



wherein she yelled a profanity, threw things, and told the patient to get out of the office. In or around 2013, the Board was provided information that Dr. Flynn was not taking her medications for conditions related to mental illness, psychological problems, or personality disorders. In the early 1990's Dr. Flynn had been diagnosed with Depressive Disorder NOS and was prescribed medications. In 2002, her hospital privileges at a facility in West Virginia were summarily suspended based on allegations by two nurses that her conduct was disruptive to the orderly operations of the hospital (although Dr. Flynn indicated that she had appealed, was vindicated and had her privileges restored).

On March 27, 2014, Dr. Noffsinger conducted the psychiatric examination of Dr. Flynn. (St. Ex. 3).

On September 10, 2014, the Board notified Dr. Flynn that it intended to determine whether to take disciplinary action against her certificate to practice medicine and surgery in Ohio. (R. 9). The Board based its proposed action on its order to Dr. Flynn to submit to a psychiatric evaluation and Dr. Noffsinger's finding that she was impaired in her ability to practice medicine and surgery. The Board further alleged that Dr. Flynn's acts, conduct, and/or omissions, individually and/or collectively, establish an "[i]nability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including, but not limited to, physical deterioration that adversely affects cognitive, motor, or perceptive skill," as set forth in R.C. §4731.22(B)(19).

Dr. Flynn requested a hearing, which was held on March 17, 2015. The evidence at the hearing included the following.

The State presented testimony of Dr. Noffsinger, a psychiatrist with 24 years of experience in practice. (T. 12).

Dr. Noffsinger testified regarding his evaluation of Dr. Flynn on March 27, 2014. (T. 13). Dr. Noffsinger testified that he reviewed records and interviewed Dr. Flynn. (T. 14-16). Dr. Noffsinger reviewed Dr. Flynn's history of medical and psychiatric treatment, work history, family history, medications, etc. (T. 17).

Based on the interview and review of records, Dr. Noffsinger formed the opinion that Dr. Flynn had Persistent Depressive Disorder, and that due to this disorder, she was unable to practice medicine according to acceptable and prevailing standards of care. (T. 20-21).

Dr. Noffsinger testified that Dr. Flynn had a history of mental health treatment, including multiple antidepressant medications during her internship and during her 30s. (T. 22). He stated that she had unresolved trauma from a violent assault around the age of 19. (T. 41-42). In the early 1990s, she was diagnosed with a major depressive disorder, which is a more severe, episodic and pervasive form of depression. (Tr. 22-23). He testified that Dr. Flynn has had depressive problems since at least the early 1990s, and that the severity of the problems and formal diagnosis have varied. (T. 28).

Dr. Noffsinger testified that he reviewed records of Dr. Flynn's employment with Mercer Health from July, 2009 to January, 2010. (T. 30). He stated that the records reflected that she had been disruptive and had inappropriate behavior in interactions with administration, problems charting, and complaints about erratic moods. (T. 31). He stated that according to multiple sources, she made pharmacy errors, argued with patients and screamed at staff, and was inconsistent in prescribing tests and medications. (T. 30-

31). He stated that these behaviors were consistent with his diagnosis of Persistent Depressive Disorder. (T. 32).

Dr. Noffsinger stated that after her employment with Mercer Health, Dr. Flynn started a practice in Belmont, Ohio. (T. 32). Dr. Flynn reported problems with this practice, including unstable office management, an office dispute, and stress that was difficult for her to manage. (T. 33). Dr. Flynn reported an incident where she was “totally stressed out” and yelled at a patient. (T. 34).

Dr. Noffsinger testified that while depression is a common disorder, Dr. Flynn is unable to practice safely because of her inability to tolerate stress. (T. 35). He stated that in stressful situations, she “makes errors or has conflicts with others and flies off the handle.” (*Id.*). He stated that her inability to handle stress impairs her relationships with office staff, patients, and hospital staff, and impairs her concentration and makes her unable to practice medicine effectively. (*Id.*).

Dr. Noffsinger testified that Dr. Flynn needs treatment from a psychiatrist, which would involve antidepressant and/or anti-anxiety medications. (T. 36). This would treat her depressive symptoms and make her better able to tolerate stress and concentrate. (*Id.*, 36-37). She would also benefit from a course of psychotherapy to learn stress management techniques and help her cope better with stress. (*Id.*, 37). He stated that her prognosis would be good with this course of treatment. (*Id.*).

Dr. Noffsinger was asked about Dr. Flynn’s written statement submitted at the hearing. Regarding her statement that she had been studying cognitive therapy, Dr. Noffsinger testified that it would not be a recognized treatment for Dr. Flynn to treat herself with behavioral therapy. (T. 39). Dr. Noffsinger stated that while Dr. Flynn

stated that she had had some counseling, she had not engaged in a pattern of sustained treatment during the over 20 years in which she has had these problems, and that, given concerns about public safety, she needed monitoring of her treatment, as well as medications and psychotherapy. (T. 40).

