NOTICE

The text of this opinion may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

2018 IL App (1st) 170285

No. 1-17-0285

FIRST DIVISION
February 20, 2018

BATU SHAKARI, Plaintiff-Appellant, v. THE ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION and JAY STEWART, in His Official Capacity as Director of the Division of Professional Regulation, Defendants-Appellees.	Appeal from the Circuit Court of Cook County. No. 15 CH 16520 Honorable Franklin Valderrama, Judge Presiding.

JUSTICE MIKVA delivered the judgment of the court, with opinion. Presiding Justice Pierce and Justice Harris concurred in the judgment and opinion.

OPINION

¶ 1 Plaintiff Batu Shakari worked as a licensed health care worker—first as a licensed practical nurse (LPN) and then as a registered nurse (RN)—for over 30 years. The Illinois Department of Financial and Professional Regulation (Department) was aware, both

when it initially approved Mr. Shakari's LPN license and, in the intervening years, when it consistently renewed his LPN and RN licenses, of Mr. Shakari's prior conviction for attempted murder in 1975 and the circumstances surrounding that conviction. Mr. Shakari was never subject to disciplinary action and was never charged with another crime.

¶ 2 In 2011 the General Assembly passed section 2105-165 of the Department of Professional Regulation Law (20 ILCS 2105/2105-165 (West 2014)), which requires the permanent revocation without a hearing of the license of any health care worker who, among other things, "has been convicted" of a forcible felony. Although the Department renewed Mr. Shakari's RN license after this law took effect, in 2015 it determined, based on the language of the statute and the fact that attempted murder is elsewhere classified as a forcible felony, that his license should be revoked. Mr. Shakari sought administrative review of that decision in the circuit court, and the court affirmed the Department's revocation order.

¶ 3 On appeal, Mr. Shakari argues that section 2105-165 does not apply to individuals who, like him, received their convictions before they became health care workers. Mr. Shakari also argues that, by renewing his license after section 2105-165 was passed and again after it took effect, the Department was estopped from revoking his license.

¶ 4 For the following reasons, we affirm the Department's revocation order.

¶ 5 I. BACKGROUND

¶ 6 In 1975 Mr. Shakari, then known as David Beverly, was convicted of attempted murder. He was 21 years old. This court reversed Mr. Shakari's conviction and remanded his case for a new trial, at which point Mr. Shakari agreed to enter a plea of guilty to attempted murder in exchange for a sentence of time served and two years of probation.

¶ 7 Mr. Shakari completed his probation and went on to pursue his education and a nursing career. He obtained a licensed practical nursing degree in 1981 and, after disclosing and appearing before the committee of nurse examiners to explain his prior conviction, was allowed to sit for the state licensing examination. The Department approved Mr. Shakari's LPN license in 1982. Several years later, Mr. Shakari returned to school to obtain an associate's degree in nursing and, after again disclosing his prior felony, was allowed to sit for the licensing examination. The Department approved Mr. Shakari's RN license in 1989 and consistently renewed that license until 2015. Mr. Shakari was never subject to disciplinary action under either his LPN license or his RN license.

¶ 8 In 2011, the General Assembly passed section 2105-165, which provides that "[w]hen a licensed health care worker * * * (3) has been convicted of a forcible felony[,] * * * the license of the health care worker shall by operation of law be permanently revoked without a hearing." 20 ILCS 2105/2105-165(a) (West 2014). Attempted murder is a forcible felony in Illinois. 68 Ill.

Adm. Code 1130.120(a), (c), (jj), amended at 37 Ill. Reg. 7479 (May 31, 2013). Section 2105-165 took effect on July 31, 2012. As it had before, the Department renewed Mr. Shakari's license in 2012, after section 2105-165 was passed, but before it took effect. Throughout the spring and summer of 2014, however, there was an unusual delay in the renewal of Mr. Shakari's license. After corresponding with the Department, Mr. Shakari finally received a notification that his license had been renewed, along with an apology for the delay, which Department personnel indicated "was due to a positive answer [he] provided on [the] personal history questions on [his] renewal form."

¶ 9 But on August 17, 2015, the Department notified Mr. Shakari that it intended to permanently revoke his RN license pursuant to section 2105-165. Relying on our supreme court's decision in *Hayashi v. Illinois Department of Financial & Professional Regulation*, 2014 IL 116023, the Department rejected Mr. Shakari's argument that section 2105-165 did not apply to him and permanently revoked his RN license on September 30, 2015.

¶ 10 Mr. Shakari timely filed a complaint for administrative review in the circuit court against the Department and Jay Stewart, its director of professional regulation. In his *pro se* brief in support of that complaint, Mr. Shakari argued that the plain language of section 2105-165 did not apply to him because he was not a health care worker at the time of his conviction, a fact he contended distinguished his case from *Hayashi*, which involved three individuals who were

already licensed health care workers when they were convicted. Mr. Shakari further argued that the intent of the legislature was not served by predicating revocation of his license on a prior conviction that was unrelated to patient care and did not qualify him as a sex offender, that the Department's erroneous reading of section 2105-165 and of *Hayashi* prevented it from considering his case in a fair and impartial manner, and that, because the Department had issued him a license with full knowledge of his prior conviction, its revocation of that license was "a violation of its previous judgment on the issue." In his reply brief, Mr. Shakari argued that the Department's decisions to renew his license in 2012 and 2014 "collaterally estopped" it from later revoking his license pursuant to section 2105-165.

¶ 11 At the circuit court hearing in this matter, Mr. Shakari, now represented by counsel, reiterated these arguments and stressed that the case was one that "crie[d] out for an equitable and a legal solution." In questioning Mr. Shakari's counsel, the circuit court expressed its view that, previously, the Department "had some discretion as to what penalty, if at all, they would exercise" but "the statute does away with th[at] discretion."

¶ 12 Counsel for the Department, who made clear that he had not understood Mr. Shakari to be making an estoppel argument in his brief before the circuit court, nevertheless addressed what he referred to as "plaintiff's equitable estoppel argument" at the hearing. He stated that, "even if the Department did issue

a renewal license in 2014," there was no reason "that [the Department's] mistake of law should serve as some sort of precedent that would prohibit them from following the law where they d[id] not have any discretion."

¶ 13 Having considered the parties' arguments, the circuit court affirmed the Department's revocation order. The court concluded that it was bound by *Hayashi* to reject Mr. Shakari's interpretation of the Department of Professional Regulation Law, stating:

> "The Illinois Supreme Court in the *Hayashi* decision held that the plain language of the Act related to the phrase 'had been convicted' clearly indicates the legislative intent to subject persons to the Act without regard to the date of their conviction.
>
> Other arguments addressed or advanced—excuse me—by the plaintiff, this Court also finds were front and center and directly addressed by the *Hayashi* decision and rejected by the Illinois Supreme Court in *Hayashi* such as, plaintiff's argument regarding retroactivity and due process; therefore, the Court finds that those arguments have already been decided by *Hayashi* and the Court is certainly in no position to review a Supreme Court decision."

¶ 14 Although the court found that Mr. Shakari's estoppel argument was "not specifically articulated in his memorandum in support" of his complaint, it also found that the issue was properly before it because the

Department "was able to articulate * * * a cogent argument regarding estoppel" at the hearing.

¶ 15 The court went on to address, not collateral estoppel, but *equitable* estoppel, a doctrine it noted courts do not favor applying against public bodies. Although the court expressed sympathy for Mr. Shakari's situation, it concluded that the doctrine did not apply because the new law eliminated the Department's authority to renew Mr. Shakari's license. As the court explained:

> "Here, the revocation, per the Act, acts and applies as a matter of law. The 2014 renewal of the plaintiff's license was unauthorized under the Act. As such, plaintiff cannot rely on that unauthorized [a]ct to support a claim for equitable estoppel. Plaintiff here presents, beyond words, a very sympathetic case. Plaintiff has, by all accounts, been a contributing member to society who has more than paid his share for his previous acts.
>
> The arguments relating to the facts and reasons why this now approximately 40-year-old conviction should not prevent him from practicing his chosen profession, a profession in which—from this Court's—excuse me—from the record before the Court, he has not faced any criminal or disciplinary action as a nurse, are compelling. This Court, however lacks authority to depart from the General Assembly's mandate."

¶ 16 The circuit court also noted that Mr. Shakari could avail himself of amendments to section 2105-165 that became effective in January 2017, which permit

individuals whose health care licenses were revoked as a result of certain prior forcible felony convictions to petition the Department for restoration of their licenses. Pub. Act 99-886 (eff. Jan. 1, 2017) (amending 20 ILCS 2105/2105-165(a-1)).

¶ 17 Mr. Shakari now appeals the circuit court's order affirming the Department's revocation of his license.

¶ 18 II. JURISDICTION

¶ 19 The circuit court affirmed the Department's permanent revocation of Mr. Shakari's RN license on January 5, 2017, and Mr. Shakari timely filed his notice of appeal on February 1, 2017. We have jurisdiction over this matter pursuant to section 3-112 of the Code of Civil Procedure (735 ILCS 5/3-112 (West 2016)), making final orders in administrative review cases reviewable by appeal as in other civil cases, and Illinois Supreme Court Rules 301 and 303, governing appeals from final judgments of the circuit court in civil cases. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); R. 303 (eff. Jan. 1, 2015).

¶ 20 III. ANALYSIS

¶ 21 On appeal, Mr. Shakari argues that the Department erroneously construed section 2105-165 to apply equally to individuals like the plaintiffs in *Hayashi*—who were licensed health care workers before they were convicted—and to individuals like him, whose convictions predate their licensure. Mr. Shakari also argues that, by renewing his license after the section 2105-165 was passed and again after it took effect, the

Department was estopped from revoking his license. Although Mr. Shakari asserts that the circuit court misconstrued his collateral estoppel argument as one based on equitable estoppel, on appeal he argues that reversal is warranted under either theory. We address each argument in turn.

¶ 22 A. Statutory Construction

¶ 23 Mr. Shakari contests neither the fact of his prior conviction for a forcible felony nor that this is an offense that can trigger the revocation of a health care worker's license under section 2105-165. He also recognizes that in *Hayashi* our supreme court held that revocation may be based on a conviction predating the effective date of the statute. Mr. Shakari argues that section 2105-165 applies only to individuals who, unlike him, were convicted *after* they became health care workers. This is a question of statutory construction that we review *de novo*. *Branson v. Department of Revenue*, 168 Ill. 2d 247, 254 (1995). Where, as here, a case "involve[es] an agency's interpretation of a statute [that] the agency is charged with administering," we consider the agency's interpretation to be "relevant but not binding." *Id.* "In construing a statute, our goal is to effectuate the intent of the legislature, with the plain and unambiguous language enacted providing the most reliable indicator of that intent." *Manago v. County of Cook*, 2017 IL 121078, ¶ 10.

¶ 24 Section 2105-165(a) of the Act provides as follows:

> "(a) When a licensed health care worker, as defined in the Health Care Worker Self-Referral Act [(225 ILCS 47/1 *et seq.* (West 2014))], (1) has been convicted of a criminal act that requires registration under the Sex Offender Registration Act [(730 ILCS 150/1 *et seq.* (West 2014))]; (2) has been convicted of criminal battery against any patient in the course of patient care or treatment * * *; (3) *has been convicted of a forcible felony*; or (4) is required as part of a criminal sentence to register under the Sex Offender Registration Act, then, notwithstanding any other provision of law to the contrary, except as provided in this Section, *the license of the health care worker shall by operation of law be permanently revoked without a hearing*." (Emphases added.) 20 ILCS 2105/2105-165(a) (West 2014).

¶ 25 In concluding that section 2105-165 applied to Mr. Shakari, both the Department and the circuit court believed themselves bound by our supreme court's decision in *Hayashi*, 2014 IL 116023. The plaintiffs in *Hayashi*—two doctors and a chiropractor—were charged with sexual misconduct with patients or the inappropriate touching of patients and convicted—before section 2105-165 took effect—of either criminal misdemeanor battery or criminal sexual abuse. *Hayashi*, 2014 IL 116023, ¶¶ 5-8. The Department revoked the plaintiffs' licenses shortly after section 2105-165 went into effect, and they filed suit, seeking injunctive relief and a declaration that the law only applied to convictions imposed after its effective date. *Id.* ¶ 9. The circuit court dismissed the plaintiffs' claims, and

both the appellate court and the supreme court affirmed. *Id.* ¶¶ 10, 52.

¶ 26 Our supreme court declined to focus on the policy concerns raised by the *Hayashi* plaintiffs because it found the language of section 2105-165 to clearly and unambiguously apply to convictions imposed both before and after that section's effective date. *Id.* ¶ 18. It also rejected the plaintiffs' arguments that, if section 2105-165 was applied to them, it would be impermissibly retroactive in violation of their right to substantive due process. *Id.* ¶¶ 25-26. The court concluded that, because it "affect[ed] only the present and future eligibility of [individuals] to *continue* to use their health care licenses" (emphasis added), the law was "solely prospective," even though it drew on the antecedent fact of a past conviction for its operation. *Id.* ¶ 26.

¶ 27 Mr. Shakari correctly notes that, unlike him, all three of the *Hayashi* plaintiffs were licensed health care workers before they received the convictions that triggered the revocation of their licenses under section 2105-165. Mr. Shakari invites us to distinguish *Hayashi* on this basis and to view the circumstances of his case as an "unresolved area" of the law. We do not agree that we are at liberty to do so. The *Hayashi* court noted that, in reference to the triggering offenses listed in section 2105-165(a), the legislature used the phrase "has been convicted" rather than "is convicted." In its view, this use of the present perfect tense—"a verb form used to denote action beginning in the past and continuing to the present" (internal quotation marks omitted)—refers "to health care workers who hold the

status of having been convicted of a particular offense, *no matter when that status was obtained*" and "clearly indicates the legislative intent to subject persons to the Act *without regard to the date of their convictions*." (Emphases added.) *Id.* ¶¶ 17-18. These statements apply equally to Mr. Shakari's case.

¶ 28 Mr. Shakari fails to offer a straightforward reading of the language of section 2105-165 that would draw a distinction between health care workers, like himself, who were convicted before they received their licenses and health care workers, like those in *Hayashi*, convicted after they were licensed. In either situation the licensee is currently a health care worker who, at some time in the past, "has been convicted" of a triggering offense. The relevant point in time for assessing a licensee's status as a health care worker who "has been convicted" of a triggering crime is the moment when the license is revoked. As our supreme court made clear in *Hayashi*, it does not matter how long ago the conviction resulting in that status occurred.

¶ 29 Nor has Mr. Shakari articulated any policy reason why the legislature might wish to exempt health care workers with felonies predating their licensure. This intent would be particularly incongruous since the statute also prevents new applicants with the same kind of criminal records from receiving licenses in the first instance. See 20 ILCS 2105/2105-165(b) (West 2014) ("No person who has been convicted of any offense listed in subsection (a) or [is] required to

register as a sex offender may receive a license as a health care worker in Illinois.").

