



Ohio Board of Speech-Language Pathology and Audiology

77 South High Street, 16th Floor
Columbus, Ohio 43215

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614-466-3145 614-995-2286 fax

July 23, 2003

Patrice O. Carothers
108 Champion Lane
Chagrin Falls, Ohio

Case No. C02-10

ADJUDICATION ORDER

This matter came on for hearing at 2:00 P.M. on June 26, 2003 before the Ohio Board of Speech-Language Pathology and Audiology (hereinafter "Board"). The following Board members were present: Jane Kukula, Au.D., Audiology board member, Chairperson; Cindy Satterfield, M.A., Speech-Language Pathology board member, Vice-chairperson; Ann Glaser, M.S., Speech-Language Pathology board member; Ann Shotwell, public board member; Debra Abel, Au.D., Audiology board member; Carol Leslie, Ph.D., Speech-Language Pathology board member; and Patrick Mangino, M.A., Audiology board member.

The hearing was held for the purpose of the Board's review of evidence on the question of whether or not Patrice O. Carothers' application for Speech-Language Pathology re-licensure, pursuant to Section 4753.08(C), Ohio Revised Code, should be approved or denied. The hearing was held pursuant to the Notice of Opportunity for Hearing mailed to Ms. Carothers by certified mail on November 15, 2002. Ms. Carothers did not subsequently request a hearing. Accordingly, pursuant to *Goldman vs. Ohio State Medical Board* (1996), 110 Ohio App.3d 124 (Franklin Co.), Ms. Carothers could not participate in the hearing or submit additional evidence.

Ms. Carothers was not present at the hearing.

Betty Willis, Willis Court Reporting, served as the court reporter.

Assistant Attorney General Barbara Petrella appeared on behalf of the Board.

The following witnesses were called on behalf of the Board:

Sallie Debolt, Executive Director, Ohio Board of Speech-Language Pathology and Audiology

Doug Hart, Investigator, Ohio Board of Speech-Language Pathology and Audiology

The following exhibits were admitted into evidence:

State's Exhibit 1: Notice of Opportunity for Hearing, dated November 15, 2002, and certified mail return receipt

Sallie Debolt
Executive Director

Jane M. Kukula, Au.D., Chairperson
Cindy Satterfield, M.A. Vice-Chairperson

Debra B. Abel, Au.D.
M. Ann Glaser, M.S.

Patrick N. Mangino, M.A.
Carol Pahl Leslie, Ph.D.

Judith W. Harvey, Ph.D.
Ann Shotwell

- State's Exhibit 2: Letter dated May 29, 2003 from Sallie Debolt, Executive Director, Ohio Board of Speech-Language Pathology and Audiology, notifying Ms. Carothers of the June 26, 2003 Board review of the evidence in the matter noted in the Notice of Opportunity for Hearing dated November 15, 2002, with certified mail return receipt.
- State's Exhibit 3A: The renewal application for 1999 and 2000 sent to Patrice O. Carothers.
- State's Exhibit 3B: Copy of the Notices of Expired License, dated March 3, 1999 and October 1, 1999, sent to Patrice Carothers.
- State's Exhibit 4: Application for re-licensure filed by Patrice O. Carothers on September 27, 2001.
- State's Exhibit 5: Letter dated October 15, 2002 from Kathy Casaletta, Documentation Specialist, Financial Investigations, Medical Mutual of Ohio.
- State's Exhibit 5A: Medical Mutual of Ohio billing records of Patrice Carothers (with last names of patients redacted).
- State's Exhibit 6A: Documents related to the employment of Patrice Orosz Carothers by Case Western Reserve University for the Summer Session 1998, including the Curriculum Vitae of Patrice Orosz Carothers.
- State's Exhibit 6B: Documents related to the employment of Patrice Orosz Carothers by Case Western Reserve University for Summer Session 1999, including the Curriculum Vitae of Patrice Orosz Carothers.
- State's Exhibit 6C: Documents related to the employment of Patrice Orosz Carothers by Case Western Reserve University for Summer Session 2000, including the Curriculum Vitae of Patrice Orosz Carothers.
- State's Exhibit 6D: Documents related to the employment of Patrice Orosz Carothers by Case Western Reserve University for Summer Session 2001, including the Curriculum Vitae of Patrice Orosz Carothers.
- State's Exhibit 7A: Examination Note dated January 14, 1999, signed by Patrice Orosz Carothers, Ohio License #2168.
- State's Exhibit 7B: Record of January 28, 1999 evaluation performed by Patrice Orosz Carothers, Ohio License #2168.
- State's Exhibit 7C: Treatment reports for patient Vincent dated from December 19, 1998 through April 19, 1999, signed by Patrice Orosz Carothers, Ohio License #2168.