Dr. Flynn did not testify or call any other witnesses at the hearing. Dr. Flynn submitted a written statement (R. Ex. G). Dr. Flynn stated that she found Dr. Noffsinger's evaluation "stressful and distressing." (*Id.*, p. 1). She related that she had been a victim of a violent assault while in college. (*Id.*). She stated that she had studied cognitive therapy and had participated in a counseling group in 2014. (*Id.*). Addressing reported problems during her employment with Mercer Health, she stated that her approach to practicing changed the way things were done and caused friction with staff and administration. (*Id.*, p. 2). She stated that the Wheeling hospital issue was resolved with the restoration of her privileges. (*Id.*). She stated that she did not recall an incident where she allegedly yelled at a patient in 2012. (*Id.*). She stated that she has good relationships with patients and staff, wants to continue to practice, and does not believe she is impaired. (*Id.*, p. 3).

On April 2, 2015, the Hearing Examiner issued a Report and Recommendation. The Hearing Examiner found that the evidence established Dr. Flynn's "[i]nability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including, but not limited to, physical deterioration that adversely affects cognitive, motor or perceptive skills," as set forth in R.C. 4731.22(B)(19). (R&R, p. 15). The Hearing Examiner stated:

Since the early 1990s, Dr. Flynn has had episodes of depression, stress, and irritability. In the past, Dr. Flynn attended counseling for these

issues and took antidepressants which worked well for her. However, beginning in 2002, Dr. Flynn has had multiple instances of disruptive and inappropriate behavior at different medical facilities with respect to her interaction with hospital administration, office staff, and patients. Unfortunately, her 2009 behavior resulted in the termination of her employment.

...During her interview with Dr. Noffsinger, Dr. Flynn reported feeling stressed, depressed, mild fatigue, and impaired concentration. She also admitted that she was not presently receiving any form of mental health treatment, such as counseling or medication. Dr. Noffsinger diagnosed Dr. Flynn with Persistent Depressive Disorder and opined that she was unable to practice medicine according to acceptable and prevailing standards of care.

(*Id.*, p. 15-16). The Hearing Examiner recommended an indefinite suspension of Dr. Flynn's certificate, with provisions for interim monitoring and terms and conditions for reinstatement. (*Id.*, p. 16).

This matter came before the Board at its meeting on May 13, 2015. After a discussion of this matter, the Board voted to amend the proposed order to impose a probationary term rather than a suspension, with a requirement of psychiatric assessment and treatment, if necessary, and completion of educational courses. (R. 122-124).

On June 9, 2015, Appellant filed this appeal from the Board's Order.

## **II. LAW**

When considering an appeal from an order of the Medical Board, a common pleas court must uphold the order if it is supported by reliable, probative, and substantial evidence, and is in accordance with law. R.C. 119.12. *Pons v. Ohio State Med. Bd.*, 66 Ohio St.3d 619, 621 (1993).

## **III. THE COURT'S FINDINGS AND CONCLUSIONS**

Appellant's first assignment of error asserts that the Board's Order violated state and federal laws prohibiting discrimination against individuals with disabilities.

Specifically, Appellant argues that the Order violated Title II of the Americans with Disabilities Act (“ADA”), 42 U.S.C. 12102 and 12132, which protects individuals who have, or are regarded as having, a disability from discrimination. Appellant argues that the Order violated Ohio’s similar anti-discrimination law, R.C. 4112.02.

The Ohio Supreme Court has rejected the argument that the ADA prevents the discipline of professionals with disabilities. *Cincinnati Bar Ass’n v. Komarek*, 84 Ohio St.3d 90, 96 (1998). In *Columbus Bar Ass’n v. Elsass*, 86 Ohio St.3d 195, 199-200 (1999), the Court stated that the ADA “does not prevent the discipline of attorneys with disabilities. This is because the primary purpose of attorney discipline is to protect the public ....” *See also Alexander v. Margolis*, 921 F. Supp. 482, 488 (W.D. Mich 1995) (“The very nature of the police powers exercised by state boards of medicine require the state to discriminate on the basis of, among other considerations, a mental condition harmful to the public’s safety.”).

In accordance with the above legal authority, the Court finds Appellant’s first assignment of error to be without merit.

Appellant’s second assignment of error asserts that the Board’s Order is not supported by reliable, probative, and substantial evidence that Dr. Flynn is unable to practice according to acceptable and prevailing standards by reason of a mental illness.

