

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

RONIKA LEE RICHMOND, L.P.N.,	:	
	:	
Appellant	:	CASE NO. 11CVF10-12978
	:	
vs.	:	JUDGE BEATTY
	:	
OHIO BOARD OF NURSING,	:	
	:	
Appellee.	:	

DECISION AND JUDGMENT ENTRY AFFIRMING THE
ORDER OF THE OHIO BOARD OF NURSING
AND
NOTICE OF FINAL APPEALABLE ORDER

BEATTY, JUDGE

This is an appeal pursuant to R.C. 119.12 from a September 23, 2011 Order of the Ohio Board of Nursing (“the Board”).

I. FACTS

On March 18, 2011, the Board issued a Notice of Opportunity for Hearing to Appellant (the “Notice;” R. 7b). The Notice alleged that Appellant and the Board had entered into a Consent Agreement effective March 14, 2008 (the “Consent Agreement”, copy attached to the Notice). Under the Consent Agreement, Appellant agreed to abstain from use of alcohol or drugs except as prescribed. (R. p. 33). Appellant was required to submit blood or urine samples to be tested for drugs and alcohol. (R. p. 34).

The Notice alleged that on July 24 and July 31, 2008, Appellant submitted specimens that tested positive for cocaine. (R. p. 29; the test results are R. 7g and h). The Notice alleged that Appellant failed to submit specimens for testing pursuant to the Consent Agreement on twelve occasions from August 25, 2008 to December 9, 2010. (R. p. 29; R 7i). The Notice alleged that on March 31, 2010 and June 14, 2010, Appellant

provided specimens which tested positive for a metabolite of ethyl alcohol. (R. p. 29; the test results are R. 7j and k). The Notice further alleged that on December 10, 2010, Appellant provided a specimen that tested positive for barbiturates and butabital. (R. p. 29; the test result is R. 7m). The Notice alleged that disciplinary action was authorized under R.C. 4723.28(B)(8), which provides that sanctions may be imposed for self-administering a dangerous drug without a valid prescription.

Appellant signed for certified mail service of the Notice on March 24, 2011. (R. 7b, p. 39). Appellant did not request a hearing.

On August 15, 2011, the Board notified Appellant that her case would be considered at the Board's meeting on September 22-23, 2011. (R. 7c, p. 40). The Board's letter advised Appellant that because she did not request a hearing, she would not be allowed to offer evidence. Appellant did not appear at the hearing.

On September 23, 2011, the Board issued its Order permanently revoking Appellant's nursing license. Appellant filed this appeal of the Board's Order.

II. STANDARD OF REVIEW

This Court must affirm the Order of the Board if it is supported by reliable, probative and substantial evidence and is in accordance with law. R.C. 119.12; *Univ. of Cincinnati v. Conrad* (1980), 63 Ohio St.2d 108, 111.

III. THE COURT'S FINDINGS AND CONCLUSIONS

Appellant argues that the Board violated her right to procedural due process. Specifically, Appellant asserts that the Notice was insufficient because in the first and last paragraphs it erroneously refers to Appellant as a registered nurse rather than an LPN.

In *In re Shelly*, Tenth App. Dist. Case No. 92AP-440, 1992 Ohio App. LEXIS 6761, the Court held that “due process requires notice and a hearing when an individual's license to practice a profession is revoked in an administrative proceeding.” The Court stated: “Procedural due process concerns require a charge to provide fair notice to an individual of the precise nature of the charges that will be brought forth at a disciplinary hearing.” (*Id.* p. 13).

The Notice was addressed to “Ronika L. Richmond.” Appellant signed the certified mail receipt for delivery of the Notice. (R. 7b, p. 39).

The Notice sets forth in detail the charges against Appellant. The Notice addresses the provisions of the Consent Agreement entered into by Appellant, including the requirements for abstention from drugs and alcohol and for drug and alcohol testing. The Notice also sets forth, in detail, the instances in which specimens submitted by Appellant tested positive for drugs or alcohol, and the instances in which Appellant failed to submit specimens for testing.

Attached to and incorporated in the Notice is a copy of the Consent Agreement, which contains numerous references to Appellant's license to practice as an LPN. The Consent Agreement refers to Appellant's LPN license in the title and first paragraph (R. p. 31), reviews the history of Appellant's LPN license and the chemical dependency issues that led to the Consent Agreement (R. p. 32), addresses the suspension of her LPN license (R. p. 33), and sets forth the conditions for reinstatement of her LPN license (R. p. 36). The Consent Agreement is signed by “Ronika Lee Richmond, L.P.N.” (R. p. 38).

The Board's August 15, 2011 letter advising Appellant that her case would be considered at the Board's September meeting was also addressed to "Ronika Richmond." (R. p. 40).

An affidavit from a Board employee explains that the references in the Notice to Appellant as a registered nurse were typographical errors. (R. p. 24). The record contains no evidence that these typographical errors prejudiced Appellant, as there is no affidavit, letter, or other communication from Appellant reflecting any confusion or uncertainty about the nature of this matter. The long history of Appellant's involvement in this matter, including the Consent Agreement, the repeated failed drug tests, and the repeated failure to submit specimens leave no doubt about the nature of this disciplinary action.

Given that the Notice was addressed to and signed for by Appellant, the history and allegations set forth in the Notice relate to her LPN license, and the Consent Agreement included in the Notice contains numerous references to her LPN license, the Court concludes that Appellant received fair notice of the specific charges. Accordingly, there was no violation of her right to procedural due process.

Appellant also argues that the imposition of permanent revocation is disproportionate and unconstitutional. Even if the Court were inclined to be more lenient, it is powerless to do so given the long-settled rule of *Henry's Café v. Board of Liquor Control* (1959), 170 Ohio St. 233, found at paragraph three of the syllabus:

On such appeal, the Court of Common Pleas has no authority to modify a penalty that the agency was authorized to and did impose, on the ground that the agency abused its discretion.

In *King v. State Medical Board* (1999), Tenth Appellate District, No. 98AP-570, 1999 Ohio App. LEXIS 201, the Court stated: “the common pleas court, in concluding the board’s order is supported by reliable, probative and substantial evidence, is precluded from interfering with or modifying the penalty imposed if such penalty is authorized by law.” (*Id.*, p. 4). The cases cited by Appellant in which penalties were modified are inapposite, as those cases involved orders which were reversed as to one or more violations. Permanent revocation is authorized by R.C. 4723.28.

For the foregoing reasons, the Court finds that the Board’s Order is supported by reliable, probative and substantial evidence and in accordance with law. The Board’s Order is **AFFIRMED**. This is a final, appealable Order. Costs to Appellant.

IT IS SO ORDERED.

Franklin County Court of Common Pleas

Date: 03-15-2012
Case Title: RONIKA LEE RICHMOND RN -VS- OHIO STATE BOARD
NURSING
Case Number: 11CV012978
Type: DECISION/ENTRY

It Is So Ordered.


The image shows a handwritten signature in cursive that reads "Laurel Beatty". The signature is written in black ink and is positioned over a circular blue seal. The seal contains the text "COMMON PLEAS COURT" at the top, "FRANKLIN COUNTY" in the middle, and "ALL THINGS ARE POSSIBLE" at the bottom.

/s/ Judge Laurel A. Beatty

Court Disposition

Case Number: 11CV012978

Case Style: RONIKA LEE RICHMOND RN -VS- OHIO STATE BOARD NURSING

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes