counseling were recorded, one in 1999 and another in 2000, along with the notation of "[d]ischarged successfully."³⁶ For "medical issues," the note reported "high blood

³⁰ *Id.* at 1.

³¹ Intake Assessment note at 1 ("At this time no further services are being recommended.").

³² *Id.*

³³ *Id.*

³⁴ Assumedly meaning "Alcohol and Other Drug, *see* <http://www.acronymfinder.com/AOD.html>.

³⁵ *Id.*

³⁶ *Id.*

pressure, seasonal allergies.”³⁷ The note also reported two prior DUIs. Additionally, it commented on Decker's general status:

At this time [Decker] is not in need of any further services. [Decker] has not drank alcohol for over 2 years and has no desire to do so. [Decker's] strengths are []good mom, strong willed and good worker. Her goals are to keep doing things the way she has been. She stated there are no limitations. [Decker] does have a believe (sic) in a Higher Power.³⁸

On June 12, 2013, the Board rendered its decision. The Board first rejected two of the hearing officer's conclusions as unsupported by the evidence: that Decker presumptively practiced nursing while impaired on drugs³⁹ and that Decker violated certain policies her employer presumptively had in place requiring her to seek help for any substance abuse problems and refrain from working while impaired. Next, the Board found that while Decker's work at Fresenius allowed little contact with drugs, Decker's "substance abuse evaluation report only indicate[d that] . . . Decker reported a problem with 'alcohol.'"⁴⁰ The Board also found troubling the fact that "this [was] . . . Decker's second time before th[e] Board regarding issues surrounding

³⁷ *Id.*

³⁸ Intake Assessment note at 1.

³⁹ The Board noted that the only time on-the-job impairment can be inferred is when a nurse, while working, is asked to take a drug test and refuses. *See In re Karen Decker*, Complaint No. 11-58-11, at 3 (Del. B.N. June 12, 2013).

⁴⁰ *Id.* at 4.

medication use and/or abuse.”⁴¹ Therefore, in order “to properly protect the public,” the Board concluded that it would modify the officer’s recommended discipline, imposing a two year suspension of Decker’s license, which could be lifted if, at the end of that period, Decker could establish that she received a substance abuse evaluation specifically geared towards “poly-substance abuse,” and followed all counseling advice.⁴² If the Board lifted the suspension, Decker then would serve a probationary period of three years, during which she would be prohibited from working around controlled substances. During her probation, Decker also would be required to meet certain obligations such as taking random drug tests, attending classes on proper nursing and substance abuse, and submitting both self-evaluations and evaluations performed by any nursing supervisors.

Decker appealed the Board’s decision. She also procured for this Court an additional note from Brandywine dated June 19, 2013, in which a counselor clarified that the February 13, 2013 substance abuse assessment discussed in the Brandywine note which the Board examined in making its decision included an alcohol *and* drug assessment. The counselor stated that Decker “did not meet [the] criteria for drug or

⁴¹ *Id.* Assumedly, the first time mentioned in the Board's reference was the 2011 letter of reprimand Decker received.

⁴² *Id.* at 4–5.

alcohol abuse or dependence. As a result of the findings of the assessment no further services are being recommended.”⁴³

Standard of Review

When reviewing an administrative agency’s decision, this Court reviews questions of law *de novo*.⁴⁴ All other determinations are examined to determine whether they are free from legal error and supported by substantial evidence.⁴⁵ In order for evidence to be considered “substantial,” it should be sufficient enough to allow a reasonable person to reach a certain conclusion.⁴⁶ The Court does not weigh the evidence, determine questions of credibility, or make its own factual findings.⁴⁷ It merely determines if the evidence is legally adequate to support the agency’s factual findings.⁴⁸

⁴³ Ex. C. to Opening Br.

⁴⁴ See *Michael v. Delaware Bd. of Nursing*, 2012 WL 1413573, at *2 (Del. Super. Feb. 16, 2012) (citing *Anchor Motor Freight v. Ciabattoni*, 716 A.2d 154, 156 (Del. 1998)).

⁴⁵ See, e.g., *Michael*, 2012 WL 1413573, at *2 (explaining the deference this Court gives administrative agency decisions).

⁴⁶ *Id.* (citations omitted).

⁴⁷ *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

⁴⁸ 29 Del. C. § 10142(d).

Discussion

Despite vigorous briefing, the parties' contentions can be whittled down to two principal arguments: whether the record supports the Board's conclusion that Decker had an untreated drug problem, and whether the Board abused its discretion choosing a two-year suspension followed by probation as the appropriate sanction for Decker.

In determining whether the Board erred in rendering its decision, the Court examines only the reasons articulated in the Board's decision.⁴⁹ Therefore, it is imperative in this case to understand exactly what the Board held. Other than the hearing officer's presumptions that Decker committed misconduct by practicing nursing while impaired and violating certain employment policies, the Board accepted the hearing officer's factual and legal conclusions, all of which seemed to be based on one overarching premise: Decker was an untreated drug addict. Regarding an appropriate sanction, with protection of the public as its only goal, the Board fashioned a particular discipline because it found that Decker's Brandywine note referenced only alcohol, and that this was Decker's second time appearing before the Board for issues surrounding medication use and/or abuse.