- State's Exhibit 7D: Report of the May 29, 1999 evaluation of patient Wesley, signed by Patrice Orosz Carothers, Ohio License #2168.
- State's Exhibit 7E: Report of the March 30, 2000 evaluation of patient William, signed by Patrice Orosz Carothers, Ohio License #2168.
- State's Exhibit 7F: Report of the December 7, 2000 evaluation of patient Natalie, signed by Patrice Orosz Carothers, Ohio License #2168.
- State's Exhibit 7G: Report of the July 7, 2001 evaluation of patient Anthony, signed by Patrice Orosz Carothers, Ohio License #2168.
- State's Exhibit 8: Letter dated September 28, 2001 from Patrice O. Carothers to the Ohio Board of Speech-Language Pathology and Audiology.
- State's Exhibit 9: Letter dated July 9, 2002 from Patrice Orosz Carothers to Sallie J. Debolt, Ohio Board of Speech-Language Pathology and Audiology.
- State's Exhibit 10: Letter dated October 23, 2002 from Patrice O. Carothers to Sallie Debolt, Ohio Board of Speech-Language Pathology and Audiology, with enclosures.

The Board considered all of the evidence and testimony presented before issuing its determination as ordered below.

It is hereby ORDERED by the Board of Speech-Language Pathology and Audiology as follows:

Ms. Carothers shall be re-licensed upon receipt, within thirty (30) calendar days of the date of this ORDER, of documentation establishing that she is in compliance with the continuing education requirements for re-licensure. Her license shall then be immediately suspended for a period of two (2) years and nine (9) months. However, one (1) year and nine (9) months of the suspension shall be stayed.

This Adjudication Order shall be effective immediately upon receipt.

APPEAL RIGHTS

Section 119.12, Ohio Revised Code, may authorize an appeal from this Adjudication Order. If so, such an appeal may be taken to the Court of Common Pleas of the county in which your place of business or residence is located, or, if you are not an Ohio resident, to the Court of Common Pleas of Franklin County.

Such an appeal shall be commenced by filing the original Notice of Appeal with the Ohio Board of Speech-Language Pathology and Audiology, 77 South High Street, 16th Floor,

Columbus, Ohio 43215, and a **copy of said Notice of Appeal with the proper court of common pleas** as determined under Section 119.12, Ohio Revised Code. Such Notice of Appeal shall contain the Order appealed from and the grounds of said appeal. Such original Notice of Appeal must be filed at the Board office and the copy of said Notice of Appeal filed at the proper court of common pleas **within fifteen** (15) calendar days of the mailing date of this Order.

By Order of the Ohio Board of Speech-Language Pathology and Audiology


Sallie Debolt
Executive Director

CERTIFICATION

I hereby certify that the forgoing is a true and accurate copy of the Adjudication Order of the Ohio Board of Speech-Language Pathology and Audiology that was entered on its Journal of the 26th day of June, 2003 and that this copy was mailed to Patrice O. Carothers, 108 Champion Lane, Chagrin Falls, Ohio 44022, by certified mail number 70010360 0002 4136 3343 on this 23 day July 2003.


Doug Hart
Investigator

Cc: Barbara Petrella, Assistant Attorney General
Kelly Haddox, Assistant Attorney General
Board Members

FILED
IN COURT OF APPEALS

DEC 13 2004

DENISE M. K...
CLERK OF COURT
GEAUGA COU...

