IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO
GENERAL DIVISION

SUDHIR SITARAM POLISETTY, M.D.,	**:**	
APPELLANT,	**:**	**CASE NO. 14 CV 11929**
vs.	**:**	**JUDGE COLLEEN O'DONNELL**
STATE MEDICAL BOARD OF OHIO	**:**	
APPELLEE.	**:**	

DECISION AND ENTRY

O'DONNELL, J.

This matter is before this Court pursuant to the R.C. 119.12 appeal of Appellant, Sudhir Sitaram Politsetty, M.D., from a (November 5, 2014) Entry and Order of the State Medical Board of Ohio ("Board"). On November 5, 2014, the Board adopted the Findings of Fact and Conclusions of Law of Hearing Examiner, Siobhan R. Clovis, and her recommendation that Appellant's certificate to practice medicine and surgery in the State of Ohio be permanently revoked. See Hearing Examiner's September 24, 2014 Report and Recommendation. Appellant filed his appeal on November 17, 2014.

In the September 24, 2014 Report and Recommendation, the Hearing Examiner set forth the following **FINDINGS OF FACT**:

> 1. On December 14, 2011, Sudhir Sitaram Polisetty, M.D., entered into a Probationary Consent Agreement with the Board in lieu of formal proceedings based upon his violation of Section 4731.22(B)(18), Ohio Revised Code. In the December 14, 2011 Probationary Consent Agreement, Dr. Polisetty admitted that he was repeating the final year of his residency and that he had been placed on probationary status by his residency program for conduct related to professionalism.
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> On October 10, 2012, Dr. Polisetty entered into a Superseding Step I Consent Agreement with the Board, based on his violation of Sections 4731.22 (B)(26), (B)(15), and (B)(5),

Ohio Revised Code. In the October 10, 2012 Superseding Step I Consent Agreement, Dr. Polisetty admitted that he had been terminated from his residency program in January 2012, and that in June 2012 he had incorrectly answered some questions from a representative of the Board. Dr. Polisetty's certificate to practice medicine and surgery was suspended for an indefinite period of time, but no less than 90 days.

On January 9, 2013, Dr. Polisetty entered into a Step II Consent Agreement with the Board, which reinstated his certificate to practice medicine and surgery in Ohio, subject to certain probationary terms, conditions and limitations. To date, Dr. Polisetty remains subject to the January 9, 2013 Step II Consent Agreement.

2. At the time Dr. Polisetty entered into the December 14, 2011 Probationary Consent Agreement with the Board, he was repeating the third year of his residency program. Previously, on March 30, 2011, Dr. Polisetty's residency program had made a preliminary determination to terminate him from the program. However, following an April 21, 2011, due process hearing, Dr. Polisetty was allowed the opportunity to repeat the third year of his residency, under certain conditions, including the continuation of his probation. The conditions also stated that he would be immediately recommended for dismissal, with no further right of appeal, if he failed to comply with specified standards.

On January 27, 2012, Dr. Polisetty was terminated from his residency.

3. In August 2013, Dr. Polisetty's former residency program learned of the existence (sic) a letter of recommendation for Dr. Polisetty dated February 21, 2013, which purportedly was written by his former Program Director. In addition, around that same time, Dr. Polisetty's former residency program also learned of the existence of a third-year evaluation form that was purportedly signed by his former Program Director on February 4, 2013, which had been used to allow Dr. Polisetty to sit for the certifying examination with the American Board of Dermatology in July 2013.

4. ***Dr. Polisetty used the false February 2013 letter of recommendation and 2013 third-year evaluation form for his own benefit***. For example, he submitted the false February 2013 letter of recommendation when seeking employment. In addition, even though he had not completed the final year of his residency program, the 2013 third-year evaluation form was used to allow him to sit for the certification examination with the American Board of Dermatology in July 2013. (Emphasis added).

5. On October 8, 2013, Dr. Polisetty was interviewed by a Board investigator. While he denied that he had prepared the false February 2013 letter of recommendation of the 2013 third-year evaluation form, or forged the signature of his Program Director, he made a number of false statements during this interview. The false statements that Dr. Polisetty made to the Board investigator included, but were not limited to, the following:
(a) Dr. Polisetty stated that he had spoken with his former Program Director over the phone in February 2013, and his former Program Director had told him that he was going to allow Dr. Polisetty to sit for the dermatology board examinations.
In fact, Dr. Polisetty's former Program Director never told Dr. Polisetty that he was going to allow him to sit for the dermatology board examination; ***indeed, the former Program***

Director did not speak to Dr. Polisetty at all in February 2013. Further, Dr. Polisetty was, in fact, ineligible to take the examination, because he had not completed a residency program. (Emphasis added).