⁴⁹ See *Gillespie v. Del. Bd. of Nursing*, 2011 WL 6034789, at *4 (Del. Super. Nov. 17, 2011) ("Since *the Board's decision* was based upon a violation of this statute without more, the record lacks substantial evidence to support the finding." (emphasis added)), *aff'd*, *Del. Bd. of Nursing v. Gillespie*, 41 A.3d 423, 427 (Del. 2012) (Gillespie had no prior disciplinary history, and *the Board did not articulate* any basis for sanctioning Gillespie other than the fact that the she failed to report the abuse to DFS." (emphasis added)).

The Board's opinion illuminates the issues to be decided by the Court. The first is whether Decker committed conduct in this case warranting sanctioning, as determined by whether the record factually supports with substantial evidence that Decker had an untreated drug problem during the relevant time period. The second is whether the Board abused its discretion in choosing suspension as Decker's sanction based on her substance abuse evaluation and the fact that this was her second time before it regarding medication use and/or abuse. For this issue, the Court must determine whether Decker could have modified the Brandywine note with the counselor's June 19, 2013 note and whether the Board could infer a medication use and/or abuse problem based on Decker's disciplinary record.

The record contains substantial evidence that at the time the hearing officer made his recommendation, Decker had an untreated drug problem. As this Court has stated time and time again, "[i]t is the function of the [Board] to sit as the trier of fact with the authority to weigh the evidence, determine issues of credibility and make its own factual findings and conclusions."⁵⁰ If nothing else, the State produced Mosser to the hearing officer, who testified as to Decker's drug problem:

⁵⁰ *E.g., Down Under, Ltd. v. Del. Alcoholic Beverage Control Com'n*, 576 A.2d 675, 681 (Del. Super. 1989) (citation omitted) (reciting the function of an administrative body).

Q. Did [Decker] make any other admissions at [the] time [of the SCI incident]?

A. She said that [the Soma] was not for anyone else or she wasn't giving it to any patient, that she wasn't selling them, that she was indeed taking – *took them for herself.*

Q. Did . . . Decker ever make any admissions or comments to you about whether or not she had a substance abuse problem?

A. Only at the very end after we talked about, *she said that she may have . . .*

Q. Page 11 seems to contain the information about your confrontation with Karen about the missing Soma. Is that the case?

A. Yes, she did she sa[id], "*I have a problem and maybe I need to get out of nursing.*"

Q. What was your reaction to [Decker's] admission that she had a problem?

A. I offered a – I suggested that she would attend Narcotics Anonymous meetings, to get signed slips if she would go there. I offered to go with her. *I offered to help her get substance abuse treatment if she so desired. And she felt she could do it herself.*

Q. Since . . . [Decker] was terminated from her employment in the summer of 2011, have you had contact with her?

A. I contacted her once after the initial confrontation, and she said she was doing fine and that she was getting treatment.

Q. Did she give any specifics about where was getting treatment?

A. No.

Q. And since June 15th of 2011, have you had any additional contact with . . . Decker?

A. No, I haven't.

Q. Do you know whether or not she has undergone any substance abuse treatment?

A. I do not know.⁵¹

⁵¹ *In re Del. Bd. of Nursing v. Karen Decker*, C.A. No. 11-58-11, at 16, 18:20 (emphasis added).

The Board determines which witnesses it chooses to believe.⁵² In this case, the hearing officer, and by reference the Board, believed Mosser, and articulated as such, albeit in a less than precise manner.⁵³

The Court finds unavailing Decker's reliance on this Court's decision in *Ferguson v. Delaware Board. of Nursing*.⁵⁴ In particular, the Court rejects Decker's claim that the Board ignored evidence that she did not have a drug problem without providing concomitant specific relevant reasons. In *Ferguson*, the Court reversed the Board's decision because, *inter alia*, the Board rejected the nurse's expert witness based on the factual conclusion that the nurse, after yielding a drug test that came back positive for marijuana, did not dispute that she had marijuana in her system. This Court invalidated that factual conclusion as not supported by substantial evidence. Thus, *Ferguson* stands for the proposition that, when choosing to credit or not credit certain pieces of evidence, a Board does not satisfy its obligation to

⁵² See, e.g., *Tatman v. Daisy Const.*, 2008 WL 1891388, at *2 (Del. Super. Apr. 25, 2008) ("The Board has the authority to accept the testimony of one witness over that of another. When it does so it must state its reasons for making its credibility determinations. This Court, on appeal, does not sit as the trier of fact to weigh the evidence and determine witness credibility. Determinations of credibility are exclusively reserved for the Board. The Court is not free to substitute its own judgment on witness credibility for that of the Board, even if the Court would reach a different conclusion based upon the facts presented." (citations omitted)).