¶ 30 Mr. Shakari also unpersuasively argues that the circuit court in this case improperly extended section 2105-165 to criminal acts not involving patient care. In support of this argument, he relies on certain statements the supreme court made in *Hayashi* regarding the law's purpose. But the court in *Hayashi* was concerned only with section 2105-165(a)(2), the portion of the statute that applied to the plaintiffs in that case. That section is focused on "criminal battery against any patient in the course of patient care or treatment." 20 ILCS 2105/2105-165(a)(2) (West 2014). Section 2105-165(a)(3), which the Department relied on in Mr. Shakari's case, applies to all forcible felonies and is in no sense limited to those committed against patients. 20 ILCS 2105/2105-165(a)(3) (West 2014); see also *Shushunov v. Illinois Department of Financial & Professional Regulation*, 2017 IL App (1st) 151665, ¶ 36.

¶ 31 In sum, we agree with the circuit court and with the Department that under our supreme court's clear articulation in *Hayashi* of the scope of section 2105-165, Mr. Shakari's license was properly revoked pursuant to that section.

¶ 32 B. Estoppel

¶ 33 We next consider Mr. Shakari's argument that, because the Department renewed his license in 2012, after section 2105-165 was passed, and again in 2014, after it went into effect, the Department was estopped

from later revoking his license pursuant to that same section. According to Mr. Shakari, although the circuit court incorrectly believed this was an argument based on the doctrine of equitable estoppel, rather than collateral estoppel, we may reverse the Department's revocation order under either doctrine.

¶ 34 We first address the Department's contention that Mr. Shakari forfeited any estoppel-based argument by raising it for the first time in his reply brief in the circuit court. "In general, issues or defenses not placed before the administrative agency will not be considered for the first time on administrative review." *Texaco-Cities Service Pipeline Co. v. McGaw*, 182 Ill. 2d 262, 278 (1998) (citing 735 ILCS 5/3-110 (West 1994)). Arguments raised for the first time in a reply brief are also subject to forfeiture. *Wilfert v. Retirement Board of the Firemen's Annuity & Benefit Fund*, 263 Ill. App. 3d 539, 546 (1994). Although Mr. Shakari was not represented by counsel either in the proceedings before the Department or during briefing in the circuit court, principles of forfeiture apply equally to *pro se* litigants. *Porter v. Urbana-Champaign Sanitary District*, 237 Ill. App. 3d 296, 299 (1992). In response to the Department's forfeiture argument, Mr. Shakari contends that it is clear from the factual allegations in his response filed with the Department that he intended to argue estoppel.

¶ 35 It unnecessary for us to decide whether the inclusion of those allegations in Mr. Shakari's response filed with the Department was sufficient to preserve the issue for administrative review. It is evident from

the record that the Department failed to object to the introduction of Mr. Shakari's estoppel argument in the circuit court. Indeed, as the circuit court judge noted, the Department responded to the argument substantively at the hearing in this matter. Under these circumstances, it is the Department's objection, and not Mr. Shakari's argument, that has been forfeited. See *Wilfert*, 263 Ill. App. 3d at 546 (finding no forfeiture where a plaintiff's argument was raised for the first time in his reply brief on administrative review but where the agency could have, but did not, argue forfeiture at that time). We thus consider the merits of Mr. Shakari's estoppel argument. And we do so in reference to both collateral estoppel, the doctrine Mr. Shakari intended to base his argument on, and equitable estoppel, the doctrine the circuit court analyzed.

¶ 36 We agree with Mr. Shakari that collateral estoppel and equitable estoppel are two distinct legal theories. The former "prevents the relitigation of issues resolved in earlier causes of action" where there was a final judgment on the merits against the party against whom the doctrine is asserted (or someone in privity with that party). *State Building Venture v. O'Donnell*, 239 Ill. 2d 151, 158 (2010). The latter applies when a party makes a knowing misrepresentation of material fact that another party reasonably relies on and when the relying party would be prejudiced if the representing party were later allowed to deny the truth of the representation. *Falcon Funding, LLC v. City of Elgin*, 399 Ill. App. 3d 142, 157-58 (2010). For our purposes, however, it does not matter whether the circuit court

applied the wrong legal doctrine. "In administrative cases, we review the decision of the administrative agency, not the determination of the circuit court" (*Wade v. City of North Chicago Police Pension Board*, 226 Ill. 2d 485, 504 (2007)), and where, as here, the application of either doctrine is based on a question of law, our review is *de novo* (*In re Scarlett Z.-D.*, 2015 IL 117904, ¶ 26; *Pedersen v. Village of Hoffman Estates*, 2014 IL App (1st) 123402, ¶ 42). Mr. Shakari's position on appeal is that the Department was barred from revoking his license under either doctrine.

¶ 37 An analysis of the elements of the two doctrines is unnecessary, however, because neither collateral nor equitable estoppel can be based on the unauthorized act of an administrative agency. Section 2105-165 unambiguously revokes the licenses of certain health care workers "by operation of law." As such, it is really the State of Illinois, as principal, that Mr. Shakari argues was estopped from revoking his license, based on the actions of its agent, the Department. But this contradicts the longstanding rule that a government body "cannot be estopped by an act of its agent beyond the authority conferred upon him." *Rippinger v. Niederst*, 317 Ill. 264, 275 (1925) (holding that a city was not estopped by the actions of its building commissioner who, acting in his official capacity as a representative of the city, issued a building permit he was not authorized to issue under the applicable zoning ordinance).

¶ 38 The rule is frequently applied in cases where an administrative agency, whether due to the error of a ministerial employee or otherwise, has acted beyond

the scope of its authority to issue or renew a license or permit. See, *e.g.*, *Gersch v. Department of Professional Regulation*, 308 Ill. App. 3d 649 (1999) (holding that the unauthorized issuance of the plaintiff's social worker's license by a governmental employee did not prevent the later revocation of the license when it was discovered that the plaintiff did not meet the necessary educational requirements for such a license); *Armond v. Sawyer*, 205 Ill. App. 3d 936, 939 (1990) (holding a municipality was not estopped from revoking the plaintiff's liquor license simply because the local liquor commission had renewed the license in violation of a referendum limiting the sale of unpackaged alcohol); *Lake Shore Riding Academy, Inc. v. Daley*, 38 Ill. App. 3d 1000, 1003 (1976) (holding that a zoning department's renewal of a license to operate a riding stable in violation of a zoning ordinance was an unauthorized act that did not prevent the municipality from revoking the license); *People ex rel. Satas v. City of Chicago*, 5 Ill. App. 3d 109, 113 (1972) (holding that the approval of an application for a laundromat license that violated a local zoning ordinance was "clearly beyond the scope" of the issuing employee's authority and could not form the basis for a defense of equitable estoppel).

¶ 39 Although the rule is typically applied where a party has argued equitable estoppel, the result is the same under a theory of collateral estoppel. As our supreme court has explained, administrative agencies "have no general or common law powers" but are "statutory creature[s]," and "must find within the statute the authority which [they] claim[ ]." *City of Chicago v.*

Fair Employment Practices Comm'n, 65 Ill. 2d 108, 112-13 (1976). When the order of an agency exceeds the agency's jurisdiction, that order is void. *Id.* And when an agency mistakenly believes that it has the authority to take certain actions, that misapprehension of the law cannot form the basis for a defense of collateral estoppel. See *Superior Coal Co. v. Department of Revenue*, 4 Ill. 2d 459, 468 (1954) (finding no collateral estoppel where an agency made and followed erroneous rules and regulations based on its misinterpretation of a statute).

¶ 40 Here, the Department's renewal of Mr. Shakari's license in 2012 is of no consequence because, prior to the effective date of section 2105-165, the Department still had the discretion to renew his license. And the Department's unauthorized renewal of Mr. Shakari's license in 2014 had no effect on the enforceability of the law in Mr. Shakari's case or on the Department's obligation to comply with it.

¶ 41 Mr. Shakari's concerns with the harshness of section 2105-165(a)(3) are well taken, and fortunately the legislature last year amended section 2105-165 to include a provision, at subsection (a-1), allowing individuals like Mr. Shakari to petition the Department for restoration of their licenses. Pub. Act 99-886 (eff. Jan. 1, 2017) (amending 20 ILCS 2105-165(a-1)). Specifically, that provision allows individuals convicted of forcible felonies that are not sex offenses to petition for restoration of their licenses if more than five years have passed since the date of their triggering convictions or more than three years have passed since their release from confinement from that conviction.

¶ 42 Mr. Shakari has expressed concern that, even if he successfully avails himself of this provision, the fact that his license was once revoked will remain on his record. However, in its motion for leave to cite supplemental authority—which we granted—the Department highlights another part of the 2017 amendment, providing that licensees subject to disciplinary action may apply to have their disciplinary histories "classified as confidential and not for public release and considered expunged for reporting purposes," so long as they have no new disciplinary incidents or pending investigations and three years have passed since their disciplinary offense or the restoration of their license, whichever is later. Pub. Act 100-262 (eff. Aug. 22, 2017) (amending 20 ILCS 2105/2105-207(a)). By focusing on these amendments, the Department appears not only to encourage Mr. Shakari to mitigate the harsh consequences of section 2105-165(a) by petitioning for restoration of his license but to recognize that restoration of his license is the appropriate outcome here.

¶ 43 In sum, we agree with the circuit court that the enactment of section 2105-165, which provides for the revocation of certain health care workers' licenses "by operation of law," eliminated the Department's discretion to renew the licenses of such individuals. The Department's unauthorized renewal of Mr. Shakari's license after the law's effective date cannot give rise to a defense of collateral or equitable estoppel.

¶ 44 IV. CONCLUSION

¶ 45 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 46 Affirmed.

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

BATU SHAKARI, Plaintiff-Appellant, v. ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION and JAY STEWART, in His Official Capacity as Director of the Division of Professional Regulation, Defendants-Appellees.	)	No. 1-17-0285

ORDER

(Filed Mar. 9, 2018)

This matter coming to be heard on the Plaintiff-Appellant's petition for rehearing and the Court being fully advised in the premises;

IT IS HEREBY ORDERED that the petition is denied.

Dated this ___ day of _____, 2018.

/s/ [Illegible]
Justice

/s/ [Illegible]
Justice

/s/ [Illegible]
Justice

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Batu Shakari v. Illinois Department of Financial and Professional Regulation	No. 15 CH 16520

ORDER

This matter coming forth for hearing on Plaintiff's Complaint for Administrative Review, both parties present and the Court having read all written submissions and taken oral argument, the Court AFFIRMS the decision of the Department for those reasons stated on the record and denies Plaintiff's complaint.

Atty. No.: 99000
Name: Daniel Waltz
Atty. for: Defendants
Address:
100 W. Randolph St. 13th Floor
City/State/Zip:
Chicago, IL 60601
Telephone: (312) 814-7201

ENTERED:
JAN – 5 2017
Dated:

/s/ [Illegible]
Judge **Judge's No.**

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

IN THE CIRCUIT COURT OF COOK COUNTY,
ILLINOIS COUNTY DEPARTMENT,
CHANCERY DIVISION

BATU SHAKARI, Plaintiff, vs. ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION and JAY STEWART DIRECTOR, DIVISION OF PROFESSIONAL REGULATION, Defendants.	)	No. 15 CH 16520

Report of proceedings had at the hearing in the above-entitled cause before the HONORABLE FRANKLIN VALDERRAMA, Judge of said Court, commencing at 2:47 p.m. on January 5, 2017.

APPEARANCES:

MR. BATU SHAKARI, pro se;

BARRY A. GOMBERG & ASSOCIATES, by
MR. BARRY A. GOMBERG
On behalf of the Plaintiff;

OFFICE OF THE ATTORNEY GENERAL, by
MR. DANIEL WALTZ
On behalf of the Defendant.

[2] MR. GOMBERG: Good afternoon, your Honor. Barry Gomberg of Mr. Shakari.

MR. WALTZ: Good afternoon, your Honor. Assistant Attorney General, Dan Waltz, WALTZ, on behalf the Department of Financial and Professional Regulation.

MR. SHAKARI: Good afternoon, Batu Shakari.

MR. GOMBERG: Good afternoon.

The matter before the court on the plaintiff's complaint for administrative review, I've received and reviewed the briefing support, the response, as well as the reply, and I'm prepared to proceed to argument – to hear argument on the brief.

Before we get started, when we were last – I think we were last in court, there was mention made by counsel for the Department regarding an amendment to the statute and whether or not such an amendment would – I'm going to paraphrase it. I'm not going to hold you to the terms that I'm about to use – potentially either moot or lead to some potential resolution of the issue presented by the motion. Since you're all before me this afternoon, I'm going to presume that no such resolution has been reached and we're ready to proceed this afternoon. Am I correct?

MR. GOMBERG: Correct.

[3] THE COURT: All right. With that being said, you may proceed.

MR. GOMBERG: Thank you, your Honor.

And I know you've read the briefs, but I would like to say, before I get a little bit more into detail, that this case, when you look at it as a whole, cries out for an equitable and a legal solution. We're not in chancery court by error or we're not in the wrong court.

This is a case, when you look at the facts, are – it's amazing that Mr. Shakari's license was revoked. And I'm going to talk a little bit about the facts, but one thing I want to say at the beginning is that this Act that we're litigating under was in effect in 2012. And Mr. Shakari received his license after he told the agency about the fact that he had a prior conviction 33 years or more years ago, maybe 40 years ago. They had a hearing, they asked him questions, they passed on it. They gave him his license, and I'm going to – I'm going to just call that, that they should be estopped from taking his license now, that it's collateral estoppel on that basis alone although, I'm going to go into more detail as the brief do, that he should – the Department should be required to give Mr. Shakari his license back.

[4] THE COURT: I'm sorry. Before you go any further, I want to be sure, do you argue estoppel in your motion?

MR. GOMBERG: Mr. Shakari argues it in his brief on page 12, which is his brief in support of his compliant. He did this pro se; but that's essentially page 12 and page 13.

THE COURT: Counsel for the defendant, did you understand it to be an estoppel argument?

MR. WALTZ: Judge, I did not understand this to be an estoppel argument, no.

MR. GOMBERG: But clearly that's what it is, your Honor. And obviously Mr. Shakari is not an attorney. I've read this over thoroughly and that's my interpretation of what he was saying to the Court in his brief.

THE COURT: Okay. Proceed.

MR. GOMBERG: Again, if – with your Honor's permission, I would like to just review some of the basic facts.

In 1975, everybody knows Mr. Shakari was convicted of a forceable felony. In 1978, his conviction was reversed and remanded for a new trial by the Illinois Appellate Court. In 1979, the State of Illinois offered Mr. Shakari a plea bargain. The plea [5] bargain is – was – we'll consider the time he served in prison as served in exchange for a guilty plea. And Mr. Shakari accepted that and that is what has led to this case, in part.

What we want to – we want to emphasize is that Mr. Shakari, in 1982, became a licensed practical nurse. In 1989, he received his R.N. license. And then for 33 years and more after that, he was a nurse; and I'm pretty sure it was mostly, if not exclusively at Cook County Hospital. And I think we shouldn't just skim over that. We should make it clear that during that time he had no disciplinary record, no criminal record, he was protecting the health of the public, he did a

terrific job; and the fact that his license has now been revoked is incredible based on his history and service to the public.

In 2014, as I've said before, Mr. Shakari had a hearing in front of the Department. They asked him questions. He answered their questions. They knew very well that he had a prior conviction and they said, We understand you've been a nurse for 33 years. You were 21 years old when you had this problem. You've controlled your life. You've rehabilitated your life. You've had no problems in 33 years as a public servant [6] as a nurse. We're going to grant your license.

So on that basis alone, as I said earlier, your Honor, this Court – I respectfully ask that this Court ask the Department, tell the Department that the revocation order should be vacated and Mr. Shakari should be given his license back so he can go back to being a nurse and serve the public.