In his written report (St. Ex. 3) and testimony at the hearing, Dr. Noffsinger stated his opinion as an expert in psychiatry that Dr. Flynn had Persistent Depressive Disorder and that due to this disorder, she was unable to practice medicine according to acceptable and prevailing standards of care. (T. 20-21). Dr. Flynn’s psychiatric evaluation included an interview with her and a review of certain employment records, medical records, and

records from the Board's investigation of this matter. (Sources of information are stated in St. Ex. 3, p. 1-2). In the report and testimony, Dr. Flynn set forth the bases for his opinion. The bases included Dr. Flynn's mental health history, with prior diagnosis and treatment of major depressive disorder, treatment with multiple antidepressant medications, and the severity and length of her depressive problems since at least the early 1990s. (T. 22-23, 28, 41-42). Dr. Noffsinger referenced Dr. Flynn's disruptive and inappropriate behavior in her work history, including her employment with Mercer Health and her practice in Belmont, Ohio, based on records provided as well as problems reported by Dr. Flynn, and stated that these behaviors were consistent with the diagnosis of Persistent Depressive Disorder. (T. 30-34). Dr. Noffsinger also explained how Dr. Flynn's Persistent Depressive Disorder made her unable to practice safely, as her inability to handle stress impaired her concentration and relationship with office staff and patients. (T. 35).

In her brief, Appellant questions the accuracy of certain records and the details of certain incidents in her history. However, Appellant presented no expert testimony opposing the opinions of Dr. Noffsinger. Appellant also presented no fact witnesses challenging the accuracy of the history provided to Dr. Noffsinger.

This Court's scope of review of an agency's decision in an administrative appeal is limited. The Court is to "give due deference to the administrative resolution of evidentiary conflicts." *Univ. of Cincinnati v. Conrad*, 63 Ohio St.2d 108, 111 (1980). The Court "will not substitute its judgment for the Board's where there is some evidence supporting the board's order." *Harris v. Lewis*, 69 Ohio St. 2d 577, 579 (1982). *See also In re Frank and Glenda Miller* (1976), 10<sup>th</sup> Dist. No. 76AP-348, 1976 Ohio App. LEXIS

6408, p. 8 (“The inference made by the commission should not be altered by the Common Pleas Court or this court merely because we would come to a different conclusion”).

The Ohio Supreme Court has recognized that the General Assembly granted the Medical Board a broad measure of discretion. *Arlen v. State*, 61 Ohio St.2d 168, 174 (1980). In *Farrand v. State Med. Bd.*, 151 Ohio St. 222, 224 (1949), the court stated:

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 men equipped with the necessary knowledge and experience pertaining to a particular field. ...

“Accordingly, when courts review a medical board order, they are obligated to accord due deference to the board’s interpretation of the technical and ethical requirements of the medical profession.” *Landefeld v. State Med. Bd.*, 10<sup>th</sup> Dist. No. 99AP-612, 2000 Ohio App. LEXIS, pg. 9.

After reviewing the record, the Court finds that the record contains reliable, probative, and substantial evidence supporting the Board’s conclusion that Dr. Flynn is unable to practice according to acceptable and prevailing standards by reason of a mental illness.

Appellant’s third assignment of error asserts that the Board used a legal standard that is not in accordance with R.C. 4731.22(B)(19). Appellant focuses on certain questions the Board asked Dr. Noffsinger when it referred this matter to him (set forth in his report, Ex. 3), including whether Dr. Flynn suffered from a mental disorder.

R.C. 4731.22(B)(19) authorizes Board action based on an “Inability to practice according to acceptable and prevailing standards of care by reason of mental illness or

physical illness, including, but not limited to, physical deterioration that adversely affects cognitive, motor, or perceptive skills.”

Regardless of how questions were phrased when the matter was referred to him, Dr. Noffsinger testified to his opinion that Dr. Flynn had Persistent Depressive Disorder and that due to this disorder, she was unable to practice medicine according to acceptable and prevailing standards of care. (T. 20-21). Thus, the record supports the Board’s action under the appropriate statutory standard.

Appellant’s fourth assignment of error asserts that the Board’s Order violated Appellant’s due process rights. Appellant’s first due process argument is that the State failed to timely file and disclose St. Exhibit 5.

Ohio Admin. Code 4731-13-18(B) provides that, upon request, a party shall provide copies of exhibits it intends to offer at a hearing fourteen days prior to the hearing. Appellant states that while the State timely disclosed Exhibits 1-4, it did not disclose Exhibit 5 until the day of the hearing.

Exhibit 5 contains approximately 130 pages of records from Dr. Flynn’s employment at Mercer Health. Appellant argues that she was prejudiced by the untimely disclosure of the documents because it was incomplete and she had no means to respond to the records. Appellee states that copies of the Mercer Health documents were inadvertently not provided with disclosure of Dr. Noffsinger’s report.

In *Korn v. Ohio Medical Bd.*, 61 Ohio App.3d 677, 686, (10<sup>th</sup> Dist. 1988), the Court held that “In order to support reversal of a judgment, the record must show affirmatively not only that error intervened, but that such error was to the prejudice of the party seeking such a reversal.”

