

No. 18-1135

**In The
Supreme Court of the United States**

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BATU SHAKARI,

Petitioner,

v.

ILLINOIS DEPT OF FINANCIAL AND
PROFESSIONAL REGULATION AND JAY STEWART,
IN HIS OFFICIAL CAPACITY AS DIRECTOR OF THE
DIVISION OF PROFESSIONAL REGULATION,

Respondents.

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**On Petition For Writ Of Certiorari
To The Appellate Court Of Illinois
First Judicial District**

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PETITION FOR REHEARING

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Now Comes Petitioner Batu Shakari (“Petitioner”), pursuant to Rule 44 of the Supreme Court of the United States, and presenting his Petition for Rehearing in this matter, states as follows:

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JURISDICTION

The Court denied Petitioner’s Petition for Writ of Certiorari on April 15, 2019. Petitioner presents this Petition within 25 days after the Court’s denial of the Petition for Writ of Certiorari. As such, the Court has jurisdiction over this Petition pursuant to Rule 44(1).

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ARGUMENT

Petitioner hereby presents his grounds for rehearing; such grounds are restricted to those specified in Rule 44(2) of the Supreme Court; this Petition is presented in good faith and not for purposes of delay.

A. The Respondent’s finding that Petitioner’s arguments were “absurd” prejudiced the entire process.

Contained in the Appendix, Respondent Illinois Dep’t of Financial and Professional Regulation’s and Jay Stewart’s, only in his Official Capacity as Director of the Division of Professional Regulation (cumulatively “Respondent” herein), Permanent Revocation Order states: “The Act is not limited to convictions that

occur when a person is a licensed health care worker. In fact, **it would be absurd to consider** that only convictions that occur to an individual while licensed as a health care worker are subject to permanent revocation. That would be contrary to the intent of the statute. . . .” A48 (emphasis added). It goes on to state: “Furthermore, in the application process the Department refuses to issue health care licenses to individuals who have been convicted of offenses under 20 ILCS 2105/2105-165. This happens before the individual is licensed as a health care worker and the Department still permanently denies the license for convictions under the Act, even when the conviction occurred prior to the licensure.” A48-A49.

Initially, Petitioner’s interpretation of the statute is based on the statutory language itself. The Act provides for the situation where a new applicant has a forcible conviction in his or her background, but is seeking licensure. 20 ILCS 2105/2105-165. The Act further provides for the situation where a health care worker commits a forcible felony while licensed. 20 ILCS 2105/2105-165(a). The Act simply does not provide for the situation in this case – where Petitioner was already licensed (for almost 30 years!), but had a forcible felony in his background.

Further, the same party castigating Petitioner for being “absurd” licensed him twice despite his disclosure of a forcible felony in his distant past. Petitioner’s positions were of a good-faith nature and well-supported by the language in the Act.

Yet, Respondent's provided its opinion in the Permanent Revocation Order that Petitioner's arguments were "absurd." This characterization prejudiced the entire proceedings.

Respondent is a state entity, with hundreds of employees and the weight and funding of an entire state at its disposal. Petitioner is a lone person, attempting to challenge the state's action. It is already challenging in this David vs. Goliath situation. When Respondent found as a fact that Petitioner's positions were "absurd," it essentially prejudiced the whole proceeding.

On review of an administrative decision, the Appellate Court reviews the decision of the agency, not the decision of the circuit court. *Outcom, Inc. v. Illinois Dep't of Transp.*, 233 Ill.2d 324, 337, 909 N.E.2d 806, 814 (2009). Where, as here, a case "involve[s] an agency's interpretation of a statute [that] the agency is charged with administering," the agency's interpretation is considered to be "relevant but not binding." *Branson v. Department of Revenue*, 168 Ill.2d 247, 254 (1995). A9.

While the Appellate Court suggested a *de novo* review of the case (A16), Respondent's *ad hominem* characterization of Petitioner's arguments in its Order affected the entire proceeding. The Petitioner was placed in a position of attempting to reverse an Order entered by the Respondent as the fact-finder, with the Respondent as his opponent. Respondent was able to draft the rules of the game and then interpret the same rules to ensure its success.

It is impossible to separate the prejudice that such characterizations had on the Petitioner's case. While the Appellate Court and Circuit Court each expressed sympathy for Petitioner's circumstances, they both were saddled with the Respondent's finding that his positions were absurd. With the Respondent making such a finding in the record, it became a foregone conclusion that the subsequent tribunals would fall in line with the finding. Given the loss of Petitioner's license after 30 years and loss of his ability to make a living, such attacks certainly should have been shelved. Their inclusion made an already-challenging opponent insurmountable. This finding was prejudicial and affected Petitioner's due process rights.