I have other arguments that are – that I would really like to make, too, but that, I would like say at the beginning.

One of the things that has brought out in the brief also is that the Act that's in question here pertains to licensed health care workers not the actions of an unlicensed private citizen. When this happened when Mr. Shakari was 21, he wasn't a health care worker. He was 21 years old. We can say – I don't know this for a fact – that he was trying to understand what his life was about. He was an unlicensed private citizen. He never – There's no allegation at all that as a licensed

health care worker he did anything to a patient that was wrong. Nobody ever accused him of anything, and he's certainly not a sex offender.

The plain language of the Act states in relevant part – if I may read just a little bit of [7] it – When a licensed health care worker has been convicted of a forcible felony, the license of a health care worker shall be, by operation of law, permanently revoked.

Plaintiff has no felony convictions. And I think everybody agrees, the defendant is in agreement, that he has no convictions of any kind as a licensed health care worker. Therefore, we believe that the Act does not apply to him and therefore, his license should be given back to him.

Another point, your Honor, when the Department revoked plaintiff's license, they did so clearly in a retroactive fashion. They looked to something that happened 33 years before and maybe even longer if I have my math right. He was 21 years old. This Act says: If you are a health care worker and you commit a forcible felony, you should have your license revoked.

Well, obviously he wasn't a health care worker, as I said a moment ago, when he was 21 is years old. And also, when he went in front of the board – the agency and they questioned him about it, they gave him his license. So to go back and say something that happened when he was 21 years old should now be held against him retroactively . . .

[8] Even in the Act itself, the legislature gave the defendant to power and the duty to apply the Act fairly and impartially. That's what they did when they gave him his license in 2014. To revoke it now, is a violation of that mandate by the legislature to that Department – to that agency.

THE COURT: Well, wouldn't did the import of the new legislation to, in effect, remove the discretion that the Department previously had and through this new Section 2105-165 basically say, You, Department must permanently revoke the license of a health care worker where – and then the various subsections.

In other words, prior to that time, presumably the Department had some discretion as to what penalty, if at all, they would exercise. Subsequent to the statute, it seems to me that the reading of the statute does away with the discretion of the Department meaning the statute as existing before the most recent amendment.

MR. GOMBERG: Well, I would argue against that, your Honor. I understand why you say that, but I still think part of the Act and part of the mandate of this agency is to handle matters of this sort in a fair and impartial manner. I don't think they took that away. [9] But – But even going back – let's assume that your Honor is right – they are already gave him his license in 2014 and that's the argument about collateral estoppel. So they decided – The Act was already in place and they gave it to him, because – and you can argue and I'm arguing, at least, in part, because of

equitable considerations, because of what he did with his life, that he was never a problem after that and he was a wonderful nurse for 33 years. That's not the only argument, but I think that's one of the reasons why the agency did have some discretion and they used it, and that's when they gave him his license in 2014.

I would also argue, your Honor, that there was no substantial due process in the process of revoking Mr. Shakari's license, that the defendant has shown no rational basis for revoking plaintiff's license relative to the public interest that it claims to be protecting. We're talking about a public interest.

What does a nurse do in Cook County Hospital? Taking care of the public. What did Mr. Shakari do for 33 years? He took care of the public. That's what the Department or the agency considered when they gave him his license in 2014. And when they took it away from him, just without any due process, I believe that's a [10] violation of Mr. Shakari's rights.

The purpose of the Act that we're talking about, your Honor, is clearly directed towards revoking the license of health care workers who commit criminal offenses against their patients or require sex offender registration. That's what the Act talks about. It doesn't talk about a 21-year-old unlicensed person who got into some problems and he – he had his case reversed by the Appellate Court and accepted a plea bargain.

So, your Honor, I'm asking – and for all those reasons and others that are mentioned in the brief, with all due respect, that the Court consider the equitable

situation here but also the legal arguments and let Mr. Shakari go back to practicing the profession that he does so well.

THE COURT: Thank you.

Response?

MR. WALTZ: Judge, I know that probably no one in this courtroom knows more about this specific Act than you do. I believe it was your opinion that formed the basis in the Hayashi decision and I think there have been several others where you've been affirmed. So I'm not going to stand here and rehash every single argument [11] because I believe that you fully understand them.

That being said, this is a pure legal argument. It's – review de novo. I agree with the facts as stated by the plaintiff. He practiced for 33 years, no – no serious incidents. The issue here is, did the Department err when it applied the law that was enacted by the General Assembly in 2012? And I believe the Department believes that it did not.

Section 2105/2105-165 states: When a licensed health care worker, as defined in the Health Care Worker Self-Referral Act, has been convicted of a forcible felony, that notwithstanding any other provision of law to the contrary, the license of the health care worker shall, by operation of law, be permanently revoked without a hearing. That leaves no discretion to the Department.

In this case, we have a licensed health care worker, Mr. Shakari, who was convicted and has passed of the crime of attempt murder; and that is a forcible felony as defined by the law. Obviously the most important question to decide here is whether that statement "when a licensed health care worker" refers to a licensed health care worker who, at the time, commits a crime or whether it's a licensed health care worker [12] who, at any time, commits a crime. And I believe that question has been answered in Hayashi. And they answered that question is that it's a licensed health care worker who, at any time, regardless of when he became licensed as a health care worker, that the Act applies.

What we have here is not – it's an additional licensing requirement. As discussed in the Hayashi decision, it's one additional factor that the Department considers when deciding whether or not to issue a license to a licensed health care worker. The State always maintains the ability to enact new regulations and requirements on that profession. And in this case, the General Assembly spoke and said, This is what – This is how we would like to proceed. We don't want people who have been convicted of forceable felonies practicing medicine in the state of Illinois.

As for plaintiff's equitable estoppel argument, that wasn't something that I picked up from the briefs originally, but just briefly to that point, I don't believe that even if the Department did issue a renewal license in 2014 that their mistake of law should serve as some sort of precedent that would prohibit them from following the law where they do not have any [13] discretion.

Obviously, when the Department issued the notice of revocation in August of 2015 to Mr. Shakari, they followed the letter of the law and did not exercise any discretion and they acted, because they did not have any discretion to exercise, but argue that the timing of revocation is really irrelevant to the decision of whether or not the Department followed the letter of the law in this case.

As for retroactivity, this is not a criminal punishment. Retroactivity does not apply. I believe the Hayashi court already decided the revocation – the automatic revocation of licenses where the crimes that resulted in the revocation occurred prior to the enactment of the Act did not constitute retroactivity for purposes of the law and I think that's a well said question. I don't think there's anything there.

As for the due process and the rational basis claim, if plaintiff is asking this Court to overturn this law on the basis of constitutionality, the plaintiff has a very high burden. And what we're talking about here is a rational basis test. The rational basis test is the easiest test for the State in terms of arguing that – arguing for constitutionality.

[14] In this case, the General Assembly has spoken, that they – they saw fit to determine that individuals who were convicted of forcible felonies should not be in contact with patients. And I think it's pretty clear to see what that rational basis would be. There's a potential there that individuals who stand convicted of forcible felonies maybe shouldn't be in contact with

patients. And while we might disagree on that, given certain fact patterns, I think that if the Court finds that there is any rational basis for the General Assembly to enact this law, any – any reasonable interpretation of why they would have done so, that requires you to sustain the constitutionality of this Act.

So at this time, the Department just asks that you find in favor of this final administrative decision as it applied to the law as it stood at the time of the revocation in 2015. The Department did not have any discretion in its conduct. The Act was written in such a way that it required the Department to revoke the license of a health care worker who had been convicted; and in this case, Mr. Shakari has been convicted of a forcible felony.

THE COURT: If I understand your brief – and I'm [15] going to let counsel for Mr. Shakari have the last word on the reply – by and large your argument is that the case of Hayashi versus the Department of Illinois [sic] Professional Regulation essentially is dispositive of this particular motion. Am I correct, in many respects?

MR. WALTZ: That's correct.

THE COURT: So counsel for Mr. Shakari, if you would pick up on that? In other words – And I know you address or it's addressed – I'm not going to say who – it's addressed in the motion as well as in the reply. But if you would highlight for me how the arguments that you're raising here are fundamentally different than the arguments that were advanced in

Hayashi, keeping in mind that to the extent that the issues are similar, this Court is bound by a stare decisis to follow the decision of the Illinois Supreme Court as in Hayashi. So if I'm not – from your perspective, if not – if I'm going to depart from that Hayashi decision, it must be based on something other than what is similar to what was in Hayashi. So if you would, address that.

MR. GOMBERG: Well, certainly, your Honor. I think the Hayashi and the Shakari case are not identical yet there's some similarities. I think one of the main things that we want to concentrate on, besides [16] Mr. Shakari's conviction, it's – you know, it's even hard to call it a conviction because it was reversed by the Appellate Court; and only because of a plea bargain did somebody now call it a conviction. I would have to argue, it's really not a conviction, but I understand that it was not brought up in Mr. Shakari's brief when he did it, but I do think that's an element.

But also we're not – it's similar on all the facts and one of the main ones is that the issue of collateral estoppel that I mentioned before. Mr. Shakari has already had a hearing. The Agency – The Department has already ruled, they questioned him, and they knew about his conviction, and they gave him his license. That's not the same as in the Hayashi case as I understand it. So that alone, your Honor, gives you some leeway. And obviously besides the legal argument, the equitable – equity nature of this case, I think you have the authority to exercise your equitable discretion in this case, as I mentioned before.

THE COURT: Okay. Thank you.

The Court is going to take a couple minutes and I'll come back out and give you my ruling probably close to 3:30.

MR. GOMBERG: Thank you.

[17] MR. WALTZ: Thank you, Judge.

(A short recess was had.)

THE COURT: The Court having heard arguments of counsel in support of the complaint for the administrative review, and in opposition to the complaint and the administrative review is prepared to rule on the complaint and the petition.

The Court does not have a written ruling but since we have the benefit of a very able court reporter, we'll read into the record the Court's ruling.

The statute that's at issue in this case is the health care workers licensure statute known as 20 ILCS 2105/2105-165. That statute provides in relevant part: When a licensed health care worker as defined in the Health Care Worker Self-Referral Act, for purposes of this case, has been convicted of a forcible felony, the license of a health care worker shall, by operation of law, be permanently revoked without a hearing.

The plaintiff raises several arguments in this case as to why this statute, from plaintiff's perspective, does not apply to him or at least certainly does not apply to his circumstance. It is undisputed that the plaintiff was not a licensed health care worker [18] at the

time of his conviction and only became licensed after his conviction. Plaintiff argues that as such the Act does not apply to him. The Court must respectfully disagree.

The Illinois Supreme Court in the Hayashi decision held that the plain language of the Act related to the phrase "had been convicted" clearly indicates the legislative intent to subject persons to the Act without regard to the date of their conviction.

Other arguments addressed or advanced – excuse me – by the plaintiff, this Court also finds were front and center and directly addressed by the Hayashi decision and rejected by the Illinois Supreme Court in Hayashi such as, plaintiff's argument regarding retroactivity and due process; therefore, the Court finds that those arguments have already been decided by Hayashi and the Court is certainly in no position to review a Supreme Court decision.

However, Hayashi did not address an issue that has been raised by plaintiff's counsel, that is, one of equitable estoppel. While not specifically articulated in the memorandum in support, plaintiff argues that he does raise the issue of estoppel and argues that the decision by the Department to issue plaintiff a license [19] or renew the license in 2014 after the passage of the Act should operate as an estoppel on the Department from its ability to revoke the plaintiff's license.

The Department argues that the Department did not view that as an estoppel argument and did not address it as such in its response; however, certainly

before the Court this afternoon, the Department was able to articulate, from the Court's perspective, it's certainly a cogent argument regarding estoppel. So from my perspective, the issue of the estoppel argument is properly before the Court.

A party, in order to establish a claim for estoppel, must satisfy six elements: One, words or conduct by the party against whom the estoppel is alleged amounting to a misrepresentation or concealment of material facts; two, the party against whom the estoppel is alleged must have had knowledge at the time the representations were made that the representations were untrue; three, the truth respecting the representations so made must be unknown to the party claiming the benefit of the estoppel at the time the representations were made and the time that they were acted on by him or her; four, the party estopped must intend or reasonably expect that his conduct or [20] representations will be acted upon by the party asiding – excuse me – asserting the estoppel or the public generally; five, the party claiming the benefit of the estoppel must have, in good faith, relied on the misrepresentation to his own detriment; and six, the party claiming the benefit of estoppel must have so acted, because of such representations or conduct, that he or she would be prejudiced if the first party is permitted to deny the truth thereof. These elements are found in the case of Vaughn vs. Speaker 126 Ill. 2d, 150, pages 163 to 164, 1988.

Courts, however, do not favor the use of the doctrine of equitable estoppel against a public body. That

is Gersch, G E R S C H, vs. Illinois Department of Regulation, 308 Ill. App. 3d 649, 660, First District 1999. To invoke equitable estoppel against a public entity, there must be some affirmative act on the part of the public entity and the inducement of substantial reliance by the affirmative act.

The affirmative act which prompts a party's reliance must be an act with the public body itself, such as a legislative enactment rather than the unauthorized acts of a ministerial officer or ministerial misrepresentation.

[21] Here, the revocation, per the Act, acts and applies as a matter of law. The 2014 renewal of the plaintiff's license was unauthorized under the Act. As such, plaintiff cannot rely on that unauthorized Act to support a claim for equitable estoppel. Plaintiff here presents, beyond words, a very sympathetic case. Plaintiff has, by all accounts, been a contributing member to society who has more than paid his share for his previous acts.

The arguments relating to the facts and reasons why this now approximately 40-year-old conviction should not prevent him from practicing his chosen profession, a profession in which – from this Court's – excuse me – from the record before the Court, he has not faced any criminal or disciplinary action as a nurse, are compelling. This Court, however, lacks authority to depart from the General Assembly's mandate.

In closing, the Court notes that the Act has been amended effective January of 2017 to allow health care

workers whose licenses have been revoked due to a forcible felony conviction, to petition the Department to restore their license. The Act appears to provide the Department with discretion in determining whether a [22] license shall be restored.

For all these reasons, this Court is bound to and must deny the petition for – or the complaint for administrative review and affirm the Department's decision. That will be the Court's ruling.

Anything else?

MR. WALTZ: No thank you, Judge.

(Which were all the proceedings had at this time in the above-entitled cause.)

---

[23] STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

Kim A. Kocimski, being first duly sworn, on oath says that she is a Certified Shorthand Reporter doing business in the City of Chicago, County of Cook and the State of Illinois;

That she reported in shorthand the proceedings had at the foregoing hearing;

And that the foregoing is a true and correct transcript of her shorthand notes so taken as aforesaid and contains all the proceedings had at the said hearing.

/s/ Kim A. Kocimski
KIM A. KOCIMSKI, CSR

CSR No. 084-004610

SUBSCRIBED AND SWORN TO
before me this 16th day of
January, A.D., 2017.

/s/ Mary B. Cizadlo
NOTARY PUBLIC

IN THE CIRCUIT COURT OF COOK COUNTY,
ILLINOIS COUNTY DEPARTMENT,
CHANCERY DIVISION
GENERAL CHANCERY SECTION

SHAKARI, Plaintiff, v. STEWART, Defendant.	Case No. 15 CH 16520 Calendar 03 Honorable Franklin U. Valderrama

ORDER

THIS MATTER coming to be heard on a Plaintiff's Motion to Supplement the Record, IT IS HEREBY ORDERED:

1. That the motion is entered and continued to the date for clerks status for the plaintiff's petition for administrative review on August 25 at 9:30 in room 2305.

