

SUPREME COURT OF APPEALS OF WEST VIRGINIA

State ex rel. Fillinger v. Rhodes

230 W. Va. 560 (2013) · Decided March 12, 2013

SUMMARY

The West Virginia Supreme Court of Appeals granted a writ of prohibition sought by a registered nurse against the West Virginia Board of Examiners for Registered Professional Nurses. The court held that the Board exceeded its jurisdiction by repeatedly delaying hearings and failing to comply with statutory and regulatory requirements governing disciplinary proceedings. The court dismissed with prejudice the 2008 and 2009 complaints against the petitioner.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Ketchum, Justice; Benjamin, Chief Justice; Loughry, Justice
JURISDICTION	West Virginia
DECIDED	March 12, 2013
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Original proceeding in prohibition seeking an order directing the West Virginia Board of Examiners for Registered Professional Nurses to dismiss with prejudice two disciplinary complaints that had remained unresolved without an administrative hearing.
STANDARD OF REVIEW	A writ of prohibition issues only in a clear case in which an inferior tribunal is proceeding without or in excess of jurisdiction. When the tribunal is alleged to have exceeded its legitimate powers rather than lacked jurisdiction altogether, the Court considers five factors under State ex rel. Hoover v. Berger, giving substantial weight to clear legal error; prohibition cannot substitute for an appeal.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Jennifer A. Fillinger, R.N. v. West Virginia Board of Examiners for Registered Professional Nurses, Rhodes

TOPICS

- agency adjudication
- medical licensing
- administrative law
- exhaustion of remedies
- writ of certiorari

PRACTICE AREAS

administrative law

health law

medical licensing

appellate procedure

remedies

QUESTIONS PRESENTED

1. Whether the Board exceeded its jurisdiction by failing to conduct a timely administrative hearing and issue a final ruling on the 2008 and 2009 disciplinary complaints.
2. Whether prohibition was an available remedy despite Fillinger's failure to exhaust ordinary administrative and judicial review procedures, where the administrative process had been delayed for an unreasonable period.
3. Whether the complaints should be dismissed with prejudice because the Board violated statutory and regulatory requirements governing complaint resolution, hearings, and continuances.
4. Whether the issues remained reviewable despite a possible settlement because they were capable of repetition yet likely to evade review and involved matters of public importance.

HOLDINGS

1. The Board exceeded its jurisdiction by failing to take definite action, conduct an administrative hearing, and enter a final decision on the 2008 and 2009 complaints within the time and procedural requirements imposed by West Virginia law.
2. Prohibition was appropriate because the delayed administrative remedy had become largely theoretical and did not provide an adequate alternative means of relief.
3. The possible settlement did not render the case moot because the challenged procedural issues were capable of repetition yet likely to evade review and were of continuing public importance.

KEY QUOTATIONS

“The writ of prohibition will issue only in clear cases where the inferior tribunal is proceeding without, or in excess of, jurisdiction.” (230 W. Va. at 564)

“That assertion is difficult to sustain, however, where the administrative remedy, delayed over an unreasonable period of time, becomes largely theoretical.” (230 W. Va. at 566)

“This Court has no reason to conclude that the Legislature meant less than what it said in W.Va.Code, 30-1-5(e) [2005], about those requirements, and the Board’s violation thereof is clearly demonstrated in the record before this Court.” (230 W. Va. at 567)

“The Board having acted in excess of its jurisdiction, the petitioner’s request for relief in prohibition is granted, and the complaints filed against her in 2008 and 2009 are dismissed, with prejudice.” (230 W. Va. at 567)

FACTUAL BACKGROUND

Fillinger was a licensed registered professional nurse who worked at Charleston Area Medical Center and later Logan Regional Medical Center. Each employer terminated her employment after medication-dispensing data

allegedly showed discrepancies involving her access credentials and controlled medications; the employers filed disciplinary complaints with the Board in 2008 and 2009. Fillinger denied wrongdoing and demanded an administrative hearing, but the Board repeatedly continued scheduled hearings and did not conduct one or enter a final decision.

PROCEDURAL HISTORY

The Board received disciplinary complaints against Fillinger in 2008 and 2009 and repeatedly continued scheduled administrative hearings. Fillinger demanded a hearing, moved before the Board to dismiss the complaints, and then sought prohibition in the Supreme Court of Appeals after the Board failed to conduct a hearing or issue a final decision. The Supreme Court granted the writ and dismissed both complaints with prejudice.

DISPOSITION

writ_granted

CASES CITED

- State ex rel. M.C.H. v. Kinder, 173 W. Va. 387, 317 S.E.2d 150 (1984)
- Hart v. Nat'l Collegiate Athletic Ass'n, 209 W. Va. 543, 550 S.E.2d 79 (2001)
- State ex rel. Jeanette H. v. Pancake, 207 W. Va. 154, 529 S.E.2d 865 (2000)
- Vineyard v. O'Brien, 100 W. Va. 163, 130 S.E. 111 (1925)
- State ex rel. Johnson v. Reed, 219 W. Va. 289, 633 S.E.2d 234 (2006)
- State ex rel. Hoover v. Berger, 199 W. Va. 12, 483 S.E.2d 12 (1996)
- State ex rel. West Virginia National Auto Insurance Co. v. Bedell, 223 W. Va. 222, 672 S.E.2d 358 (2008)
- State ex rel. Isferding v. Canady, 199 W. Va. 209, 483 S.E.2d 555 (1997)
- State ex rel. Gibson v. Hrko, 220 W. Va. 574, 648 S.E.2d 338 (2007)
- Buskirk v. Judge of Circuit Court, 7 W. Va. 91 (1873)
- Webb v. West Virginia Board of Medicine, 212 W. Va. 149, 569 S.E.2d 225 (2002)
- State ex rel. Sheppe v. West Virginia Board of Dental Examiners, 147 W. Va. 473, 128 S.E.2d 620 (1962)
- State ex rel. Gordon Memorial Hospital v. West Virginia State Board of Examiners for Registered Nurses, 136 W. Va. 88, 66 S.E.2d 1 (1951)