STATE OF OHIO)
)SS.
COUNTY OF GEAUGA)

IN THE COURT OF APPEALS
ELEVENTH DISTRICT

PATRICE O. CAROTHERS,

Appellant,

- vs -

OHIO BOARD OF SPEECH-LANGUAGE
PATHOLOGY AND AUDIOLOGY,

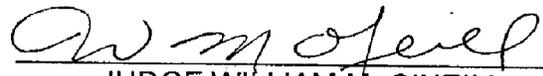
Appellee.

JUDGMENT ENTRY

CASE NO. 2004-G-2559

**HEALTH & HUMAN
DEC 17 2004
SERVICES SECTION**

For the reasons stated in the opinion of this court, appellant's assignment of error is without merit. It is the judgment and order of this court that the judgment of the trial court is hereby affirmed.



JUDGE WILLIAM M. O'NEILL
FOR THE COURT

11/297

FILED
IN COURT OF APPEALS

DEC 13 2004

DENISE M. KANFUS
CLERK OF COURTS
GEAUGA CO.

THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
GEAUGA COUNTY, OHIO

PATRICE O. CAROTHERS, : OPINION
Appellant, :
- vs - : CASE NO. 2004-G-2559
OHIO BOARD OF SPEECH-LANGUAGE :
PATHOLOGY AND AUDIOLOGY, :
Appellee. :

Administrative appeal from the Court of Common Pleas, Case No. 03 A 000753.

Judgment: Affirmed.

R. Kevin Kerns, 65 East State Street, Suite 1800, Columbus, OH 43215, *Joseph H. Weiss, Jr.*, May Valley Building, Suite 6-B, 8228 Mayfield Road, Chesterland, OH 44026, and *Alan S. Kopit*, 3300 BP Tower, 200 Public Square, Cleveland, OH 44114 (For Appellant).

Jim Petro, Attorney General, and *Dominic J. Chieffo*, Assistant Attorney General, State Office Tower, 26th Floor, 30 East Broad Street, Columbus, OH 43215 (For Appellee).

WILLIAM M. O'NEILL, J.

{¶1} In this an accelerated calendar case, appellant, Patrice O. Carothers ("Carothers"), appeals the judgment entered by the Geauga County Court of Common Pleas. The trial court affirmed the decision of appellee, Ohio Board of Speech-Language Pathology and Audiology ("the Board"). The Board suspended Carothers' speech-language pathology license.

{¶2} Carothers originally received her speech-language pathology license in 1979. Prior to 1999, Carothers moved without notifying the Board of her new address, as required by the Ohio Administrative Code. As a result, the renewal application for her license was returned to the Board. Carothers' license expired in December 1998. She did not renew her license for the 1999-2000 or 2001-2002 biannual periods. She applied for renewal of her license in September 2001.

{¶3} The Board sent Carothers a "notice of opportunity for hearing" in November 2002, via certified mail. Carothers did not request a hearing. In May 2003, the Board sent Carothers a letter advising her that the matter would be heard at a public meeting on June 26, 2003, but that she would not be permitted to participate since she did not request a hearing.

{¶4} In July 2003, the Board issued its adjudication. Therein, the Board decided to issue Carothers a new license. However, the Board suspended the license for two years and nine months, with one year and nine months of the suspension stayed, resulting in a net suspension of one year. Pursuant to R.C. 119.12, Carothers appealed the Board's adjudication to the common pleas court. The trial court affirmed the Board's adjudication. Carothers now appeals to this court.

{¶5} Carothers raises the following assignment of error:

{¶6} "The trial court erred in affirming the board's adjudication order because the portion which suspended appellant's speech-language pathology license is contrary to law."

{¶7} "In an administrative appeal under R.C. 119.12, a trial court must determine whether the decision of the administrative board is supported by reliable,

probative and substantial evidence.^[1] The trial court must give due deference to the administrative resolution of evidentiary conflicts and must not substitute its judgment for that of the administrative board or agency.^[2] Appellate review is limited to determining whether the trial court abused its discretion in finding the board's decision supported by reliable, probative and substantial evidence.^[3] Issues of law are reviewed *de novo*.^[4]⁵

{¶8} Carothers asserts the Board did not provide her with proper notice of the nature of the proceedings against her. Specifically, Carothers claims she was not given notice that the Board could suspend her license.