⁵³ See Recommendation of hearing officer at 15 ("[T]he SCI conduct, even taken alone, is, in my view, clear evidence of a long-term drug abuse problem which . . . *Decker has candidly admitted to others*." (emphasis added)).

⁵⁴ *Ferguson v. Del. Bd. of Nursing*, 2009 WL 4021230 (Del. Super. Aug. 20, 2009).

articulate specific relevant reasons for doing so by ignoring pertinent evidence which counters a false factual conclusion.⁵⁵ *Ferguson* does not assist Decker because in that case, the factual conclusion which the Board reached was indeed *false*; conversely, the factual conclusion which the Board reached in this case, via the hearing officer's opinion, was *true*, as explained above. Thus, the Board, by adopting the hearing officer's finding that Decker had an untreated drug problem, did properly articulate specific relevant reasons for disciplining her.

The record contained substantial evidence that Decker had an untreated drug problem. Thus, conduct warranting sanctioning occurred because an established untreated drug problem, coupled with admitted theft of drugs, seems, at the very least, to fit exactly within the definition of "fail[ing] to conform to legal and accepted standards of the nursing profession and . . . thus . . . adversely affect[ing] the health and welfare of the public."⁵⁶

⁵⁵ *See id.* at *4 ("While it is the Board's role to determine the credibility of witnesses, the Board is not free to ignore the objective and uncontradicted testimony of the only expert witness without providing specific relevant reasons for doing so.").

⁵⁶ Delaware Dept. of State, Div. of Professional Regulation, 1900 Bd. of Nursing, Reg. No. 10, § 4.1, *available at* <http://regulations.delaware.gov/AdminCode/title24/1900.shtml>.

Decker cannot modify the Brandywine note with the June 19, 2013 note. The June 19, 2013 note constitutes additional evidence not before the Board in rendering its decision; as such, the Court cannot consider it in rendering its decision.⁵⁷

The Board permissibly inferred that this was Decker's second time before it regarding medication use and/or abuse. Decker's argument that her first time before the Board involved failure to document drug distributions and that her second time involved drug diversion, neither of which equates to "medication use and/or abuse," must fail. The facts support the Board's conclusions.

Thus, the Board was left with a substance abuse evaluation that did not discuss drugs,⁵⁸ and a permissible inference that this constituted Decker's second instance of

⁵⁷ See Super. Ct. Civ. R. 76(g) ("Appeals shall be heard and determined by the Superior Court from the record of proceedings below, except as may be otherwise expressly provided by statute."). See also, *Noel-Liszkiewicz v. La-Z-Boy*, 68 A.3d 188, 192 (Del. 2013) ("[W]e find no error in the Superior Court's refusal to address Noel-Liszkiewicz's additional evidence on appeal because the evidence had not been fairly presented to and considered by the Board in the first instance." (citation omitted)); *Zoning Bd. of Adjustment of New Castle County v. Dragon Run Terrace, Inc.*, 222 A.2d 315, 318 (Del. 1966) ("Our various administrative and quasi-judicial bodies should understand that any pertinent information known personally by the members, but not placed into the record by proper evidence, cannot be considered by a court on appellate review." (citation omitted)); 29 Del. C. § 10142(a) & (c) ("Any party against whom a case has been decided may appeal such decision to the Court. The appeal shall be heard on the record without a trial de novo."); *id.* at § 10161(f) ("Where the respondent is in disagreement with the action of the [B]oard, the respondent may appeal the [B]oard's decision in accordance with the provisions of the Administrative Procedures Act. The Court shall hear the appeal on the record.").

⁵⁸ The Court takes judicial notice that "AOD," found on the Brandywine evaluation is, among other things, an abbreviation for "Alcohol and Other Drugs," but still concludes that the evaluation lacked any clear evidence that Decker had been evaluated for drugs as well. See AcronymFinder, <http://www.acronymfinder.com/AOD.html> (last visited Octo. 25, 2013).

discipline for medication use and/or abuse. From this, the Board chose the sanction of the two year suspension. The Court cannot find that this shocks its sense of fairness.⁵⁹

Decker's attempt to cast her suspension as a punishment rather than as a method to protect the public also holds no merit. The Court finds impermanent removal of a nurse with an untreated drug problem for a period of time, coupled with a chance to re-enter the profession once certain conditions are met, serves the public interest and attempts to forgive and rehabilitate past misdeeds.

Based on the foregoing, the Court **AFFIRMS** the Board's decision.

IT IS SO ORDERED.

Very truly yours,

/s/ Richard F. Stokes

Richard F. Stokes

Cc: Prothonotary

Judicial Case Manager

⁵⁹ See, e.g., *Warmouth v. Del. State Bd. of Examiners in Optometry*, 514 A.2d 1119, 1123 (Del. Super. 1985) (explaining the standard for judging an administrative agency's choice of sanction so long as the sanction is "based on substantial evidence and not outside its statutory authority").

