

ATTORNEYS FOR APPELLEES and
CROSS-APPELLANTS

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STATEMENT OF ISSUES

- I. The Board has a statutory duty to examine all qualifications of an applicant for licensure.
- II. There is sufficient evidence to support a finding by the Board that Singha lacked the professional capabilities for licensure.

ARGUMENT

I. THE BOARD HAS A STATUTORY DUTY TO EXAMINE ALL QUALIFICATIONS OF AN APPLICANT FOR LICENSURE.

Singha has claimed that he did not have fair notice of the issues that would be decided at the hearing held in August, 1998. Specifically, he objected to the introduction of evidence pertaining to fraud and deceit, or otherwise making misleading statements to the Board. (See Appellee's Reply Brief, page 1). This argument fails for two (2) reasons. In this case, the Supreme Court previously made a determination that the first hearing held by the Board was in violation of the Administrative Agencies Practices Act, N.D.C.C. Chapter 28-32, primarily since no verbatim record was made of the proceeding. (See Singha v. North Dakota State Bd. of Medical Examiners, 1998 ND 42, 574 N.W.2d 838. The case was remanded to the Board which ultimately afforded Singha a complete formal hearing adhering to all protections and rights available under N.D.C.C. Chapter 28-32.¹

The ALJ, responding to Singha, stated that "[t]here is a clear indication . . . from its decision that the Board had wrongly considered Singha's application, i.e. the Board's denial was not in accordance with N.D.C.C. Chapters 28-32 and 54-57. Therefore, the Board must start over again to consider Singha's application appropriately." (Appellant's A: 39). The ALJ went on to state that since the Board had not previously made a full licensure determination as required by law, the matter before the ALJ became "the first appropriate. full licensure proceeding regarding Singha." (Appellant's A: 39).

¹

The Board now provides every aggrieved applicant (one who has been denied licensure or who has been given a restrictive license) the opportunity to pursue a formal disposition of his/her application.

Thus, if there is an issue of fraud or deceit, or moral qualifications, that issue must certainly be considered by the Board in making its decision on licensure. Singha simply cannot make a compelling case that these issues should not be considered. In addition, he had notice that the issue of moral qualifications was a concern to the Board. In Singha the court rejected Singha's estoppel argument, by stating that "the Board lacks authority to license Singha if he does not possess the qualifications required by statute." Singha, 1998 ND 847, ¶ 34. The court went on to state that:

Assuming estoppel can apply to physician licensure, this record shows communications between the Board, Singha, and others, in which the Board and others incorrectly referred to Singha as a "Dr." and a "M.D." without clarification by Singha. Singha's failure to clarify these references to his status leaves him in a poor position to argue estoppel against the Board. Under these circumstances, we reject Singha's claim the Board is estopped from denying his application for licensure.

Singha, 1998 ND 847, ¶33.

Thus, Singha was given notice not only by the Board but also by the North Dakota Supreme Court. There is no requirement that the Board enunciate in some written agenda, detail by detail, every concern it would have about an applicant's qualifications. In the licensure process, all statutory requirements are clearly stated, and an applicant needs to assume that there can be questions in any of those areas. As the ALJ also found, "Singha was given every opportunity to respond to all the Board's evidence", he "did not seek a continuance to allow for time to prepare to respond to any of the Board's evidence", and "Singha was not sufficiently surprised by that evidence." (Appellant's A: 39).

As N.D.C.C. § 43-17-18 specified, the statutory requirements which must be met to qualify for a medical license in North Dakota extend beyond the educational criteria. In addition to the educational requirements, the applicant is required to show:

5. Physical, mental, and professional capability for the practice of medicine in a manner acceptable by the board; and
6. A history free of any finding by the board, any other state medical licensure board, or any court of competent jurisdiction of the commission of any act which would constitute grounds for disciplinary action under this chapter; the board, in its discretion, may modify this restriction for cause.

N.D.C.C. § 43-17-18. (Emphasis added).

Relevant provisions for disciplinary action are found in N.D.C.C. § 43-17-31(1) which provides for the discipline of physicians based upon “the use of any false, fraudulent, or forged statement or document, or the use of any fraudulent, deceitful, dishonest, or immoral practice, in connection with any of the licensing requirements.” There are additional provisions relating to unprofessional, unethical or dishonorable conduct, as provided in N.D.C.C. § 43-17-31(5).