{¶9} Ohio courts have held that the test set forth in *Mathews v. Eldridge* is to be used in administrative proceedings such as this to determine the amount of due process protection a particular situation warrants.⁶ The *Mathews* test requires consideration of the following factors: (1) the individual's interest that will be affected by the action; (2) the risk of error that could arise without providing additional procedural safeguards; and (3) the cost to the government agency to provide the additional procedural safeguards.⁷ In addition, "[p]rocedural due process requires that fair notice be given to an individual as to the precise nature of the charges to be brought forth at a disciplinary hearing."⁸

1. R.C. 119.12; *Our Place, Inc. v. Ohio Liquor Control Comm.* (1992), 63 Ohio St.3d 570, 571.

2. *Univ. of Cincinnati v. Conrad* (1980), 63 Ohio St.2d 108, 111.

3. *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, 621.

4. *Univ. Hosp., Univ. of Cincinnati College of Medicine v. State Emp. Relations Bd.* (1992), 63 Ohio St.3d 339, 343-344.

5. *Sohi v. Ohio St. Dental Bd.* (1998), 130 Ohio App.3d 414, 421.

6. *Chirila v. Ohio State Chiropractic Bd.* (2001), 145 Ohio App.3d 589, 593, citing *Mathews v. Eldridge* (1976), 424 U.S. 319, 335. See, also, *Doyle v. Ohio Bur. Motor Vehicles* (1990), 51 Ohio St.3d 46, 52.

7. *Mathews v. Eldridge*, 424 U.S. at 335.

8. *In re Morgenstern* (May 28, 1992), 10th Dist. No. 91AP-1018, 1992 Ohio App. LEXIS 2753, at *7, citing *In re Ruffalo* (1968), 390 U.S. 544.

{¶10} We acknowledge that an individual has a protected property interest in a professional license.⁹ However, Carothers entered these administrative proceedings in bad standing, i.e., *without* a license. Therefore, a threshold question arises as to whether Carothers had a property interest in jeopardy. At the time the November letter was sent, Carothers was not licensed in Ohio. Thus, there was no license to suspend. The initial language of the letter indicated the Board would decide whether to refuse to issue her a license. It was only after the Board decided to issue Carothers a new license, that a suspension could occur. However, even though Carothers did not currently have a license, she arguably had at least a diminished property interest, given her status as a former licensee. Thus, we will continue our analysis to determine whether she was afforded sufficient procedural safeguards.

{¶11} The Board must comply with R.C. 119.01, et seq., when determining whether to issue, suspend, or revoke a speech-language pathology license.¹⁰ Carothers contends the Board did not provide her notice of “the charges or reasons for the proposed action” as required by R.C. 119.07. Thus, she asserts, the adjudication is void pursuant to R.C. 119.06.¹¹

{¶12} Initially, in applying the *Matthews* test, we conclude that the November letter provided Carothers with the relevant information regarding her licensure status. Through this letter, Carothers was given an opportunity to be heard, as she could have requested a hearing, at which she could present evidence, call witnesses, and cross-

9. *Chirila v. Ohio State Chiropractic Bd.*, 145 Ohio App.3d at 596, citing *Sohi v. Ohio St. Dental Bd.*, 130 Ohio App.3d at 422.

10. R.C. 4753.10

11. See, also, *Chirila v. Ohio State Chiropractic Bd.*, *supra*, at 594.

examine adverse witnesses. She chose not to exercise this right and did not request a hearing.

{¶13} The crux of the instant appeal is that Carothers claims the November letter did not adequately provide her with notice that the Board could *suspend* her license but, rather, only indicated the Board would determine whether to issue her a new license. Carothers does not contend the November letter failed to inform her of the precise nature of the *charges* against her. Rather, she claims she was not advised that the Board could suspend her license, which is actually a possible *sanction* that could result from charges against her. The Board had the initial task of determining whether to issue Carothers a new license. Had the Board decided not to issue a new license, an inquiry regarding suspension would be irrelevant.

