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App. No. _____

In The
Supreme Court of the United States

Bharani Padmanabhan MD PhD

v.

Massachusetts Board of Registration in Medicine

ON APPLICATION FOR AN EXTENSION OF TIME TO FILE A PETITION
FOR A WRIT OF CERTIORARI
TO THE MASSACHUSETTS SUPREME JUDICIAL COURT
(State Supreme Court Docket # FAR-28938)
(State Appeals Court Docket # 2021-P-0527)

PETITIONER'S APPLICATION TO EXTEND TIME TO
FILE A PETITION FOR A WRIT OF CERTIORARI

DECEMBER 2, 2022

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To Circuit Justice John Roberts:

Petitioner Dr. Bharani respectfully requests that the time to file a Petition for a Writ of Certiorari in this matter be extended for sixty days, up to and including February 9, 2023. On September 12, 2022, the Massachusetts Supreme Judicial Court denied a petition for further appellate review without memorandum. The Appeals Court decision is thus enclosed. Absent an extension of time, the Petition would therefore be due on December 11, 2022. This Court has jurisdiction over this Application under 28 U.S.C. 1254 (1) and 1257, Rule 10(b), and has authority to grant the requested relief under the All Writs Act, 28 U.S.C. 1651.

BACKGROUND

Petitioner here, a neurologist with two fellowships in multiple sclerosis (Harvard and UMass) was excluded from the neurology marketplace in July 2017. The exclusion was the result of petitioner blowing the whistle on fake brain MRI reports being issued by his former employer hospital. The Massachusetts medial board held a hearing on the accusations made by the hospital. The magistrate assigned to the case held a hearing over eight days and issued his

tentative decision in August 2015, five months after the close of evidence. The tentative decision declared that no discipline was warranted as no substandard medical care was proved. Under state regulations this tentative decision became final and binding upon the medical board in February 2016 because it did not issue its own decision within 180 days of the tentative decision being issued. In July 2017, eighteen months after the tentative decision became final and binding, the medical board issued its "final decision" and imposed an indefinite suspension of petitioner's medical license in defiance of a clear binding state law.

In October 2019, the Massachusetts Appeals Court ruled in a different case and for the first time interpreted the relevant state regulation relied upon by this petitioner to inform the medical board of its errors. Within two weeks, petitioner immediately filed with the medical board a petition for reinstatement of his medical license. The board did nothing, though in every other physician's case they issued a decision (for or against) within thirty days. In March 2020 petitioner sought injunctive relief in state court to get the board to issue a decision on his reinstatement petition. State court refused to act. The Appeals Court ruled that petitioner had not pointed to any legal duty that required the medical board to act on a petition that had been pending for two and a half years. On September 12, 2022, the state Supreme Court affirmed the denial by declining further appellate review.

REASONS FOR GRANTING AN EXTENSION OF TIME

The time to file a Petition for a Writ of Certiorari should be extended for sixty days for these reasons:

This case documents defiance by a state court of the bedrock American principle of party presentation. Petitioner sought injunctive relief from state court because the medical board had not acted for many months on his pending petition to reinstate his medical license based on a new binding precedential full opinion from the state Appeals Court that interpreted a state law, the same law which the board had intentionally violated when indefinitely suspending his license. Petitioner is losing $25,000 per month as a result of the medical board's defiance. The state court denied his petition for injunctive relief.

The state Appeals Court panel affirmed this denial by *sua sponte* putting forth its own novel argument which was not briefed by either party, the exact action declared forcefully by Justice Ginsburg in *Sineneng-Smith* to be a violation of bedrock principles of American jurisprudence. The panel declared that petitioner had not pointed to a *legal* duty that required the board to act on pending petitions to reinstate, even though under binding precedent the state's various boards are under an *equitable* duty to act. Neither the petitioner nor the board ever briefed this point, and the board was on record agreeing that it had a duty to act. The board has never claimed that it did not have a legal duty to act on pending petitions to reinstate a liberty interest.

Petitioner represented himself *pro se* in the state courts, went unheard, and needs representation by an attorney experienced in preparing briefs in this Court. This case presents an extraordinarily important issue that warrants a carefully prepared Petition. One would be hard-pressed to envisage a worse outcome for jurisprudence than silently allowing state courts to openly defy a bedrock principle of American jurisprudence that has been reiterated forcefully by this Court for over 100 years, most recently by Justice Ginsburg in *United States v. Sineneng-*

Smith, 590 U.S. ___ (2020). This legal point has already been declared by this Court to be an issue of exceptional importance. And the state court has defied it. Review by the Court is thus essential. There is at minimum a substantial prospect that this Court will grant certiorari, and a substantial prospect of reversal given the severe blow to a bedrock principle of American jurisprudence and the power of this Court that the state court's opinion presents.

The Petitioner is working diligently to retain counsel with Supreme Court expertise to prepare the Petition. The extension sought shall assist greatly in locating appropriate counsel.

No meaningful prejudice to any party would arise from the extension.