(b) Dr. Polisetty stated that he had been in contact with his former Program Director between the time he was terminated from his Residency Program in January 2012 until the time the February 2013 recommendation letter was purportedly provided to him. He also described the contacts as occurring periodically.

In fact, he did not have periodic contacts with his former Program Director from the time he was terminated from the program in January 2012 until February 2013. ***Further, and in fact, his former Program Director has had no contact with Dr. Polisetty since the day he was terminated from the program in January 2012.*** (Emphasis added).

(c) When the Board investigator first showed Dr. Polisetty the February 2013 letter of recommendation purportedly prepared and signed by his former Program Director, he stated that he had never seen the letter before.

In fact, Dr. Polisetty had provided the February 2013 letter of recommendation to prospective employers while attempting to find work. In addition, Dr. Polisetty subsequently acknowledged to the Board investigator that Dr. Polisetty, in fact, had previously seen the purported recommendation letter.

(d) After acknowledging during his interview with the Board investigator that he had previously seen the February 2013 letter of recommendation, Dr. Polisetty stated that the letter had been faxed to him in or around Feburary 2013 by his former residency program.

In fact, Dr. Polisetty's former residency program did not fax him the February 2013 letter of recommendation. (Emphasis added).

(e) Dr. Polisetty further told the Board investigator that in or around February 2013, he had called a former business manager/employee whom he had worked with during his residency program, and during the conversation he had mentioned that he needed a recommendation letter. He said that, shortly after the call, his former residency program faxed him the February 2013 letter of recommendation.

In fact, Dr. Polisetty's claim that he talked to this particular former employee in February 2013 is not credible, and there is no credible evidence that she was involved in the preparation of the February 2013 letter of recommendation. (Emphasis added).
(f) Dr. Polisetty informed the Board investigator that he believed that his former residency program had completed on his behalf the 2013 third-year evaluation form that had allowed him to take the board certification examination. He also stated that he believed an individual who had previously worked at his residency program had submitted the form to the American Board of Dermatology.

In fact, his former residency program did not prepare or submit the evaluation form to the American Board of Dermatology, nor did the individual whom he identified prepare or submit the form. (Emphasis added).

6. Paragraph 1 on page 3 of the January 2013 Step II consent Agreement provides that Dr. Polisetty "shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio."

Despite this provision, Dr. Polisetty has failed to obey all such laws and rules governing the practice of medicine in Ohio.

Additionally, the Hearing Examiner set forth the following **CONCLUSIONS OF LAW**:

1. The Acts, conduct, and/or omissions of Sudhir Sitaram Polisetty, M.D., as set forth in Finding of Fact 5, individually and/or collectively, constitute "[f]ailure to cooperate in an investigation conducted by the board under division (F) of this section, including failure to comply with a subpoena or order issued by the board or failure to answer truthfully a question presented by the board in an investigative interview, an investigative office conference, at a deposition, or in written interrogatories," as that clause is used in Section 4731.22(B)(34), Ohio Revised Code.

2. Dr. Polisetty's acts, conduct, and/or omissions as set forth in Findings of Fact 3, 4, and 5, individually and/or collectively, constitute "making false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine or surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

3. Dr. Polisetty's acts, conduct, and/or omissions as set forth in Findings of Fact 3, 4, and 5, individually and/or collectively, constitute "[t]he obtaining of, or attempting to obtain, money or anything of value by fraudulent misrepresentations in the course of practice," as that clause is used in Section 4731.22(B)(8), Ohio Revised Code.

4. Dr. Polisetty's acts, conduct, and/or omissions as set forth in Findings of Fact 1, 2, 3, 4, 5, and 6, individually and/or collectively, constitute a "[v]iolation of the conditions of limitation placed by the board upon a certificate to practice," as that clause is used in Section 4731.22(B)(15), Ohio Revised Code.

5. Dr. Polisetty's acts, conduct, and/or omissions as set forth in Findings of Fact 3, 4, and 5, individually and/or collectively, constitute "[c]omission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed," as that clause is used in Section 4731.22(B)(10), Ohio Revised Code, to wit: Forgery, in violation of Section 2913.31, Ohio Revised Code.