Respondent was able to draft its own Revocation Order, using language that undermined Petitioner's positions and made light of his arguments. Calling his arguments "absurd" did nothing to address the legal positions, but it placed Petitioner in a light most unfavorable to the subsequent appellate tribunals.

B. The Permanent Revocation Order is vague in that it seems to claim Petitioner's reversed-on-appeal conviction was the basis for the revocation; this action would be in violation of the statute.

Respondent recounts its factual basis for stripping Petitioner of his nursing license in its Permanent Revocation Order of September 20, 2015. A47. It stated that, on December 3, 1975, Petitioner was convicted of

attempted murder in the Circuit Court of Cook County, which is a forcible felony pursuant to Illinois law. *Id.* Petitioner appealed the Circuit Court decision, and on July 31, 1978, the Illinois Appellate Court reversed and remanded for a new trial. *People v. Beverly*, 63 Ill. App. 3d 186, 199 (1978). On May 14, 1979, he entered into a guilty plea for attempted murder. On August 17, 2015, the Department issued a Notice of Intent to Issue Permanent Revocation Order because his conviction is a forcible felony subjecting Respondent to permanent revocation of licensure as a “health care worker.” 68 Ill. Admin. Code 1130.120(a), (jj). A47, pars. 3-5.

The Permanent Revocation Order’s reference to Petitioner’s “conviction” indicates that Respondent used Petitioner’s conviction at trial as the basis for the revocation as opposed to his plea bargain. This is important, as there is no basis in the Act to revoke Petitioner’s license for a conviction that was reversed by the Appellate Court.

In its determination, Respondent declared the factual basis for the revocation, whether it be a reversed conviction or a plea bargain, was “irrelevant” for its purposes. A47, par. 8. This is erroneous.

If Respondent based its revocation on Petitioner’s reversed conviction, as the Permanent Revocation Order suggests, then this action is not authorized by the Act. The Act requires a conviction; the Appellate Court, in reversing Petitioner’s conviction, removed this as a potential basis for revocation. For the Respondent to

use a reversed conviction as its basis to revoke Petitioner's license would be outside the bounds of the Act's language and purpose.

If the Respondent based its revocation on Petitioner's plea bargain, the Permanent Revocation Order should have reflected this as its basis. Moreover, this ruling would require a discussion as to the circumstances of Petitioner's plea bargain.

When Petitioner entered into his plea bargain with the State, he had already served years in prison for a conviction that was reversed. The State offered him a plea bargain wherein he would receive time-served and be able to walk away a free man. There would be no risk involved with a significant sentence if convicted; he also would avoid the costs and personal trauma involved in a trial. Petitioner proffers that very few people would select the risk involved with a trial in this situation.

Moreover, Petitioner could not be expected in 1979 to be able to comprehend that, over 30 years later, his rational decision to enter into a plea bargain would result in the revocation of a license he had worked 30 years to attain and maintain. It was not a foreseeable consequence. Under these circumstances, it is unfair to characterize Petitioner's plea bargain as a conviction under the Act.

Most critically though, Respondent's Permanent Revocation Order remains vague as to its basis for revoking his license. Given the heightened remedy of

automatic revocation, the Respondent should have made its basis explicit. The Order cannot stand given its indefinite nature.



CONCLUSION

Petitioner is a victim. He made a plea bargain almost 40 years ago, pursued a career in nursing, achieved licensure, and became a model citizen. Then, Respondent changed the rules; it revoked his license, even after approving him in several instances. Though it has tried, Respondent cannot tarnish the work and professionalism Petitioner has accrued over the years. One must wonder whether Petitioner is the intended target of the Act, whether there is any good purpose being served in the Respondent's actions, and, most importantly, whether Respondent and subsequent tribunals were correct in their application of the Act. Given the undisputed facts and character of Petitioner, there can be no doubt that Respondent has over-stepped in its application of the Act. Petitioner is entitled to some sense of justice in this process.

Plaintiff respectfully requests this Honorable Court to grant his Petition for Rehearing, grant certiorari, and review the rulings of the courts herein.

Dated: April 29, 2019

Respectfully submitted,
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**CERTIFICATE OF COMPLIANCE
WITH RULE 44(2)**

I certify that this Petition for Rehearing to the United States Supreme Court is restricted to the grounds specified in Rule 44(2) of the Supreme Court and that it is presented in good faith and not for purposes of delay.

Executed on April 29, 2019

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