CONCLUSION

Based on the facts and legal arguments presented herein, this Application for extension of time to file a petition for certiorari must be granted and the time to file should be extended sixty days up to and including February 9, 2023, which is what the petitioner respectfully requests.

Respectfully submitted,

December 2, 2022

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SUPREME JUDICIAL COURT
for the Commonwealth
Case Docket

BHARANI PADMANABHAN vs. BOARD OF REGISTRATION IN MEDICINE
THIS CASE CONTAINS IMPOUNDED MATERIAL OR PID
FAR-28938

CASE HEADER			
Case Status	FAR denied	**Status Date**	09/12/2022
Nature	Equity	**Entry Date**	07/01/2022
Appeals Ct Number	2021-P-0527	**Response Date**	07/15/2022
Appellant	Plaintiff	**Applicant**	
Citation		**Case Type**	Civil
Full Ct Number		**TC Number**	2082CV00308
Lower Court	Norfolk Superior Court	**Lower Ct Judge**	Beverly J. Cannone, J.

INVOLVED PARTY	ATTORNEY APPEARANCE
Bharani Padmanabhan Pro Se Plaintiff/Appellant	
Board of Registration in Medicine Defendant/Appellee	Samuel M. Furgang, Esquire

DOCKET ENTRIES

Entry Date	Paper	Entry Text
07/01/2022		Docket opened.
07/01/2022	#1	FAR APPLICATION filed by Bharanidharan Padmanabhan.
07/01/2022	#2	Motion to Waive Filing Fee filed by Bharanidharan Padmanabhan. (ALLOWED. See 2021-P-0527.)
07/01/2022	#3	(IMPOUNDED) Affidavit of Indigency filed by Bharanidharan Padmanabhan.
09/12/2022	#4	DENIAL of FAR application.

As of 09/12/2022 5:20pm

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

21-P-527

BHARANI PADMANABHAN

vs.

BOARD OF REGISTRATION IN MEDICINE.

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

The plaintiff, Bharani Padmanabhan, M.D., Ph.D., appeals from a Superior Court judgment dismissing his complaint against the Board of Registration in Medicine (board) for failure to state a claim on which relief can be granted. We affirm.

Background. The complaint, the allegations of which we take as true, Curtis v. Herb Chambers I-95, Inc., 458 Mass. 674, 676 (2011), asserted that in 2017, the board indefinitely suspended the plaintiff's license to practice medicine based on what the board found were various instances of substandard or improper actions as a physician. In 2019, this court decided Bloomstein v. Department of Pub. Safety, 96 Mass. App. Ct. 257 (2019), which held that a State agency had violated certain procedural provisions of G. L. c. 30A, § 11 (7) & (8), in suspending Bloomstein's construction supervisor license. Id. at

258, 261-262. The plaintiff here, believing that the board had committed the same or similar procedural violations in suspending his medical license, petitioned the board to reinstate his license.

An attorney for the board responded that the proper way for the plaintiff to proceed would be to enter into a probation agreement with the board, as contemplated in the original indefinite suspension decision. The plaintiff informed a board employee of his view that he was entitled to a ruling on his reinstatement petition by the members of the board. The board's attorney then invited the board's enforcement division to file a response to the plaintiff's petition. The enforcement division did so, and the plaintiff filed a reply. The plaintiff then made several inquiries to board members and other personnel, asking when his license would be reinstated, but he received no response.

The plaintiff then filed this action in March of 2020, seeking "an emergency order . . . to compel the [b]oard to speedily act on the pending [p]etition to [r]einstate." The complaint also alleged that, by virtue of the Bloomstein decision, the board's 2017 indefinite suspension decision was "void" and that "the plaintiff's license must be immediately restored to [a]ctive status."

On the board's motion to dismiss, a judge ruled that although the complaint was framed as one seeking injunctive relief, in substance it sought judicial review of the board's 2017 indefinite suspension decision. As such, it was untimely because G. L. c. 112, § 64, and G. L. c. 30A, § 14 (1), require that a complaint for judicial review of a final board decision be filed within thirty days of receipt of that decision. See Friedman v. Board of Registration in Med., 414 Mass. 663, 664 n.1 (1993).[1] The plaintiff, however, failed to timely seek such review of the 2017 order, and by March of 2020, the time for doing so had passed. The judge also rejected the plaintiff's argument that the board's original decision was void. This appeal followed.

Discussion. We review the sufficiency of the plaintiff's complaint de novo. Curtis, 458 Mass. at 676. Here, the judge correctly ruled that the plaintiff's action, to the extent that it sought review of the board's indefinite suspension decision, was untimely. "Filing in the Supreme Judicial Court within thirty days for judicial review is a jurisdictional requirement

[1] Indeed, in a case brought by the plaintiff before the board issued the 2017 indefinite suspension decision, the Supreme Judicial Court ruled that once the board issued a decision, the plaintiff could seek judicial review of it and would be "free to raise issues related to the procedural aspects of the disciplinary process." Padmanabhan v. Board of Registration in Med., 477 Mass. 1026, 1028 (2017). See id. n.5. The plaintiff nevertheless failed to do so in timely fashion.

and not susceptible to extension except in limited circumstances as provided in the statute." Friedman, 414 Mass. at 666. The plaintiff could not circumvent this time limit by framing his action as one seeking injunctive relief. See Ramaseshu v. Board of Registration in Med., 441 Mass. 1006, 1006-1007 (2004) (where physician waited more than seven years after license suspension and then asked court to "'investigate the circumstances leading to'" suspension, action was time barred).

We reject the plaintiff's argument that he was entitled to raise a Bloomstein challenge to the board's 2017 decision regardless of his failure to timely seek judicial review of that decision.[2] Bloomstein itself started as an action for judicial review under G. L. c. 30A, and there is no indication that that action was untimely. See Bloomstein, 96 Mass. App. Ct. at 258. Nor can the plaintiff point to anything in the Bloomstein decision suggesting that its interpretation of G. L. c. 30A, § 11 (7) & (8), somehow permits courts to ignore another provision of G. L. c. 30A, specifically, § 14 (1), which

[2] That Bloomstein had not been decided at the time of the board's 2017 decision did not preclude the plaintiff from timely asserting the same claims under G. L. c. 30A, § 11 (7) & (8), that ultimately succeeded in Bloomstein. As the plaintiff's brief recognizes, those provisions have "had the same meaning since the effective date of the statute"; the plaintiff could have claimed violations of them in 2017.

requires timely filing of actions for judicial review of agency decisions.[3]

The plaintiff also argues that he may bring his Bloomstein challenge now because, in his view, Bloomstein "showed that his indefinite suspension order was . . . void ab initio." Again, however, nothing in Bloomstein says or even hints that a violation of the provisions of G. L. c. 30A at issue render an agency decision void. In his reply brief, the plaintiff suggests that agency proceedings conducted without subject matter jurisdiction are void, but he never explains, nor do we see, why the board lacked subject matter jurisdiction here.[4]

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[3] The plaintiff relies on language in Bloomstein that, in rejecting the agency's mootness argument, invoked the principle that "courts will address an issue that might otherwise be dismissed for mootness if [t]he issue is one of public importance, capable of repetition, yet evading review" (quotation omitted). Bloomstein, 96 Mass. App. Ct. at 259. The court went on to observe that "an agency's compliance with statutes governing its procedures for adjudications that can result in the destruction of a person's livelihood is of sufficient public importance to justify judicial review." Id. Nothing in this statement suggests that the public importance of the issue can justify ignoring the clear statutory command that actions for judicial review be timely filed. "[M]ootness [is] a factor affecting [the court's] discretion, not its power, to decide a case" (quotation omitted). Styller v. Zoning Bd. of Appeals of Lynnfield, 487 Mass. 588, 595 (2021). In contrast, the timely filing requirement is "jurisdictional." Friedman, 414 Mass. at 666.

[4] Elsewhere in his brief, the plaintiff argues that a hearing officer's August 2015 recommended decision became the board's final decision because the board did not issue its own indefinite suspension decision until more than 180 days after the recommended decision. To the extent that this argument was

Even assuming arguendo that the board's decision was procedurally erroneous, "[a]n erroneous judgment is not a void judgment." Bowers v. Board of Appeals of Marshfield, 16 Mass. App. Ct. 29, 32 (1983).

The plaintiff finally argues that his complaint also stated a valid claim for relief in the form of an order requiring the board at least to rule on his reinstatement petition. This was effectively a request for mandamus relief. "In the absence of an alternative remedy, relief in the nature of mandamus is appropriate to compel a public official to perform an act which the official has a legal duty to perform." Lutheran Serv. Ass'n of New England, Inc. v. Metropolitan Dist. Comm'n, 397 Mass. 341, 344 (1986).

Here, it might have behooved the board to rule in some more formal way on the plaintiff's reinstatement petition, or to inform the plaintiff why it would not issue such a ruling. Nevertheless, the plaintiff has not shown that the board had any legal duty to act on the petition. He points to nothing in the board's governing statutes or regulations creating such a duty. The board might well have had the discretion to act, but "a

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not already rejected in Padmanabhan, 477 Mass. at 1027, the plaintiff has not claimed that it went to the board's jurisdiction. Moreover, he was free to raise it in a timely action for judicial review once the board issued its indefinite suspension decision. See id. at 1028. He failed, however, to file such an action.

court may not compel performance of a discretionary act." Metropolitan Dist. Comm'n, 397 Mass. at 344. The complaint thus failed to state a claim for mandamus relief.[5]

Judgment affirmed.

By the Court (Blake, Sacks & D'Angelo, JJ.[6]),

Joseph F. Stanton

Clerk

Entered: June 13, 2022.

[5] The plaintiff's other arguments, including that the judge failed to treat the facts in his complaint as true and that the board retaliates against physicians like him on behalf of hospitals, "have not been overlooked. We find nothing in them that requires discussion." Commonwealth v. Domanski, 332 Mass. 66, 78 (1954).

[6] The panelists are listed in order of seniority.