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

CASSANDRA ROSE PARROTT, D.O.,	
Appellant,	Case No. 14CVF-09-09912
v.	JUDGE SCHNEIDER
STATE MEDICAL BOARD OF OHIO,	
Appellee.	

DECISION AND ENTRY AFFIRMING THE SEPTEMBER 10, 2014 ORDER OF THE STATE MEDICAL BOARD OF OHIO AND NOTICE OF FINAL APPEALABLE ORDER

SCHNEIDER, JUDGE

This matter comes before this Court upon an appeal pursuant to R.C. 119.12 from a September 10, 2014 Order of the State Medical Board of Ohio (hereinafter the "Board") in Case 14-CRF-077. The Board approved and confirmed the Findings of Facts, Conclusions and Proposed Order of State Medical Board Hearing Examiner R. Gregory Porter's August 15, 2014 Report and Recommendation, suspending for an indefinite period of time, but not less than 90 days, the training certificate of Appellant to practice osteopathic medicine and surgery in the State of Ohio. *See* September 10, 2014 Entry of Order, R. 9; *see also* September 10, 2014 Board meeting minutes concerning the matter of Cassandra Rose Parrott, D.O., R. 8.

Factual Background

Dr. Cassandra Parrott is a 2012 graduate of the Midwestern University – Arizona College of Osteopathic Medicine, although she grew up in the State of Massachusetts. She was 10th in her medical school class of 236. After completing a one-year internship at the

Pacific Hospital of Long Beach in Long Beach, CA, Dr. Parrott entered a diagnostic radiology residency program at the Cleveland Clinic. Dr. Daniel Lockwood, a neuroradiologist and Director of the Diagnostic Radiology Residency Program at the Cleveland Clinic, testified to the department-wide perception of Dr. Parrott as a wonderful, motivated resident. He saw no evidence of any impairment in her ability to practice according to acceptable standards. R. 12, Tr. 404-07, 411-14, 426-27, 436-440; App. Exh. N.

Prior to beginning at the Cleveland Clinic, Dr. Parrott sought and obtained a training certificate from the Ohio Board. In her application for a training certificate, Dr. Parrott disclosed that she had twice been convicted of driving under the influence of alcohol in the State of Massachusetts. (State Exh. 2). This was after graduating from college, but before attending medical school. Dr. Parrott's use of alcohol began when she was 14 and she also engaged in some drug use in high school.

As a result of that disclosure, the Board sent Dr. Parrott a set of interrogatories, requesting that she provide additional information regarding her use of drugs and alcohol. (State Exh. 5). In her response to the interrogatories, Dr. Parrott disclosed that she was abstinent from 2008 through part of 2012, but had continued to consume alcohol on occasion, specifically a glass of wine or a beer one or two times a month in 2013 and 2014. *Id.* The Board then ordered Dr. Parrott to submit to an evaluation by Dr. Richard Whitney at Shepard Hill Hospital, a Board-approved drug treatment facility and hospital located in Newark, Ohio.

On June 11, 2014, the Board issued to Appellant a *Notice of Summary Suspension and Opportunity for Hearing* proposing to take action against her certificate to practice

osteopathic medicine and surgery in Ohio, and notifying Dr. Parrott that it had summarily suspended her certificate pursuant to R.C. 4731.22(G). June 11, 2014 *Notice of Opportunity for Hearing*, R. 3. On June 23, 2015, Dr. Parrott requested a hearing. In addition, the Board notified Dr. Parrott that it proposed to determine whether to take disciplinary action against her Ohio training certificate based on information received from Shepard Hill Hospital that Dr. Parrott was impaired in her ability to practice osteopathic medicine according to acceptable and prevailing standards of care due to a diagnosis of alcohol dependence, in violation of R.C. 4731.22(B)(26).

The Board advised Dr. Parrott of her right to request a hearing, and she so requested a hearing on June 23, 2014. A hearing was held on July 31, 2014 and August 1, 2015.