{¶14} Carothers incorrectly asserts that the November letter states that the “sole purpose” of the action was to determine whether the Board would approve or deny her license application. The November letter provides, in pertinent part, the Board “intends to determine whether or not to refuse to issue you a license as a Speech-Language Pathologist for the following reasons[.]” Thereafter, several statutory and administrative code sections are cited, along with individual charges against Carothers. The remainder of the November letter does address the possibility of suspension of licenses, as it states, in part:

{¶15} “Section 4753.10 of the Revised Code States:

{¶16} “In accordance with Chapter 119. of the Ohio Revised Code, the board of speech-language pathology and audiology may reprimand or place on probation a speech-language pathologist or audiologist or *suspend*, revoke, or refuse to issue or

renew the license of a speech-language pathologist or audiologist. Disciplinary actions may be taken by the board for conduct that may result from but not necessarily be limited to:

{¶17} “M. Violating this chapter or any lawful order given or rule adopted by the board.

{¶18} “ ***

{¶19} “Section 4753-3-08(M) of the Ohio Administrative Code states:

{¶20} “The Board may reprimand, place on probation, deny, *suspend*, revoke or refuse to issue or renew the license or refuse to issue the conditional license of an applicant or licensee for violation of any provision of Chapter 4753. of the Ohio Revised Code, or any lawful order or rule of the board, and for unprofessional conduct, including but not limited to the following:

{¶21} “M. Violating any provision of this law, and lawful order given, or rule or regulation adopted by the board.

{¶22} “ ***

{¶23} “In the event that no request for hearing is made within thirty days of the time of the mailing of this notice, the Ohio Board of Speech-Language Pathology and Audiology may, upon consideration of this matter, reprimand, place on probation, deny, *suspend*, or revoke, or refuse to issue you a license.” (Emphasis added.)

{¶24} In its adjudication order, the Board found that Carothers was properly notified of the hearing. Pursuant to R.C. 119, the trial court had the duty to determine whether this decision was supported by reliable, probative, and substantial evidence.¹²

12. *Sohi v. Ohio St. Dental Bd.*, 130 Ohio App.3d at 421, citing R.C. 119.12; *Our Place, Inc. v. Ohio Liquor Control Comm.*, 63 Ohio St.3d at 571.

The November letter references suspension on three separate occasions. Accordingly, the trial court did not abuse its discretion in determining that Carothers was properly notified of the nature of the charges against her and the possibility of a suspension of her license, provided her license was reinstated.

{¶25} In the alternative, even if we were to accept Carothers argument that she was not properly informed of the possibility of a suspension, she admits that she was informed that the Board could refuse to issue her a license. Thus, she was informed of the "worst case" scenario. The Board notified Carothers of the severity of the hearing, including the possible result of not being issued a license. The final adjudication issued a less severe sanction, suspension of her license. Accordingly, Carothers was not prejudiced by her perceived lack of due process, because she had adequate notice that Board was conducting a hearing regarding the status of her licensing and that the hearing could result in no license at all. In addition, she was given an opportunity to participate in this hearing.

{¶26} Carothers also asserts the May letter did not provide her with proper notice regarding the possibility of suspension. The Board notes that the May letter was not required by statute and was merely sent as a courtesy. In addition, a review of the May letter indicates that Carothers was informed that the Board would review the evidence relating to her case at a public meeting on June 26, 2003. The letter clearly stated that Carothers could not present evidence or otherwise participate in the hearing, since she did not request a hearing in response to the November notice. Therefore, even if the May letter was more specific, at that time it would have been too late for Carothers to advance her position. Finally, as we held supra, Carothers had already

been properly and adequately notified, via the November letter, of the scope of the proceedings.

{¶27} Carothers was properly notified of the nature of the hearing. Further, the trial court did not abuse its discretion in determining that the Board's adjudication was supported by reliable, probative, and substantial evidence.

{¶28} Carothers' assignment of error is without merit.

{¶29} The judgment of the trial court is affirmed.

DONALD R. FORD, P.J.,

JUDITH A. CHRISTLEY, J.,

concur.