

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Highland Campbell, MD,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 44 C.D. 2014
	:	Submitted: May 16, 2014
Bureau of Professional and	:	
Occupational Affairs, State Board	:	
of Medicine,	:	
	:	
Respondent	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, Judge  
HONORABLE P. KEVIN BROBSON, Judge  
HONORABLE JAMES GARDNER COLINS, Senior Judge

**OPINION NOT REPORTED**

**MEMORANDUM OPINION BY  
SENIOR JUDGE COLINS**

**FILED: July 8, 2014**

Highland Campbell, M.D. (Dr. Campbell) petitions for review of an order of the State Board of Medicine (Board) under the Medical Practice Act of 1985 (the Medical Practice Act)<sup>1</sup> revoking Dr. Campbell’s license to practice medicine, but staying the revocation in favor of a six-month suspension of his license followed by probation for three years. We affirm.

Dr. Campbell obtained his medical degree in 2000 and thereafter completed a residency in emergency medicine. (Record Item (R. Item) 10, Hearing Examiner’s Adjudication and Order, Findings of Fact (F.F.) ¶¶13-14; R.

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<sup>1</sup> Act of December 20, 1985, P.L. 457, *as amended*, 63 P.S. §§ 422.1 - 422.51a.

Item 9, Hearing Transcript (H.T.) at 27-28, Reproduced Record (R.R.) at 24a-25a.) In 2003, Dr. Campbell submitted an application for a license to practice medicine without restriction in Pennsylvania, and the Board issued him a medical license based on that application. (R. Item 10, F.F. ¶¶16, 18; R. Item 9, Ex. C-4.) In his application, however, Dr. Campbell misrepresented that he had passed the United States Medical Licensing Examination (USMLE) Step 3 examination, although he had not taken the USMLE Step 3 examination as of the date that he signed the application and failed that examination when he took it in July 2003. (R. Item 10, F.F. ¶17; R. Item 9, Ex. C-4.) Upon learning that Dr. Campbell had failed the USMLE Step 3 examination, the Board notified him that his license was void and he returned his license documents to the Board. (R. Item 10, F.F. ¶19; R. Item 9, Ex. C-4.) Dr. Campbell entered into a consent agreement approved by the Board on January 27, 2004, in which he admitted that he made misleading and untrue representations in his application for a license in violation of the Medical Practice Act and was assessed a civil penalty of \$1,000. (R. Item 10, F.F. ¶¶20-22; R. Item 9, Ex. C-4; R. Item 9, H.T. at 61-62, R.R. at 58a-59a.) Subsequently, on February 26, 2004, the Board issued Dr. Campbell a valid medical license. (R. Item 10, F.F. ¶23.)

Dr. Campbell was required to renew his medical license every two years by submission of a biennial registration form and fee at or before the end of each even-numbered year. Section 25(b), (c) of the Medical Practice Act, 63 P.S. § 422.25(b), (c); 49 Pa. Code § 16.15. Section 41 of the Medical Practice Act provides that:

The board shall have authority to impose disciplinary or corrective measures on a board-regulated practitioner for any or all of the following reasons:

\* \* \*

(11) Making a false or deceptive biennial registration with the board.

63 P.S. § 422.41(11). On or about January 31, 2011 or February 1, 2011, Dr. Campbell filed a late biennial registration of his medical license, on which he answered “No” to both of the following questions:

Since your initial application or last renewal, whichever is later, have you been convicted, found guilty or pleaded nolo contendere, or received probation without verdict, or accelerated rehabilitative disposition (ARD) as to any felony or misdemeanor, including any drug law violations, or do you have any criminal charges pending and unresolved in any state or jurisdiction? You are not required to disclose any ARD or other criminal matter that has been expunged by order of a court.

\* \* \*

Since your initial application or last renewal, whichever is later, have you been arrested for criminal homicide, aggravated assault, sexual offenses or drug offenses in any state, territory or country?

(R. Item 10, F.F. ¶¶43-44; R. Item 9, Ex. C-1 ¶¶6-8 & Ex. A thereto (emphasis added), R.R. at 67a, 71a-72a; R. Item 9, Ex. C-2 ¶¶6-8.)