SO ORDERED.

ENTERED:

Judge Franklin U. Valderrama

DATED: July 6, 2016

[NOTE: 1 Defendant did not show for Motions Hearing! /s/ [Illegible]]

Order **(Rev. 02/24/05 (CCG N002**

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Batu Shakari v. Ill. Dep't of Fin'l and Prof'l Reg. et al.	No. 15 CH 16520

ORDER

(Filed Jun. 27, 2016)

This matter coming forth on Plaintiff's Motion for Leave to File in excess of 15 pgs., both parties present and the Court being advised in the premises, IT IS HEREBY ORDERED THAT:

1) Plaintiff's motion is granted, he may file he brief in support in the form submitted to the Court on this day;

2) Defendant is granted until July 12, 2016 to respond;

3) Plaintiff is granted until August 18, 2016 to reply;

4) The status date of July 19, 2016 is hereby stricken;

5) This matter is set for clerk's status on August 25, 2016 at 9:30 am

Attorney No.: 99000 **ENTERED:**

Name: Daniel Waltz

Atty for: Defendants Dated: _____

Address: 100 W. Randolph St. 13th Floor

City/State/Zip: Chicago, IL 60601 Judge Judge's No.

Telephone: (312) 814-7201

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

STATE OF ILLINOIS
DEPARTMENT OF FINANCIAL AND
PROFESSIONAL REGULATION
DIVISION OF PROFESSIONAL REGULATION

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION of the State of Illinois. Complainant. v. BATU A. SHAKARI, License No. 041.253717. Respondent.	)	No. 2015-06455

PERMANENT REVOCATION ORDER

This matter, having come before me pursuant to 20 ILCS 2105/2105-165, and after having been fully advised and informed, I hereby FIND:

1. Batu A. Shakari ("Respondent"), formally known as David E. Beverly, holds a license as a registered professional nurse, license no. 041.253717, in the State of Illinois. Said license is currently in "Active" status.

2. Respondent's license as a registered professional nurse qualifies him as a "health care worker" as defined in the Health Care Worker Self-Referral Act and in 68 Ill. Admin. Code 1130.110.

3. On December 3, 1975, Respondent was convicted of attempted murder in the Circuit Court of Cook County, which is a forcible felony pursuant to 20 ILCS 2105/2105-165(a)(3) ("Act") and 68 Ill. Admin. Code 1130.120(a), (jj).

4. Respondent appealed the Circuit Court decision. On July 31, 1978, the Illinois Appellate Court reversed and remanded for a new trial. *People v. Beverly,* 63 Ill. App. 3d 186, 199 (1978). On May 14, 1979, Respondent entered into a guilty plea for attempted murder.

5. On August 17, 2015, the Department issued a Notice of Intent to Issue Permanent Revocation Order because Respondent's conviction is a forcible felony subjecting Respondent to permanent revocation of licensure as a "health care worker." 68 Ill. Admin. Code 1130.120(a), (jj).

6. Respondent submitted a Response to the Notice of Intent to Issue Permanent Revocation Order within twenty (20) days.

7. Respondent argues that because the Illinois Appellate Court reversed and remanded for a new trial, his conviction is not a qualifying conviction for permanent revocation.

8. Respondent entered into a plea with the State of Illinois and plead guilty to attempted murder. Therefore, Respondent's argument is irrelevant as he concedes he plead guilty to attempted murder. *See* Respondent's Response

To Petition To Issue Permanent Revocation Order at pg. 2.

9. Respondent also argues that his license should not be permanently revoked because the conviction occurred before he held a license as a registered professional nurse. The Illinois Supreme Court has held that the Act applies to convictions without regard to the date of the conviction. *Hayashi v. Ill. Dep't of Fin. & Prof'l Regulation*, 25 N.E.3d 570, 576 (Ill. 2014). The Court held that "the plain language clearly indicated the legislative intent to subject persons to the Act without regard to the date of their convictions." *Id.* at 577.

10. The Act states, "When a licensed health care worker, as defined in the Health Care Worker Self-Referral Act . . . has been convicted of a forcible felony . . . then, notwithstanding any other provision of law to the contrary, the license of the health care worker shall by operation of law be permanently revoked without a hearing." 20 ILCS 2105/2105-165(a). The Act is not limited to convictions that occur when a person is a licensed health care worker. In fact, it would be absurd to consider that only convictions that occur to an individual while licensed as a health care worker are subject to permanent revocation. That would be contrary to the intent of the statute, which was meant to protect the public from health care workers who have committed forcible felonies, criminal battery in the course of patient care, and registered sex offenders. 20 ILCS 2105/2105-165(a). Furthermore, in the

application process the Department refuses to issue health care licenses to individuals who have been convicted of offenses under 20 ILCS 2105/2105-165. This happens before the individual is licensed as a health care worker and the Department still permanently denies the license for convictions under the Act, even when the conviction occurred prior to the licensure. Therefore, Respondent's argument is irrelevant because he is still convicted of attempted murder even if it occurred prior to his licensure as a registered professional nurse. Additionally, the timing of the conviction is irrelevant pursuant to the Illinois Supreme Court. *Hayashi,* 25 N.E.3d at 576.

11. 68 Ill. Admin Code 1130.120 states, "A 'forcible felony,' for the purposes of Section 2105-165 of the Code and this Part is one or more of the following offenses: a) Murder . . . [and] jj) Attempt of any of the above specified offenses."

WHEREFORE, pursuant to 20 ILCS 2105/2105-165 and 68 Ill. Admin. Code 1130.100, it is hereby ORDERED that Respondent's license as a registered professional nurse, license no. 041.253717, is hereby PERMANENTLY REVOKED. Respondent shall immediately surrender said license and all other indicia of licensure to the Division of Professional Regulation of the Department of Financial and Professional Regulation of the State of Illinois. If Respondent fails to comply with this order, the Department shall seize said license.

DATED THIS 30th DAY OF September, 2015.

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION of the State of Illinois: Bryan Schneider, Secretary Division of Professional Regulation

/s/ Jay Stewart
JAY STEWART
Director

Case No. 2015-06455
License No. 041.253717

STATE OF ILLINOIS
DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

DIVISION OF PROFESSIONAL REGULATION of the State of Illinois, Complainant	)	**201506455**
v.	)	
BATU A SHAKARI Respondent	)	

NOTICE

TO: BATU A SHAKARI
15809 HOYNE AVENUE
HARVEY, IL 60426

PLEASE TAKE NOTICE that the Director of the Division of Professional Regulation signed the attached Order.

YOU ARE FURTHER NOTIFIED that you have a right to judicial review of all final administrative decisions of this Department, pursuant to the provisions of the Code of Civil Procedure, Administrative Review Law, 735 ILCS 5/3-103, and all amendments and modifications thereof, and the rules adopted pursuant thereto.

The Order of the Director of the Division of Professional Regulation will be implemented as of the date of the Order unless otherwise stated.

DIVISION OF PROFESSIONAL REGULATION of the State of Illinois

BY: /s/ Traci Sondrey
Clerk for the Department

All inquiries should be Directed to:
Chicago Office: 312-814-4504
PERCs only: 217-785-0820

STATE OF ILLINOIS)
) ss:
COUNTY OF SANGAMON)

UNDER PENALTY of perjury, as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned Certifies that I caused copies of the attached NOTICE AND CONSENT OR ORDER, to be deposited in the United States mail, by certified mail at 320 W.

Washington, Springfield, Illinois 62786, before 5:00 p.m. with proper postage prepaid on the 9th day of October, 2015 to all parties at the addresses listed on the attached documents.

/s/ Traci Sondrey
AFFIANT

[SEAL]

SUPREME COURT OF ILLINOIS
SUPREME COURT BUILDING
200 East Capitol Avenue
SPRINGFIELD, ILLINOIS 62701-1721
(217) 782-2035

James M. Dore
Dore Law Offices LLC
134 N. LaSalle Street,
Suite 1208
Chicago IL 60602

FIRST DISTRICT OFFICE
160 North LaSalle Street,
20th Floor
Chicago, IL 60601-3103
(312) 793-1332
TDD: (312) 793-6185

September 26, 2018

In re: Batu Shakari, petitioner, v. The Illinois Department of Financial and Professional Regulation et al., etc., respondents. Leave to appeal, Appellate Court, First District. 123448

The Supreme Court today DENIED the Petition for Leave to Appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on 10/31/2018.

Very truly yours,

/s/ Carolyn Taft Gosboll

Clerk of the Supreme Court

The constitutional provisions, treaties, statutes, ordinances, and regulations involved in the case (Unabridged)

United States Constitution, Amendment XIV. Section 1.

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

United States Constitution, Amendment V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

EXHIBIT A

AN ACT concerning State government.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 5. The Department of Professional Regulation Law of the Civil Administrative Code of Illinois is amended by adding Section 2105-165 as follows:

(20 ILCS 2105/2105-165 new)

Sec. 2105-165. Health care worker licensure actions; sex crimes.

(a) When a licensed health care worker, as defined in the Health Care Worker Self-Referral Act, (1) has been convicted of a criminal act that requires registration under the Sex Offender Registration Act; (2) has been convicted of a criminal battery against any patient in the course of patient care or treatment, including any offense based on sexual conduct or sexual penetration; (3) has been convicted of a forcible felony; or (4) is required as a part of a criminal sentence to register under the Sex Offender Registration Act, then, notwithstanding any other provision of law to the contrary, the license of the health care worker shall by operation of law be permanently revoked without a hearing.

(b) No person who has been convicted of any offense listed in subsection (a) or required

to register as a sex offender may receive a license as a health care worker in Illinois.

(c) Immediately after a licensed health care worker, as defined in the Health Care Worker Self-Referral Act, has been charged with any offense for which the sentence includes registration as a sex offender; a criminal battery against a patient, including any offense based on sexual conduct or sexual penetration, in the course of patient care or treatment; or a forcible felony; then the prosecuting attorney shall provide notice to the Department of the health care worker's name, address, practice address, and license number and the patient's name and a copy of the criminal charges filed. Within 5 business days after receiving notice from the prosecuting attorney of the filing of criminal charges against the health care worker, the Secretary shall issue an administrative order that the health care worker shall immediately practice only with a chaperone during all patient encounters pending the outcome of the criminal proceedings. The chaperone must be a licensed health care worker. The chaperone shall provide written notice to all of the health care worker's patients explaining the Department's order to use a chaperone. Each patient shall sign an acknowledgement that they received the notice. The notice to the patient of criminal charges shall include, in 14-point font, the following statement: "The health care worker is presumed innocent until proven guilty of the charges.". The licensed health care worker shall provide a written

plan of compliance with the administrative order that is acceptable to the Department within 5 days after receipt of the administrative order. Failure to comply with the administrative order, failure to file a compliance plan, or failure to follow the compliance plan shall subject the health care worker to temporary suspension of his or her professional license until the completion of the criminal proceedings.

(d) Nothing contained in this Section shall act in any way to waive or modify the confidentiality of information provided by the prosecuting attorney to the extent provided by law. Any information reported or disclosed shall be kept for the confidential use of the Secretary, Department attorneys, the investigative staff, and authorized clerical staff and shall be afforded the same status as is provided information under Part 21 of Article VIII of the Code of Civil Procedure, except that the Department may disclose information and documents to (1) a federal, State, or local law enforcement agency pursuant to a subpoena in an ongoing criminal investigation or (2) an appropriate licensing authority of another state or jurisdiction pursuant to an official request made by that authority. Any information and documents disclosed to a federal, State, or local law enforcement agency may be used by that agency only for the investigation and prosecution of a criminal offense. Any information or documents disclosed by the Department to a professional licensing authority of another state or jurisdiction may

only be used by that authority for investigations and disciplinary proceedings with regards to a professional license.

(e) Any licensee whose license was revoked or who received an administrative order under this Section shall have the revocation or administrative order vacated and completely removed from the licensees records and public view and the revocation or administrative order shall be afforded the same status as is provided information under Part 21 of Article VIII of the Code of Civil Procedure if (1) the charges upon which the revocation or administrative order is based are dropped; (2) the licensee is not convicted of the charges upon which the revocation or administrative order is based; or (3) any conviction for charges upon which the revocation or administrative order was based have been vacated, overturned, or reversed.

(f) Nothing contained in this Section shall prohibit the Department from initiating or maintaining a disciplinary action against a licensee independent from any criminal charges, conviction, or sex offender registration.

(g) The Department may adopt rules necessary to implement this Section. (Source: P.A. 97-156, eff. 8-20-11; 97-484, eff. 9-21-11; 97-873, eff. 7-31-12.)

STATE OF ILLINOIS
DEPARTMENT OF FINANCIAL AND
PROFESSIONAL REGULATION
DIVISION OF PROFESSIONAL REGULATION

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION of the State of Illinois,	)	
Complainant,	)	No. 2015-06455
v.	)	
BATU A. SHAKARI, License No. 041.253717,	)	
Respondent.	)	

NOTICE OF INTENT TO ISSUE PERMANENT REVOCATION ORDER

(Filed Aug. 15, 2017)

TO: BATU A. SHAKARI
15809 Hoyne Ave
Harvey, IL 60426-4163

Under Illinois law, 20 ILCS 2105/2105-165, the text attached herein as **Exhibit A**, a Health Care Worker who has been convicted of certain criminal offenses shall by operation of law have his or her licenses permanently revoked.

Please take notice that the Department intends to issue an order permanently revoking your license as a Registered Professional Nurse, License No. 041.253717, because under your previous name, David Beverly per

Exhibit B, you have been convicted of Attempted Murder, as set forth in the attached certified conviction marked as **Exhibit C**, which is a forcible felony pursuant to 20 ILCS 2105/2105-165(a)(3) and 68 Illinois Administrative Code § 1130.120;

YOU ARE HEREBY NOTIFIED that you have twenty (20) days from the date this Notice is mailed to present to this Department a written response contesting the Department issuing an order to permanently revoke your license. Your response will be considered only for the following reasons: 1) you have been incorrectly identified as the person with the conviction; 2) the conviction has been vacated, overturned, reversed, expunged, or a pardon has been granted; 3) the conviction is not a disqualifying conviction; or 4) if applicable, the criminal battery against the patient did not occur in the course of patient care or treatment. Your written response must be accompanied by documentation which supports one of these four reasons and must be mailed to the address below. In the event you are contesting that the criminal battery against the patient occurred in the course of treatment, you may request a hearing. No extensions will be granted.

Your response and supporting documentation must be sent to:

Mark Thompson
General Counsel for the
Division of Professional Regulation
100 West Randolph Street, Suite 9-100
Chicago, Illinois 60601

YOU ARE FURTHER NOTIFIED that your failure to present a written response to the Department within twenty (20) days from the date this Notice is mailed will result in an Order revoking your license pursuant to 68 Ill. Admin. Code § 1130.100.

