

[Cite as *Jaros v. Ohio Bd. of Emergency Med. Serv.*, 2002-Ohio-2363.]

IN THE COURT OF APPEALS OF LUCAS COUNTY

David J. Jaros

Court of Appeals No. L-01-1422

Appellant

Trial Court No. CI-01-1639

v.

The Ohio State Board of  
Emergency Medical Services

**DECISION AND JUDGMENT ENTRY**

Appellee

Decided: May 17, 2002

\* \* \* \* \*

James L. Rogers and Matthew D. Harper, for  
appellant.

Betty D. Montgomery, Ohio Attorney General,  
and Barbara J. Petrella, Assistant Attorney  
General.

\* \* \* \* \*

SHERCK, J.

{¶1} This accelerated appeal comes to us from a judgment issued by the Lucas County Court of Common Pleas in the administrative appeal of the revocation of an EMT license. Because we conclude that the common pleas court did not err in its determinations, we affirm.

{¶2} Appellant, David J. Jaros, was employed as a firefighter with the Toledo Fire Department. As a requirement of his employment, appellant held an emergency medical technician ("EMT") license. In January 2001, appellee, the Ohio State Board of

Emergency Medical Services ("Board"), revoked appellant's EMT license. The Board adopted the hearing examiner's factual findings and recommendations as determined from an October 2001 hearing.

{¶3} At that October hearing, it was revealed that appellant had been initially charged with one count of rape. Appellant pled no contest to a reduced charge of sexual imposition, a third degree misdemeanor. The charge stemmed from an incident involving appellant's alleged improper touching of his girlfriend's seventeen year-old sister. Before the Board, testimony was presented by the investigating police officer that the victim appeared to be truthful. The officer, however, doubted appellant would have been convicted of the more serious rape charge. The officer noted that the victim did not report the incident until eight months after it allegedly occurred, but opined that this was not unusual for such crimes.

{¶4} Appellant maintained his innocence at the hearing, stating that he pled no contest only upon the advice of counsel in order to avoid the possibility of a trial on the rape charge. Appellant presented evidence that his record prior to the alleged incident was unblemished. Evidence was also presented that the alleged victim may have made up the charges to deflect reactions by her parents about her newly disclosed sexual orientation.

{¶5} The Board then issued its determination to revoke appellant's EMT license. Appellant responded by filing an administrative appeal with the Lucas County Court of Common Pleas.

The common pleas court upheld the Board's decision.

{¶6} Appellant now appeals, arguing that the trial court abused its discretion when it determined that appellee's decision to revoke appellant's EMT license was supported by reliable, probative, and substantial evidence and was in accordance with law.

{¶7} R.C. 119.12, which governs appeals of licensing board decisions to a common pleas court, states in pertinent part:

{¶8} "The court shall conduct a hearing on such appeal \*\*\*. The hearing in the court of common pleas shall proceed as in the trial of a civil action, and the court shall determine the rights of the parties in accordance with the laws applicable to such action."

{¶9} The evidence required by R.C. 119.12 is defined as follows: "(1) '[r]eliable' evidence is dependable; that is, it can be confidently trusted," and "there must be a reasonable probability

{¶10} 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.\*\*\*" *Our Place, Inc. v. Ohio Liquor Control Comm.* (1992), 63 Ohio St.3d 570, 571.

{¶11} In reviewing the board's determination, the common pleas court may consider the credibility of competing witnesses, as well as the weight and probative character of the evidence. *Vesely v.*

*Liquor Control Comm.* (Mar. 29, 2001), Franklin App. No. 00AP-1016, citing to *Andrews v. Bd. of Liquor Control* (1955), 164 Ohio St. 275, paragraph one of the syllabus. Thus, the common pleas court may, to a limited extent, substitute its judgment for that of the administrative agency. Nevertheless, the court of common pleas must give due deference to the administrative resolution of evidentiary conflicts. *Univ. of Cincinnati v. Conrad* (1980), 63 Ohio St.2d 108, 111. When reviewing a medical board's order, courts must accord due deference to the board's interpretation of the technical and ethical requirements of its profession. *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, 621.

