

SUPREME COURT OF APPEALS OF WEST VIRGINIA

State of West Virginia ex rel. O.H., M.D. v. West Virginia Board of Medicine

State ex rel. O.H. · No. No. 16-0449 · Decided October 27, 2016

SUMMARY

The Supreme Court of Appeals of West Virginia denied O.H.’s petition for a writ of prohibition seeking to prevent the West Virginia Board of Medicine from continuing its investigation of a former patient’s complaint. The court held that the Board timely sent the required status report and properly obtained a written extension of the deadline for issuing a final ruling under West Virginia Code § 30-1-5(c). The court concluded that prohibition did not lie because the extended deadline had not expired when the petition was filed, while tolling the remaining 126 days during the stay.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Justice Loughry
JURISDICTION	West Virginia
DECIDED	October 27, 2016
DOCKET	No. 16-0449
DISPOSITION	writ_denied
PROCEDURAL POSTURE	O.H., a licensed physician, petitioned the Supreme Court of Appeals of West Virginia for a writ of prohibition to prevent the West Virginia Board of Medicine from taking further action on a disciplinary complaint. The petition challenged the Board's compliance with statutory deadlines for investigating and finally resolving the complaint.
STANDARD OF REVIEW	A writ of prohibition issues only in clear cases in which an inferior tribunal proceeds without jurisdiction or in excess of its legitimate powers. For a discretionary prohibition petition alleging an excess of power, the court considers the five Hoover factors and gives substantial weight to whether the lower tribunal committed clear legal error.
PRECEDENTIAL VALUE	Published opinion; precedential value is not otherwise characterized in the source.

PARTIES

State of West Virginia ex rel. O.H., M.D. v. West Virginia Board of Medicine

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administrative law

medical licensing

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QUESTIONS PRESENTED

1. Whether the Board violated West Virginia Code § 30-1-5(c) by failing to make a probable-cause determination within the statutory period.
2. Whether the Board's written agreement with the complainant extended the statutory deadline for issuance of a final ruling while the investigation and probable-cause process remained ongoing.
3. Whether O.H. demonstrated the clear legal error or excess of jurisdiction necessary for issuance of a writ of prohibition.
4. Whether the Board's six-month agreed extension was unreasonable under the circumstances.

HOLDINGS

1. West Virginia Code § 30-1-5(c) does not establish a deadline by which the Board must make a probable-cause determination.
2. The written extension permitted by West Virginia Code § 30-1-5(c) applies to the Board's entire disciplinary complaint process, including investigation and probable-cause proceedings, so long as a final ruling is issued within the authorized extended period.
3. The statutory time frames in West Virginia Code § 30-1-5(c) are mandatory and jurisdictional, but the Board retained jurisdiction here because it obtained a valid written extension before the original deadline expired.
4. Prohibition does not lie because O.H. failed to establish that the Board acted in excess of jurisdiction or committed clear legal error.

KEY QUOTATIONS

“The statute refers to the amount of time the Board has to “investigate and resolve” complaints to a “final ruling,” i.e., to complete the entirety of the Board’s disciplinary complaint process.” (at 9-10)

“If, however, the final ruling is not issued in that time frame, the Board loses jurisdiction over the complaint.” (at 10)

“Because the Board and M.B. agreed in writing to extend the deadline for the issuance of a final ruling on M.B.’s complaint, and the extended deadline was still four months away when O.H. filed this petition for

prohibition, we conclude that O.H. has not demonstrated an error of law or that the Board has acted in excess of its jurisdiction.” (at 11)

FACTUAL BACKGROUND

A former patient complained that O.H. engaged in an improper emotional and sexual relationship with her while treating her and failed to treat her properly after she disclosed suicidal ideations. O.H. admitted frequent text messaging but denied an improper relationship and stated that the patient was under another physician's care when she later attempted suicide. The Board conducted an extensive investigation, including witness interviews, subpoenas for records, review of medical and billing records and text messages, and procurement of an expert psychiatric opinion. The complainant and Board entered a written agreement extending the final-ruling deadline to September 15, 2016.

PROCEDURAL HISTORY

A former patient filed a complaint with the Board on September 15, 2014. The Board sent the required status report, continued its investigation, and obtained the complainant's written agreement in February 2016 to extend the deadline for a final ruling to September 15, 2016. O.H. filed the prohibition petition on May 11, 2016; the court stayed the administrative proceedings on May 12, 2016, and ultimately denied the petition and lifted the stay upon issuance of the mandate.

DISPOSITION

writ_denied

REMAND INSTRUCTIONS

No remand. The stay of the Board's proceedings was lifted contemporaneously with issuance of the Court's mandate. The Board was allowed 126 days after the mandate order to issue its final ruling, with the period tolled during the stay.

CASES CITED

- State ex rel. 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. Peacher v. Sencindiver, 160 W.Va. 314, 233 S.E.2d 425 (1977)
- State v. Epperly, 135 W.Va. 877, 65 S.E.2d 488 (1951)
- State ex rel. Fillinger v. Rhodes, 230 W.Va. 560, 741 S.E.2d 118 (2013)
- State ex rel. York v. W.Va. Real Estate Appraiser Licensing and Certification Bd., 236 W.Va. 608, 760 S.E.2d 856 (2014)
- State ex rel. Miles v. W.Va. Bd. of Registered Professional Nurses, 236 W.Va. 100, 777 S.E.2d 669 (2015)
- Banker v. Banker, 196 W.Va. 535, 474 S.E.2d 465 (1996)
- Bullman v. D & R Lumber Company, 195 W.Va. 129, 464 S.E.2d 771 (1995)

- Longwell v. Bd. of Educ. of County of Marshall, 213 W.Va. 486, 583 S.E.2d 109 (2003)
- Daily Gazette Co., Inc. v. W.Va. Bd. of Medicine, 177 W.Va. 316, 352 S.E.2d 66 (1986)

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