

**IN THE COMMON PLEAS COURT OF FRANKLIN COUNTY, OHIO
CIVIL DIVISION**

Christopher J. Edmands, D.O., :
Appellant, :
v. : Case No. 14CV 5644
State Medical Board of Ohio, :
Appellee. : Judge Lynch

**DECISION AND ENTRY GRANTING MOTION OF APPELLEE
TO DISMISS DUE TO APPELLANT’S FAILURE TO EXHAUST
ADMINISTRATIVE REMEDIES,
Filed July 9, 2014**

LYNCH, J.

This matter is before the Court upon the motion of Appellee the State Medical Board of Ohio (the “Board” or “Appellee” for an order dismissing the claims of Appellant Christopher J. Edmands (“Dr. Edmands” or “Appellant”), filed July 9, 2014. Appellant filed a memorandum brief in opposition on July 22, 2014. The Court has considered all memoranda submitted.

The instant administrative appeal was filed by Dr. Edmands on May 29, 2014 subsequent to the Board’s determination at a meeting conducted on May 14, 2014 to permanently deny Dr. Edmands’ application for licensure to practice osteopathic medicine in Ohio. Prior to this determination by the Board, on March 12, 2014 the Board issued a Notice of Opportunity for Hearing letter (the “Notice”) to Dr. Edmands in which the Board advised Dr. Edmands that it “intend[ed] to determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice osteopathic medicine and surgery, or to reprimand you or place

you on probation[.]” The Notice also advised that Dr. Edmands had a right to a hearing to submit additional information or contest the allegations underlying the Board’s initial assessment of Dr. Edmands’ application. Dr. Edmands received the Notice on March 17, 2014 via certified mail. Dr. Edmands did not request a hearing. Instead, he replied in writing that he “ha[d] no further information to present to the OH Board of Medicine’s review” and therefore was not requesting a hearing.

In its motion, the Board argues Dr. Edmands’ appeal must be dismissed for failure to exhaust his administrative remedies prior to filing this appeal. Specifically, the Board asserts that Appellant’s failure to request an administrative hearing upon receiving the Notice of the Board’s initial determination pursuant to R.C. 119.07 is fatal to his appeal in that none of the exceptions to the affirmative defense of failure to exhaust administrative remedies is applicable in this case. Further, the Board asserts, Dr. Edmands affirmatively waived his right to request this Court’s review of the underlying administrative decision when he specifically declined to avail himself of the opportunity of a hearing. Finally, argues the Board, even if Dr. Edmands did not waive his right to review, this appeal should still be dismissed as Appellant’s claims are clearly frivolous.

In response, Dr. Edmands asserts that he did not waive his right to review. More specifically, Dr. Edmands contends that his failure to request an administrative hearing below was due to a misunderstanding of his rights in that he mistakenly believed the Notice he received on March 17, 2014 was merely a response to a letter Appellant had written to the Board a few weeks earlier. Dr. Edmands further contends that he was told by Board representatives and his own employer’s attorney/s not to request a hearing

because it would delay processing his pending application. Lastly, Dr. Edmands asserts that in any case his right to due process was violated because the Board's Notice issued on March 12, 2014 was "confusing, vague and ambiguous under the unique circumstances of this case" and the Board's failure to conduct a hearing denied Dr. Edmands the opportunity to be heard. The Court disagrees with Appellant on all points.

The facts are undisputed that on March 12, 2014 the Board issued a Notice of Opportunity for Hearing letter to Dr. Edmands in which he was advised that in reviewing Appellant's application for licensure the Board "intend[ed] to determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice osteopathic medicine and surgery, or to reprimand you or place you on probation[.]" The Notice specifically and unequivocally informed Dr. Edmands that he had a right to a hearing to submit additional information or contest the allegations underlying the Board's initial assessment of Dr. Edmands' application.

Dr. Edmands does not deny that he received the Notice on March 17, 2014 via certified mail. Dr. Edmands does not deny that he did not request a hearing. Instead, he contends that he did not intend to waive his due process right to a hearing because he did not realize that the hearing the Notice advised he had a right to request concerned the Board's possible permanent denial of his application due to the circumstances that formed the basis for the West Virginia Consent Agreement (the "Consent Agreement".) Yet the Notice clearly and very unambiguously sets forth the Board's determination that the conduct that gave rise to his Consent Agreement may also constitute a violation of Ohio law; that the Board was considering several courses

of action in relation to Appellant's application – none of which was favorable to Dr. Edmands – and that he had a right to a hearing at which he could offer more information or contest the underlying allegations leading to the Consent Agreement. In the face of all of the foregoing contents of the Notice, Dr. Edmands chose to respond in writing that he had no additional information to present and therefore was not requesting a hearing. The Court finds that under these circumstances that Dr. Edmands waived his right to have this Court review the Board's decision to permanently deny Dr. Edmands' application for licensure. *Crosby-Edwards v. Ohio Bd. of Embalmers & Funeral Directors.*, 886 N.E.2d 251, 259 (10th Dist. 2008.) The Court further finds that Dr. Edmands' failure to request the hearing to which he was advised he was entitled prevents this Court from reviewing the Board's determination. *Jain v. Ohio State Med. Bd.*, 10th Dist. No. 09AP-1180, 2010-Ohio-2855, ¶10. Accordingly, the appeal must be dismissed pursuant to R.C. 119.07.

Upon review, the Court finds the motion to dismiss of Appellant the State Medical Board of Ohio well taken. Accordingly, the Court **GRANTS** the motion and the appeal of Appellant Christopher J. Edmands, D.O. is hereby **DISMISSED** in its entirety, with prejudice.

IT IS SO ORDERED.

Electronic copies to all counsel of record

Franklin County Court of Common Pleas

Date: 09-08-2014
Case Title: CHRISTOPHER J EDMANDS DO -VS- OHIO STATE MEDICAL BOARD
Case Number: 14CV005644
Type: DECISION/ENTRY

It Is So Ordered.

A handwritten signature in cursive script, "Julie M. Lynch", is written over a circular, embossed seal. The seal is partially obscured by the signature and appears to be a court seal.

/s/ Judge Julie M. Lynch

Court Disposition

Case Number: 14CV005644

Case Style: CHRISTOPHER J EDMANDS DO -VS- OHIO STATE
MEDICAL BOARD

Case Terminated: 08 - Dismissal with/without prejudice

Final Appealable Order: No

Motion Tie Off Information:

1. Motion CMS Document Id: 14CV0056442014-07-0999980000
Document Title: 07-09-2014-MOTION TO DISMISS
Disposition: MOTION GRANTED