Since his last renewal, however, Dr. Campbell had been arrested in 2009 in Oregon for possession of methamphetamine. (R. Item 10, F.F. ¶32; R. Item 9, Ex. C-1 ¶9, R.R. at 67a; R. Item 9, Ex. C-2 ¶9; R. Item 9, H.T. at 32, 54, R.R. at 29a, 51a.) That charge was resolved on February 1, 2011 or February 2, 2011 by a judgment of conditional discharge that placed Dr. Campbell on probation for 18 months with adjudication of guilt withheld and provided that the charge would be dismissed following successful completion of that probation. (R. Item 10, F.F. ¶¶36-37; R. Item 9, Ex. R-1; R. Item 9, H.T. at 34-35, 54-55, R.R. at

31a-32a, 51a-52a.) Dr. Campbell subsequently successfully completed the probation and the charge was dismissed, but he had not filed to expunge the charge as of April 2013. (R. Item 10, F.F. ¶¶38-40; R. Item 9, H.T. at 35-36, 54-55, R.R. at 32a-33a, 51a-52a.)

On March 1, 2011, the Commonwealth Department of State filed an Order to Show Cause with the Board alleging that Dr. Campbell violated Section 41(11) of the Medical Practice Act because his answer in his biennial registration to the question whether he had been arrested for any drug offenses was false. (R. Item 9, Ex. C-1, R.R. at 66a-81a.) Dr. Campbell filed an answer to the Order to Show Cause admitting the factual allegations against him. (R. Item 9, Ex. C-2 ¶¶6-9.)

On April 8, 2013, a hearing examiner conducted the hearing in this matter. At the hearing, the Commonwealth introduced into evidence the Order to Show Cause and Dr. Campbell's answer, the 2004 consent agreement in which Dr. Campbell admitted to misleading and untrue representations in his 2003 application for a medical license, and a 2007 application that Dr. Campbell had filed with the Board for reactivation of his license. (R. Item 9, H.T. at 12-13, 19, 51-52, 61-62, 64, 67, R.R. at 9a-10a, 16a, 48a-49a, 58a-59a, 61a, 64a; R. Item 9, Exs. C-1, C-2, C-3, C-4.) Counsel for Dr. Campbell objected to the admission of arrest records attached to the Order to Show Cause as Exhibit B and arrest records attached to Dr. Campbell's 2007 filing. (R. Item 9, H.T. at 13-15, 64-66, R.R. at 10a-12a, 61a-63a.) The hearing examiner ruled that the portions of Exhibit B to the Order to Show Cause that went beyond the fact and date of the arrest were excluded and, with Dr. Campbell's counsel's agreement, marked the exhibit to indicate the excluded portions. (R. Item 9, H.T. at 15-19, R.R. at 12a-16a.) With

respect to the attachments to the 2007 filing, the hearing officer ruled that the arrest records were admissible as part of Dr. Campbell's license record as documents filed by him with the Board, but that they were not relevant to this proceeding and would not be considered. (R. Item 9, H.T. at 65-67, R.R. at 62a-64a.)

Dr. Campbell testified at the hearing and did not dispute that he filed a false biennial registration in 2011. (R. Item 9, H.T. at 13, 44-45, 60-61, R.R. at 10a, 41a-42a, 57a-58a.) Dr. Campbell admitted at the hearing:

Q. Okay. You were asked about the question in the application that we're here for today about your arrest in Oregon .... You anticipated that it would be expunged so you just left it out and indicated no?

A. Yes.

Q. Okay. So you were being intentionally misleading when you answered that question; is that correct?

A. Yes.

(R. Item 9, H.T. at 60-61, R.R. at 57a-58a.) Dr. Campbell admitted to his misrepresentation in his 2003 application for a medical license and the prior disciplinary action for that misrepresentation. (R. Item 9, H.T. at 61-62, R.R. at 58a-59a.) In addition, Dr. Campbell's testimony at the hearing that he left a hospital where he had worked in 2005 and 2006 because it was closing was inconsistent with his 2007 filing, in which he had advised the Board that the hospital had withdrawn his privileges and terminated his employment. (R. Item 9, H.T. at 29, 50-54, R.R. at 26a, 47a-51a; R. Item 9, Ex. C-3.)

On June 7, 2013, the hearing officer issued an Adjudication and Order setting forth 58 findings of fact, holding that Dr. Campbell was subject to disciplinary action under Section 41(11) of the Medical Practice Act and imposing

a three-year suspension of his license stayed in favor of probation for three years. (R. Item 10, Hearing Examiner's Adjudication and Order.) Pursuant to its authority under 49 Pa. Code § 16.57(a) to review decisions of hearing examiners *sua sponte*, the Board, on June 14, 2013, issued a Notice of Intent to Review the hearing officer's Adjudication and Order and provided both parties an opportunity to submit briefs to the Board for its consideration. (R. Item 11, Notice of Intent to Review.)

On December 16, 2013, the Board issued its Final Adjudication and Order in this matter. The Board adopted and incorporated in its decision all but two of the hearing examiner's findings of fact,<sup>2</sup> all of the hearing examiner's conclusions of law, and the hearing examiner's determinations and reasoning concerning Dr. Campbell's conduct and violation. (R. Item 13, Board Final Adjudication and Order at 2.) The Board, however, concluded that the probation imposed by the hearing officer was an insufficient sanction, given Dr. Campbell's prior misrepresentation to the Board in 2003 and his questionable truthfulness in his testimony at the hearing concerning his work history. (*Id.* at 2-6.) The Board imposed as a sanction revocation of Dr. Campbell's license, but stayed the revocation in favor of a six-month suspension of his license followed by probation for three years, concluding that this sanction was appropriate "to impart to him the seriousness and gravity of his misconduct" and to provide him "with an opportunity to reflect upon the seriousness of his offense and the importance of

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<sup>2</sup> The findings of fact that the Board did not adopt are Nos. 45 and 57. (R. Item 13, Board Final Adjudication and Order at 2.) There is no claim by Dr. Campbell of any error by the Board in rejecting those two findings of the hearing officer.

honesty, integrity and judgment in the medical profession.” (*Id.* at 6.) This appeal followed.

Our review is limited to determining whether the Board’s necessary findings of fact are supported by substantial evidence in the record and whether the Board committed an error of law or constitutional violation. *Moscato v. State Board of Medicine*, 965 A.2d 1234, 1236 n.3 (Pa. Cmwlth. 2008); *Marrero v. Bureau of Professional & Occupational Affairs*, 892 A.2d 854, 857 n.4 (Pa. Cmwlth. 2005). Dr. Campbell does not dispute that the Board’s findings of fact and conclusion that he filed a false or deceptive biennial registration are supported by the record. Nor does he claim that the Board committed any legal error or constitutional violation in those findings and conclusion. Rather, Dr. Campbell challenges only the sanction imposed by the Board for his conduct, arguing that 1) the Board allegedly considered materials concerning his arrests that had been excluded from evidence in imposing an increased sanction and 2) that the sanction of revocation and suspension was disproportionate to his offense and an abuse of discretion. We find both arguments to be without merit.

Due process requires that the Board base its adjudication on evidence admitted at the hearing and not on matters that are not in evidence. *See, e.g., Ohio Bell Telephone Co. v. Public Utilities Commission of Ohio*, 301 U.S. 292, 300–05 (1937); *Kyu Son Yi v. State Board of Veterinary Medicine*, 960 A.2d 864, 869-72 (Pa. Cmwlth. 2008); *Equitable Gas Co. v. Pennsylvania Public Utility Commission*, 405 A.2d 1055, 1059 (Pa. Cmwlth. 1979). The Board, however, did not base its sanction or any part of its adjudication on excluded evidence or matters outside the record. The Board explained the reasons for its increased sanction in its adjudication and made clear that it imposed revocation stayed in favor of a six-

month suspension, in addition to probation, because of Dr. Campbell's history of deception with the Board and his continued lack of candor at the hearing concerning an adverse event in his work history. (R. Item 13, Board Final Adjudication and Order at 3-6.) These bases for the Board's increased sanction are amply supported by the evidence admitted at the hearing. (R. Item 9, H.T. at 29, 50-54, 61-62, R.R. at 26a, 47a-51a, 58a-59a; R. Item 9, Exs. C-3, C-4.) Indeed, the Board made no additional factual findings beyond those made by the hearing officer and did not refer to Dr. Campbell's arrests at all in its adjudication.

The mere fact that the documents concerning Dr. Campbell's arrests are in the certified record does not invalidate the Board's adjudication. Absent a motion to strike, the Order to Show Cause, including its exhibits, was properly part of the record as the document commencing this proceeding, regardless of whether it and its exhibits were admitted in evidence. Dr. Campbell did not file any motion to strike any portion of the Order to Show Cause and only objected to the admission in evidence of its Exhibit B concerning his arrest.

Moreover, nothing in the Board's adjudication indicates that it considered any of the excluded documents at all. The hearing transcript and hearing officer's markings identify which portions of Exhibit B to the Order to Show Cause were admitted in evidence and which were excluded. (R. Item 9, H.T. at 15-19 & Ex C-1, R.R. at 12a-16a, 82a-89a.) The hearing transcript also makes clear that the attachments to Dr. Campbell's 2007 filing concerning arrests were not to be considered. (R. Item 9, H.T. at 67, R.R. at 64a.) There is no basis on which it can be inferred that the Board disregarded those exclusions by the hearing officer. The only exhibits or attachments to the Order to Show Cause or the 2007 filing referenced in the Board's or the hearing examiner's adjudications are Dr.



