

XI. INDEX TO APPENDICES

APPENDIX A Decision of 2nd Court of Appeal

APPENDIX B Decision of Superior Court of CA

APPENDIX C Decision of the Supreme Court of CA

FILED

Oct 27, 2020

DANIEL P. POTTER, Clerk

J. Lozano

Deputy Clerk

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

BIN YANG,

Plaintiff and Appellant,

v.

BOARD OF REGISTERED
NURSING,

Defendant and Respondent.

B298991

(Los Angeles County
Super. Ct. No. BS174436)

APPEAL from a judgment of the Superior Court of
Los Angeles County, James C. Chalfant, Judge. Affirmed.

Bin Yang, in pro per, for Plaintiff and Appellant.

Xavier Becerra, Attorney General, Carl W. Sonne,
Assistant Attorney General, Marc D. Greenbaum and
Vinodhini Ramagopal, Deputy Attorneys General for Defendant
and Respondent.

In 1995, Bin Yang obtained a license to practice as a registered nurse from respondent Board of Registered Nursing (Board). Yang later allowed her license to lapse. In 2005, Yang suffered a criminal conviction for assaulting a flight attendant. In 2008, Yang was arrested in Wisconsin for unlawful entry into a building or construction site; the charge was subsequently dismissed.

Yang later sought to renew her nursing license, prompting the Board to issue an order requiring her to submit to a mental health examination. The Board issued the order because it had concluded that Yang's 2005 conviction and 2008 arrest indicate that her ability to practice as a registered nurse safely may be impaired by a mental illness. Yang refused to submit to the mental health examination because, *inter alia*, she wanted the examiner to be from a university.

The Board responded by initiating administrative proceedings against Yang. At the conclusion of those proceedings, the Board revoked Yang's nursing license. Yang thereafter filed a petition for writ of mandate to set aside the Board's decision. The trial court ultimately entered a judgment denying Yang's petition.

On appeal, Yang, who is self-represented, claims the trial court: (1) erred by failing to consider evidence that she did not present during the administrative proceedings; (2) was biased against her; and (3) otherwise erroneously denied her writ petition. The first two contentions fail because Yang does not show the trial court manifestly abused its discretion in excluding the new evidence or that the court exhibited bias against her. We reject the last claim of error; Yang may not challenge the validity of the Board's examination order without first complying with the

order. Further, to the extent Yang intended to level any other claims of error, she waived them by failing to provide any discernible relevant legal argument in support of those claims. We thus affirm the trial court's judgment.

FACTUAL AND PROCEDURAL BACKGROUND

We summarize only those facts that are relevant to this appeal.¹

In July 1989, Yang earned a Bachelor/Doctor of Medicine degree from Fudan University in China. Yang later moved to the United States, and on August 8, 1995, the Board issued her a license to practice as a registered nurse.

On March 30, 2005, Yang was charged in Texas with assaulting a flight attendant while on a Southwest Airlines flight. On November 16, 2005, Yang pleaded guilty to one count of assault within the special aircraft jurisdiction of the United States. The federal court sentenced Yang to five years of probation and required her to attend anger management classes.

On February 18, 2008, Yang visited a state office in Wisconsin for the Department of Regulation and Licensing, seeking to discuss her medical license application with a specific state employee. After Yang entered a secured portion of the building, a state police officer was called to the scene. "Yang was agitated and uncooperative with [the officer], refusing to provide

¹ Our procedural and factual background is largely taken from undisputed portions of the trial court's final ruling. (See *Baxter v. State Teachers' Retirement System* (2017) 18 Cal.App.5th 340, 349, fn. 2 [utilizing the summary of facts provided in the trial court's ruling].)

her identification or answer questions.” Although Yang initially resisted arrest, the officer ultimately succeeded in handcuffing Yang.² Yang admitted to the officer that she had entered the secured part of the building, was on federal probation, and did not have permission to travel to Wisconsin. The officer issued Yang a citation and released her; she was not prosecuted, and her misdemeanor case was dismissed on March 27, 2008.

After several years of inactivity, Yang requested that the Board renew her nursing license. In the course of processing Yang’s request, the Board discovered Yang’s 2005 conviction and her 2008 arrest.

On March 10, 2017, the Board issued to Yang an order requiring her to submit to a mental examination pursuant to Business and Professions Code³ section 820 (examination order). The Board issued the examination order because it found that Yang’s ability to practice safely as a registered nurse could be impaired due to mental illness. The Board based this finding on Yang’s 2005 conviction for assault and her 2008 arrest. The order stated the examination would be conducted by a physician specializing in psychiatry or a psychologist selected by the Board and would be conducted within 30 days of service of the order. The examination order admonished Yang that failure to comply therewith would constitute grounds for disciplinary action against her nursing license, pursuant to section 821.

² The trial court’s final ruling on Yang’s writ petition notes that Yang conceded the officer arrested her for unlawful entry into a building or construction site.

³ Undesignated statutory citations are to the Business and Professions Code.

On March 1, 2018, the Board filed a first amended accusation against Yang for failure to comply with the order.

On March 13, 2018, an administrative law judge (ALJ) held a hearing on the matter. Yang testified at the hearing that she “was willing to be evaluated by an examiner who worked for a university,” but the Board disciplinary officer assigned to her case “did not want a university doctor to examine Yang because Yang ‘[knew] all the doctors.’ ” Conversely, the disciplinary officer testified that although the Board does not bar doctors from universities from conducting its mental health examinations, the disciplinary officer had “no way of knowing if a . . . doctor [approved to undertake such examinations] works for a university.” The disciplinary officer also claimed that because a doctor “would state where he or she works as part of the vetting process[,] . . . the doctor’s information is ‘highly protected by HIPPA [*sic*].’ ”

On April 2, 2018, the ALJ issued a proposed decision that recommended that the Board: (1) revoke Yang’s license for failure to comply with the examination order, and (2) require Yang to pay the Board’s costs of investigation and prosecution in the amount of \$4,752.50 if and when her license is reinstated. The ALJ reasoned Yang lacked “standing to challenge the examiner selected or the examination process” because she refused to comply with the order. The ALJ also found “[t]he Board demonstrated the minimum threshold for the issuance of a section 820 order” because it “had legitimate concern over Yang’s ability to safely practice nursing due to her conviction in 2005 and her arrest in 2008.” The ALJ concluded that “[a]s Yang failed to dispel the Board’s concerns about her ability to safely practice, the interests of public protection warrant revocation of

her license.” On June 5, 2018, the Board issued its decision and order adopting the ALJ’s proposed decision, effective July 5, 2018.

On May 12, 2018 and June 8, 2018, Yang sent e-mails to the Board wherein Yang asserted, inter alia, that “she already had been evaluated by two California experts, [including] one at UCLA, and both the California Medical Board and Texas federal court accepted his report”; and that Yang suffered an injury from “a serious auto accident in 1997” that deprived her of the strength necessary to “punch that airline attendant’s stomach and make her fall” Yang claimed that she pleaded guilty in 2005 simply “because she had no witness and her attorney advised her to do so.” The Board treated Yang’s e-mails as a request for reconsideration of its decision, and the Board denied that request on June 29, 2018.

On July 30, 2018, Yang, who was self-represented, filed a petition for writ of mandate, seeking a ruling directing the Board to vacate its order revoking her nursing license. Yang argued that “the Board did not properly carry out section 820 and the decision to revoke her nursing license was thereby an abuse of discretion.”

On January 10, 2019, Yang filed a motion seeking (among other things) leave to augment the record to include a report describing a CT scan Yang had in 1997 (1997 CT scan report) and a psychological evaluation from UCLA (UCLA psychological evaluation).

On March 21, 2019, the trial court denied Yang’s request to augment the record. The court found that Yang failed to provide “a basic evidentiary foundation of what [each] document is and why it is relevant to Yang’s administrative proceeding”; “there is

no evidence logically connecting the CT scan to [Yang's] lack of physical strength to punch the airline attendant"; "Yang has produced no evidence supporting her assertion that, if she had been reasonably diligent since November 1997 [(i.e., when the scan was conducted)], she could not have made this connection earlier and produced [the 1997 CT scan report] at the 2018 administrative hearing"; and "Yang provide[d] no evidence or argument to support" augmenting the record to include the UCLA psychological evaluation.