In his August 23, 2014 Report and Recommendation, R. Gregory Porter, State Medical Board Hearing Examiner, made the following FINDINGS OF FACT:

1. By letter dated April 2, 2014, the Board notified Cassandra Rose Parrott, D.O., of its determination that it had reason to believe that she is in violation of R.C. 4731.22(B)(26) and ordered her to undergo a 72-hour inpatient examination to determine if she is in violation of that statute. By letter dated April 14, 2014, the Board notified Dr. Parrott that the 72-hour examination had been rescheduled at her request. The Board's determination was based upon one or more of the reasons outlined in the April 2, 2014 letter, which included the following:

    a. On or about January 5, 2006, in Northbridge, Massachusetts, you were arrested for Driving While Under the Influence of Intoxicating Liquor [OUI]. Your blood alcohol content [BAC] registered 0.26%. The Uxbridge, Massachusetts District Court [Uxbridge Court] found sufficient facts to support the allegation but continued your case without a finding of guilt, ordered that you undergo a driver alcohol education program and suspended your driving license for forty-five days. From in or about February 2006 to in or about May 2006, you attended a first offense driver alcohol education outpatient program at Henry Lee Willis Community Center in Worchester, Massachusetts. On or about February 20, 2007, the matter of your OUI was dismissed by the Uxbridge Court on recommendation of the probation department.
    b. On or about December 8, 2007, in Mendon, Massachusetts, you were charged with OUI, Fail to Stop for Police, Negligent Operation of a

Motor Vehicle, Speeding, Marked Lanes Violation, and Failure to Wear a Seat Belt. Your BAC registered 0.25%. On or about January 10, 2008, in the Milford, Massachusetts District Court [Milford Court], you were found guilty of OUI and the remaining charges were dismissed. The Milford Court placed you on supervised probation for two years and ordered your attendance at a fourteen-day inpatient treatment program and that you attend an aftercare program.

c. In or about March 2008, you attended the second –offender Driving Under the Influence of Alcohol Program at Middlesex Human Service Agency in Tewksbury, Massachusetts [Middlesex Program]. According to a CIDI Diagnostic Report [CIDI Report], you reported clinically significant experiences that suggested the occurrence or presence of alcohol dependence and drug dependence. However, the CIDI Report includes the disclaimer that the CIDI is a screening device and does not provide a final diagnostic determination.

d. You reported to the Middlesex Program that you had first consumed alcohol at age 14, using marijuana at age 15, used cocaine at age 17, had used drugs in a category including "other" at approximately age 17, and prescription drugs at age 18. You reported that you smoked two to three joints of marijuana a day when you were in high school but had not used it for approximately five years prior to your treatment at the Middlesex Program. In 2002, while you were in college, you had seen a counselor who had helped you commit to sobriety and that in your junior and senior years at college, from approximately 2002 to 2004, you did not consume alcoholic beverages.

e. According to your Middlesex Program intake report, it is noted that among the problems you have experienced because of alcohol or substance use included interference with work or responsibilities; arguments with family or friends; use in situations where one could get hurt; irresistible desire to drink or use drugs; need for larger amounts for same effect; fatigue, headaches, diarrhea, shakes or emotional problems when tried to cut back; that you drank or took drugs more than intended or more frequently than intended or became drunk when not intended; tried to cut down on use but could not; experienced days when so much time was spent drinking or doing drugs or recovering there was little time for anything else; and you gave up or reduced activities because of drinking or drugs. You reported to the Middlesex Program that you have been "half with it" at work or "called in sick" more than three times because of having too much to drink; that you have passed out as a result of drinking; and that there have been three or more times when you could not recall what you did when you were drinking.

f. Currently, as of in or about January 2014, you report that you have a glass of wine or a beer one or two times a month on special occasions. However, in the past, you reported that you consumed alcoholic beverages in cycles, sometimes drinking only once a month, other times four times a week. You reported that during the winter of 2007, you had

been drinking four to five times per week and had felt some physical withdrawal symptoms such as irregular heartbeats and sweating. During your heaviest period of drinking, at age approximately 24 or 25, you consumed about a bottle of wine or ten to twelve beers five times a week. You reported further that prior to your 2007 OUI, you were consuming alcohol only three times a month but drank twelve plus beers on those occasions, and that on the occasion prior to that arrest you had consumed twelve or more beers. Your drug consumption history further includes use of cocaine approximately four times and hallucinogens approximately two times during your lifetime.

2. In a letter dated May 22, 2014, Richard N. Whitney, M.D., Medical Director of Addiction Services at Shepherd Hill Hospital, a Board-approved treatment provider, reported the results of Dr. Parrott's 72-hour examination to the Board, which was conducted from May 19 to 22, 2014. Dr. Whitney reported that Dr. Parrott was found to have the diagnosis of Alcohol Dependence and was determined to be impaired in her ability to practice according to acceptable and prevailing standards of care, and to require residential treatment.

3. As of the date of the hearing, the Board has not received information that Dr. Parrott had entered treatment with a Board-approved treatment provider. In addition, the Board had not received information that Dr. Parrott had been determined to be capable of practicing in accordance with acceptable and prevailing standards of care.

In his August 23, 2014 Report and Recommendation, the hearing examiner set forth the following CONCLUSION OF LAW:

1. R.C. 4731.22(B)(26) provides that if the Board determines that an individual's ability to practice is impaired, the Board shall suspend the individual's certificate and shall require the individual, as a condition for continued, reinstated, or renewed certification to practice, to submit to treatment and, before being eligible to apply for reinstatement, to demonstrate to the Board the ability to resume practice in compliance with acceptable and prevailing standards of care, including completing required treatment, providing evidence of compliance with an aftercare contract or written consent agreement, and providing written reports indicating that the individual's ability to practice has been assessed by individuals or providers approved by the Board and that the individual has been found capable of practicing according to acceptable and prevailing standards of care. Further, Rule 4731-16-02(B)(1)(b), Ohio Administrative Code, provides that if an examination discloses impairment, or if the Board has other reliable, substantial and probative evidence

> demonstrating impairment, the Board shall initiate proceedings to suspend the license, and may issue an order of summary suspension as provided in R.C. 4731.22(G).
>
> 2. The acts, conduct and/or omissions of Cassandra Rose Parrott, D.O., as described in Findings of Fact 1 through 3, individually and/or collectively, constitute "[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice," as that clause is used in R.C. 4731.22(B)(26).

As the rationale for the proposed order, the hearing examiner stated that Appellant "has a history of serious alcohol abuse and a diagnosis of alcohol dependency." While Dr. Parrott maintained abstinence from alcohol and other substances for about four years after undergoing in patient treatment, "[u]nfortunately, Dr. Parrott chose to begin drinking alcohol again in 2012, albeit in limited quantities, and continued to imbibe in that manner until around April 2014." The hearing examiner noted that based upon her history and relapse, she is unable to practice according to acceptable and prevailing standards of care.

Further, in his August 23, 2014 Report and Recommendation, the hearing examiner set forth a lengthy and detailed Proposed Order that would suspend Dr. Parrott's training certificate for a minimum of 90 days following the date of her summary suspension, impose interim monitoring conditions and require her to undergo at least 28 days of inpatient treatment at a board-approved treatment provider followed by aftercare, and continued monitoring for at least five years after her training certificate has been reinstated.

On September 10, 2014, the Board voted to approve and confirm the Findings of Fact and Conclusions of the hearing examiner as well as voted to approve and adopt the proposed order of the hearing examiner. Thereafter, Appellant filed a timely appeal.

APPELLANT'S ASSIGNMENT OF ERROR

The Appellant has asserted the following assignment of error:

> State Agencies such as the State Medical Board of Ohio are prohibited by the Ohio and Federal Constitutions and commit an abuse of discretion by adopting and enforcing rules affecting physician licenses and certificates when such rules violate, exceed, change and/or conflict with statutes enacted by the Ohio Legislature.

STANDARD OF REVIEW

Under R.C. 119.12, a common pleas court, in reviewing an order of an administrative agency, must consider the entire record to determine whether reliable, probative, and substantial evidence supports the agency's order and the order is in accordance with law. *D'Souza v. State Med. Bd. of Ohio*, 10th Dist. No. 09AP-97, 2009-Ohio-6901, ¶13, citing *Univ. of Cincinnati v. Conrad*, 63 Ohio St.2d 108, 110-11 (1980). 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*, supra. Moreover, the common pleas court 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. "When reviewing a Medical Board's order, courts must accord due deference to the Board's interpretation of the technical and ethical requirements of its profession." *See Coniglio v. State Med. Bd. of Ohio,* 2007-Ohio-5018, ¶ 9 (10thDist.); *Pons v. Ohio State Med. Bd.*, 66 Ohio St.3d 619, 621 (1993).

The common pleas court's "'review of the administrative record is neither *de novo* nor an appeal on questions of law only, but a hybrid review in which the court 'must appraise all the evidence as to the credibility of the witnesses, the probative character of the evidence, and the weight thereof.'" *D'Souza*, supra at ¶ 13, quoting *Lies v. Veterinary Med. Bd.*, 2 Ohio App.3d 204, 207 (1stDist.1981). The common pleas court must give due deference to the administrative agency's resolution of evidentiary conflicts, but "the findings of the agency are by no means conclusive." *Conrad*, 63 Ohio St.2d at 111. The common pleas court exercises its independent judgment in determining whether the administrative order is in accordance with law. *Ohio Historical Soc. v. State Emp. Relations Bd.*, 66 Ohio St.3d 466, 471, 1993-Ohio-182 (1993).

LAW AND ARGUMENT

A. Any Challenge To The Board's June 11, 2014 Order Summarily Suspending Dr. Parrott's Training Certificate Is Moot

In her brief, Appellant asserts that based upon the "clear legislative statutory standards" of R.C. 4731.22(G)(1) & (2), no "legal grounds or bases exist to justify summary suspension of Dr. Parrott's training certificate." App. Br. p. 7-8. Accordingly, she challenges the Board's June 11, 2014 Order summarily suspending her training certificate without a prior hearing on the grounds that such an order is prohibited by the Ohio and Federal Constitutions, and the Board has violated, exceeded, changed and acted

in conflict with the applicable statutes enacted by the Ohio Legislature. Br. p. 5, 7-9. The Court disagrees.

Actions are moot when "'they involve no actual genuine, live controversy, the decision of which can definitely affect existing legal relations.'" *Ridgeway v. State Med. Bd. of Ohio*, 10th Dist. Nos. 06AP-1197 and 06AP-1198, 2007-Ohio-5657, ¶11, quoting *Lingo v. Ohio Cent. RR., Inc.*, 10th Dist. No. 05AP-206, 2006-Ohio-2268, ¶20, additional citations omitted. Ohio courts have long recognized that a court should not entertain jurisdiction over cases that are not actual controversies. *Id. See also Tschantz v. Ferguson*, 57 Ohio St.3d 131, 133. If, while an action is pending, an event occurs that renders it impossible for a court to grant any effectual relief, the court will dismiss the action. *Id.*

According to R.C. 4731.22(G), "[a]ny summary suspension . . . shall remain in effect . . . until a final adjudicative order issued by the board pursuant to this section and Chapter 119 of the Revised Code becomes effective." Here, the Board issued a final adjudicative order on September 10, 2014. As a result, Dr. Parrott's training certificate is no longer under summary suspension because the suspension was ended by final Board action. As the Tenth District Court of Appeals held in *Ridgeway*, supra ¶12, any attempt to contest a summary suspension order of the Ohio Medical Board after it has issued a final order and an appeal has been taken to the trial court is moot. *See also Vogelson v. Ohio State Bd. of Pharmacy*, 123 Ohio App.3d 260, 267 (10thDist.1997) (a final adjudication mooted a pharmacist's challenge to the summary suspension of his license); *Angerman v. State Med. Bd. of Ohio*, 10th Dist. No. 89AP-896, unreported (Feb. 27, 1990)(the Board's final adjudicative order rendered appeal of a physician's summary

suspension moot). Consequently, to the extent that Appellant's assignment of error is based upon a challenge to the Board's June 11, 2014 Summary Suspension Order, the assignment of error is overruled.

B. The Board's Order Is In Accordance With Law

Dr. Parrott also challenges the Board's September 10, 2014 Order on the grounds that the Board has violated, exceeded, changed and acted in conflict with the applicable statutes enacted by the Ohio Legislature, and thus, violated the Ohio and Federal Constitutions. Br. p. 5, 7, 8-12. Dr. Parrott asserts that the Board "has rewritten and undermined the statutory law and, through the abuse of the rulemaking authority, substituted what the Board thinks the law should be instead of the law that was actually enacted by the Legislature." *Id.* p. 8. Dr. Parrott contends that the Board, through its enactment of Ohio Adm.Code 4731-16-02(B)(2)(a) and 4731-16-01(A) & (B) exceeded its statutory authority. *Id.* p. 8, 11-13. Specifically, Dr. Parrott argues that Ohio Adm.Code 4731-16-02(B)(2)(a) and 4731-16-01(A) & (B) are in direct conflict with R.C. 4731.22(B)(26) because they (1) improperly require absolute abstinence from alcohol consumption by those previously diagnosed or labeled as alcohol dependent" "as a condition of their continued unimpeded exercise of a license to practice medicine," and (2) they allow the Board to redefine a "relapse" that constitutes independent proof of impairment supporting license suspension or denial without the need for an examination as any use of alcohol, even in the absence of actual impairment. *Id.* p. 12. These arguments are not well-taken.

The Tenth District Court of Appeals has repeatedly held that considerable deference should be accorded to an agency's interpretation of rules the agency is required

to administer. *Smith v. Med. Bd. of Ohio,* 10th Dist. Nos. 12AP-234 and 12AP-235, 2012-Ohio-2472, ¶11. Further, an administrative rule that is issued pursuant to statutory authority has the force of law unless it is unreasonable or conflicts with a statute covering the same subject matter. *State ex rel. Celebrezze v. Natl. Lime & Stone Co.*, 68 Ohio St.3d 377 (1994). With regard to the Medical Board's rules, "courts must accord due deference to the board's interpretation of the technical and ethical requirements of the medical profession. The purpose of the General Assembly in providing for administrative hearings in particular fields was to facilitate such matters by placing the decision on facts with boards or commissions composed of people equipped with the necessary knowledge and experience pertaining to a particular field." *Maga v. Ohio State Med. Bd.*, 10th Dist. No. 11AP-862, 2012-Ohio-1764, ¶9, citing *Pons v. Ohio State Med. Bd.*, 66 Ohio St.3d 619, 621-22 (1993).

R.C. 4731.22(B) allows the Board to suspend an individual's certificate to practice, refuse to register an individual, refuse to reinstate a certificate, and reprimand or place on probation the holder of a certificate. R.C. 4731.22(B)(26) provides, that the Board by an affirmative vote of not fewer than six members shall, to the extent permitted by law, limit, revoke, or suspect an individual's certificate to practice for "[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice."

Under this authority and the authority of R.C. 4731.05(A), the Board promulgated Ohio Adm.Code 4731-16-02(B)(2)(a), which provides:

> (B) In cases where the only disciplinary action initiated against the individual is for violation of division (B)(5) of section 4730.25 of the

> Revised Code, division (B)(26) of section 4731.22 of the Revised Code, division (B)(6) of section 4760.13 of the Revised Code or division (B)(6) of section 4762.13 of the Revised Code the following general pattern of action shall be followed:
>
> (2) The presence of one or more of the following circumstances shall constitute independent proof of impairment and shall support license suspension or denial without the need for an examination:
>
> (a) The individual has relapsed during or following treatment;

The Board also promulgated Ohio Adm.Code 4731-16-01(A) & (B), which provide:

> (A) "Impairment" means impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice. Impairment includes inability to practice in accordance with such standards, and inability to practice in accordance with such standards without appropriate treatment, monitoring or supervision.
>
> (B) "Relapse" means any use of, or obtaining for the purpose of using, alcohol or a drug or substance that may impair ability to practice, by someone who has received a diagnosis of and treatment for chemical dependency or abuse, except pursuant to the directions of a treating physician who has knowledge of the patient's history and of the disease of addiction, or pursuant to the direction of a physician in a medical emergency. An instance of use that occurs during detoxification treatment or inpatient or residential treatment before a practitioner's disease of addiction has been brought into remission does not constitute a relapse.

While R.C. 4731.22(B)(26) allows the suspension of a medical license when a physician is impaired due to drugs, alcohol, or other substances, the Ohio Legislature did not define impairment as used in R.C. 4731.22(B)(26). Nor did the Legislature define relapse as used in R.C. 4731.22. It left those definitions to the Medical Board, which has set up long-standing rules and procedures to generally deal with impairment cases. Indeed, the Tenth District has found that the Medical Board's rules and procedures to deal with impairment cases generally do conflict with or improperly expand the

applicable statute. *See, e.g., Smith v. Med. Bd. of Ohio,* 10th Dist. Nos. 12AP-234 and 12AP-235, 2012-Ohio-2472, ¶9 (Ohio Adm.Code 4731-16-02(B)(3)(a)(i), which imposes 28 days of in-patient treatment where a doctor failed to docket a year of sobriety, is not unreasonable and is not an improper expansion of the statute).

The Court's examination of the Board's administrative rules and the applicable statute regarding impairment does not provide the same conclusion as espoused by the Appellant. The relapse rule simply states what evidence may be used to support a finding of impairment under R.C. 4731.22(B)(26). The rule regarding impairment requires the Board to evaluate each physician's condition on a case-by-case basis. Specifically, any finding of impairment must be evaluated by a Board-approved physician and later reviewed by the Board itself. These rules place the decision on facts related to alcohol consumption, relapse and impairment with a Board composed of people equipped with the necessary knowledge and experience pertaining to a particular field, which was the Ohio Legislature's intention in permitting such rules. *Arlen v. State*, 61 Ohio St.3d 168, 173 (1980); *Bennett v. State Med. Bd. of Ohio*, 10th Dist. No. 10AP-833, 2011-Ohio-3158, ¶33. In fact, the Tenth District has "squarely rejected [the] argument that the Board may not rely on its own expertise to determine issue of alcohol abuse and physician impairment." *Bennett, supra* at ¶33, citing *Ridgeway.* Instead, Ohio's courts have held that "recognition of the Board's 'special expertise and knowledge' with respect to the issue of physician impairment under R.C. 4731.22(B)(26) was 'consistent with the Ohio Supreme Court's admonition that 'courts must accord due deference to the [Board's] interpretation of the technical and ethical requirements of its profession.'" *Bennett, supra* at ¶33, quoting *Ridgeway*, *supra* at ¶47. *See also Singh v. State Med. Bd. of Ohio* (May

14, 1998), 10th Dist. No. 97APE09-1245 ("The question of whether or not appellant was able to competently and safely practice medicine in light of his addiction, is a determination uniquely within the province of the Board.").

As a result, the Court finds that Ohio Adm.Code 4731-16-02(B)(2)(a) and 4731-16-01(A) & (B) do not violate, exceed, change, and are not in conflict with R.C. 4731.22(B)(26) as enacted by the Ohio Legislature. Ohio Adm.Code 4731-16-02(B)(2)(a) and 4731-16-01(A) & (B) are not unreasonable, and are not beyond the scope and intent of R.C. 4731.22(B)(26). Appellant's constitutional rights have not been infringed by the Board's Order. The Board's Order is in accordance with law.

C. The Board's Order Was Supported By Reliable, Probative, And Substantial Evidence

In this appeal, Dr. Parrott's Notice of Appeal asserts that the Board's Order is not supported by reliable, probative and substantial evidence. Although she does not argue this issue in her brief, Dr. Parrott appears to suggest that the Board offered insufficient evidence to warrant a finding that she was impaired as that term is used in R.C. 4731.22(B)(26). However, in her Reply Brief, Dr. Parrott asserts that "[t]here are no material conflicting questions of fact. Credibility and weight of the evidence are not involved." Reply Br. p. 1. Instead, Dr. Parrott contends that any discussion about whether the Board's Order against her was supported by reliable, probative and substantial evidence completely misses the legal issue she has raised, and "the plain reality is that this appeal presents a pure question of law for judicial decision." *Id.* p. 2. Essentially, Dr. Parrott admits in her Reply Brief that the Board's Order is supported by reliable, probative and substantial evidence.

Nonetheless, despite Dr. Parrott's admission, the Court has conducted the required R.C. 119.12 hearing and review of the record of proceedings before the Board, as well as considered the arguments of the parties in their briefs to determine if the Board's Order is supported by reliable, probative and substantial evidence. *Gwinn v. Ohio Elections Comm.*, 10th Dist. No. 09AP-792, 2010-Ohio-1587, ¶11. Upon an independent review of the record and the evidence, this Court finds that Board's Order is so supported.

Dr. Parrott admitted that she had a history of severe alcohol abuse and that she had been arrested twice on alcohol-related driving charges. The Board relied upon not only its own expertise, but also that of two expert opinions in determining that Dr. Parrott was impaired and that her continued practice constituted a threat to the public – Dr. Gregory Collins and Richard Whitney. Drs. Collins and Whitney are two doctors that the Court of Appeals has found to be experts that "are highly experienced practitioners in the areas of chemical dependency and addiction." *Smith v. State Med. Bd. of Ohio*, 10th Dist. No. 11AP-1005, 2012-Ohio-2472, ¶16.

While Dr. Parrott suggests that a Board enforcement attorney somehow forced Dr. Whitney to find Dr. Parrott impaired, App. Br. p. 17, the record reflects that the Hearing Examiner considered all of the testimony, including Dr. Whitney's testimony that he was not consulted by the Board prior to his evaluation of Dr. Parrott and he has previously found other physicians to be unimpaired. Moreover, there is nothing in the record that reflects that in-house Board counsel told Dr. Whitney to find that Appellant was impaired. The Board simply found Dr. Whitney's diagnosis, which was supported by Dr. Collins' diagnosis, to be credible. "It should be noted that the Board is very familiar with

impairment as it is understood under R.C. 4731.22(B)(26)." *Smith, supra* at ¶16. Additionally, there is nothing to indicate that Dr. Whitney's diagnosis is not reliable, probative and substantial evidence, or that Board erred as offered by Appellant.

The Court also finds that the decision whether to impose discipline is discretionary and within the authority of the Board. The Board's primary duty is to protect the public. Here, the Board had the authority to impose a wide range of sanctions upon a finding of a violation of R.C. 4731.22, ranging from reprimand to revocation. *Clayman v. State Med. Bd. of Ohio*, 10th Dist. No. 98AP-1110 (August 17, 1999). This Court does not have authority to modify the Board's decision in regard to discipline if the discipline imposed is within the Board's authority. R.C. 119.12; *Politi v. State Med. Bd. of Ohio*, 10th Dist. 06AP-914, 2007-Ohio-2240, ¶18; *Henry's Café, Inc. v. Bd. of Liquor Control*, 170 Ohio St. 233 (1959); *Berezoski v. State Med. Bd. of Ohio*, 48 Ohio App.3d 231 (1988). The collateral effects of the Board's Order are not relevant to this appeal, and Appellant has not provided any legal bases that her punishment is not in accordance with law.

DECISION

Based on the foregoing, the Court finds no substantive factual or legal support for the assignment of error raised by Appellant. Appellant's arguments are not well-taken and her assignment of error is hereby **OVERRULED.** The Court finds that the September 10, 2014 Order of the State Medical Board of Ohio is supported by reliable, probative and substantial evidence and is in accordance with law. The Ohio Medical Board's September 10, 2014 Order is **AFFIRMED.**

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. Costs to Appellant.

IT IS SO ORDERED.

Copies to:

Steven A. Sindell, Esq.
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Franklin County Court of Common Pleas

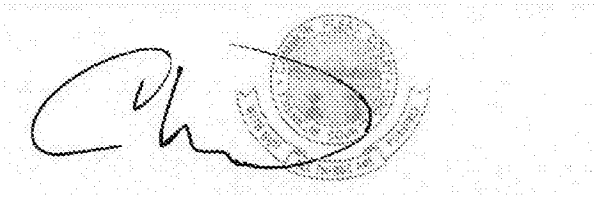
Date: 09-30-2015

Case Title: CASSANDRA ROSE PARROTT DO -VS- OHIO STATE MEDICAL BOARD

Case Number: 14CV009912

Type: JUDGMENT ENTRY

It Is So Ordered.



/s/ Judge Charles A. Schneider

Court Disposition

Case Number: 14CV009912

Case Style: CASSANDRA ROSE PARROTT DO -VS- OHIO STATE MEDICAL BOARD

Case Terminated: 10 - Magistrate

Final Appealable Order: Yes