DIVISION OF PROFESSIONAL
REGULATION OF THE DEPARTMENT OF FINANCIAL AND
PROFESSIONAL REGULATION
of the State of Illinois

/s/ Jay Stewart
JAY STEWART
Director

Jay Stewart
Director, Division of Professional Regulation
100 West Randolph Street, Suite 9-100
Chicago, Illinois 60601

Case No. 2015-06455
License No. 041.253717

EXHIBIT A

AN ACT concerning State government.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 5. The Department of Professional Regulation Law of the Civil

Administrative Code of Illinois is amended by adding Section 2105-165 as follows:

(20 ILCS 2105/2105-165 new)

Sec. 2105-165. Health care worker licensure actions; sex crimes.

(a) When a licensed health care worker, as defined in the Health Care Worker Self-Referral Act, (1) has been convicted of a criminal act that requires registration under the Sex Offender Registration Act; (2) has been convicted of a criminal battery against any patient in the course of patient care or treatment, including any offense based on sexual conduct or sexual penetration; (3) has been convicted of a forcible felony; or (4) is required as a part of a criminal sentence to register under the Sex Offender Registration Act, then, notwithstanding any other provision of law to the contrary, the license of the health care worker shall by operation of law be permanently revoked without a hearing.

(b) No person who has been convicted of any offense listed in subsection (a) or required to register as a sex offender may receive a license as a health care worker in Illinois.

(c) Immediately after a licensed health care worker, as defined in the Health Care Worker Self-Referral Act, has been charged with any offense for which the sentence includes registration as a sex offender; a criminal battery against a patient, including any offense based on sexual conduct or sexual penetration, in the course of patient care or treatment; or a forcible felony, then the

prosecuting attorney shall provide notice to the Department of the health care worker's name, address, practice address, and license number and the patient's name and a copy of the criminal charges filed. Within 5 business days after receiving notice from the prosecuting attorney of the filing of criminal charges against the health care worker, the Secretary shall issue an administrative order that the health care worker shall immediately practice only with a chaperone during all patient encounters pending the outcome of the criminal proceedings. The chaperone must be a licensed health care worker. The chaperone shall provide written notice to all of the health care worker's patients explaining the Department's order to use a chaperone. Each patient shall sign an acknowledgement that they received the notice. The notice to the patient of criminal charges shall include, in 14-point font, the following statement: "The health care worker is presumed innocent until proven guilty of the charges.". The licensed health care worker shall provide a written plan of compliance with the administrative order that is acceptable to the Department within 5 days after receipt of the administrative order. Failure to comply with the administrative order, failure to file a compliance plan, or failure to follow the compliance plan shall subject the health care worker to temporary suspension of his or her professional license until the completion of the criminal proceedings.

(d) Nothing contained in this Section shall act in any way to waive or modify the confidentiality of information provided by the prosecuting attorney to the extent provided by law. Any

information reported or disclosed shall be kept for the confidential use of the Secretary, Department attorneys, the investigative staff and authorized clerical staff and shall be afforded the same status as is provided information under Part 21 of Article VIII of the Code of Civil Procedure, except that the Department may disclose information and documents to (1) a federal, State, or local law enforcement agency pursuant to a subpoena in an ongoing criminal investigation or (2) an appropriate licensing authority of another state or jurisdiction pursuant to an official request made by that authority. Any information and documents disclosed to a federal, State, or local law enforcement agency may be used by that agency only for the investigation and prosecution of a criminal offense. Any information or documents disclosed by the Department to a professional licensing authority of another state or jurisdiction may only be used by that authority for investigations and disciplinary proceedings with regards to a professional license.

(e) Any licensee whose license was revoked or who received an administrative order under this Section shall have the revocation or administrative order vacated and completely removed from the licensee's records and public view and the revocation or administrative order shall be afforded the same status as is provided information under Part 21 of Article VIII of the Code of Civil Procedure if (1) the charges upon which the revocation or administrative order is based are dropped: (2) the licensee is not convicted of the charges upon which the revocation or administrative order is based; or (3) any conviction for

charges upon which the revocation or administrative order was based have been vacated, overturned, or reversed.

(f) Nothing contained in this Section shall prohibit the Department from initiating or maintaining a disciplinary action against a licensee independent from any criminal charges, conviction, or sex offender registration.

(g) The Department may adopt rules necessary to implement this Section. (Source: P.A. 97-156, eff. 8-20-11; 97-484, eff. 9-21-11; 97-873, eff. 7-31-12.)

EXHIBIT B

(Filed July 9, 2002)

8061
Judgment for Change of Name(s) **(Rev. 1/18/01) CCCH 0039**

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

THE PETITION OF	
David Emmanuel Beverly	
_____	No. 02CH12526
_____	
_____	
For Change of Name(s)	

JUDGMENT

This cause having come to be heard upon the petition filed herein, with the Court being fully advised in the premises upon said petition and attached affidavit. The Court is further advised upon Certificate of Publication, identifying that proper notice of the intended application for a change of name(s) was given by publishing notice thereof in:

Law Bulletin

a newspaper of general circulation published in the County wherein said petitioner(s) resides. The Court also recognizes that said publication has been made for three consecutive weeks, the first insertion of which was at least six weeks prior to July 9, 2002, setting forth the return day of this Court at which said petition was to be filed, together with the name(s) sought to be undertaken, and said notice being signed by said petititioner(s).

That all the material facts alleged in said petition are true: that the said petitioner(s) is/are a resident(s) of the State of Illinois and has resided therein continuously for a period of at least six months, that the conditions mentioned and specified in an Act of the General Assembly of the State of Illinois, entitled "Change of Name Act, 735 ILCS 5/21-101" have been complied with: that this Court has jurisdiction of the person(s) and of the subject matter hereof: and that no reason appears why the the prayer(s) in said petition contained should not be granted.

It is therefore ordered, adjudged and decreed that the said petitioner(s)'s name(s) be, and the name(s) is hereby changed

FROM David Emmanuel Beverly

TO Batu Ameer Shakari

by which said last-mentioned name shall be hereafter known and called.

Atty. No.: _____

Name: David Emmanuel Beverly

Atty. for: _____

Address: 328 E. 70th Street

City/Zip: Chicago, IL 60637

Telephone: (773) 483-7186

ENTER:

_____
Judge Judge's No.

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

EXHIBIT C

(This form replaces CCG-40B, 0040, 0601, 0605, 0629, 0630, 0631, 0632, 0633: CCMC-1.363-6055, 6056, CCMC-613, and CCCR-0084, 0039A & B, and CCCR-0606) (Rev. 5/24/04) CCCR 0699

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

People of the State of Illinois
OR
City/Village/Municipality
Cook County
Plaintiff

v

David Beverly
Defendant

Case No. 74c03684
I. R. # _____
S. I. D. #_____

CERTIFIED STATEMENT OF DISPOSITION/CONVICTION

I, DOROTHY BROWN, Clerk of the Circuit Court of Cook County, Illinois, and keeper of the records and the seal thereof, do hereby certify the records of the Circuit Court of Cook County reflect:

(*STRIKE ALL INAPPLICABLE STATEMENTS)

*1. On July 12, 1974, the State's Attorney of Cook County/local prosecutor filed an (information ☐/ complaint ☑) number 74c3698 charging the defendant with the offense(s) of Murder, Att. Murder, Aggravated Battery.

*2. On _____, ____, the duly impaneled Cook County Grand Jury for the month of _____, _____ returned an indictment number _____ charging the above named defendant with the offense(s) of _____.

*3. On July 22, 1974, the above-named defendant, while represented by counsel and fully advised of his/her rights, was arraigned before the Honorable Garippo, Judge of the Circuit Court of Cook County, and entered a plea of (not guilty ☑/ guilty ☐).

*4. A trial by jury (was ☐ was not ☑) waived by the defendant, who was represented by counsel; and defendant was found (not guilty ☐/ guilty ☑).

*5. On December 3, 1975, a hearing was held in the above-captioned case before the Honorable Romiti, Judge of the Circuit Court of Cook County; the Order entered by the Court was: defdndant found guilty of Attempted Murder, sentenced to 10-30 years IDOC, defendant advised of right to appeal.

_____

_____

COURT SEAL

[SEAL]

I hereby certify that the foregoing has been entered of record in the above-captioned case.

DATED: January 15, 2015

/s/ Dorothy Brown

Dorothy Brown,
Clerk of the Circuit Court

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

STATE OF ILLINOIS
DEPARTMENT OF FINANCIAL AND
PROFESSIONAL REGULATION
DIVISION OF PROFESSIONAL REGULATION

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION of the State of Illinois, Complainant, v. BATU A. SHAKARI (License No. 041.253717), Defendant.	)	No. 2015-06455

RESPONSE TO PETITION TO ISSUE PERMANENT REVOCATION ORDER

Respondent, BATU A. SHAKARI, by and through his attorneys, HAY & OLDENBURG, LLC, in response to Complainant's Notice of Intent to Issue Permanent Revocation Order, states as follows:

1. A Notice of Intent to Issue Permanent Revocation Order was issued to Respondent August 17, 2015, advising that the Illinois Department of Financial and Professional Regulation intends to issue an Order permanently revoking his registered professional nurse license pursuant to 20 ILCS 2105/2105-165(a)(3) and 68 Illinois Administrative Code 1130.120. See Petition to Issue Permanent Revocation Order attached as Exhibit "A".

2. Pursuant to the Notice, Respondent has been advised that a written response contesting the Department issuing an Order to permanently revoke his license will be considered if it meets one of four proposed criteria. Respondent argues that this matter should not be considered a disqualifying conviction pursuant to strict interpretation of the Statute as his conviction of a forcible felony in 1975, 40 years ago, occurred before he became a licensed health care worker in the State of Illinois, and was reversed and remanded and a plea was offered in 1979 for time served.

3. Section 2105-165(a)(3) applies when a licensed health care worker is convicted of a forcible felony. In this case, Respondent was not a health care worker at the time of his conviction on December 3, 1975, almost 40 years ago. The conviction was reversed by the Illinois Appellate Court and remanded for a new trial. The State of Illinois offered Respondent a plea of "time considered served" in exchange for a guilty plea which he accepted and was released on two years' probation, completing that probation without any violation. See Group Exhibit "B".

4. Respondent completed the probation related to the criminal matter and then decided to move forward with a nursing education, attending Dawson Skill Center, part of the City Colleges of Chicago, graduating in 1981 with his licensed practical nurse degree. Prior to sitting for the State Board examination and approving licensure in the State of Illinois, Respondent attended a hearing specifically dealing with the past felony conviction. The Illinois Department of Financial

and Professional Regulation authorized Respondent to sit for the Nursing Board examination and approved his LPN license in 1982. The IDFPR renewed Respondent's LPN license from 1982 until 1989. At no time did Respondent have any disciplinary action taken against his LPN license. See attached Group Exhibit "B".

5. Respondent returned to school and attended Olive-Harvey College and received his Associate in Applied Science degree in Nursing. The Illinois Department of Financial and Professional Regulation requested information about the past felony conviction before Respondent was given approval to sit for the State Boards for his RN license. The IDFPR approved the Respondent's request to sit for the license and approved his RN license in 1989. The IDFPR renewed Respondent's RN license from 1989 to the present date. At no time has any disciplinary action been taken against Respondent's RN license. See attached Group Exhibit "C".

6. 20 ILCS 2105/2105-165 was effective July 31, 2012. In March of 2014, Respondent began the process of renewing his RN license on a timely basis and completed all of the necessary paperwork including informing the Department as a part of the renewal process of the past conviction as required by the renewal documents. The IDFPR again requested information with regard to the past felony conviction and after consideration of this information, renewed Respondent's RN license in June of 2014. See attached documents marked as Group Exhibit "D".

7. Respondent has practiced as a nurse in the State of Illinois for 33 years. At no time has he had any disciplinary action taken against his license. The criminal conviction which has triggered the petition at issue here occurred prior to the Respondent becoming a licensed nurse in the State of Illinois. The Illinois Department of Financial and Professional Regulation has held hearings and gathered information with regard to this past felony conviction on multiple occasions including the occasion of approval of sitting for the Nursing Board exam in 1981 and 1989 and in authorizing and licensing the Respondent as a nurse in the State of Illinois beginning in 1981 and then again in 1989. The Illinois Department of Financial and Professional Regulation regularly renewed the Respondent's license to practice nursing in the State of Illinois including June of 2014 subsequent to the enactment of the Statute at issue in this case.

8. The felony at issue in this case does not involve a sexual offense and does not require the Respondent to register under the Sex Offender Registration Act. The felony conviction at issue took place 40 years ago and before the Respondent became a licensed health care worker in the State of Illinois.

9. Respondent legally changed his name from David E. Beverly to Batu A. Shakari on July 9, 2002, electing to change his name to an African name for cultural and spiritual reasons.

10. Respondent has had no prior disciplinary history and has complied with all requirements of the State of Illinois related to the prior conviction. Respondent has had no criminal matters subsequent to the matter for which he entered into a plea agreement after reversal of the original conviction and has rehabilitated himself in his life, pursuing education in the health care profession of nursing, and has worked for over 33 years as a nurse in the State of Illinois without any disciplinary action taken against his license at any time.

11. An Amendment to 20 ILCS 2105/2105-165 has been proposed and is in final stages of approval before the Rules Committee of the Illinois state legislature. The proposed amendments include language to specifically revise the section of the Statute referencing forcible felonies, indicating that if a licensed health care worker has been convicted of a forcible felony, other than a forcible felony requiring registration under the Sex Offender Registration Act or involuntary sexual servitude of a minor, that is a forcible felony, and the health care worker has had his or her license revoked, the health care worker may petition the Department to restore his or her license, so long as conviction occurred more than five years before the date the Petition is filed. The proposed amendment includes a list of factors that are not self-limiting to be considered by the Department in reinstatement of a license. See attached Exhibit "E".

12. Respondent respectfully requests that his license to practice nursing in the State of Illinois not be revoked pursuant to 20 ILCS 2105/2105-165(a)(3).

Respectfully submitted,

/s/ Batu Shakari
Respondent, Batu A. Shakari

Susan Wagener
Hay & Oldenburg, LLC.
221 N. LaSalle Street, Suite 450
(312) 704-8444
ARDC No. 6191446

SW/bpw

VERIFICATION

I, Batu A. Shakari, under penalties of law provided pursuant to 735 ILCS 5/1-109 of the Illinois Code of Civil Procedure, certify that the foregoing responses are true and correct to the best of my knowledge and belief, and that, except where noted in the foregoing responses, the information is complete in accordance with the request to the best of my knowledge and belief.

/s/ Batu Shakari
Batu A. Shakari

Complaint Verified (This form replaces CCMD-8A) **CCM N008-150M-1/21/04 (3335092)**

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Batu A. Shakari
Plaintiff(s)

v.

Jay Stewart, Dir. Illinois Department of Financial and Professional Regulation
Defendant(s)

No. _____
Contract _____
Amount Claimed $ __
Return Date _____

COMPLAINT

(Filed Nov. 12, 2015)

The Plaintiff(s) claim(s) as follows:

1. On September 30, 2015 Plaintiff was the Party of Record whose Professional Registered Nurse License (#041.253717) was permanently revoked by Order of the Illinois Department of Financial & Professional Regulation (IDFPR). This Order was signed by Jay Stewart, Director.

2. Plaintiff requests that the Transcript of Evidence in this Case be filed by IDFPR as part of the record.

3. The Permanent Revocation Order, issued to Plaintiff By IDFPR, states in part: "Whether, pursuant to 20 ILCS 2105/2105-[illegible] 68 Ill. Admin. Code 1130.100, it is hereby ordered that Respondent's license as a Registered Professional Nurse, License No. 041.253717, is hereby permanently

revoked." Plaintiff seeks to have this Honorable Court review this Decision.

I, Batu A. Shakari (Name), certify that I am the _____ (Name of Attorney if applicable) plaintiff in the above entitled action. The allegations in this complaint are true.

Atty. No.: ___ (Pro Se 99500)
Atty. (or Pro Se Plaintiff)
Name: Batu A. Shakari
Address: 15809 Hoyne Ave.
City/State/Zip: Harvey, IL 60426
Telephone: (773) 437-7170

Dated: November 12, 2015

/s/ Batu Shakari
Signature

☑ Under penalties as provided by law pursuant to 735 ILCS 5/1-109 the above signed certifies that the statements set forth herein are true and correct.

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
ORIGINAL – COURT FILE

**IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

BATU SHAKARI, Plaintiff, v. ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION and JAY STEWART, DIRECTOR, DIVISION OF PROFESSIONAL REGULATION, Defendant.	Case No.: 15 CH 16520 HON. FRANKLIN VALDERRAMA Cal. 03

NOTICE OF MOTION

(Filed Jun. 14, 2016)

TO: Illinois Department of Financial
and Professional Regulation, and
Jay Stewart, Director
100 West Randolph Street Ste. 9-300
Chicago, Illinois 60601

On June 27, 2016 at 9:30 a.m., or as soon thereafter as counsel may be heard, I shall appear before the Honorable Judge Franklin Valderrama, or whomever is sitting in Courtroom 2305 of the Richard J. Daley Center, Chicago, Illinois, and shall then and there present **PLAINTIFF'S MOTION FOR COURT PERMISSION TO RE-FILE IDENTICAL PLAINTIFF'S BRIEF IN SUPPORT OF COMPLAINT**

AND WITHDRAW PREVIOUS MOTION TO REQUEST EXTENSION OF 15-PAGE LIMIT, a copy of which is attached hereto.

Respectfully Submitted,

/s/ Batu Shakari

Batu A. Shakari
15809 Hoyne Ave.
Harvey, IL 60426
(773) 437-7170

CERTIFICATE OF SERVICE

The undersigned individual certifies that a copy of the aforementioned document was served upon the above named individual at the above address by U.S. Mail, postage prepaid, on June 14, 2016.

/s/ Batu Shakari

Batu A. Shakari

**IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

BATU SHAKARI, Plaintiff, v. ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION and JAY STEWART, DIRECTOR, DIVISION OF PROFESSIONAL REGULATION, Defendants.	Case No.: 15 CH 16520 HON. FRANKLIN VALDERRAMA Cal. 03

**PLAINTIFF'S BRIEF IN
SUPPORT OF COMPLAINT**

(Filed Jun. 14, 2016)

I. Statement of the Case

The Complaint in this matter involves the September 30, 2015 Permanent Revocation Order issued by the Illinois Department of Financial and Professional Regulation signed by Jay Stewart, Director (Defendants) permanently revoking Plaintiff's RN license pursuant to 20 ILCS 2105/2105-165 and 68 Ill. Admin. Code 1130.100. Plaintiff seeks the reversal of this order, and the restoration of his RN license.

II. Procedural History

This matter comes before the Court by way of a Complaint for judicial review of the final administrative decision made by the Illinois Department of Financial and Professional Regulation (IDFPR) on September 30, 2015 permanently revoking Plaintiff's RN license.

Subsequent to Plaintiff's timely filing of his Complaint on November 12, 2015, Defendant filed a Combined Motion To Dismiss on December 17, 2015. This Court ruled on March 29, 2016 that Defendant's Motion To Dismiss is DENIED for reasons stated on the record.

III. Statement of Facts

In 1975, Plaintiff was convicted of a forcible felony (attempted murder). In 1978, Plaintiff's conviction was reversed and remanded by the Illinois Appellate Court for a new trial. In 1979, the State of Illinois offered Plaintiff a plea bargain of time considered served in exchange for his guilty plea. Plaintiff accepted the plea bargain, and was released from incarceration on May 19, 1979 on parole. Plaintiff was released from parole on May 26, 1981 without any violation.

Subsequent to Plaintiff's release from prison, he began in earnest rebuilding his life by enrolling in a Licensed Practical Nurse (LPN) course with the intent of becoming a LPN. He successfully completed the LPN course, and applied to IDFPR for licensure. After being fully informed of Plaintiff's past felony conviction,

IDFPR issued Plaintiff his LPN license in 1982. Plaintiff subsequently enrolled in a Registered Nurse (RN) course with the intent of becoming a RN. He successfully completed the RN course, and applied to IDFPR for licensure. Again, after being fully informed of Plaintiff's past felony conviction, IDFPR issued Plaintiff his RN license in 1989. Plaintiff practiced as a nurse in the State of Illinois for 33 years, and at no time was any disciplinary action ever taken against his license as a LPN nor RN. Also, at no time during his 33 years of nursing service was Plaintiff ever convicted of any forcible felony or sex crime.

On August 17, 2015, the IDFPR filed a Notice of Intent To Issue Permanent Revocation Order informing Plaintiff of its intent to permanently revoke his RN license pursuant to 20 ILCS 2105/2105-165. Plaintiff responded by filing a timely Response To Petition To Issue Permanent Revocation Order. On September 30, 2015, IDFPR filed a Permanent Revocation Order informing Plaintiff that his RN license had been permanently revoked.

Defendant argues that Plaintiff's RN license should be revoked based solely upon the fact of his forcible felony conviction over 40 years ago, but this contention is neither supported by the plain language of 20 ILCS 2105/2105-165 nor the Supreme Court ruling (*Hayashi*) cited in Defendant's Permanent Revocation Order.

IV. Argument

1. 20 ILCS 2105/2105-165 (THE ACT) CLEARLY STATES THAT IT PERTAINS TO THE ACTIONS OF "LICENSED HEALTH CARE WORKERS" NOT THE ACTIONS OF "UNLICENSED PRIVATE CITIZENS."

The plain language of the Act states in relevant part: "(a) When a licensed health care worker, as defined in the Health Care Worker Self-Referral Act. . . . (3) has been convicted of a forcible felony. . . . the license of the health care worker shall by operation of law be permanently revoked without a hearing." Plaintiff has no felony convictions as "a licensed health care worker." The felony conviction at issue here occurred when Plaintiff was "a unlicensed private citizen."

Defendant argues that since Plaintiff is a licensed health care worker now, then the Act automatically applies to him no matter what he was at the time of the felony conviction. But such a conclusion defies the plain language of the Act by completely ignoring the predicate and subject relationship used in the wording of the Act. According to the rules of English, the term "has been convicted" is a predicate that states, affirms or attests to something about the subject being referenced in the sentence, which in this case is "a licensed health care worker." The relationship of the predicate to the subject stated in the Act does not change simply because the underlying individual is the same. The Act was written to punish "licensed health care workers" who violate its tenets by revoking their licenses, not

"unlicensed private citizens" who have no license to revoke.

2. REVOKING PLAINTIFF'S RN LICENSE PURSUANT TO THE ACT MADE IT CLEARLY AND MANIFESTLY RETROACTIVE, AND THEREFORE GROUNDS FOR THE COURT TO PRESUME THAT THE LEGISLATURE DID NOT INTEND THAT IT BE SO APPLIED.

Applying the Act to Plaintiff's case goes beyond the temporal reach of the Act, thereby making it clearly and manifestly retroactive. In the Supreme Court case used by Defendant to justify its permanent revocation of Plaintiff's RN license, cited as *Hayashi v. Ill. Dept. of Fin. & Prof'l Regulation, 25 N.E.3d. 570, 576 (Ill. 2014)*, it states in relevant part: ". . . . the court must determine whether applying the statute would have a "retroactive" or "retrospective" impact; that is, "whether it would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed." Where there would be no retroactive impact, as defined in *Landgraf*, the court may apply the statute to the parties. However, if applying the statute would have a retroactive impact, then the court must presume that the legislature did not intend that it be so applied. Applying the *Landgraf* test to the Act, we find that the legislature plainly indicated the temporal reach by stating that the license of a health care worker who has been convicted of one of the triggering

offenses shall by operation of law be permanently revoked without a hearing."

As clearly stated above, the temporal reach of the Act applies when "a health care worker" has been convicted of one of the triggering offenses. Plaintiff's felony conviction over 40 years ago not only occurred long before he became licensed as a registered professional nurse, which was issued by Defendant with full knowledge of his past conviction, but the conviction had nothing whatsoever to do with patient care, medical practice or any sexual offense. Consequently, the retroactive impact of applying the Act to Plaintiff is clear: (1) The Act impairs Plaintiff's right to possess licensure today where no such bar existed in 1989 when Defendant issued his RN license; (2) The Act increases Plaintiff's liability for a past felony conviction by revoking his license today where no such liability existed in 1989 barring him from being issued his RN license; and (3) The Act imposes new duties upon Plaintiff relative to his qualification for licensure even though Plaintiff had already completed the transaction of receiving his RN license.

Defendant was clearly aware of the court's ruling on the issue of retroactive impact as proven by *Hayashi* being cited in Defendant's Permanent Revocation Order, yet this issue was completely ignored in revoking Plaintiffs RN license. The Illinois Legislature is the body that passed the Act and made it law, but it gave the Defendant the power and duty to apply the Act fairly and impartially. Defendant clearly failed to do this in revoking Plaintiff's RN license.

3. DEFENDANT HAS SHOWN NO RATIONAL BASIS FOR REVOKING PLAINTIFF'S RN LICENSE RELATIVE TO THE PUBLIC INTEREST IT CLAIMS TO BE PROTECTING BY APPLYING THE ACT TO PLAINTIFF, THEREFORE THE REVOCATION CONSTITUTES A SUBSTANTIVE DUE PROCESS VIOLATION.

Applying the Act to Plaintiff clearly fails the rational basis test upon examination of Plaintiff's 33 years of "protecting the public health, safety and welfare" by administering to the healthcare needs of the citizens of Illinois. According to *Hayashi*, it states in relevant part: "While this court has held that "a license to practice medicine is a 'property right' within the meaning of the constitutional guarantees of due process of law", this simply means that proceedings to revoke medical licenses must comply with procedural due process guarantees. The right to pursue a profession is not a fundamental right for substantive due process purposes, however, and legislation infringing upon that right need only be examined using the rational basis test. In applying the rational basis test, we must identify the public interest that the statute was intended to protect, determine whether the statute bears a reasonable relationship to that interest, and verify whether the means chosen to protect that interest are reasonable."

Plaintiff has been a practicing nurse in the State of Illinois for 33 years "protecting the public health, safety and welfare" of its citizenry by delivering quality patient care. Never, throughout his 33 years of

nursing practice, has he ever had any disciplinary action taken against his LPN license nor RN license, nor has he been convicted of any felony or sex crime. Applying "the rational basis test" to the issue of revoking Plaintiff's RN license, it becomes clear that Defendant had no rational basis for doing so. The stated purpose of the Act is to protect the public health, safety and welfare; and this is work that the Plaintiff has been doing for 33 years without blemish. The Act bears no reasonable relationship to fulfilling its protection purpose when applied to Plaintiff because not only has the Plaintiff demonstrated over the course of 33 years a consistent commitment to protecting the health, safety and welfare of the public to whom he has given professional nursing care with distinction, but the felony conviction at issue occurred long before he became a licensed health care worker. The means chosen by Defendant to protect the public interest by revoking Plaintiffs RN license is clearly unreasonable, because there is no rational relationship between Plaintiff's non-nursing related felony conviction over 40 years ago as a unlicensed private citizen / protecting the public from Plaintiff as a health care worker who has served the public with distinction for 33 years with no felony or sex convictions as a health care worker / and then revoking Plaintiff's health care license in the name of protecting the public from Plaintiff after he has served the public for 33 years with Defendant's full permission and renewed licensure throughout his entire tenure as both a licensed practical nurse as well as a registered professional nurse.

Clearly, a substantive due process violation has occurred relative to Defendant's permanent revocation of Plaintiff's RN license pursuant to the Act, because it was not rationally related to the goal of protecting the public health, safety and welfare.

4. THE PURPOSE OF THE ACT IS CLEARLY DIRECTED TOWARDS REVOKING THE LICENSE OF HEALTH CARE WORKERS WHO COMMIT CRIMINAL OFFENSES AGAINST THEIR PATIENTS OR REQUIRE REGISTRATION UNDER THE SEX OFFENDER REGISTRATION ACT, NEITHER OF WHICH APPLIES TO PLAINTIFF.

Plaintiff has never committed nor been convicted of any criminal act against any patient, nor has he ever been registered as a sex offender. In *Hayashi*, it states in relevant part: "The public interest underlying the Act is the protection of the public's health, safety, and welfare. . . ." Also, "Accordingly, we find that the Act, which bars health care workers previously convicted of certain criminal offenses involving their patients from practicing their professions, bears a reasonable relationship to the legitimate state interest of regulating the medical profession for the protection of the public." Also, "Section 2105-165 imposes mandatory revocation of heath care licenses on plaintiffs based on their convictions of certain criminal offenses during the course of patient care or treatment." Also, "Effective August 20, 2011, the Act mandates the permanent revocation, without a hearing, of the license of a health care worker who has been convicted of certain criminal offenses, including criminal battery against any patient

in the course of patient care or treatment and any criminal offense which requires registration under the Sex Offender Registration Act. The purpose of the Act was to protect the health, safety, and welfare of the public by ensuring that individuals convicted of certain sex offenses would no longer be eligible to practice medicine in Illinois."

Both the Act and the case law cited by the Defendant (*Hayashi*) repeatedly underscore that license revocation is predicated upon "a licensed health care worker" being convicted of a criminal or sexual offense against a patient, or them having to register as a sex offender. Plaintiff's felony conviction over 40 years ago had nothing whatsoever to do with any patient under his care, because he was "a unlicensed private citizen" when the conviction occurred. Plaintiff has never been registered as a sex offender at anytime in his life. The purpose of the Act is clearly not being served by revoking Plaintiff's RN license, and this fact is magnified when his 33 years of nursing practice in Illinois without any disciplinary action ever being taken against his license is factored into the equation.

5. DEFENDANT'S DECISION TO PERMANENTLY REVOKE PLAINTIFF'S RN LICENSE WAS CLEARLY BASED UPON AN ERRONEOUS MISREADING OF BOTH THE ACT AND THE HAYASHI RULING, AND THEREFORE IT SHOULD BE REVERSED DUE TO ITS FAULTY APPLICATION TO THIS CASE.

Defendant has erroneously concluded that license revocation applies equally, automatically and universally

to "licensed health care workers" and "unlicensed private citizens" without any difference; despite the fact that the plain language of both the Act and *Hayashi* states otherwise. In Defendant's Permanent Revocation Order, it states in relevant part: "The Act is not limited to convictions that occur when a person is a licensed health care worker. In fact, it would be absurd to consider that only convictions that occur to an individual while licensed as a health care worker are subject to permanent revocation. That would be contrary to the intent of the statute, ..."

Contrary to Defendant's assertion stated above, the Act is most certainly, and by legal necessity, limited to felony convictions that occur when a person is "a licensed health care worker", because the Act has no applicability to "a unlicensed private citizen" who has no license for the Act to revoke.

But even if the plain language of both the Act and *Hayashi* are ignored relative to its stated purpose of applying to "licensed health care workers", and "unlicensed private citizens" are judged to be culpable to the Act as well, it would only be when "a unlicensed private citizen" decided to enter into the health care field that the issue of his or her felony conviction would become a factor that impacts their professional lives relative to the Act. Hence, license revocation under the Act would only be possible when one chooses to become "a licensed health care worker." However, due to the fact that Plaintiff chose to become "a licensed health care worker" in 1981, which was 30 years before the Act came into existence, and therefore 30 years before

his conviction became a bar to him receiving licensure under the Act, such an application of the Act cannot be done without being clearly and manifestly retroactive (see Argument #2).

When Plaintiff decided to enter into the health care field, and applied for his LPN license in 1981 and his RN license in 1989, both were granted by the Defendant with full knowledge of Plaintiff's felony conviction history. The felony conviction at issue occurred over 40 years ago in 1975 when Plaintiff was "a unlicensed private citizen." Now, after 33 years of working in the nursing profession with no disciplinary actions ever taken against his license, nor any felony or sex convictions, Defendant has used an Act that was passed by the Illinois Legislature in 2011 to permanently revoke Plaintiff's RN license based solely upon Plaintiffs felony conviction over 40 years ago as "a unlicensed private citizen." In *Hayashi*, the Supreme Court has ruled that such an action can only be justified if it: (1) applies to "a licensed health care worker", (2) has "no retroactive impact", and (3) passes "the rational basis test." By all 3 of these measures the Act shows no justifiable applicability to Plaintiff.

Plaintiff's felony conviction over 40 years ago in 1975 occurred when he was "a unlicensed private citizen." The Act states in relevant part: "When a licensed health care worker, as defined in the Health Care Self-Referral Act. . . . (3) has been convicted of a forcible felony. . . . the license of the health care worker shall by operation of law be permanently revoked without a hearing." Also, The Health Care Worker Self-Referral

Act (225 ILCS 47/15) states in relevant part: "(d) "Health care worker" means any individual licensed under the laws of this State to provide health services. . . ."

In 1975, Plaintiff was not an "individual licensed under the laws of this State to provide health services" to anyone. In 2015, when Defendant permanently revoked Plaintiff's RN license he was certainly "a licensed health care worker", but he had no felony convictions since becoming one; no felony nor sex convictions of any kind. This action on the part of Defendant defies the plain language of the Act, because Plaintiff has no felony conviction as "a licensed health care worker" upon which to base its application.

In Defendant's Permanent Revocation Order, it states in relevant part: ". . . . in the application process the Department refuses to issue health care licenses to individuals who have been convicted of offenses under 20 ILCS 2105/2105-165. This happens before the individual is licensed as a health care worker and the Department still permanently denies the license for convictions under the Act, even when the conviction occurred prior to the licensure. Additionally, the timing of the conviction is irrelevant pursuant to the Illinois Supreme Court, *Hayashi*, 25 N.E.3d at 576." Defendant's argument here is clearly erroneous, because Plaintiff's felony conviction over 40 years ago occurred 36 years before 20 ILCS 2105/2105-165 even existed, and therefore applying the Act to Plaintiff raises the issue of its retroactive impact. Defendant's statement of what the Department does today under the Act does not exempt Defendant from showing just cause for

applying it in Plaintiff's case for a conviction that occurred 36 years before the Act came into existence, and before Plaintiff became a licensed health care worker. Also, Defendant's use of *Hayashi* to justify making the claim that "the timing of the conviction is irrelevant" is both misleading and without merit.

In Defendant's Permanent Revocation Order, the following citation from *Hayashi* is stated to support the claim that the time of Plaintiff's felony conviction is irrelevant: ". . . . the plain language clearly indicates the legislative intent to subject persons to the Act without regard to the date of their convictions." However, when the entire paragraph from which this sentence comes is read, it becomes clear that the "persons" being referred to is "licensed health care workers." When applying the Act to Plaintiff the issue of "the timing of the conviction" is crucial, because Plaintiff's felony conviction occurred at a time when Plaintiff was "a unlicensed private citizen" not "a licensed health care worker." And, as has been stated previously, the plain language of the Act relative to license revocation states that it applies to "licensed health care workers" not "unlicensed private citizens" who have no license to revoke.

Defendant permanently revoked Plaintiff's RN license under the Act without showing any regard for its retroactive impact nor determining if there was any rational basis for doing so, even though both the retroactive impact and lack of rational basis is clear (see Arguments #2 and #3). And this was done in violation of their legislative mandate to be fair and impartial.

6. DEFENDANT FAILED TO EXERCISE ITS LEGALLY MANDATED POWERS AND DUTIES TO BE FAIR. AND IMPARTIAL IN EXAMINING PLAINTIFF TO EXERCISE HIS PROFESSION, AND THEREFORE ITS REVOCATION ORDER SHOULD BE REVERSED.

Defendant failed to be fair and impartial, in accordance with the powers and duties mandated by the Illinois Legislature, in examining the Plaintiff's qualification to exercise his profession as a registered professional nurse. According to Department of Professional Regulation Law (20 ILCS 2105/2105-15), it states in relevant part: "The Department has, subject to the provisions of the Civil Administrative Code of Illinois, the following powers and duties. . . . (2) To prescribe rules and regulations for a fair and wholly impartial method of examination of candidates to exercise the respective professions, trades, or occupations."

The revocation process used by Defendant was a method of examination of Plaintiff to determine if he could exercise his profession as a registered professional nurse, and it was clearly neither fair nor impartial. In Defendant's Notice of Intent To Issue Permanent Revocation Order, it states in relevant part: "You are hereby notified that you have twenty (20) days from the date this Notice is mailed to present to this Department a written response contesting the Department issuing an order to permanently revoke your license. Your response will be considered only for the following reasons:. . . . 2) the conviction has been vacated, overturned, reversed, expunged, or a pardon has

been granted; 3) the conviction is not a disqualifying conviction; . . . ." In Plaintiff's Response To Petition To Issue Permanent Revocation Order, it states in relevant part: "Respondent argues that this matter should not be considered a disqualifying conviction pursuant to strict interpretation of the Statute as his conviction of a forcible felony in 1975, 40 years ago, occurred before he became a licensed health care worker in the State of Illinois, and was reversed and remanded, and a plea was offered in 1979 for time served. Section 2105-165(a)(3) applies when a licensed health care worker is convicted of a forcible felony. In this case, Respondent was not a health care worker at the time of his conviction on December 3, 1975, almost 40 years ago. The conviction was reversed by the Illinois Appellate Court and remanded for a new trial. The State of Illinois offered Respondent a plea of "time considered served" in exchange for a guilty plea, which he accepted and was released on two years probation, completing that probation without any violation." Despite Plaintiff's response, Defendant permanently revoked Plaintiff's RN license.

The circumstances of Plaintiff's case, relative to applying the Act to him, clearly showed some serious contraindications to its application such as: (1) the Plaintiff's lack of being a licensed health care worker at the time of his felony conviction over 40 years ago, (2) the retroactive impact of applying the Act to Plaintiff after Defendant's consistent renewal of his RN license over the course of 33 years, and (3) the lack of a rational basis for applying the Act to Plaintiff whose

33 years of nursing service served to promote and protect the health, safety and welfare of the public. All of these issues are delineated in *Hayashi*, which Defendant was clearly familiar with as evidenced by its use in support of the order permanently revoking Plaintiff's RN license. Yet, despite being familiar with the *Hayashi* ruling, Defendant completely ignored these 3 issues as well as the legislative mandate to be fair and impartial in carrying out its examination function, and permanently revoked Plaintiff's RN license anyway.

The determination to revoke Plaintiff's RN license was made by Defendant, and not by any automatic dictatorial decree of the Act. In 68 Ill. Admin. Code 1130.110, it states in relevant part: "a) Upon determination that the license of a licensed health care worker is subject to permanent revocation pursuant to Section 2105-165(a) of the Code, the Director shall cause a Notice of Intent to Issue Permanent Revocation Order to be served on the licensee by registered mail at the licensee's address of record." By making the determination to revoke Plaintiff's RN license, Defendant must be held liable for failing to be fair and impartial in accordance with Department of Professional Regulation Law (20 ILCS 2105/2105-15).

The revocation documents filed against the Plaintiff by Defendant confirm Defendant's familiarity with the plain language of both the Act and *Hayashi* rulings, and the multiple issues that contraindicate applying the Act to Plaintiff's case. Yet, instead of being fair and impartial in making the determination to apply the Act to Plaintiff, the Defendant chose to apply

the Act to Plaintiff based solely upon his felony conviction over 40 years ago as "a unlicensed private citizen" with no regard for any other considerations. Such action demonstrates Defendant's lack of fairness and impartiality as mandated by its own governing law, and therefore the revocation of Plaintiff's RN license should be reversed.

7. DEFENDANT'S APPLICATION OF THE ACT TO PLAINTIFF'S CASE VIOLATES ITS PREVIOUS JUDGMENT 33 YEARS AGO, BECAUSE UNDER SECTION 15 OF THE ILLINOIS NURSING ACT PLAINTIFF'S FELONY CONVICTION WAS PREVIOUSLY SCRUTINIZED BY DEFENDANT AND FOUND NOT TO BE A BAR TO HIM POSSESSING LICENSURE, AND THEREFORE ITS REVOCATION ORDER SHOULD BE REVERSED.

Defendant has violated its previous decision to approve Plaintiffs licensure in 1981 by applying the Act to Plaintiff in 2015, because under the Illinois Nursing Act the issue of Plaintiff's felony conviction was previously reviewed and scrutinized by Defendant and found not to be a bar to him possessing licensure. On page #50 of Defendant's Answer To Complaint In Administrative Review is a letter addressed to Plaintiff from Defendant dated October 22, 1981 which states in relevant part: "Section 15 of the Illinois Nursing Act provides that this Department may refuse to issue a license upon proof that the person has been convicted of a felony, if the person has not offered proof of sufficient rehabilitation to warrant the public trust.

Because of the nature of your previous criminal conviction, it will be necessary for you to meet with the Committee of Nurse Examiners before you can become eligible for licensure as a licensed practical nurse in Illinois. The Committee of Nurse Examiners will have for their review your entire applicant file, including letters of reference already submitted. They will be interviewing you relative to the circumstances surrounding your conviction, your activities since the conviction, future goals, job opportunities, etc." Also, on page #36 of this same document is a letter addressed to Plaintiff from Defendant dated December 16, 1981 which states in relevant part: "At the November 5-6, 1981 meeting of the Committee of Nurse Examiners, you appeared before the Committee to explain the situation surrounding your criminal conviction. The Committee recommended that your application for examination be approved and that a license be issued pending successful completion of the licensure examination. The Department accepted the recommendation of the Committee." Also, on page #34 of this same document is a letter addressed to Plaintiff from Defendant's contracted company Continental Testing Services, Inc. dated May 18, 1989 which states in relevant part "Continental Testing Services, Inc. has received and approved your application for the Registered Nurse examination, ..."

All of the communications cited above from Defendant to Plaintiff confirm that Defendant was fully informed of Plaintiff's past felony conviction and scrutinized it prior to issuing both his LPN and RN

licenses. Therefore, for Defendant to return to this same issue 33 years later, and use it to justify revoking Plaintiff's RN license today, is clearly a violation of its previous judgment on the issue of Plaintiff's past felony conviction, and is grounds for Defendant's revocation order to be reversed.

V. Request For Relief

Plaintiff seeks as relief: (1) Defendant's order to permanently revoke Plaintiff's RN license be reversed, and (2) Plaintiff's RN license be restored and returned to him.

Respectfully Submitted,

/s/ Batu Shakari

Batu A. Shakari
15809 Hoyne Ave.
Harvey, IL 060426
(773) 437-7170

Table of Citations and Case Law

20 ILCS 2105/2105-165 (the Act)

68 Ill. Admin. Code 1130.100

Hayashi v. Ill. Dept. of Fin. & Prof'l Regulation, 25 N.E.3d 570, 576 (Ill. 2014)

The Health Care Worker Self-Referral Act (225 ILCS 47/15)

Department of Professional Regulation Law (20 ILCS 2105/2105-15)

**IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

BATU SHAKARI Plaintiff, v. ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION and JAY STEWART, DIRECTOR, DIVISION OF PROFESSIONAL REGULATION, Defendant.	Case No.: 15 CH 16520 HON. FRANKLIN VALDERRAMA Cal. 03

NOTICE OF MOTION

(Filed Jun. 28, 2016)

TO: Illinois Department of Financial
and Professional Regulation and
Jay Stewart, Director
ATTN: Daniel Waltz
100 W. Randolph Street 13th Floor
Chicago, IL 60601

On **July 6, 2016 at 9:30 a.m**., or as soon thereafter as counsel may be heard, I shall appear before the Honorable Judge Franklin Valderrama, or whomever is sitting in his **Courtroom 2305** of the Richard J. Daley Center, Chicago, Illinois, and shall then and there present **PLAINTIFF'S MOTION FOR COURT PERMISSION TO SUPPLEMENT THE RECORD**

WITH PERTINENT REFERENCED DOCUMENT IN THIS CASE, a copy of which is attached hereto.

Respectfully Submitted,

/s/ Batu Shakari

Batu A. Shakari
15809 Hoyne Ave.
Harvey, IL 60426
(773) 437-7170

CERTIFICATE OF SERVICE

The undersigned individual certifies that a copy of the aforementioned document was served upon the above named individual at the above address by U.S. Mail, postage prepaid, on June 28, 2016.

/s/ Batu Shakari

Batu A. Shakari

**IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

BATU SHAKARI, Plaintiff, v. ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION and JAY STEWART, DIRECTOR, DIVISION OF PROFESSIONAL REGULATION, Defendant.	)	Case No.: 15 CH 16520 HON. FRANKLIN VALDERRAMA Cal. 03

PLAINTIFF'S MOTION FOR COURT PERMISSION TO SUPPLEMENT THE RECORD WITH PERTINENT REFERENCED DOCUMENT IN THIS CASE

(Filed Jun. 28, 2016)

Plaintiff requests of this Honorable Court that he be allowed to place into the record his 2014 RN License Renewal Application. This document is referenced in Defendant's Answer To Complaint In Administrative Review on pages # 17 and # 102, but the document itself is not included in the record submitted by Defendant. This document is pertinent to the license revocation issue before this court, and therefore should be

included in the record, and not simply referenced without the court being fully aware of its contents.

