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FILED
LUCAS COUNTY

2014 AUG 15 IN THE COURT OF COMMON PLEAS
LUCAS COUNTY, OHIO

ORIGINAL

COMMON PLEAS COURT
BERNIE QUILTER
CLERK OF COURTS

CAPITAL CARE NETWORK
OF TOLEDO

Case No. CI201403405

Appellant,

Judge Myron C. Duhart

v.

OHIO DEPARTMENT OF HEALTH

Appellee.

C

APPELLEE'S Request for NON-ORAL HEARING

Capital Care Network ("CCN") filed an administrative appeal under R.C. 119.12. Within that appeal, CCN asked for a stay of the Director's Adjudication Order pending the outcome of the administrative appeal before the Court. That stay was granted by the Court on August 11, 2014. The Court can now proceed with its review of the administrative appeal. The agency is required to file the record of the administrative appeal within thirty days. R.C. 119.12.¹

This appeal is governed solely by R.C. 119. 12 which states: "unless otherwise provided by law, in the hearing of the appeal, the court is confined to the record as certified to it by the agency." The Court's review is confined to the record filed by the agency and is limited to whether the order (Director's Adjudication Order) "is supported by reliable, probative, and substantial evidence." R.C. 119.12. This standard of review is well settled and the Ohio Supreme Court has affirmed it repeatedly. *VFW Post 8586 v. Ohio Liquor Control Comm.*, 83

¹ Pursuant to the Court's directive, the Record of the administrative hearing was filed on August 15, 2014.

Ohio St.3d 79 (1998); *Our Place, Inc. v. Ohio Liquor Comm.*, 63 Ohio St.3d 570 (1992). Because this is an administrative appeal, to be determined on the administrative record, there is no new trial, but rather the Court reviews the record of the administrative proceeding pursuant to the administrative appeal process set forth in R.C. 119.12.

In *Our Place*, the Ohio Supreme Court defined the standard of review of the administrative record for an administrative order on appeal to a common pleas court:

(1) **'Reliable'** evidence is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true. (2) **'Probative'** evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue. (3) **'Substantial'** evidence is evidence with some weight; it must have importance and value. *Id.* at 571. (Emphasis Added).

Where an administrative order is supported by reliable, probative and substantial evidence and is in accordance with law, a court may not substitute its judgment for that of the agency, but *must* affirm the order. *Pons v. Ohio State Medical Board*, 66 Ohio St.3d 619, 621 (1993); *Henry v. Lewis*, 69 Ohio St.2d 577 (1982); *Arlen v. State*, 61 Ohio St.2d 168 (1980); *Henry's Cafe, Inc. v. Board of Liquor Control*, 170 Ohio St.233 (1959); *Farrao v. Bureau of Motor Vehicles*, 46 Ohio App.2d 120 (1975) (syllabus).


The Ohio Supreme Court requires reviewing courts to give deference to administrative resolution of evidentiary conflicts. *University of Cincinnati v. Conrad*, 63 Ohio St.2d 108 (1980). In *Conrad*, the court held that a reviewing court may reverse, vacate, or modify an administrative order *only* if "...the court, in its appraisal of the evidence, determines that there exist legally significant reasons for discrediting certain evidence relied upon by the administrative body, and necessary to this determination." *Conrad, supra* at 111. Accordingly, if the standards of Ohio Rev. Code § 119.12 are met, and a statute authorizes the sanction imposed, a reviewing court

may not alter the agency's chosen discipline, even if it disagrees with the agency. This is the only standard of review that applies to this case.

Appellee, the Ohio Department of Health, requests that the Court issue a briefing schedule which includes a date for the filing of the record and briefs of the parties. For the Court's convenience, the parties have filed a proposed briefing schedule.

Respectfully submitted,

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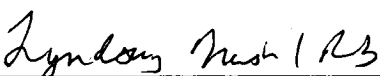
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CERTIFICATE OF SERVICE

I hereby certify that, on August 15, 2014, a true and accurate copy of the foregoing, Appellee's Request for Non-Oral Hearing, was filed with the Clerk and sent via e-mail and regular mail to the following:

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