Campbell's 2011 biennial registration and attachments to the 2007 filing concerning his work history that contradicted his testimony at the hearing. (R. Item 13, Board Final Adjudication and Order at 4; R. Item 10, Hearing Examiner's Adjudication and Order, F.F. ¶¶25-26, 28, 43-45 and Discussion at 14.) Those documents were all admitted in evidence at the hearing without objection. (R. Item 9, H.T. at 13-19, 64-67, R.R. at 10a-16a, 61a-64a.)

Dr. Campbell's attack on the severity of the sanction imposed by the Board likewise fails. The Board has statutory authority to revoke or suspend a medical license for the conduct it found here. As noted above, the Medical Practice Act grants the Board the power to impose disciplinary or corrective measures for filing a false or deceptive biennial registration. 63 P.S. § 422.41(11). Section 42 of the Medical Practice Act provides in relevant part:

(a) Authorized actions.--When the board is empowered to take disciplinary or corrective action against a board-regulated practitioner under the provisions of this act or pursuant to other statutory authority, the board may:

\* \* \*

(3) Revoke, suspend, limit or otherwise restrict a license or certificate. ...

63 P.S. § 422.42(a).

The sanction imposed by the Board is therefore a matter within the Board's discretion and must be upheld unless it is shown that the Board acted in bad faith or fraudulently or that the sanction constitutes capricious action or a flagrant abuse of discretion. *Slawek v. State Board of Medical Education & Licensure*, 586 A.2d 362, 364-66 (Pa. 1991); *Tandon v. State Board of Medicine*, 705 A.2d 1338, 1346 (Pa. Cmwlth. 1997). Where no bad faith or fraudulent

conduct is alleged and “the board’s decision was not capricious or a flagrant abuse of discretion, ... it is not for ... any reviewing court to substitute its judgment of what is reasonable for that of the agency whose decision is being reviewed.” *Slawek*, 586 A.2d at 365-66. There is no claim here that the Board acted in bad faith or fraudulently. It is also clear from review of the Board’s adjudication that it did not act capriciously or abuse its discretion. The Board set forth substantial reasons for the penalty it imposed: the importance of honesty and integrity in the practice of medicine; the fact that Dr. Campbell’s deception was intentional; that this was not his first act of dishonesty in his licensure filings; that prior discipline had not been sufficient to deter him from making a false and deceptive filing; and that his testimony at the hearing showed a continuing lack of honesty and candor. (R. Item 13, Board Final Adjudication and Order at 3-6.)

Dr. Campbell argues that the sanction of revocation and suspension for six months is an abuse of discretion because the subject of the inquiry that he falsely answered, the fact that he had been arrested, is not a ground for discipline. That is beside the point. The issue that the Board’s sanction addressed was dishonest licensure filings, not Dr. Campbell’s arrest or the outcome of the drug charges against him. Dr. Campbell did not fail to answer the question concerning arrests on his biennial registration form or object to the question, he intentionally lied. The filing of false or deceptive licensure documents, including biennial registration forms, is a ground for discipline regardless of whether there is any other ground for discipline and independent of whether the content misrepresented relates to patient care or medical ability. 63 P.S. § 422.41(2), (11). Moreover, the record showed and the Board found that Dr. Campbell’s lack of honesty both in the past and at the time of the hearing has encompassed information that directly bears

on his fitness to practice medicine, his failure to pass a licensing examination and the termination of his privileges by a hospital. (R. Item 13, Board Final Adjudication and Order at 3-5; R. Item 9, H.T. at 50-54, 60-62, R.R. at 47a-51a, 57a-59a; R. Item 9, Ex. C-4.)

Accordingly, we conclude that the Board committed no error in its consideration of this matter and that it acted well within its discretion in imposing the sanction of revocation of Dr. Campbell's medical license stayed in favor of a six-month suspension of his license followed by probation for three years. We therefore affirm the order of the Board.

  
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JAMES GARDNER COLINS, Senior Judge

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Occupational Affairs, State Board	:	
of Medicine,	:	
	:	
Respondent	:	

**ORDER**

AND NOW, this 8<sup>th</sup> day of July, 2014, the order of the State Board of Medicine in the above matter is affirmed.

  
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JAMES GARDNER COLINS, Senior Judge

**Certified from the Record**

**JUL - 8 2014**

**and Order Exit**