It is obvious that the Board has the authority to inquire into the professional capabilities and moral qualifications of applicants for medical licensure. This is not an issue that can be waived by the Board simply because it was not enunciated in the initial decision made by the Board, prior to this Court’s ruling in Singha. It is necessary to conclude, therefore, that the hearing afforded Singha in this case, in August, 1998, represented a complete hearing and review in accordance with N.D.C.C. Chapter 28-32, and that all of Singha’s qualifications for licensure were at issue. There was no direction given by this court in Singha, nor do the statutory provisions allow the Board or its applicants to pick and choose which qualifications are relevant and which are not. All qualifications must be considered.

II. THERE IS SUFFICIENT EVIDENCE TO SUPPORT A FINDING BY THE BOARD THAT SINGHA LACKED THE PROFESSIONAL CAPABILITIES

FOR LICENSURE.

The ALJ found, pursuant to the provisions of N.D.C.C. Chapter 43-17, that “the applicant has the burden of proof to establish that he meets all of the requirements of the law to be licensed, including educational, moral, and professional fitness.” (Appellant’s A: 39). In addition to the educational qualifications, Singha, therefore, has the burden of proving that he has the necessary moral and professional capacity to practice medicine. For these reasons, the Board must inquire into any issues that relate to an applicant’s fitness or character. Furthermore, the Board is entitled to inquire whether or not any of the statutory grounds for disciplinary action, N.D.C.C. § 43-17-31, had been violated, particularly as those provisions relate to the licensure requirements. As argued previously, there is sufficient evidence for the Board to find that Singha was deceitful, fraudulent, or otherwise misrepresented himself in the licensing process. This argument has been significantly addressed in the Appellee’s Brief previously.

Honesty and integrity are essential attributes of good character and are significantly related to the practice of a profession. That is why the Vermont Supreme Court in Brode v. Barasch, 582 A.2d 132 (VT. 1990), upheld a psychology licensing board’s decision to deny an applicant licensure. The court stated:

The Board found that plaintiff’s failure to represent accurately his competence, education, training, and experience failed to meet the statutory standard. The Appeals Panel concluded that plaintiff’s submission of misleading, exaggerated, and misrepresentative statements about his career and background amounted to moral unfitness, because they revealed “a cavalier attitude to the truth and a serious problem in judgment.”

Id. at 137.

Singha has the burden of proof to show that he is morally fit and of sufficient

character, and that he possess the necessary professional capacity to practice medicine in North Dakota. That is the requirement stated in N.D.C.C. § 43-17-18 (5) and (6). Singha proposes that the court should twist the statute so that the Board is required to establish by clear and convincing evidence, that the applicant committed fraud. This is simply not the law. Therefore, if the burden of proof is placed upon the applicant to show that he possess the necessary educational and moral qualifications for licensure, it follows that the Board can consider evidence to the contrary. Nevertheless, if this Court should reverse the burden of proof requirement and place it on the Board rather than the applicant, then it is submitted that there is still ample evidence in the record to support a finding by the Board that this applicant does not possess the requisite moral or professional qualifications. In either case, there is sufficient evidence to support the Board's findings.

It is the duty of the Board to pass upon all of the qualifications of its applicants for licensure. There are necessarily, some very general standards and some specific standards to be applied in finding whether an applicant possesses the professional capacity, the moral qualifications to practice medicine as well as a history free of any act which would constitute grounds for disciplinary action against a licensed physician. It is the Board that is obliged to weigh and assess an applicant's truthfulness, integrity, and veracity, particularly in his communications with the Board. Based upon the facts in this case, the Board was entitled to find that Singha did not represent himself, by his communications with the Board and others, in a manner that satisfied the standards for licensure.

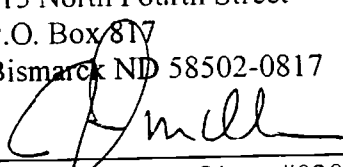
CONCLUSION

Based upon the foregoing reasons and the fact that Singha fails to meet the educational requirements for licensure, it is respectfully submitted that the Board's order

denying Singha's application for a license to practice medicine in North Dakota should be upheld.

Dated this 10th day of April, 2000.

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