6. Dr. Polisetty's acts, conduct, and/or omissions as set forth in Findings of Fact 3, 4, and

> 5, individually and/or collectively, constitute "[c]omission of an act in the course of practice that constitutes a misdemeanor in this state, regardless of the jurisdiction in which the act was committed," as that clause is used in Section 4731.22(B)(12), Ohio Revised Code, to wit: Falsification, in violation of Section 2921.13(A)(3), Ohio Revised Code.

Appellant asserts the following three assignments of error:

FIRST ASSIGNMENT OF ERROR: The Board's Conclusions are not supported by substantial, probative, and reliable evidence and are not in accordance with law because they rely on the incorrect premise that Dr. Polisetty created false documents or had knowledge certain documents were false, despite the complete lack of evidence in support of that premise.

SECOND ASSIGNMENT OF ERROR: The Board's Order is not supported by substantial, probative, and reliable evidence and is not in accordance with law because Dr. Polisetty's Due Process rights were violated when the Board refused to enforce a subpoena that would have uncovered evidence necessary for his defense.

THIRD ASSIGNMENT OF ERROR: The Board's Conclusion that Dr. Polisetty failed to cooperate with an investigation conducted by the Board as required under R.C. 4731.22(B)(34) is not supported by substantial, probative, and reliable evidence and was not in accordance with law because the underlying Finding of Fact is directly contrary to the evidence in the record.

STANDARD OF REVIEW

R.C. § 119.12 sets forth the standard of review a common pleas court must follow when reviewing an administrative appeal. R.C. 119.12 provides, in pertinent part:

> The court may affirm the order of the agency complained of in the appeal if it finds, upon consideration of the entire record and such additional evidence as the court has admitted, that the order is supported by reliable, probative and substantial evidence and is in accordance with law.

In *Our Place* the Ohio Supreme Court provided the following definition of reliable, probative, and substantial evidence as:

> (1) 'Reliable' evidence is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true. (2) 'Probative' evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue. (3) 'Substantial' evidence is evidence with some weight; it must have importance and value.

Our Place, Inc. v. Ohio Liquor Comm., 63 Ohio St.3d 570, 571, (1992).

Once the common pleas court has determined that the administrative agency's order is supported by reliable, probative, and substantial evidence, the court must then determine whether the order is in accordance with law. See R.C. § 119.12. The reviewing court cannot substitute its judgment for the agency's decision where there is some evidence supporting the decision. See *Harris v. Lewis*, 69 Ohio St. 2d 577, 579, (1982); see also *University of Cincinnati v. Conrad*, 63 Ohio St. 2d 108 (1980).

LAW AND ANALYSIS

The Board's primary duty is to protect the public. In summary, the facts demonstrate that:

> -Appellant was terminated from his Wright State residency program in January 2012 and thus, did not complete it.
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> -At the time that Appellant was terminated from his residency program in January 2012, his Ohio license was restricted. Dr. Polisetty's certificate to practice medicine and surgery in Ohio remains subject to the January 9, 2013 Step II Consent Agreement. State Exhibit 4; Tr. 86-87.
>
> -To establish eligibility for the examination for American Board of Dermatology (ABD) certification, an applicant must have completed a three year residency program and have an unrestricted medical license. Tr. 20, 373.
>
> -Appellant did not complete a three-year dermatology residency program; yet, a forged evaluation regarding his completion of the third year of residency was sent by someone to the ABD a year after Appellant had been dismissed from the Wright State residency program. State Exhibit 23
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> -On July 18, 2013 Appellant sat for, and passed, the ABD certification examination, knowing that he did not complete his residency program, and that his Ohio license was restricted, and thus, he did not meet the eligibility prerequisites for taking the examination for board certification.
>
> -On October 8, 2013, Appellant was interviewed by Board investigator, Greg McGlaun, and claimed to be board certified. He also provided other false statements to the Board investigator. State Exhibits 4 and 25; Tr. 97-121, 148, 177, 187, 191-192.
>
> -Appellant submitted a forged/fraudulent letter of recommendation to several prospective employers. State Exhibit 26.

In his first assignment of error, Appellant asserts that the "Board's Conclusions" rely on the incorrect premise that Dr. Polisetty created false documents or knew certain documents were false, despite the lack of evidence to support of that premise.