The Court concludes that Appellant has not established prejudice from the Board's alleged failure to provide copies of the Mercer Health documents fourteen days prior to the hearing. The records at issue were referenced and discussed in Dr. Noffsinger's report provided to Appellant on January 26, 2015. This provided notice to Appellant of what in the records was relevant to Dr. Noffsinger's opinion, thus preventing surprise. A review of Dr. Noffsinger's report shows that Dr. Flynn's employment at Mercer Health was only one part of a long history related therein. Appellant had the opportunity to cross-examine Dr. Noffsinger at the hearing regarding her employment at Mercer Health. The record also does not show that Appellant requested a continuance of the March 17, 2015 hearing, which would have been a remedy for any prejudice from late disclosure of records.

Appellant's next due process argument is that the Board erred in failing to issue requested subpoenas.

On January 30, 2015, Appellant requested that the Board issue subpoenas to Mercer Health at their place of business and to an individual known as "M.P.," name and address unknown, seeking production of records "by or before 5:00 p.m. on Friday, February 6, 2015." (Certified Record, E2360-060). The hearing was subsequently continued at Dr. Flynn's request to March 17, 2015.

On March 3, 2015, Appellant again requested issuance of the same subpoenas, with a return date of 5:00 p.m. on February 6, 2015. (*Id.*, E2360-058). On March 4, 2015, the Board notified Appellant that the request was returned because it did not specify an accurate return date for the subpoenas and did not specify the name or address of "M.P." (*Id.*, E2360-057).

Ohio Admin. Code 4731-13-13(B) provides that all subpoena requests must specify “the name and address of the individual to be served and the date and time at which the individual is to appear. With respect to the production of books, records and papers, such request may specify a date of compliance not more than seven days prior to the hearing.”

Despite being notified of the deficiencies in the request for subpoenas, Appellant did not correct them so as to bring the request in compliance with the above requirements in Ohio Admin. Code 4731-13-13(B).

Appellant states that the request for a subpoena to MP was to an “individual who allegedly complained to the Board.” (Appellant’s brief, p. 22). A summary of MP’s witness statement is Exhibit 3 to State Exhibit 4. Pursuant to R.C. 4731.22(F)(5), “a complaint, or information received by the board pursuant to an investigation ... is confidential and not subject to discovery in any civil action.” In *State ex. rel. Wallace v. State Med. Bd.*, 89 Ohio St.3d 431, 434 (2000), the Court held that the statute protects the confidentiality of persons who file complaints with the Board.

The Court further concludes that Appellant has not established prejudice from any failure to issue subpoenas.

Appellant’s next due process argument is that the Board relied on an unsubstantiated allegation. The allegation at issue is the unsworn witness statement of MP, Exhibit 3 to State’s Exhibit 4.

In response to Appellant’s objection to admission of the statement at issue, the State withdrew the statement, and it was not admitted into evidence at the hearing. (T. 65). While Appellant objects to references to the incident with MP elsewhere in the

record, Dr. Flynn admitted during her interview with Dr. Noffsinger that she had lost her temper and yelled at the patient. (T. 34, 43). Dr. Noffsinger further testified that his opinion was the same without the witness statement at issue. (T. 43).

For the foregoing reasons, the Court finds that the Board's Order did not violate Appellant's due process rights.

For the reasons set forth herein, the Court finds that the Board's Order is supported by reliable, probative, and substantial evidence and is in accordance with law.

The Board's Order is **AFFIRMED**. This is a final, appealable Order. Costs to Appellant. Pursuant to Civil Rule 58, the Clerk of Court shall serve upon all parties notice of this judgment and its date of entry.

Franklin County Court of Common Pleas

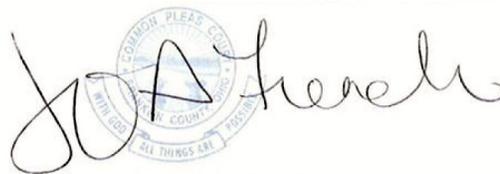
**Date:** 01-08-2016

**Case Title:** FREEDA J FLYNN MD -VS- OHIO STATE MEDICAL BOARD

**Case Number:** 15CV004888

**Type:** DECISION/ENTRY

It Is So Ordered.

A handwritten signature in black ink, appearing to read "J. A. French", is written over a circular blue seal. The seal contains the text "COMMON PLEAS COURT" at the top, "FRANKLIN COUNTY OHIO" in the middle, and "ALL THINGS ARE POSSIBLE" at the bottom.

/s/ Judge Jenifer A. French

Court Disposition

Case Number: 15CV004888

Case Style: FREEDA J FLYNN MD -VS- OHIO STATE MEDICAL  
BOARD

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes