

NINETEENTH JUDICIAL DISTRICT COURT

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

DR. TRUDY BOND : Number 569, 127

v.

: Section 24

LOUISIANA STATE BOARD OF
EXAMINERS OF PSYCHOLOGISTS :

**PLAINTIFF'S SUR-REPLY MEMORANDUM IN OPPOSITION TO DEFENDANT'S
PEREMPTORY EXCEPTION OF NO RIGHT OF ACTION**

I. INTRODUCTION

In its Reply Memorandum, as in its Peremptory Exception, defendant, Louisiana State Board of Examiners of Psychologists (the "LSBEP," or the "Board") again omits reference to any controlling authority to support its position. For the first time, the LSBEP contends that La. R.S. 49:964(A)(1) precludes Dr. Bond from seeking judicial review of the Board's dismissal of her complaint against Dr. Larry James.¹ Contrary to the LSBEP's assertion, Dr. Bond has such a right, and this right is plainly set forth in La. R.S. 37:2353(E), a provision which is conspicuously absent from the LSBEP's Reply Memorandum.

II. LAW AND ARGUMENT

A. Dr. Bond's Right to Judicial Review is Statutory

Controlling authority squarely establishes Dr. Bond's right to seek judicial review of the Board's decision. Specifically, this right is set forth in La. R.S. 37:2353(E), which provides that "[a]ny person aggrieved by an action of the board may seek judicial review in the district court for the parish of East Baton Rouge in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq." Id. (emphasis supplied). The terms of this provision directly contradict the LSBEP's assertion that "[a]ny right to judicial review is conferred only by La. R.S. 49:964(A)(1). (emphasis supplied).

Consistent with the well-established canon of rule-construction, the entirety of La. R.S. 37:2353(E) must be given meaning, including its principal provision, i.e., that which gives "any person" the right to seek judicial review in this Court if she is aggrieved by "any action" of the

¹ As the LSBEP has raised this argument for the first time in its reply memorandum, Dr. Bond respectfully requests an opportunity to respond accordingly.

Board. See State v. Texas Co., 205 La. 417, 431 (1944) (endorsing the “assumption that all parts of a [rule] -- each word, each phrase, each clause -- were intended . . . to have some meaning” and that “none was inserted by mere inadvertence”). The LSBEP, in its Reply, has completely ignored the controlling portion of La. R.S. 37:2353(E) – to the extent that the Memorandum does not even cite to it – and focuses only on the last clause of that rule. This is impermissible, if not disingenuous.

The portion of La. R.S. 37:2353(E) that refers to the Administrative Procedure Act can be reconciled with the part that gives “any person” aggrieved the right to judicial review of “any action” by the Board because the substantive scope of judicial review is established by La. R.S. 37:2353(E) itself. In this sense, pursuant to the plain language of the statute, Dr. Bond has a right to judicial review in this Court. On the other hand, the reference to the Administrative Procedure Act in La. R.S. 37:2353(E) is one that merely establishes procedural bounds to Petitioners’ actions.

The preceding analysis is, by itself, sufficient to overcome the argument in the Board’s Reply. However, this analysis is further supported by an important phrase from La. R.S. 49:964(A) itself, which was also omitted from the Board’s Reply Memorandum. It states:

A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy and would inflict irreparable injury.

If the Board seeks to argue that its decision to dismiss Dr. Bond’s complaint was somehow less than a final decision – a position that strains credulity – then, at a minimum, the decision was a procedural action that Dr. Bond is nonetheless entitled to appeal, pursuant La. R.S. 49:964(A).²

B. Dr. Bond Has Established That She Has Standing In This Matter

Dr. Bond’s right to bring a professional complaint against a Louisiana psychologist is firmly established by Section 1503(B) of the Louisiana Administrative Code. It follows that her right to seek review of an action dismissing her complaint is also codified in La. R.S. 37:2353(E). As previously stated in Dr. Bond’s Opposition to the LSBEP’s Peremptory Exception of No Right of Action, Dr. Bond’s complaint is based not on disagreements with United States Military policy, but on the individual unethical actions taken by Dr. Larry C. James while acting in his capacity as a licensed Louisiana psychologist. The proposition that Dr. Bond

² Of course, there can be no question that the Board’s dismissal of Dr. Bond’s request for an investigation of Dr. James’ unethical conduct constitutes an “action.” Although the Louisiana Revised Statutes do not define “action” as it is used in the statute, there is no indication that “action” should be so confined as to exclude the dismissal of an ethical complaint. The Board can cite to no authority that would support such a proposition.


must be a detainee at the military detention base in Guantanamo Bay in order to be aggrieved by the LSBEP's decision is without merit and contrary to the underlying purpose of applicable ethical rules. Dr. Bond is aggrieved by the baseless denial of a complaint that she was fully entitled to bring.

Dr. Bond's Petition and Opposition to LSBEP's Peremptory Exception of No Right of Action contain numerous examples of Dr. James' unethical behavior that LSBEP cannot and should not cast a blind eye. The LSBEP's decision to deny – without a proper basis – further investigation of Dr. James' conduct is contrary to the principle of maintaining a profession in which the welfare and protection of the individuals and groups with whom psychologists work remains the primary goal. (See La. R.S. 37:2351; see also American Psychological Association Ethics Code 2002, Preamble.) As such, Dr. Bond is aggrieved as a psychologist whose request for an investigation was prematurely and unjustly denied by the LSBEP.

III. CONCLUSION

For all of the foregoing reasons, as well as those outlined in Dr. Bond's Opposition to LSBEP's Peremptory Exception of No Right of Action, Defendant's Peremptory Exception of No Right of Action should be dismissed, and Dr. Bond should receive (i) a declaratory judgment stating that she filed her complaint before the LSBEP timely, and (ii) a remand for a full investigation and hearing.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Sur-Reply Memorandum in Opposition to Peremptory Exception of No Right of Action has been forwarded via U.S. Mail, postage prepaid, and fax to all counsel of record as follows:

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Providence, Rhode Island, this 8th day of July, 2009


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