Forged Third-Year Evaluation Sent to ABD

Based on the direct and circumstantial evidence, the Board made a reasonable inference regarding the forged third-year evaluation form that was sent by the Wright State residency program to the ABD. The evidence demonstrates that the Program Director, Dr. Julian Trevino did not draft or file with the ABD a third-year evaluation form on Appellant's behalf, because Appellant did not complete the Wright State residency program. Tr. 177. However, a forged evaluation form was sent to the ABD, which included the forged signature of Dr. Julian Trevino. Tr. 176-177; State's Exhibit 24.

Forged Letter of Recommendation

Appellant submitted a forged letter of recommendation to several prospective employers. The evidence demonstrates that the letterhead was altered and the phone number listed was not that of the Wright State Dermatology Program. Dr. Trevino testified that he did not compose or sign the letter, and the letter contained numerous inaccuracies. Tr. 92-94, 191-199.

Analysis

The resolution of credibility determinations rests with Appellee. This Court must give due deference to the administrative determination of conflicting testimony, including the resolution of credibility conflicts. *ATS Inst. Of Tech. v. Ohio Bd. of Nursing*, 2012-Ohio-6030; see also *McRae v. State Medical Board of Ohio*, 2014-Ohio-667. Appellant testified that he was unaware that the third-year residency evaluation sent to the ABD and the letter of recommendation, both purportedly signed by Dr. Trevino, were forgeries. However, there is no

question that he used and relied on those forged documents. Appellant knew that he was ineligible to sit for the ABD board certification examination because he did not complete his third-year residency program and had a restricted Ohio license. Moreover, he presented false credentials and a forged recommendation letter to prospective employers. The Board concluded that Appellant was a prevaricator and thus, it did not believe his testimony.

The Board found Appellee's witnesses to be credible. Moreover, based on the direct and circumstantial evidence, it is a reasonable inference to conclude that Appellant either forged these documents, had them forged, and/or knew they were forged. Appellant's first assignment of error is not well taken and is hereby **OVERRULED**.

In his second assignment of error, Appellant asserts that his Due Process rights were violated when the Board refused to issue and/or enforce subpoenas that allegedly would have uncovered evidence necessary for his defense. Specifically, Appellant asserts that Appellee did not issue subpoenas to Jean Modaffare, the Administrative Administrator for the ABD, Thomas Horn, M.D. of the ABD, or to Miami Valley Hospital to gain access to Karen Baker Daughtery's work computer.

The fundamental requirements of procedural due process are notice and a hearing and ultimately, an opportunity to be heard. Providing a person with notice and a hearing is all that is necessary in order to comply with due process in an administrative proceeding involving the potential revocation of an individual's license to practice a profession. See *Coleman v. State Medical Board of Ohio,* 2007-Ohio-5007.

In the context of an administrative law hearing, the due process afforded to the individual is an opportunity to be heard. This Court concludes as a matter of law that Appellant was afforded notice and a hearing and ultimately, an opportunity to be heard.

The record reflects that the ABD is a Michigan entity and that Dr. Horn and Ms. Modaffare are residents of Michigan. Appellant does not address the jurisdiction or enforcement issues regarding these subpoenas, or for that matter, the waiver issues in his proceeding with the June 2014 hearing without any objection to these witnesses not being present. R.C. 2307.382; Civ. R. 4.3. Additionally, Appellant did not address the potential HIPAA issues regarding the production of any and all computers and/or hard drives utilized by Karen Baker Daughtery in the course of her employment at Miami Valley Hospital between January 1, 2012 and May 2014. The Board adopted the Hearing Examiner's finding of fact that "Dr. Polisetty's claim that he talked to this particular employee in February 2013 is not credible, and there is no credible evidence that she was involved in the preparation of the February 2013 letter of recommendation." See, September 24, 2014 Report and Recommendation, ¶ 5.

Appellant cannot create appellate issues by requesting subpoenas to people or entities that are outside the Board's jurisdiction or may run afoul of the law. Further, a thorough review of the transcript demonstrates that Appellant did not proffer the content or relevance of any testimony which he claims would uncover evidence necessary for his defense or request compliance in a timely manner. Thus, he failed to establish that he suffered any prejudice from the alleged error, particularly in light of the overwhelming evidence against him. Even if, *arguendo*, the Board were deemed to have erred, there is no showing of prejudice as required to support reversal of the Order. See *Korn v. Ohio Medical Bd.*, 61 Ohio App.3d 677, 686 (1988).

