

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

ANTONELLI COLLEGE PRACTICAL	:	
NURSING PROGRAM,	:	
	:	
Appellant	:	CASE NO. 16CV-3331
	:	
vs.	:	JUDGE FRENCH
	:	
OHIO BOARD OF NURSING,	:	
	:	
Appellee	:	

MAGISTRATE’S DECISION GRANTING APPELLANT’S MOTION FOR STAY
FILED APRIL 11, 2016

SKEENS, MAGISTRATE

The Court entered an Order referring Appellant’s Motion for Stay. A hearing was held on April 11, 2016. Appellant presented evidence by affidavit, and both sides presented argument.

FINDINGS OF FACT

The affidavit of Marre Barnette, former Program Administrator of Antonelli College Practical Nursing Program, attests that Antonelli College was operating its nursing program under conditional approval of the Ohio Board of Nursing until November 20, 2015. (Affidavit, ¶3). On November 20, 2015, the Nursing Board issued a Notice of Opportunity for Hearing Letter to Antonelli that proposed to withdraw conditional approval and deny full approval status to Antonelli. (“NOH”) (*Id.*, ¶7).

Ms. Barnette’s affidavit states that on December 14, 2015, she prepared and mailed a letter requesting a hearing in regard to the NOH. (*Id.*, ¶8-9). The affidavit states that the letter was properly addressed, with postage, sent by US Mail, and never returned. (*Id.*, ¶8-9, 13). The affidavit states that on January 4, 2016, Ms. Barnette was

advised for the first time by the Nursing Board that it had no record of receiving the request for a hearing. (*Id.*, ¶12).

Appellant presented an affidavit of Ken Harthun, Network Administrator for Antonelli. Mr. Harthun's affidavit states that his review of Antonelli's computer system verifies that the hearing request letter was created by Ms. Barnette on December 14, 2015. (Affidavit, ¶6).

On March 17, 2016, the Nursing Board issued an Order finding that Antonelli had failed to request a hearing within thirty days of mailing of the NOH. The Order withdrew conditional approval of, and denied full approval of, Antonelli's nursing program. The Order was mailed March 29, 2016.

Appellant presented, without objection, documentation that there are currently 52 students enrolled in its practical nursing program. (Ex. D to Motion). Sixteen students are expected to graduate on May 4, 2016; fourteen students are scheduled to graduate on August 26, 2016; fourteen students are expected to graduate on December 20, 2016; and eight students started in March 2016 and are scheduled to graduate on March 1, 2017. (*Id.*).

CONCLUSIONS OF LAW

R.C. 119.12(E) provides as follows:

If it appears to the court that an unusual hardship to the appellant will result from the execution of the agency's order pending determination of the appeal, the court may grant a suspension and fix its terms.

In *Bob Krihwan Pontiac-GMC Truck, Inc. v. GMC*, 141 Ohio App.3d 777, 782-783 (2001), the Tenth District Court of Appeals held that a trial court has discretion in determining whether there is unusual hardship that warrants the granting of a stay. The

Court identified the following factors as logical considerations when determining whether it is appropriate to stay an administrative order pending judicial review: (1) whether appellant has shown a strong or substantial likelihood or probability of success on the merits; (2) whether appellant has shown that it will suffer irreparable injury; (3) whether the issuance of a stay will cause harm to others; and (4) whether the public interest would be served by granting a stay. *Id.* at p. 783.

The merits issue before the Court in this appeal is whether Appellant properly requested a hearing. Appellant has presented evidence that Ms. Barnette prepared a letter requesting a hearing, the letter contained the accurate mailing address of the Nursing Board, postage was placed on the letter, and the letter was delivered to the post office.

In *Blackburn Security, Inc. v. Ohio Dept. of Commerce*, 2nd Dist. No. 13660, 1993 Ohio App. LEXIS 2665, p. 7, the Court stated: “A presumption of due receipt of a letter or other communication sent through the mails arises upon proof that the letter or other communication (1) was properly addressed, (2) had sufficient postage, and (3) was properly deposited in the mails.” In accordance with this authority, the Magistrate concludes that Appellant has presented sufficient evidence of likelihood of success.

With respect to irreparable injury and undue hardship, Appellant has asserted that its nursing program will be shut down, and currently enrolled students will be unable to continue in the program without a stay. Students may lose money spent on tuition and time spent in the program thus far. The Magistrate finds that because of both the magnitude and potentially irreparable nature of this loss, this qualifies as unusual hardship.

There has been no showing that a stay would cause harm to others. The NOH sets forth allegations that appear to relate to the nursing program's curriculum and reporting requirements. Appellant asserts that any student who participates in the nursing program must still pass a national certifying examination before he or she can obtain a license to practice as a nurse.

Appellant asserts that the public interest would be served by permitting the students who have invested time and money in this program to continue pending a determination of the merits of this appeal. Appellant agrees to two conditions on a stay suggested by the Nursing Board, that Appellant not admit new students during the pendency of this appeal, and that students admitted after March 1, 2016 have an opportunity to get a tuition refund if they cannot continue.


For the foregoing reasons, the Magistrate's Decision is that Appellant's Motion for Stay filed April 11, 2016 is granted, and the Nursing Board's Order is suspended during the pendency of this appeal, subject to the conditions set forth above.

A PARTY SHALL NOT ASSIGN AS ERROR ON APPEAL THE COURT'S ADOPTION OF ANY FACTUAL FINDING OR LEGAL CONCLUSION, WHETHER OR NOT SPECIFICALLY IDENTIFIED AS A FINDING OF FACT OR CONCLUSION OF LAW, UNLESS THE PARTY TIMELY AND SPECIFICALLY OBJECTS TO THAT FINDING OR CONCLUSION AS REQUIRED BY CIV. R. 53(D).

Franklin County Court of Common Pleas

Date: 04-11-2016
Case Title: ANTONELLI COLLEGE PRACTICAL NURSING PROG -VS- OHIO
STATE BOARD NURSING
Case Number: 16CV003331
Type: MAGISTRATE DECISION

So Ordered

A handwritten signature in black ink, reading "Edwin L. Skeens", is written over a circular, textured seal. The seal is partially obscured by the signature. The entire signature and seal are enclosed within a faint, dotted rectangular border.

/s/ Magistrate Edwin L Skeens

Court Disposition

Case Number: 16CV003331

Case Style: ANTONELLI COLLEGE PRACTICAL NURSING PROG -
VS- OHIO STATE BOARD NURSING

Motion Tie Off Information:

1. Motion CMS Document Id: 16CV0033312016-04-1199980000
Document Title: 04-11-2016-MOTION TO STAY - PLAINTIFF:
ANTONELLI COLLEGE PRACTICAL NURSING PROG
Disposition: MOTION GRANTED