MOLLY E. GALEWYRICK

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April 20, 2016

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Re: Dr. Nanette J Liegeois vs. State of Wisconsin Medical Examining Board
File No. 15 CV 141

Dear Counsel,

I am writing with my decision on Dr. Nanette J. Liegeois's Petition for Judicial Review of a March 18, 2015 Order from the State of Wisconsin Medical Examining Board. I realize this isn't the standard format for a legal decision but quite frankly the undisputed facts of this case do not warrant that level of formality.

I am adopting the procedure and factual background set forth in Petitioner's submissions. They are for the most part not disputed. I find it incredulous that a doctor's or any other professional's license can be taken without due process and that is what happened here.

As we know, Judicial Review of Administrative Decisions under Chapter 227 entails a review of the record, there is no trial de novo by the circuit court. The agency's Findings of Fact must be sustained unless they are unsupported by substantial evidence in the record. Wis. Stat. § 227.57(6). Since allegations in a complaint are just that and alone cannot be the basis for the Board's decision, the Respondent must be able to point to evidence in the record (emphasis added) that supports the conclusion that Dr. Liegeois engaged in unprofessional conduct or created an unacceptable risk to her patients. While a certified copy of the record was submitted to the court in a timely fashion, Dr. Jeffrey M. Hall M.D.'s affidavit and a report from Psychological expert Dr. John Hung were not included. Dr. Hall's affidavit was filed some 9 months later

(January 21, 2016) and to my knowledge Dr. Hung's report was never provided although it was referenced on page 100 of the Decision. Since the time provisions of section 227.55 are mandatory (Wagner v. State Medical Examining Board., 181 Wis. 2d 633, 511 N.W. 2d 874); the Court may refuse to consider the Board's argument if they fail to timely file the entire record. Without Dr. Hall's affidavit, or Dr. Hung's report, there is no substantial evidence in the record to support the Board's decision. For this reason alone I am remanding the case to the Board for further proceedings.

Furthermore, I find the Board erred as a matter of law in denying Dr. Liegeois's Motion to Vacate the Default Judgment for cause. Respondent appears to rest their argument on Petitioner's failure to promptly obtain counsel or appear in the action pro se. The record establishes that the doctor was properly notified of Board action as early as December 11, 2014 when she was served by regular and certified mail, the Notice of Presentation of Petition for Summary Suspension. The notice was sent to the doctor's address on file with the Board and there is no question that it is her duty to maintain current contact information, which she did not do. A week later Dr. Liegeois was served by regular mail, certified mail and e-mail a copy of the Order of Summary Suspension. This order was also sent to Attorney Kevin O'Connor who is identified in the affidavit of service as the petitioner's attorney of record.

On January 8, 2015, the Division of Hearing and Appeals sent a notice of telephonic scheduling conference to Dr. Liegeois by regular mail. This was returned as undeliverable. It is unknown why this notice was returned while the earlier notices were not.

What we do know is that shortly before the February 24, 2015 deadline for responding to the proposed decision and order, Dr. Liegeois retained counsel. That attorney was undoubtedly late to the case but nonetheless attempted to contact the Department of Safety and Professional Services. For a variety of reasons, Petitioner's attorney did not receive a reply to her voicemails until one day after the deadline. Had counsel's messages been timely responded to, Petitioner would have met the deadline. Respondent's argument that they did nothing to induce inaction on Petitioner's part, begs the question. This is not unlike a statute of limitations where a Plaintiff has until the very end of the statute to file their claim. Just because they have knowledge of the claim and could have filed it earlier, does not prohibit them from filing at the 11th hour. The Clerk of Court can't refuse the submission because the deadline is only a couple of days away.

I find that on or around January 8, 2015 when notice of an upcoming scheduling conference was returned, the Division of Hearing and Appeals was on notice that they did not have a valid address for Dr. Liegeois. Petitioner's attorney did what could be done to try and determine the status of the case prior to the deadline. Phone calls were not returned. Dr. Liegeois's livelihood should not be taken, without the opportunity to be heard, because of these errors. Petitioner showed good cause.

Under the totality of circumstances, I am remanding the case to the Board for further proceedings wherein the Petitioner is permitted to respond to the initial complaint.

Sincerely,

Molly E. GaleWyrick

Molly E. GaleWyrick
Circuit Court Judge Branch I

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