{¶12} Generally, if the common pleas court determines that a board's finding of a violation is supported by reliable, probative, and substantial evidence, that court is "precluded from interfering or modifying the penalty which the [board] imposed, so long as such penalty is authorized by law." *DeBlanco v. Ohio State Med. Bd.* (1992), 78 Ohio App.3d 194, 202; see, also, *Henry's Cafe, Inc. v. Bd. of Liquor Control* (1959), 170 Ohio St. 233, paragraph three of the syllabus ("the Court of Common Pleas has no authority to modify a penalty that the agency was authorized to and did impose, on the ground that the agency abused its discretion."); but, see, *Brost v. Ohio State Med. Bd.* (1991), 62 Ohio St.3d 218, 221 (a penalty will be reversed when there is evidence that the board felt constrained to invoke a particular sanction based upon an internal disciplinary guideline or other policy without considering any of the lesser

sanctions provided in R.C. 4731.22(B)).

{¶13} Unlike the common pleas court, when reviewing an administrative appeal, the court of appeals does not determine the credibility of witnesses or weight of the evidence. *Rossford Exempted Village School Dist. Bd. of Edn. v. State Bd. of Edn.* (1992), 63 Ohio St.3d 705, 707. Rather, an appellate court may only determine whether the common pleas court abused its discretion in determining whether the board's order is supported by reliable, probative, and substantial evidence. *Hartzog v. Ohio State Univ.* (1985), 27 Ohio App.3d 214. On questions of law, however, the common pleas court does not exercise discretion and the court of appeals' review is plenary. See *Univ. Hosp., Univ. of Cincinnati College of Medicine v. State Emp. Relations Bd.* (1992), 63 Ohio St.3d 339.

{¶14} Ohio Administrative Code section 4765-10-03(B) provides that, pursuant to an administrative hearing under R.C. 119, the State Board of Emergency Medical Services,

{¶15} "by a vote of the majority of all may suspend, revoke, refuse to grant limit or refuse to renew a certificate issued by the board, impose a fine not to exceed one thousand dollars, or issue a written reprimand if it finds any of the following:

{¶16} "\*\*\*

{¶17} "(2) Conviction of, pled guilty to, had a judicial finding of guilt for, or had a judicial finding of eligibility for treatment in lieu of conviction for:

{¶18} "\*\*\*

{¶19} "(c) A misdemeanor involving moral turpitude\*\*\*."

{¶20} Ohio Administrative Code section 4765-10-03(C) provides that a person whose license has been revoked may apply to the Board for reinstatement.

{¶21} In this case, it is undisputed that appellant was convicted of a misdemeanor involving moral turpitude. That fact alone permits the Board to impose a sanction, including revocation of appellant's EMT license.<sup>i</sup> While we acknowledge

{¶22} that questions may exist concerning the facts and circumstances surrounding the conviction we, nevertheless, cannot say that the trial court abused its discretion in finding that the Board's decision to impose sanctions was supported by reliable, probative, and substantial evidence.

{¶23} In reviewing the sanction imposed, we agree that the sanction, given the circumstances, appears to be too harsh. The sanction was, however, one permitted under the administrative code, and, thus, was authorized by law. Therefore, the trial court's decision to affirm the revocation of appellant's license was in accordance with law.

{¶24} Accordingly, appellant's sole assignment of error is not well-taken.

{¶25} The judgment of the Lucas County of Common Pleas is affirmed. Court costs of this appeal are assessed to appellant.

JUDGMENT AFFIRMED.

Peter M. Handwork, J.

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JUDGE

James R. Sherck, J.

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JUDGE

Richard W. Knepper, J.  
CONCUR.

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JUDGE

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<sup>1</sup>{¶a} We acknowledge that the use of a no contest plea is prohibited in any subsequent civil or criminal proceedings. See Crim.R. 11(B)(2). For example, if appellant had pled no contest and been found not guilty, the no contest plea could not have been utilized by the Board for any reason. In this case, however, it is the conviction, not the no contest plea, which is the basis of the review by the Board. Therefore, the no contest plea is irrelevant for purposes of the Board's authority to revoke appellant's license.