The evidence demonstrates that Appellant sat for an ABD certification examination that he was not eligible to take, relying on a forged third-year residency evaluation form that was sent to ABD. It seems logical that these out-of-state witnesses, as the recipients of the forged third-year evaluation, would have little, if any, exculpatory evidence to present. The issues regarding

(1) who forged the three-year evaluation form and sent it to the ABD, or (2) who forged the recommendation letter were not before the Board, and are not now before this Court.

There is overwhelming evidence in the record substantiating the Board's inferences based on the direct and circumstantial evidence that no matter who forged/sent the documents in question, Appellant used and relied on those documents when he took the ABD certification examination. He was not eligible to take the examination and he presented a forged letter of recommendation to prospective employers. Accordingly, Appellant's second assignment of error is not well-taken and is hereby **OVERRULED**.

In his third assignment of error, Appellant asserts that the Board erred when it found that he failed to cooperate with an investigation conducted by the Board as required under R.C. 4731.22(B)(34). The false statements that Appellant made to the Board investigator included, but were not limited to, those set forth in the September 24, 2014 Report and Recommendation, Findings of Fact, ¶ 5. See September 24, 2014 Hearing Officer's Report and Recommendation, Findings of Fact, ¶ 5. Providing these false statements to the Board investigator is evidence of Appellant's non-cooperation and thus, his violation of R.C. 4731.22(B)(34). Tr. 97, 121, 148, 177, 187, 191-192. Appellant's intent to deceive the Board was reasonably inferred from the surrounding circumstances. *Hoxie v. Ohio State Med. Bd.*, 2006-Ohio-646.

Appellant knew that he was ineligible to sit for the ABD certification examination because, based on his conduct, (1) he was terminated from his third-year residency program at Wright State University; and (2) he had a restricted Ohio medical license. However, despite knowing of his ineligibility to take the ABD certification examination, he sat for it anyway.

This Court concludes that there is reliable, probative and substantial evidence that Appellant violated R.C. 4731.22(B)(34). Accordingly, Appellant's third assignment of error is not well-taken

and is hereby **OVERRULED**.

This Court does not have authority to modify the Board's decision regarding discipline if the discipline imposed is within the Board's authority. *Henry's Café, Inc. v. Bd. of Liquor Control*, 170 Ohio St. 233 (1959). The Board's Order to permanently revoke Appellant's Ohio medical license is supported by reliable, probative and substantial evidence, and it is in accordance with law. Upon review, Appellant's three assignments of error are not well-taken and are hereby **OVERRULED**. Accordingly, this Court **AFFIRMS** the November 5, 2014 Order issued by the Board.

Appellant's Renewed Motion to Suspend the Order of the State Medical Board of Ohio Pending Appeal, filed March 5, 2015, is hereby **DENIED**.

Rule 58(B) of the Ohio Rules of Civil Procedure provides the following:

> **(B) Notice of filing.** When the court signs a judgment, the court shall endorse thereon a direction to the clerk to serve upon all parties not in default for failure to appear notice of the judgment and its date of entry upon the journal. Within three days of entering the judgment on the journal, the clerk shall serve the parties in a manner prescribed by Civ. R. 5(B) and note the service in the appearance docket. Upon serving the notice and notation of the service in the appearance docket, the service is complete. The failure of the clerk to serve notice does not affect the validity of the judgment or the running of the time for appeal except as provided in App. R. 4(A).

THE COURT FINDS THAT THERE IS NO JUST REASON FOR DELAY. THIS IS A FINAL APPEALABLE ORDER. Pursuant to Civil Rule 58, the Clerk of Court shall serve notice upon all parties of this judgment and its date of entry.

Copies to all parties.

Franklin County Court of Common Pleas

Date: 04-13-2015

Case Title: SUDHIR S POLISETTY MD -VS- OHIO STATE MEDICAL BOARD

Case Number: 14CV011929

Type: ENTRY

It Is So Ordered.

/s/ Judge Colleen O'Donnell

Court Disposition

Case Number: 14CV011929

Case Style: SUDHIR S POLISETTY MD -VS- OHIO STATE MEDICAL BOARD

Motion Tie Off Information:

1. Motion CMS Document Id: 14CV0119292015-03-0599980000
   Document Title: 03-05-2015-MOTION
   Disposition: MOTION DENIED