On July 2, 2019, the trial court issued a ruling denying Yang's petition for writ of mandate. In pertinent part, the court reasoned that "[Yang's] arguments about the merits of the incidents forming the basis for the [examination o]rder are irrelevant" because "[c]ase law establishes that a licensee has no due process right to challenge the reasons for a section 820 order before submitting to the examination." The trial court also rejected Yang's argument that "the Board should have scheduled a university doctor to perform the mental examination" because "Section 820 permits the board to choose the [examining] professional from its approved list" and "there is no reason to believe that a university professional would have any different bias than a private practitioner." In addition, the court ordered the parties to meet and confer and submit a proposed judgment along with any unresolved objections for the court's review.

On the date on which the trial court issued its ruling, Yang filed a premature notice of appeal of the court's decision.⁴

⁴ We exercise our discretion under California Rules of Court, rule 8.104(d)(2) to consider the notice of appeal as if it were timely filed immediately after the September 17, 2019

On July 4, 2019, Yang filed an ex parte application for reconsideration of the trial court's ruling on her petition. On July 5, 2019, the trial court denied Yang's ex parte application because it lacked proper notice, there was no showing of an emergency, and the application was without merit.

On July 11, 2019, Yang filed a motion for reconsideration of the denial of her petition.

On September 17, 2019, the trial court denied Yang's motion for reconsideration. It found Yang failed to comply with California Rules of Court, rule 3.1112(a) by, inter alia, not including a notice of hearing with the motion; omitting the affidavit required by Code of Civil Procedure section 1008, subdivision (b); and failing "to provide any new facts, circumstances, or law in support of her motion for reconsideration"

Also on September 17, 2019, the trial court entered a judgment denying Yang's petition for writ of mandamus. The judgment incorporated by reference the court's July 2, 2019 ruling denying the petition, and stated that the court had rendered its decision upon "having reviewed the administrative

judgment. (See Cal. Rules of Court, rule 8.104(d)(2) ["The reviewing court may treat a notice of appeal filed after the superior court has announced its intended ruling, but before it has rendered judgment, as filed immediately after entry of judgment."]; cf. *Castillo v. Glenair, Inc.* (2018) 23 Cal.App.5th 262, 275 ["Because the [plaintiffs] filed their notice of appeal before the trial court entered judgment on its order granting summary judgment, the notice of appeal was premature. Nonetheless, we have jurisdiction to consider the appeal because the trial court later filed a final judgment as to the [plaintiffs]."].)

record, considered all of the arguments of counsel, . . . and . . .
having exercised [the court's] independent judgment”

DISCUSSION

We observe that much of Yang’s briefing is disjointed, devoid of record citations, and vague. We nonetheless discern the following claims of error: (1) The trial court excluded certain evidence Yang did not present during the administrative proceedings; (2) the court was biased against her; and (3) the court erred in denying her petition for writ of mandate.

For the reasons discussed below, we reject these arguments, and conclude the remainder of Yang’s challenges to the trial court’s judgment are meritless or have been waived. Consequently, Yang fails to overcome the presumption of correctness accorded to the trial court’s judgment. (See *Shenouda v. Veterinary Medical Bd.* (2018) 27 Cal.App.5th 500, 512–514 [noting that “a judgment denying a petition for writ of administrative mandate” is “presumed correct” and “the appellant bears the burden to affirmatively demonstrate error” and “show that the error was prejudicial”]; see also *Scholes v. Lambirth Trucking Co.* (2017) 10 Cal.App.5th 590, 595 [“On appeal, a party challenging an order has the burden to show error by providing an adequate record and making coherent legal arguments, supported by authority, or the claims will be deemed forfeited. [Citations.] The rules of appellate procedure apply to [appellant] even though he is representing himself on appeal. [Citation.] A party may choose to act as his or her own attorney. We treat such a party like any other party, and he or she ‘ “is entitled to the same, but no greater consideration than other litigants and attorneys. [Citation.]” ’ [Citation.]”].)

A. The Trial Court Did Not Err in Excluding Evidence That Yang Had Failed to Introduce During the Administrative Proceedings

“The general rule is that a hearing on a writ of administrative mandamus is conducted solely on the record of the proceeding before the administrative agency. [Citation.] [Citation.] Augmentation of the administrative record is permitted only within the strict limits set forth in [Code of Civil Procedure] section 1094.5, subdivision (e) . . .” (*Pomona Valley Hospital Medical Center v. Superior Court* (1997) 55 Cal.App.4th 93, 101 (*Pomona Valley Hospital Medical Center*).)

Code of Civil Procedure section 1094.5, subdivision (e) provides in pertinent part: “Where the court finds that there is relevant evidence that, in the exercise of reasonable diligence, could not have been produced or that was improperly excluded at the hearing before respondent [agency], it may enter judgment . . . remanding the case to be reconsidered in the light of that evidence; or, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, the court may admit the evidence at the hearing on the writ without remanding the case.” (Code Civ. Proc., § 1094.5, subd. (e).)

“In the absence of a proper preliminary foundation showing that one of the exceptions noted in [Code of Civil Procedure] section 1094.5, subdivision (e) applies, it is error for the court to permit the record to be augmented. [Citation.] Determination of the question of whether one of the exceptions applies is within the discretion of the trial court, and the exercise of that discretion will not be disturbed unless it is manifestly abused.” (*Pomona Valley Hospital Medical Center, supra*, 55 Cal.App.4th at p. 101.)

During the proceedings below, Yang conceded in her motion to augment that neither the 1997 CT scan report nor the UCLA psychological evaluation is in the administrative record. Yang appears to contend that she did not submit her 1997 CT scan report during the administrative proceedings because “[t]he first time when [she] could link her head injury with the Southwest Airlines issue was [in] March of 2018 when she was defending herself at the administrative hearing with the nursing board.” It further appears Yang is arguing she did not provide the ALJ with a copy of the UCLA psychological evaluation because she “could not anticipate that [the Board] assumed all mental exams were done in TX.”

Yang provides no explanation as to why she could not, in the exercise of reasonable diligence, have submitted the 1997 CT scan report and the UCLA psychological evaluation to the ALJ prior to the conclusion of the administrative proceedings. Rather, she apparently contends that the Board and/or the ALJ “easily” could have obtained these documents on their own. She does not cite any authority showing that the Board or the ALJ was obligated to do so.

Yang also seems to argue the trial court erred in failing to consider a letter authored by Dr. Martin Weiss after the conclusion of the administrative proceedings (Weiss letter). That correspondence supposedly “explain[ed] the connection between [Yang’s] injury” from the automobile accident and her “inability” to harm the flight attendant in 2005. Yang admits she submitted the Weiss letter to the trial court as an attachment to her reply brief on the merits of the petition, rather than as an enclosure to a motion to augment the record. In any event, Yang does not explain why she failed to have Dr. Weiss prepare this letter at an

earlier point in time so that she could have submitted it to the ALJ.

By failing to advance any argument that she satisfied the requirements of Code of Civil Procedure section 1094.5, subdivision (e), Yang has waived her claim that the trial court manifestly abused its discretion in declining to consider the 1997 CT scan, the UCLA psychological examination, and the Weiss letter. (See *Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956 (*Cahill*) [“ ‘Appellate briefs must provide argument and legal authority for the positions taken. . . .’ ‘We are not bound to develop appellants’ arguments for them. [Citation.] The absence of cogent legal argument or citation to authority allows this court to treat the contention as waived.’ ”].)

Yang also suggests for the first time in her reply that she did not submit these documents to the ALJ because she “only had a few hours to prepare for the hearing since [the Board’s attorney] refused to give her an extension to handle her urgent business issue.” We disregard this argument because Yang did not timely raise it. (See *Regency Outdoor Advertising, Inc. v. Carolina Lanes, Inc.* (1995) 31 Cal.App.4th 1323, 1326, 1333 [“To the extent [appellant] raised new arguments . . . in its reply brief on appeal, we do not reach them.”].)

B. Yang Fails to Establish that the Trial Court Was Biased Against Her

Yang seems to complain that the trial court was biased against her. Although Yang’s argument on this point is not altogether clear, she apparently claims the trial court should not have denied her July 4, 2019 ex parte motion for reconsideration and the court otherwise erred in rejecting her claim that the Board illegally revoked her nursing license.

Yang's failure to tether her claim of bias to a statute or constitutional provision presents difficulties on appeal as to what standard of review we should apply to her bias claim. She appears to be claiming that the trial court was biased because it ruled against her several times. That would not be grounds for a due process violation because "[t]he mere fact that the trial court issued rulings adverse to [Yang] on several matters in this case, even assuming one or more of those rulings were erroneous," is insufficient to give rise to a violation of her "due process right to an impartial judge." (See *Brown v. American Bicycle Group, LLC* (2014) 224 Cal.App.4th 665, 673–675.) To the extent Yang is relying on an authority other than constitutional guarantees of due process, she has not identified any such authority, which would constitute waiver of any such claims. (See *Cahill, supra*, 194 Cal.App.4th at p. 956.)

C. The Trial Court Did Not Err in Denying Yang's Writ Petition

As we mentioned in the Factual and Procedural Background, the trial court denied Yang's writ petition because: (1) Yang could not challenge the basis of the examination order without first complying with the order; and (2) the Board was not obligated to honor Yang's request to be examined by a doctor employed by a university. Each ground presents a question of law that we review de novo. (See *Fettgather v. Board of Psychology* (2017) 17 Cal.App.5th 1340, 1342, 1345 (*Fettgather*) ["On appeal, we review the trial court's decision [on a petition for writ of mandate concerning an agency's revocation of a professional license] for substantial evidence, resolving any conflicts in favor of the trial court's judgment. [Citation.]

Questions of law, however, are subject to de novo review.”].) Applying that standard, we conclude the trial court did not err.

Section 820 provides in relevant part: “Whenever it appears that any person holding a license, certificate or permit . . . may be unable to practice his or her profession safely because the licentiate’s ability to practice is impaired due to mental illness, or physical illness affecting competency, the licensing agency may order the licentiate to be examined by one or more physicians and surgeons or psychologists designated by the agency. The report of the examiners shall be made available to the licentiate and may be received as direct evidence in proceedings conducted pursuant to Section 822.”⁵ (See § 820.)

In turn, section 821 provides: “The licentiate’s failure to comply with an order issued under Section 820 shall constitute grounds for the suspension or revocation of the licentiate’s certificate or license.” (§ 821.) Similarly, section 822 authorizes the agency to revoke a license if it “determines that its licentiate’s ability to practice his or her profession safely is impaired because the licentiate is mentally ill” (See § 822.)

⁵ The *Fettgather* court described the investigatory purpose of this report: “This report may be received as direct evidence in an accusation brought to revoke a license [citations], but the function of obtaining it is investigatory. [Citations.] Further, the Board is authorized to consider the report in closed session [citation], and the report itself remains confidential until an accusation is actually filed [citation]. If an accusation is not filed, the report is kept confidential for a period of five years and thereafter destroyed if no new proceedings are initiated within that period of time.” (*Fettgather, supra*, 17 Cal.App.5th at pp. 1345–1346.)

Relying on these statutes, the First and Third Appellate Districts have held that a licensed health care professional may not contest the validity of an examination order issued pursuant to section 820 without first complying with the order. (See *Fettgather, supra*, 17 Cal.App.5th at pp. 1342, 1346–1349; *Lee v. Board of Registered Nursing* (2012) 209 Cal.App.4th 793, 796–798 (*Lee*).) These courts observed that the only fact relevant in a license revocation proceeding under section 821 is whether the licensee complied with the examination order. (See *Fettgather, supra*, at pp. 1347–1348; *Lee, supra*, at pp. 797–798.) This approach does not violate the licensee’s state and federal due process rights because allowing him or her to challenge only the results of a section 820 examination properly balances private and governmental interests, including the agency’s interest in protecting the public.⁶ (See *Fettgather*, at pp. 1347–1349; citing *Lee*, at pp. 797–798; see also § 2708.1 [“Protection of the public shall be the highest priority for the Board of Registered Nursing in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.”].)

The trial court relied upon *Fettgather* and *Lee* in its ruling denying Yang’s writ petition. With the exception of one vague passage in her reply brief, Yang does not advance any argument

⁶ *Fettgather* observed that the right to practice is “not implicated by the order for a mental examination” because such an order does “not immediately threaten” one’s license, but is merely “an authorized administrative inquiry[] falling squarely within the police power to protect the public.” (*Fettgather, supra*, 17 Cal.App.5th at p. 1347.)

establishing that either case was wrongly decided. Instead, Yang apparently claims that *Lee* is distinguishable because “[Yang] already had two mental exams done and was willing to go to any university experts of [the Board] from day 1.” In making this argument, Yang ignores the fact that *Lee* affirmed an order denying a writ petition filed by a licensee who had been evaluated by five mental health professionals, but not one selected by the regulatory board. (See *Lee, supra*, 209 Cal.App.4th at p. 795.)

In any case, the decision in *Lee* hinged on the licensee’s refusal to submit to a mental health examination. (See *Lee, supra*, 209 Cal.App.4th at pp. 797–798.) Yang’s willingness to be examined by a professional *she believes* is qualified does not distinguish her appeal from *Lee*. (Cf. *id.* at pp. 795, 799 [affirming the trial court’s denial of the writ petition, even though the Board rejected the licensee’s attempt to “have the examination conducted by a psychiatrist of her choosing”].) In sum, we agree with *Lee* and *Fettgather* and hold that Yang cannot challenge the propriety of the examination order without first complying with that order.

Insofar as Yang reasserts her contention that the Board must select an examiner employed by a university, we reject that claim. Section 820 authorizes *the Board* to “designate[]” a “physician[.] . . . surgeon[.] or psychologist[.]” to conduct the examination. (See § 820.) Nothing in section 820 requires the Board to utilize “university experts” for mental health examinations. (See *Red Mountain, LLC v. Fallbrook Public Utility Dist.* (2006) 143 Cal.App.4th 333, 347 [“Words of a statute are to be given a plain and commonsense meaning. When they are clear and unambiguous, there is no need to resort to other

indicia of legislative intent, such as legislative history, to construe the statute.”]

D. Yang’s Remaining Challenges to the Trial Court’s Judgment Fail

Yang repeatedly complains that the Board’s attorney wanted Yang to submit to “ ‘ANY EXAM’ by ‘ANYONE.’ ” It seems Yang is arguing that the Board violated section 820 by requiring Yang to be examined by any layperson, instead of “one or more physicians and surgeons or psychologists designated by the agency.” (See § 820.)

This assertion is squarely belied by the record. At the administrative hearing, the Board’s counsel simply asked Yang whether she would submit to an exam conducted by “any doctor” assigned by the Board. Yang then responded, “I have to look at it.” Thus, Yang fails to establish that the Board’s counsel violated section 820.

Further, Yang repeatedly argues the trial court “knew that [the Board’s] analyst was lying about that they had no access to expert data due to HIPAA [citation], and [the Board] does not exclude university experts [citation].” Yang appears to be referring to: (1) the trial court’s remark that the disciplinary officer mistakenly asserted that the identity of an examiner’s employer would be protected by HIPAA; and (2) the fact the trial court replied “right” when Yang asserted at a hearing that the Board does not “exclude experts from [a] university.” These statements have no apparent relevance to the propriety of the trial court’s judgment.

The rest of Yang’s briefing raises numerous complaints that, to the extent we understand them, have no apparent legal significance. As illustrative is her claim that “there is no time

limit to set aside a judgement obtained by fraud." Apart from vaguely asserting that the Board violated sections 820 and 821, she fails to identify any fraud underlying the trial court's judgment or otherwise explain the relevance of this legal proposition to this appeal. Similarly untethered to the issues in this appeal, Yang levels the following charge against the trial court: "[T]he Superior Court Judge misled Appellant to go against her common sense and deprived her constitutional rights [sic] to protect herself and granted [the Board] unlimited rights to abuse and harm Appellant." She similarly fails to explain the relevance of her claim that a medical board required her to pay \$400 to have an expert review her medical education.

Because we are under no obligation to " 'develop [Yang's] arguments' " for her, we deem as waived all such other remaining untethered appellate challenges. (See *Cahill, supra*, 194 Cal.App.4th at p. 956.)

DISPOSITION

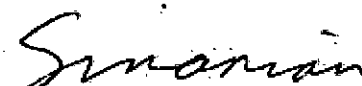
The judgment is affirmed. The Board is awarded its costs on appeal.

NOT TO BE PUBLISHED.

We concur:


ROTHSCHILD, P. J.


BENDIX, J.


SINANIAN, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

DIVISION 1

COURT OF APPEAL - SECOND DIST.

FILED

Nov 10, 2020

DANIEL P. POTTER, Clerk

jzelaya Deputy Clerk

BIN YANG,
Plaintiff and Appellant,
v.
THE BOARD OF REGISTERED NURSING,
Defendant and Respondent.

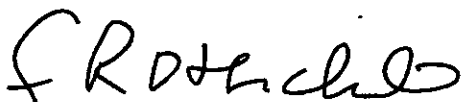
B298991
Los Angeles County Super. Ct. No. BS174436

THE COURT:

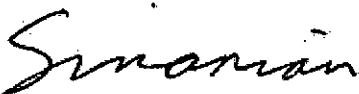
Appellant's Motion to Reconsider is construed as a petition for rehearing.
The petition for rehearing is denied.



BENDIX, J.



ROTHSCHILD, P.J.



SINANIAN, J.*

*Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to
article VI, section 6 of the California Constitution.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION: 1

COURT OF APPEAL - SECOND DIST.

FILED

Nov 13, 2020

DANIEL P. POTTER, Clerk

jzelaya Deputy Clerk

BIN YANG,
Plaintiff and Appellant,
v.
THE BOARD OF REGISTERED NURSING,
Defendant and Respondent.

B298991
Los Angeles County Super. Ct. No. BS174436

THE COURT:

The Court has read and considered appellant's second motion to reconsider filed November 12, 2020. The motion is denied.



ACTING PRESIDING JUSTICE

cc: Vinodhini Ramagopal
Bin Yang
File

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[Exempt from Filing Fee per Gov't
Code §6103]

FILED
Superior Court of California
County of Los Angeles

SEP 17 2019

Sherril R. Carter, Executive Officer/Clerk
By J. Luna, Deputy
Jennifer De Luna

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES**

Bin Yang,

Defendants - Petitioner,

v.

The Board of Register Nursing,

Respondent-Complainant.

Case No. BS174436

**[PROPOSED] JUDGMENT DENYING
PETITION FOR WRIT OF MANDAMUS**

Date: July 2, 2019
Time: 1:30p.m.
Dept: 85
Judge: Hon. James C. Chalfant
Action Filed: July 30, 2018

This matter came on regularly before this court on July 2, 2019 for hearing in Department 85 of the County of Los Angeles Superior Court, the Honorable James C. Chalfant, Judge presiding. Petitioner, Bin Yang, appeared on her own behalf. Deputy Attorney General Vinodhini Ramagopal appeared for Xavier Becerra, Attorney General, as attorneys for Respondent, California State Board of Registered Nursing [erroneously sued as "The Board of Register Nursing"].

The court having reviewed the administrative record, considered all of the arguments of counsel, both oral and written, and the court having exercised its independent judgment and

1 having adopted its tentative ruling on July 2, 2019, a copy of which is incorporated herein
2 and attached hereto, now issues its judgment.

3 IT IS HEREBY ORDERED that:

- 4 1. The petition for writ of mandate is denied;
5 2. Petitioner shall take nothing by this action; and
6 3. Respondent shall recover its costs in this action in the amount of _____.

7
8 Dated: _____

9 9/17/19

10 *J. Chalfant*
11 HON. JAMES C. CHALFANT
12 Judge of the Superior Court

13 APPROVAL AS TO FORM:

14 _____
15 Bin Yang, Petitioner

16 _____
17 Date

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Petitioner Bin Yang ("Yang") seeks a writ of mandate reversing the decision by Respondent Board of Registered Nursing ("Board") to revoke her license as a registered nurse. The court has read and considered the moving papers, opposition,¹ and reply, and renders the following tentative decision.

A. Statement of the Case

1. Petition

Petitioner Yang, acting *pro per*, commenced this proceeding on July 30, 2018. The Petition for Writ of Mandate alleges in pertinent as follows.

Yang is a Chinese national. In 1989, she graduated from the Shanghai Medical University School of Medicine and obtained a medical degree. In 1994, Yang immigrated to the United States. On August 8, 1995, the Board issued to Yang a Registered Nurse License. Yang allowed her license to lapse.

In 1997, Yang was rear-ended by an 18-wheeler in Amarillo, Texas and suffered a traumatic brain injury. She could not speak for days and had to relearn English.

Over the years, Yang has attended several American medical schools. In 2005, Yang attended a program at Baylor College of Medicine and in 2006 attended a program at USC Keck School of Medicine.

In March 2005, Yang flew from Houston, Texas to Lubbock, Texas. After Yang asked the flight attendant for a blanket three times but received no response, Yang "pushed" the attendant's right forearm for attention. The attendant claimed that Yang punched her stomach and made her fall into a cabinet. In November 2005, a Texas district court convicted Yang of a class B misdemeanor count of assault within the special aircraft jurisdiction of the United States.

In February 2008, Yang visited a state office located in Madison, Wisconsin to discuss her pending application for a Wisconsin medical license. Yang followed an employee into a room marked with a sign of "Legal Service" in the hopes of meeting counsel. A state police officer was ultimately called to the scene upon a complaint that Yang was creating a disturbance. The officer arrested Yang for violation of Wisconsin Administrative Code section 943.15(1), unlawful entry into a building or construction site.

In April 2008, the Wisconsin Medical Examining Board denied Yang's application for a medical license for several reasons, including (1) she failed an oral examination conducted in September 2007 and (2) the board viewed her Shanghai Medical University School of Medicine degree as equivalent to a bachelor's degree in nursing from an American university.

Yang's renewal of her license with the Board after several years of inactivity triggered an audit of her continuing education requirements. After the Board's continuing education unit was unable to contact Yang, the matter was referred to Board Enforcement Analyst Barbara Lira ("Lira"). Yang's criminal matters in Texas and Wisconsin caused Lira concern about Yang's ability to safely practice as a registered nurse. Based on Lira's recommendation, the Board's

¹ Yang asserts that the opposition brief violates the 15-page limit of CRC 3.1113(d). Yang is incorrect. The cover page, table of contents, and table of authorities are not included in the page count. See *id.*

Executive Officer Joseph L. Morris ("Morris") issued an order requiring Yang to submit to a medical examination by a professional selected by the Board.

On March 10, 2017, Morris issued an order for Yang to contact Lira within 30 days of the letter's date of service to coordinate a timely examination. Yang contacted Lira and indicated that she would not submit to an examination unless the examiner worked for a university. Lira refused this request, stating that Yang knew every doctor working at the universities.

An administrative hearing was scheduled for March 13, 2018. In February 2018, Yang requested a continuance of the hearing because she had a conflict. Opposing counsel refused.

On March 1, 2018, Morris filed a First Amended Accusation ("FAA") against Yang requesting the revocation or suspension of Yang's nursing license. The Accusation alleges two causes for discipline: (1) failure to comply with an order to compel a mental examination in violation of Business and Professions Code section 820 and (2) unprofessional conduct premised on the Wisconsin's Medical Examining Board's denial of Yang's application for a permanent license to practice medicine and surgery.

An administrative hearing was held on March 13, 2018. Yang testified that she had previously submitted to two mental examinations in California: one by an expert approved by a federal court and another by a Ph.D. from UCLA. Yang testified that, as part of her Chinese medical training, she had taken extra courses in nursing compared to most other doctors. Yang testified that she had experienced no adverse events at residency training and received excellent letters of recommendation from USC, Texas Tech, and UCLA.

On April 2, 2018, the administrative law judge ("ALJ") issued a proposed decision recommending revocation of Yang's nursing license.

Yang seeks a writ of mandate directing the Board to (1) vacate its order revoking Yang's nursing license, (2) communicate better with other licensees, and (3) permit experts from universities or other decent workplaces to conduct mental examinations. Yang presents several grounds why mandate should issue. First, the ALJ omitted consideration and discussion of crucial evidence at the hearing: the real story of what occurred in Texas and Wisconsin, Yang's medical education, and her letters of recommendation. Second, the ALJ was biased. According to Yang, the ALJ "turned a human rights fighter and an outstanding healthcare professional into a potential bomber, so he could give what 'his clients' wanted." Third, the Board's practice of refusing to consider university medical examiners is unreasonable.

2. Course of Proceedings

At a trial setting conference on November 1, 2018, the court granted Yang's request to dismiss Respondent Deputy Attorney General ("DAG") Vinodhini Ramagopal ("Ramagopal") from the case.

On December 11, 2018, the court overruled the Board's demurrer to the Petition and granted the Board's motion to strike Ramagopal from the Petition's caption.

B. Standard of Review

CCP section 1094.5 is the administrative mandamus provision which structures the procedure for judicial review of adjudicatory decisions rendered by administrative agencies. Topanga Ass'n for a Scenic Community v. County of Los Angeles, ("Topanga") (1974) 11 Cal.3d 506, 514-15.

CCP section 1094.5 does not in its face specify which cases are subject to independent review, leaving that issue to the courts. Fukuda v. City of Angels, (1999) 20 Cal.4th 805, 811. In

cases reviewing decisions which affect a vested, fundamental right the trial court exercises independent judgment on the evidence. Bixby v. Pierno, ("Bixby") (1971) 4 Cal.3d 130, 143; see CCP §1094.5(c). An administrative decision imposing discipline on a professional licensee is decided under the independent judgment standard. Griffiths v. Superior Court, (2002) 96 Cal.App.4th 757, 767.

Under the independent judgment test, "the trial court not only examines the administrative record for errors of law but also exercises its independent judgment upon the evidence disclosed in a limited trial de novo." Bixby, supra, 4 Cal.3d at 143. The court must draw its own reasonable inferences from the evidence and make its own credibility determinations. Morrison v. Housing Authority of the City of Los Angeles Board of Commissioners, (2003) 107 Cal.App.4th 860, 868. In short, the court substitutes its judgment for the agency's regarding the basic facts of what happened, when, why, and the credibility of witnesses. Guymon v. Board of Accountancy, (1976) 55 Cal.App.3d 1010, 1013 16.

However, "[i]n exercising its independent judgment, a trial court must afford a strong presumption of correctness concerning the administrative findings, and the party challenging the administrative decision bears the burden of convincing the court that the administrative findings are contrary to the weight of the evidence." Fukuda, supra, 20 Cal.4th at 817. Unless it can be demonstrated by petitioner that the agency's actions are not grounded upon any reasonable basis in law or any substantial basis in fact, the courts should not interfere with the agency's discretion or substitute their wisdom for that of the agency. Bixby, supra, 4 Cal.3d 130, 150 51; Bank of America v. State Water Resources Control Board, (1974) 42 Cal.App.3d 198, 208.

The agency's decision must be based on a preponderance of the evidence presented at the hearing. Board of Medical Quality Assurance v. Superior Court, (1977) 73 Cal.App.3d 860, 862. The hearing officer is only required to issue findings that give enough explanation so that parties may determine whether, and upon what basis, to review the decision. Topanga, supra, 11 Cal.3d 506, 514 15. Implicit in section 1094.5 is a requirement that the agency set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order. Id. at 115.

An agency is presumed to have regularly performed its official duties (Ev. Code §664), and the petitioner therefore has the burden of proof. Steele v. Los Angeles County Civil Service Commission, (1958) 166 Cal.App.2d 129, 137. "[T]he burden of proof falls upon the party attacking the administrative decision to demonstrate wherein the proceedings were unfair, in excess of jurisdiction or showed prejudicial abuse of discretion. Afford v. Pierno, (1972) 27 Cal.App.3d 682, 691.

C. Governing Law

1. Business and Professions Code² Section 820 (Examination; Report)

"Whenever it appears that any person holding a license, certificate or permit under this division or under any initiative act referred to in this division may be unable to practice his or her profession safely because the licensee's ability to practice is impaired due to mental illness, or physical illness affecting competency, the licensing agency may order the licensee to be examined by one or more physicians and surgeons or psychologists designated by the agency...." §820.

2. Section 821 (Failure to Comply with Order; Suspension or Revocation)

² All further statutory references are to the Business and Professions Code unless otherwise stated.

A licentiate's failure to comply with an order issued under section 820 shall constitute grounds for the suspension or revocation of the licentiate's certificate or license. §821.

3. Section 822 (Disposition Alternatives; Reinstatement)

If a licensing agency determines that its licentiate's ability to practice his or her profession safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the licensing agency may take action by any one of the following methods:

- (a) Revoking the licentiate's certificate or license.
- (b) Suspending the licentiate's right to practice.
- (c) Placing the licentiate on probation.
- (d) Taking such other action in relation to the licentiate as the licensing agency in its discretion deems proper.

The licensing agency shall not reinstate a revoked or suspended certificate or license until it has received competent evidence of the absence or control of the condition which caused its action and until it is satisfied that with due regard for the public health and safety the person's right to practice his or her profession may be safely reinstated. §822.

4. Section 2761 (Grounds for Discipline; Evidence of Conviction)

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

...(4) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a health care professional license or certificate by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that action. §2761(a)(4).

c. Section 125.3 (Investigation and Enforcement Costs; Payment by Licentiate)

In any order issued in resolution of a disciplinary proceeding before any board within the department or before the Osteopathic Medical Board, upon request of the entity bringing the proceeding, the administrative law judge may direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. §125.3(a).

D. Statement of Facts

1. Background

Yang attended the Medical Center of Fudan University in China, enrolling in September 1985. She was granted the degree of Bachelor/Doctor of Medicine in July 1989. AR 145. Yang subsequently moved to the United States and the Board issued to her a license as a registered nurse on August 8, 1995. AR 25.

In 2003, the Educational Commission for Foreign Medical Graduates certified Yang. AR 142. In 2005, Yang was admitted by the Baylor College of Medicine to a neurology residency program and in 2006 to a rehabilitation medicine residency program in Harvard Medical School's Spaulding Rehabilitation Hospital. AR 141, 143.

2. 2005 Incident

On March 30, 2005, Yang was charged with assaulting and intimidating flight attendant Cara Moore while on board a Southwest Airlines flight. AR 54, 57. On November 16, 2005, Yang pled guilty to one count of assault within the special aircraft jurisdiction of the United States. AR 66. The federal court sentenced Yang to five years of probation, imposed a fine and a penalty totaling \$5,510, required her to attend anger management classes, and barred her from booking passage on any Southwest Airlines flight for the duration of her probation. AR 69.

A December 14, 2006 letter to Whom it May Concern from the program directory of an anger management workshop stated that Yang had been participating in the workshop on a regular basis, she is not an angry person, and she is generally misunderstood. AR 214.³

3. 2008 Incident

On February 18, 2008, Yang visited a state office in Wisconsin for the Department of Regulation and Licensing, seeking to discuss her medical license application with state employee Colleen Baird ("Baird"). AR 81-82. Yang spoke to several other employees about her application and was not satisfied with their answers to her questions. Yang did not acknowledge their answers and continued to repeat herself, gradually becoming more agitated. AR 82, 83. Another state employee, James Parker ("Parker"), informed Yang that Baird was not available, and that Yang needed to finish providing the required information Baird had previously requested. Yang refused to acknowledge this information and continued asking for Baird. AR 82.

Yang subsequently entered a secured portion of the building, causing a state police officer, J. Calhoun, to be called to the scene. AR 81-2. Yang was agitated and uncooperative with Calhoun, refusing to provide her identification or answer questions. AR 82. Yang resisted when Calhoun attempted to arrest her, but Calhoun successfully handcuffed her. AR 82. Yang admitted she had entered the secured part of the building and admitted that she was on federal probation and did not have permission to travel to Wisconsin. AR 84. After bringing her to the Public Safety Building for processing, Calhoun issued a citation to Yang and released her. AR 84-85. Yang was not prosecuted, and her misdemeanor case was dismissed on March 27, 2008. AR 78.

4. Denial of Medical Licensure in Wisconsin

On April 23, 2008, the State of Wisconsin Medical Examining Board ("Wisconsin Board") denied Yang's application for a license to practice medicine and surgery. AR 92-93. The Wisconsin Board denied Yang's application for the following reasons: (1) failure of the oral examination conducted on September 9, 2007; (2) lack of a qualifying medical degree as Yang's medical degree in China was the equivalent of a nursing degree; (3) adverse action during Yang's medical residency at Texas Tech University, including poor clinical performance, behavioral problems and complaints from staff and physicians, and failure to complete the residency program; and (4) Yang's 2005 conviction for assault in Texas, a petty theft conviction in Minnesota in 1995, and a violation of law in creating a disturbance resulting in her 2008 arrest in Wisconsin. AR 92-

³ According to Yang, a psychology report in 2005 showed that she had no mental or personality disorder in the Texas airline incident. AR 205.

In August 2006, a medical doctor met with Yang to evaluate whether she had a "health related problem" for purposes of her entry into the rehabilitation medicine residency program at Spaulding Rehabilitation Hospital. AR 163.

3.

On April 23, 2008, Yang requested a hearing challenging the denial of her application in Wisconsin, but she did not appear at the pre-hearing conference and her appeal was dismissed. AR 96-97. The administrative law judge's ("ALJ") proposed decision dismissing her appeal was adopted by the State of Wisconsin and became the final decision. AR 95.

5. Mental Exam Order

On March 10, 2017, the Board, through its Executive Officer Joseph Morris ("Morris"), issued to Yang an Order Compelling Mental and/or Physical Examination ("Order") based on a conclusion that Yang's ability to safely practice as a registered nurse may be impaired due to mental and/or physical illness. AR 39-43. The Order based this conclusion on Yang's 2005 conviction for assault on the Southwest Airlines flight attendant and Yang's 2008 violation of her probation and Wisconsin law, resulting in her arrest. AR 41.

The Order directed Yang to submit to a mental and/or physical examination pursuant to section 820 to determine her ability to safely practice as a registered nurse. AR 42. The Order stated the examination would be conducted by a physician specializing in psychiatry or a psychologist selected by the Board and would be conducted at a time that is mutually convenient to Yan and the selected examiner within 30 days of service of the Order. AR 42. The Order further stated that failure to comply with the Order would constitute grounds for disciplinary action against Yang's license, pursuant to section 821. AR 43. The Board mailed the Order to Yang on March 20, 2017. AR 36.

6. Accusation

On March 1, 2018, the Board filed its First Amended Accusation ("FAA") against Yang for her failure to comply with the Order. AR 12-15. The first cause for discipline stated that Yang was subject to discipline because she did not comply with the Order to submit to a mental/physical examination within 30 days. Pursuant to section 821, Yang's license was subject to discipline for her failure to comply. AR 14.

The second cause for discipline was the Wisconsin Medical Board's denial of Yang's application for a medical license. AR 14. Pursuant to section 2761(a)(4), Yang was subject to discipline based on this denial. AR 14-15.

On June 8, 2017, Yang requested a hearing. AR 8. On August 21, 2017, the Board set the hearing for March 13, 2018. AR 4.

7. The Hearing

The hearing occurred on March 13, 2018. ALJ Eric Sawyer conducted the hearing. AR 23-35. Relevant testimony from the hearing is as follows.

1. Yang

Yang was accepted at Texas Tech but did not care for it and was accepted at Baylor in neurology. AR 318. Because Texas wanted a "newspaper" to evaluate her medical education, she withdrew her application in Texas and accepted an offer of a one-year residency in California. AR 318. She had no disciplinary matters and, in fact, had letters of recommendation from her residency. AR 326-28.

Yang is not currently working as a nurse. Since 2006 she has been running her own business. AR 362-64. Yang has not used her registered nurse license since 2008 and she does not

need the license. AR 370.

Yang tried to continue the hearing, but the deputy attorney general opposed. AR 270. Yang never really objected to submitting to a mental evaluation and was willing to be evaluated by an examiner who worked for a university. AR 315. Lira did not want a university doctor to examine Yang because Yang "[knew] all the doctors." AR 315, 335. Yang became very anxious when Lira refused to allow a university doctor to examine her. AR 315. Yang is distrustful of the professionals approved by the Board, feeling that they are apt to act in favor of the government for the purposes of securing further business and referrals. AR 333-35, 387-88. University doctors are less subject to such influence. AR 334. Yang felt she was being set up. AR 312, 355.

Regarding the 2005 incident with the Southwest Airlines flight attendant, Yang maintained that she only pushed the flight attendant to get her attention. AR 371-72. The story was exaggerated, and Yang did not intend to harm her. AR 258. She apologized, but the attendant insisted that Yang intended to harm her. AR 258. Yet, Yang's auto accident impaired her physical ability, she cannot play tennis, and she could not raise her luggage to the overhead. AR 258. Yang was forced to admit that she knowingly and intentionally assaulted the flight attendant by striking her in the stomach and forearm, causing her to fall against the bulkhead and strike her elbow. AR 374-75.

Yang has had two mental examinations in California. AR 346. In 2008, she asked for early termination of her probation and had her own expert examine her and then one of "their" experts. AR 346. Both were in California. AR 346.

Regarding the 2008 incident in Wisconsin, Yang travelled to Wisconsin without permission from her probation officer because it would take two weeks to get permission and the Wisconsin Board only had certain days a year. AR 386. She did not know the area she entered was secured when she entered it. AR 385. The incident was a wrongful arrest manipulated with criminal intention. AR 385.

Regarding the April Fool petty theft in Minnesota, she learned her lesson and the conviction has been expunged. AR 329. See AR 160-61.

There have been no clinical complaints or police reports against Yang since 2008. AR 292.

Yang was willing to let her license lapse without further issue, but the Board insisted on obtaining a court order. AR 357, 389. Yang refused to offer information as to her financial ability to pay the costs for the Board's investigation. AR 365-69.

2. Lira

Barbara Lira ("Lira") testified on behalf of the Board. Lira was the discipline analyst for Yang's case. AR 272-73. Yang had not been practicing as a nurse for approximately eight years and let her license lapse. AR 303.

Yang came to the Board's attention when she filed a license renewal application. AR 303. The Board's Continuing Education Unit ("CEU") conducts random audits of nurses requesting certificates demonstrating that they are current with continuing education requirements. AR 278. The CEU conducted an audit of Yang's license. AR 278. The CEU sent two letters to Yang requesting her certificates but did not receive a response. AR 278. The CEU then reviewed Yang's file and noted her 2005 conviction for assault and her 2008 arrest in Wisconsin. AR 279. The CEU referred the file to Lira for review. AR 280-81. Lira referred Yang's file to the Attorney General's office, which subsequently served the Order on Yang. AR 281.

The Order required Yang to contact Lira about the examination within 30 days. AR 282. Yang called Lira on March 24, 2017. AR 282, 285. The two spoke for over 30 minutes and Yang

was very excitable, causing Lira to feel the conversation was "out of the ordinary." AR 282. Yang repeatedly went off on tangents and was uncooperative in scheduling the medical exam. AR 283.

Yang stated she was only willing to submit to an examination if the examiner worked for a university. AR 287. Lira explained that the Board selects examiners from a list of approved professionals and Yang could not choose her own examiner. AR 287. The Board approved list is a list of professionals who apply and are vetted by the Board; the Board does not exclude university professionals from the list. AR 287-88, 290. The Board cannot go outside its contracted professionals, and Lira has no way of knowing if a listed doctor works for a university. AR 298. Lira eventually cut off the conversation and informed Yang she would extend the time limit for scheduling the medical examination by a week to give Yang more time to think about it. AR 283.

On April 27, 2017, Yang again phoned Lira. AR 284. Yang said that this was not right, and Lira was trying to say she is mentally ill. AR 284. Lira responded that she was only trying to make an exam appointment for Yang if she wanted it. Yang responded no, she was not calling to make an appointment. AR 284.

The Board does not exclude doctors from universities. AR 287. The applicant would state where he or she works as part of the vetting process. AR 304. Lira contended that the doctor's information is "highly protected by HIPPA." AR 299.

The mental examinations of Yang conducted in 2006 and 2008 were not relevant because they were not performed by a Board approved professional and were outdated. AR 294. Lira also found the fact that Yang has had two or three mental evaluations to be a little alarming. AR 294.

8. The ALJ's Proposed Decision

The ALJ issued his proposed decision on April 2, 2018. AR 178-87. The ALJ defined the primary issue as whether the Board established cause for discipline by clear and convincing evidence to a reasonable certainty. AR 184. The ALJ found as follows.

Yang's license was issued in 1995. AR 179. She allowed her license to lapse for an undetermined number of years before renewing it. AR 179. The license would expire on January 31, 2019 unless renewed or disciplined. AR 179. Yang's preference is to let her license expire and she will not seek to renew it. AR 183.

With respect to the first cause for discipline, the statutes and related regulations do not define the threshold for issuance of a mental or physical examination order under section 820, but courts have used "a showing of good cause" or "reasonable cause" as a threshold. AR 184. At a minimum, an agency may issue a section 820 order whenever it appears a licensee may be unable to practice her profession due to impairment from mental illness or physical illness affecting competency. AR 185.

Case law establishes that Yang had no right to challenge the basis for the Order before complying with it. Fettgatter v. Board of Psychology, ("Fettgatter") (2017) 17 Cal.App.5th 1340, 1346; Lee v. Board of Registered Nursing, ("Lee") (2012) 209 Cal.App.4th 793, 798. Yang would only have standing to challenge the examiner selected or the examination process if she had complied with the Order. Her excuses for noncompliance with the Order and her arguments about the merits of the Order are therefore irrelevant. AR 185.

The Board established with clear and convincing evidence that Yang is subject to disciplinary action under section 821 because she failed to comply with the Order. AR 185. The Board had legitimate concern over Yang's ability to safely practice nursing due to her conviction in 2005 and her arrest in 2008. AR 185. The Board demonstrated the minimum threshold for the issuance of a section 820 order, as well as the thresholds of good or reasonable cause. AR 185.

Yang was subject to a lawful order that the Board had the authority and discretion to issue and willfully refused to comply with it. AR 185.

With respect to the second cause for discipline, the Board established by clear and convincing evidence that Yang is subject to disciplinary action for unprofessional conduct under section 2761(a)(4) because her application for a medical license was denied by the Wisconsin Medical Examining Board in 2008. AR 186. Yang had notice of and an opportunity to challenge the denial but failed to prosecute her appeal, which was subsequently dismissed. Yang's efforts to denigrate the merits of Wisconsin's actions are therefore untimely and not relevant. AR 186.

The Wisconsin Board's denial of Yang's application does not require serious discipline, as it occurred ten years ago and the Board presumably knew of the denial and took no action on it. AR 186. Yang's failure to comply with the Order is subject to a greater level of discipline. The Board is rightfully concerned about Yang's behavior underlying her criminal cases in 2005 and 2008 and Yang has done nothing recently to assuage the Board's concerns about her ability to safely practice. AR 186. Yang has made it clear she does not respect or trust the Board, demonstrating a safety concern. As Yang failed to dispel the Board's concerns about her ability to safely practice, the interests of public protection warrant revocation of her license. AR 186.

The ALJ recommended that Yang's nursing license be revoked and that she pay for the Board's costs of investigation and prosecution in the amount of \$4,752.50 if and when her license is reinstated. AR 187. Yang did not demonstrate a reason to reduce the costs or an inability to pay them. AR 186. Due to the unique nature of the case, Yang should only pay the costs if and when her license is reinstated. AR 186.

On June 5, 2018, the Board issued its Decision and Order adopted the Proposed Decision, effective July 5, 2018. AR 189.

9. Reconsideration

On May 12 and June 8, 2018, Yang sent emails to the Board, which included an attachment listing her volunteer services and the December 14, 2006 letter from the program directory of an anger management workshop stating that Yang had been participating in the workshop on a regular basis. AR 210-12, 2014. Yang stated that she already had been evaluated by two California experts, one at UCLA, and both the California Medical Board and Texas federal court accepted his report. AR 211. The emails included an explanation that Yang had a serious auto accident in 1997 which impaired her physical strength. AR 210. She had no ability to punch that airline attendant's stomach and make her fall because of this injury. AR 211. She only pled guilty because she had no witness and her attorney advised her to do so. AR 211.

The Board treated these emails as a request for reconsideration of its decision. AR 210-14. On June 29, 2018, the Board issued its Order Denying Reconsideration, stating that Yang did not establish good cause to grant reconsideration. AR 215-17.

F. Analysis

Petitioner Yang challenges the merits of the Board's Order, arguing that the Board did not properly carry out section 820 and the decision to revoke her nursing license was thereby an abuse of discretion.⁴

⁴ Yang also requests punitive damages in the amount of \$1,200,000. As the Board correctly argues, punitive damages are not available in administrative mandamus proceedings. Yang's remedies are limited to a judgment to set aside the agency's decision or remanding the matter for

1. Did the Board Properly Issue the Order?

Yang asserts that the Board did not "carry Code 820 properly" when it issued the Order, arguing that she was willing to submit to a mental examination by a university examiner and that the Board improperly refused to comply with her request. Yang testified that she was concerned that the Board was setting her up and she wanted an independent university doctor to examine her. Had Lira selected an expert from a university, no administrative hearing or writ petition would have been necessary. Pet. Op. Br. at 12; Reply at 2-3.

Section 820 permits an agency to order an examination of a licensee whenever it appears that the licensee may be unable to practice their profession due to impairment from mental illness or physical illness. The agency designates an examiner to perform the examination. Bus. & Prof. Code §820.

The Board's section 820 order to Yang was based on its concern about Yang's ability to safely practice nursing because of her 2005 Texas federal conviction and her Wisconsin arrest in 2008. AR 41-2. As the opposition notes, the ALJ found that the Board had ample reason to have concern over Yang's ability to safely practice as a nurse and met the minimum threshold, as well as the thresholds of good cause or reasonable cause. Opp. at 11.

Yang challenges both of the incidents forming the basis for the Order. Yang asserts that she only pushed the flight attendant in the 2005 incident, contrary to the attendant's claim that Yang punched her in the stomach, making the attendant fall into a cabinet. Pet. Op. Br. at 3. Yang argues that she did not have the physical strength to do as she was accused and that she only pled guilty based on her attorney's advice and her belief that she had no witnesses and the jurisdiction was unfair. Pet. Op. Br. at 3, 7; Reply at 1. Yang also challenges her 2008 Wisconsin arrest, claiming that she did not knowingly enter the secured area and that she left as soon as she was asked. Pet. Op. Br. at 4-5; Reply at 2. Yang also notes that the misdemeanor citation was dismissed and should not be used against her. Pet. Op. Br. at 13.

As the ALJ explained and yet Yang fails to understand, her arguments about the merits of the incidents forming the basis for the Order are irrelevant. Case law establishes that a licensee has no due process right to challenge the reasons for a section 820 order before submitting to the examination; the licensee may not prevent the examination and challenge its merits. Fettgater, *supra*, 17 Cal.App.5th at 1348; Lee, *supra*, 209 Cal.App.4th at 798. The reason for this rule is that the governmental interest in public safety is compelling and the ability to investigate whether a licensee is mentally ill is paramount. Fettgater, *supra*, 17 Cal.App.5th at 1349. The government's interest would be severely impacted if a licensee could delay an investigation which the licensee believes to be unwarranted and requiring compliance with a section 820 order protects the licensee as well. *Id.* at 1349. Only after submitting to the exam may a licensee challenge its results or basis in an administrative hearing and in court, and license revocation may be based on failure to obey a mental examination order. Lee *supra*, 209 Cal.App.4th at 709.

Lee involved a situation similar to Yang's position in which the petitioner tried to have a psychiatrist of her own choosing conduct the exam, and then later refused to submit to any exam. 209 Cal.App.4th at 795. The Lee court held that the only relevant fact is whether the petitioner complied with the Board's order for a mental exam. *Id.* at 798.

Yang does not dispute that she did not comply with the Order. All of Yang's arguments about the underlying Texas and Wisconsin incidents are irrelevant to the question whether the

the agency's reconsideration. See CCP §1094.5(f). Opp. at 18.

Board properly issued the Order.

Yang additionally asserts the Board should have scheduled a university doctor to perform the mental examination. Pet. Op. Br. at 12; Reply at 2-3. This argument is dependent on the language of section 820. Section 820 expressly states that the licensing agency may order the licensee to be examined by one or more physicians and surgeons or psychologists designated by the agency. Pursuant to this language, the examiner is selected by the Board and Yang cannot set limits on which examiner is chosen by insisting she be affiliated with a university. Lira explained at the hearing that the examiners are taken from a list of Board-approved professionals. To be on the list, a professional must submit an application which is then vetted. The Board enters into a contract with the professional to render mental examination services. The Board can only choose a professional from the approved list, and Lira had no way of knowing which professionals were university-affiliated. AR 298.

Yang's argument about the bias of a non-university professional is not well taken. First, there is no reason to believe that a university professional would have any different bias than a private practitioner. Both are vetted, enter into a contract, and are paid by the Board. To the extent that there is a bias in favor of the Board based on the prospect of future business, both professionals would have it.

More important, Yang has no legal right to interfere with the statutorily required system. Section 820 permits the Board to choose the professional from its approved list. Yang was required to submit to that examination. Should Yang disagree with the outcome and believe that the Board's professional was biased, her option was to challenge the outcome at a hearing where she could have demonstrated the bias and presented her own expert's mental examination report. But she cannot prevent the Board from ordering an exam by a professional chosen by the Board from its approved list.

The Board properly complied with section 820 in issuing the Order.

2. The Wisconsin Board Decision

Yang appears to challenge the ALJ's conclusion that the Wisconsin Board's denial of her application formed a basis for discipline under section 2761(a)(4). Pet. Op. Br. at 4, 6, 8. Yang asserts that the Wisconsin Board "made up stories" and did not have cause to deny her application. Pet. Op. Br. at 4, 6, 8. Yang also argues that the Board disregarded her evidence that the Wisconsin Board's denial of her application was improper and only cared about Yang having "a certificated copy" of the decision. Pet. Op. Br. at 8.

The Board may take disciplinary action against a licensee for any disciplinary action against a health care professional license or certificate by another state. A certified copy of the decision or judgment shall be conclusive evidence of that action. §2761(a)(4). The Wisconsin Board denied Yang's application for a license in 2008. AR 92-3. Yang requested a hearing challenging the denial but failed to appear at the pre-hearing conference, resulting in her appeal being dismissed. AR 95-9.

Section 2761(a)(4) states that disciplinary actions in other states, including denial of licensure, are grounds for disciplinary action by the Board and a certified copy of the relevant decision is conclusive evidence of such an action. Yang's application for a license was denied by the Wisconsin Board, and the decision regarding that denial is certified and in the record. AR 95. The denial is therefore a valid basis for the Board to take disciplinary action against Yang pursuant to section 2761(a)(4).

Despite this fact, the ALJ did not rely on denial of a medical license in Wisconsin as

requiring "serious discipline" for Yang's nursing license. AR 186.

3. The Accusations Against DAG Ramagopal and the ALJ

Yang makes various arguments unrelated to the merits of the Order, including assertions that DAG Ramagopal committed misconduct by (a) objecting to almost everything submitted by Yang, (b) misstating the names of the universities to which Yang was willing to go for an exam, (c) forcing Yang to agree with forced Yang to admit that she agreed to the factual basis for her federal conviction, (d) forcing Yang submit to a mental exam by any examiner to set her up, and (d) saying that she did not care if the Wisconsin Medical Board made up stories because she had a certificated copy of denial. Pet. Op. Br. at 12; Reply at 3.

Yang also contends that the ALJ (1) did not care what happened in Texas and Wisconsin, omitted unknown workplace and patient resources, (2) deleted Yang's approved medical education and excellent letters of recommendation, (3) turned two mental exams into multiple exams, (4) ignored the fact that Yang changed her medical specialties and turned that into adverse residency results, (5) treated the Minnesota lack of records as proof of no expungement order, (6) disregarded the August 2006 evaluation of Yang for a "health related problem" and treated the letter's conditional recommendation of a six-month follow-up as evidence of mental instability, and (7) failed to obtain the medical records from the federal court in Texas. Pet. Op. Br. at 8-9; Reply at 4. Yang concludes that the ALJ altered facts to serve his clients to create evidence of mental instability and downgrade Yang's solid medical education, and turn a human rights fighter and outstanding healthcare professional into a potential bomber. Pet. Op. Br. at 13.

None of the accusations against DAG Ramagopal constitute misconduct, and the accusations against the ALJ are unsupported by the Record. Opp. at 15-18. Moreover, these arguments have no bearing on the issues of the validity of the Order and whether Yang's non-compliance is a basis discipline.⁵

F. Conclusion

The Petition is denied. The Board is ordered to prepare a proposed judgment, serve it on Yang for approval as to form, wait ten days after service for any objections, meet and confer if there are objections, and then submit the proposed judgment along with a declaration stating the existence/non-existence of any unresolved objections. An OSC re: judgment is set for August 8, 2019 at 9:30 a.m.

⁵ Yang continues to assert that DAG Ramagopal modified the Administrative Record to her detriment and failed to properly deliver it. Pet. Op. Br. at 10-11. The court previously resolved all issues concerning the Record, the pertinent May 12 and June 8 emails are in the Record (AR 192-94, 197-99, 202-4, 206-8, 210-12), and there is no reason to address this issue further.

Court of Appeal, Second Appellate District, Division One - No. B298991

S265853

IN THE SUPREME COURT OF CALIFORNIA

En Banc

SUPREME COURT
FILED

JAN 13 2021

BIN YANG, Plaintiff and Appellant,

Jorge Navarrete Clerk

v.

Deputy

BOARD OF REGISTERED NURSING, Defendant and Respondent.

The petition for review is denied.

CANTIL-SAKAUYE

Chief Justice

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DANIEL P. POTTER, CLERK

DIVISION 1

Los Angeles County Superior Court

BIN YANG,
Plaintiff and Appellant,
v.
THE BOARD OF REGISTERED NURSING,
Defendant and Respondent.
B298991
Los Angeles County Super. Ct. No. BS174436

*** REMITTITUR ***

I, Daniel P. Potter, Clerk of the Court of Appeal of the State of California, for the Second Appellate District, do hereby certify that the attached is a true and correct copy of the original order, opinion or decision entered in the above-entitled cause on October 27, 2020 and that this order, opinion or decision has now become final.

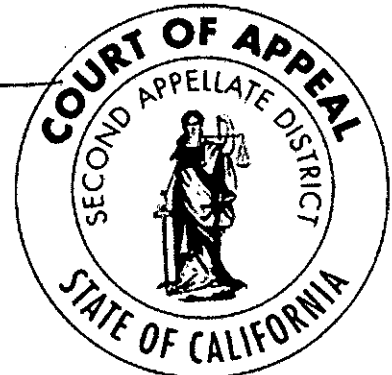
The Board is awarded its costs on appeal.

Witness my hand and the seal of the Court
affixed at my office this

Jan 14, 2021

DANIEL P. POTTER, CLERK

Juliet Lozano
by: J. Lozano,
Deputy Clerk



cc: All Counsel (w/out attachment)
File