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8/8/2019 | Articles

Pennsylvania Appellate Court Heightens the Bureau of Professional and Occupational Affairs' Burden in Professional Licensure Proceedings Regarding Mental and Physical Evaluations

On July 24, 2019, the Commonwealth Court of Pennsylvania reversed the State Board of Nursing's decision that professional licensee is subject to disciplinary action, in the professional licensure context, merely based on a medical doctor's opinion that the professional licensee suffers from depression and an alcohol abuse disorder. See *Thim v. Bureau of Prof'l & Occupational Affairs*, 2019 WL 3315143 (Pa. Cmwlth. 2019).

Background

In this case, a professional nurse was ordered to submit to a mental physical examination after being arrested for driving under the influence in the Commonwealth of Pennsylvania. After the evaluation, the evaluating doctor concluded the professional nurse suffered from depression along with an alcohol abuse disorder and was therefore unable to practice professional nursing without monitoring. Specifically, the evaluating doctor concluded that the professional nurse demonstrated a pattern of drinking in order to cope with her emotions. As a result of the evaluating doctor's opinion, the Bureau of Professional and Occupational Affairs filed an Order to Show Cause against the professional nurse, alleging she was in violation of Section 14(a)(2) of the Professional Nursing Laws in that she was "unable to practice professional nursing with reasonable skill and safety to patients by reason of mental or physical illness or condition or physiological or psychological dependence upon alcohol."

Commonwealth Court's Decision

This case proceeded to a hearing where the issue was whether the evaluating doctor's opinion that the professional nurse at issue suffered from depression was enough for the Commonwealth to establish its burden. The State Board of Nursing found in favor of the Commonwealth. On appeal, however, the Commonwealth Court of Pennsylvania reversed the State Board of Nursing's decision on the following two grounds:

1. The Commonwealth Court held that the State Board of Nursing's disciplinary action was improper because the evaluating doctor's report did not establish any criteria for his diagnosis of depression and an alcohol abuse disorder.
2. The Commonwealth Court further held that the State Board of Nursing's disciplinary action was improper because the evaluating doctor's report and his opinion at the hearing did not include the language in Section 14(a)(2) of the Professional Nursing Law and precisely state "the licensee is unable to practice professional nursing with reasonable skill and safety to patients by reason of mental or physical illness or condition or physiological or psychological dependence upon alcohol."

Practical Impact of this Decision

The *Thim* decision is favorable for licensees as it heightens the Commonwealth's burden in professional licensure

proceedings regarding mental and physical evaluations. Further, it provides licensees an additional defense mechanism to disciplinary action against their professional occupational license, alleging being unfit to practice due to a mental health or substance abuse disorder. It is no longer enough for an evaluating doctor to provide an opinion that a professional licensee is unfit to practice due to a mental health or substance abuse disorder without providing any criteria behind the opinion and stating a precise opinion that mirrors the language from the professional licensure regulation at issue. Moreover, a competing medical evaluation is not necessarily needed anymore for a professional licensee to succeed in these proceedings.

Please consult with our experienced attorneys at Dickie McCamey regarding professional licensure issues.



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