Respectfully Submitted,

/s/ Batu Shakari

Batu A. Shakari
15809 Hoyne Ave.
Harvey, IL 60426
(773) 437-7170

EXHIBIT A

[LOGO] FIRSTView
Imaging Archival and
Retrieval Section
[LOGO] [Illegible]

Folder Name: [illegible]
Batch Number: [illegible] Image
Group No. [illegible]
Batch Scan Type [illegible]

Image Zoom View
<Back

Front

License [illegible] [illegible] for:
REGISTERED NURSE

Department of Financial and
Professional Regulation
Division of Professional Regulation
Post Office Box 7066
Springfield, IL 62791-7066

BATU SHAKARI
[redacted]
CHICAGO, IL 60426

	[Illegible] Please PRINT any [illegible] that others [illegible]. Change of [illegible] must be accompanied by documentary proof. Registered Nurse License Name and Address BATU A. SHAKARI CHICAGO, IL [illegible] Name Batu A. Shakari [redacted] [illegible] [Illegible] State IL Zip Code 60426

PAYMENT OPTIONS (Fees are NOT Refundable)

CREDIT CARD: Renew your quickly and easily with a credit card via internet. Logon to [illegible] and click on "[illegible] License Renewals". You may not [illegible] with a credit cared if you are renewing after the expiration date, changing your name or requesting a waiver of CR requirements. Licenses renewed by credit card are processed and [illegible] within one week. PLEASE DO NOT MAIL THE APPLICATION IF YOU RENEW BY CREDIT CARD

CHECK/MONEY ORDER: Mail the upper portion of this [illegible] form along with the [illegible] in the envelope provided. Only checks and money orders, payable to the DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION, will be accepted. Only checks drawn on United States Banks within the Federal Reserve are accepted. [illegible]

renewals typically require three to four weeks to process. DO NOT SEND CASH. [illegible] of a STOP PAYMENT on a check [illegible] is a $[illegible] fine.

E-BATCH RENEWAL: Ask your employer if they are participating in the E-Batch program. With E-batch, you submit your renewal there and [illegible] to your employer. [Illegible] [illegible] [illegible] of the rest.

[Illegible]

[LOGO] FIRSTView Imaging Archival and Retrieval Section [LOGO] [Illegible]	Folder Name:	[illegible]	
	Batch Number:	[illegible]	Image
	Group No.	[illegible]	
	Batch Scan Type	[illegible]	

Image Zoom View

<Back

Front of Stub

PART A: PERSONAL HISTORY QUESTIONS: You must respond to ALL of the following questions in order to renew your license. Failure to answer ALL of these questions will result in the form(s) being returned to you for proper completion.

___Yes ✓ No Are you currently charged with or have you been convicted of a criminal act that requires regulation under the Sex Offender Registration Act?

___ Yes ✓ No Are you currently charged with or have you been convicted of a criminal battery against any patient in the course of patient care or treatment, including any offense based on sexual conduct or sexual penetration?

___ Yes ✓ No Are you required, as part of a criminal sentence, to register under the Sex Offender Registration Act?

✓ Yes ___ No Are you currently charged with or have you been convicted of a forcible felony?

Stub Information

Account Number
6049
Received Date
06/04/2014
Adjusted Amount
$60.00
Due Amount:
$60.00
Paid Amount
$0.00
Applied Amount
$60.00

[Illegible]

[Illegible]Fold Here[Illegible]

License Number: [Illegible] FIN Number: [Illegible]

PART B: Check one of the following:

✓ [Illegible] [Illegible] [Illegible] with the Continuing Education requirement of 30 hours for the renewal of any license.

___ I am requesting a [Illegible] of my Continuing Education requirements. (See attached [Illegible]).
Have you previously been granted a [Illegible].
____ Yes ____No
If yes, when____ (Year)

___ I wish to place my license on INACTIVE STATUS. No FEE IS REQUIRED TO DO INACTIVE PRIOR TO [Illegible].
After [Illegible], you must submit [Illegible] plus proof of [Illegible] to go [Illegible].

PART C: Check the appropriate statement below:
Are you more than 30 days delinquent in complying with a child support order?
[Illegible] if you are not subject to a child support order, [illegible]?
✓ No ___Yes

For [illegible] [illegible]4: $40.00 After [illegible]: $60.00

PART D:
APPLICATION NOT [illegible] AND/OR INCOMPLETE WILL BE RETURNED.
I understand that if I provide [illegible] [illegible] Information I could lose my license, [illegible] [illegible] [illegible] [illegible] other [illegible] [illegible]. I also understand the FEES ARE NOT REFUNDABLE.

Therefore, I declare that I have [illegible] this form and, to the best of my knowledge, all statements are true, correct and complete.

SIGNATURE [redacted]

SOCIAL SECURITY NUMBER [redacted]

DAYTIME PHONE NUMBER: [redacted]

My signature above [illegible] the Department of Financial and Professional Regulation to [illegible] [illegible] the [illegible] of the [illegible] if the [illegible] submitted is not correct. I understand this will be done only if the [illegible] submitted is [illegible] than the [illegible] [illegible], but in no [illegible] shall [illegible] [illegible] to [illegible] in an amount greater than $30.

04125371700000006000V00000800T

[Illegible]Fold Here[Illegible]

LICENSE RENEWAL INSTRUCTIONS

1. You must answer ALL questions in PART A. Failure to answer ALL questions in PART A will result in your renewal being returned to you for proper completion.

2. [Illegible] now requires you to respond to the questions [Illegible] in Part B regarding compliance with the [Illegible] [Illegible] requirements. If you are [Illegible] [Illegible] [Illegible] [Illegible] the [Illegible] does, you are required to submit photocopies of your [Illegible] [Illegible] [Illegible] [Illegible] as proof of compliance.

3. Check statement in Part B if you want to place your license in inactive status. Your license will be placed on "inactive status" immediately upon processing of your request. You are prohibited from practicing during the time your license is inactive.

4. Illinois law requires you to respond to the Child Support question in Part C. Licensees required to pay child support [Illegible] [Illegible] on this [Illegible] [Illegible] to [Illegible] [Illegible] more than 30 days delinquent in [Illegible] with a child support order. If you are not subject to a child support order, answer "No."

5. Make any name or address changes on the reverse side of this form. [Illegible] changes must be accompanied by [Illegible] of [Illegible] of the following: marriage certificate, divorce decree, court order, etc. IF A NAME CHANGE IS REQUESTED, YOU CANNOT RENEW BY CREDIT CARD.

6. You must sign the application in the space provided and include your Social Security Number in Part D.

Failure to follow [Illegible] [Illegible] [Illegible] in your [Illegible] [Illegible] [Illegible] [Illegible]. [Illegible] after the expiration of your decree shall constitute [Illegible] practices which would result in [Illegible] [Illegible] and [Illegible] of your [Illegible].

OTHER STUB INFORMATION

HEADER NAME	HEADER 1	HEADER 2	HEADER 3	HEADER 4
02085498				

HEADER 5	BATCH SCAN TYPE	STUB ACCOUNT NUMBER	ADJUSTED AMOUNT
02085498	Application	6049	$ 60.00

DUE AMOUNT	PAID AMOUNT	RECEIVED DATE	REJECT CODE
$ 60.00	0.0000	06/04/2014	N

REJECT REASON	BATCH NUMBER	TRN	CHECK AMOUNT
	00001853	1	$ 60.00

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, CHANCERY DIVISION

BATU SHAKARI Plaintiff, v. ILLINOIS DEPARTMNET OF FINANCIAL AND PROFESSIONAL REGULATION, and JAY STEWART in his official capacity as DIRECTOR of the DIVISION OF PROFESSIONAL REGULATION, Defendant.	Case No.: 15 CH 16520 HON. FRANKLIN VALDERAMMA Cal. 03

NOTICE OF FILING

(Filed Jul. 12, 2016)

TO: Batu Shakari
15809 Hoyne Ave.
Harvey, Illinois 60426

PLEASE TAKE NOTICE that on July 12, 2016 the attached **RESPONSE IN SUPPORT OF PLAINTIFF'S BRIEF IN SUPPORT OF COMPLAINT**, on behalf of the Defendants, the ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION and JAY STEWART in his official capacity as DIRECTOR OF THE DIVISION OF PROFESSIONAL REGULATION, was filed with the Clerk of the Circuit Court of Cook County, Illinois, County

Department, Chancery Division, at the Richard J. Daley Center, Chicago, Illinois 60602.

Respectfully Submitted,
/s/ Daniel R. Waltz

LISA MADIGAN, #99000
Attorney General
of Illinois

Daniel R. Waltz
Office of the Illinois Attorney General
100 W. Randolph Street,
13th Floor
Chicago, Illinois 60601
(312) 814-7201
DWaltz@atg.state.il.us

CERTIFICATE OF SERVICE

The undersigned attorney certifies that a copy of this Notice was served upon the above named individual(s) by email and at the above address and by U. S. Mail, postage prepaid, by way of the U.S. Postal Box located at 100 W. Randolph Street, before 5:00pm on July 12, 2016.

/s/Daniel R. Waltz

**IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

BATU SHAKARI Plaintiff, v. ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION, and JAY STEWART in his official capacity as DIRECTOR of the DIVISION OF PROFESSIONAL REGULATION, Defendant.	Case No.: 15 CH 16520 HON. FRANKLIN VALDERAMMA Cal. 03

**DEFENDANTS' BRIEF IN
RESPONSE TO PLAINTIFF'S COMPLAINT**

(Filed Jul. 12, 2016)

Defendants, the Illinois Department of Financial and Professional Regulation ("IDFPR"), and JAY STEWART in his official capacity as Director of IDFPR Division of Professional Regulation (hereinafter collectively referred to as the "Department"), by their attorney, LISA MADIGAN, Illinois Attorney General, submit the following Brief in Response to Plaintiff's Brief in Support of Complaint, and respectfully request that this Court affirm the Department's final decision.

INTRODUCTION

Plaintiff lacks judicial recourse in challenging 20 ILCS 2105/2105-165 ("the Act"). The Act clearly and unambiguously states that the Department **must** revoke Plaintiff's nursing license because of his attempted murder conviction, a "forcible felony" under the Act. The Act demands revocation of Plaintiff's license and makes no exception to a forcible felony conviction occurring before Plaintiff's licensure or outside of the patient context. Revoking Plaintiff's nursing license, under the Act, bears rational relation to protecting the public, as well as ensuring good moral character among, and protection of, the health care profession. The Department lacks discretion under the Act, and must revoke Plaintiff's nursing license. Therefore, the Department asks this Court to uphold the revocation of Plaintiff's nursing license.

STATEMENT OF FACTS

After the appellate court reversed and remanded his conviction, Plaintiff, formerly known as David E. Beverly, pled guilty to attempted murder on May 14, 1979. (R. 8). Thereafter, the Department granted Plaintiff a Licensed Practical Nurse (LPN) license in 1982 (R. 16) and a registered nurse license in 1989. (R. 17). In 2011, the state legislature passed the Act, which provides that "[w]hen a licensed health care worker, as defined in the Health Care Worker Self-Referral Act . . . (3) has been convicted of a forcible felony . . . then, notwithstanding any other provision of law to the

contrary, the license of the health care worker shall by operation of law be permanently revoked without a hearing." 20 ILCS 2105/2105-165. The Illinois Administrative Code lists attempted murder as a "forcible felony." 68 Ill. Admin. Code § 1130.120.

In compliance with the Act, the Department filed a Notice of Intent to Issue Permanent Revocation Order on August 17, 2015. (R. 1). The Department served Plaintiff with the Notice of Intent to Issue Permanent Revocation Order on September 5, 2015. (R. 5). Plaintiff submitted a response to the Notice of Intent to Issue Permanent Revocation Order, and argued that the Act was not applicable to him because his conviction, at one point, was reversed and remanded by the Illinois Appellate Court. (R. 15). The Department entered a Permanent Revocation Order on September 30, 2015. (R. 8).

On November 20, 2015, Plaintiff filed his Complaint with the Clerk of the Circuit Court of Cook County. The Department filed a 2-619.1 Combined Motion to Dismiss on December 17, 2015, which the Court denied on March 29, 2016.

ARGUMENT

I. According to *Hayashi*, The "Has Been Convicted" Language of 20 ILCS 2105/2105-165 Clearly And Unambiguously Applies to the Revocation Of Plaintiff's Nursing License

Plaintiff misconstrues *Hayashi v. Ill. Dept. of Fin. & Prof'l Regulation*, 2014 IL 116023, which unequivocally

holds that "the plain language [of the Act] clearly indicates the legislative intent to subject persons to the Act without regard to the date of their convictions."[1] *Id.* at ¶ 17. Despite this clear holding, Plaintiff still argues, in contravention of *stare decisis*, that the Act is inapplicable to him because "Plaintiff has no felony convictions as 'a licensed health care worker' and "[t]he felony conviction at issue here occurred when Plaintiff was 'a [sic] unlicensed private citizen.' " (Pl. Br. 3). Without citing to any authority, Plaintiff attempts to buttress this contention on the "has been convicted" language in the Act, in which he erroneously states that "[t]he relationship of the predicate to the subject stated in the Act does not change simply because the underlying individual is the same." (*Id.*). In making this argument, Plaintiff argues a self-contrived distinction, found nowhere in the Act or the Health Care Worker Self-Referral Act, 225 ILCS 47/15, between "licensed health care workers" and "unlicensed private citizens." (Pl. Br. 3, 4, 11, 12).

The *Hayashi* Court directly addressed Plaintiff's contention and held, " '[H]as been convicted,' as used in the Act, thus refers to health care workers who hold

---

[1] Plaintiff quotes this language and wrongly states, "[W]hen the entire paragraph from which this sentence comes is read, it becomes clear that the 'persons' being referred to is 'licensed health care workers.' " (Pl. Br. 12). In fact, the paragraph from which the aforementioned statement is read makes no such reference to an offense having to be committed while a health care worker is licensed and broadly states that the Act "refer[s] to *individuals* convicted of certain offenses before or after the Act's *effective date*." *Hayashi*, 25 N.E.3d at 577 (emphasis added).

the status of having been convicted of a particular offense, *no matter when that status was obtained.*" *Hayashi*, 2014 IL 116023, ¶ 17 (emphasis added). The *Hayashi* Court reasoned that "[t]he phrase, 'has been convicted,' in reference to three of the four triggering offenses [including forcible felony] in subsection 2105-165(a), is in the present perfect tense. The present perfect tense is 'a verb form used to denote action beginning in the past and continuing to the present.'" *Id.* (quoting *In re Gwynee P.*, 215 Ill.2d 340, 357-58 (2005) (citing *Williams v. Augusta County School Board*, 445 S.E.2d 118, 120-21 (1994))).

The legislature's use of "has been convicted" language in the present perfect tense is, by no means, a slip of the pen. There is no disputing the legislature's consciously broad reach of the statute. The *Hayashi* Court thoroughly addressed this point when it wrote:

> Had the General Assembly intended to limit the Act's reach only to convictions occurring after August 20, 2011, it would have made that intent explicit. For example, the Act could have stated that a licensed health care worker who 'is convicted' of a particular crime is subject to mandatory revocation of his or her license. Alternatively, the Act could have included limiting language to indicate that only convictions after a certain date would expose workers to revocation of their licenses.

Hayashi, 2014 IL 116023, ¶ 18. Therefore, all that is required for subpart (a) of the Act to reach Plaintiff, based upon the clear and unambiguous language of the

statute, is: 1) possession of a health care worker license; and 2) a conviction for an offense enumerated in the statute, including a "forcible felony". 20 ILCS 2105/2105-165. Because Plaintiff was convicted of attempted murder, a forcible felony,[2] and possessed a nursing license, he clearly fell within the reach of the Act. *Id.*

II. Despite Plaintiff's Unavailing Argument to the Contrary, *Hayashi* Already Dispelled Any Notion of Retroactivity Stemming From the Act

Plaintiff's argument favoring a presumption against retroactivity under *Landgraf v. USI Film Products,* 511 U.S. 244, 280 (1994), similarly falls flat. "Under *Landgraf*, if the legislature has clearly prescribed the temporal reach of the statute, the legislative intent must be given effect absent a constitutional prohibition." *Hayashi*, 2014 IL 116023, ¶ 23.

Plaintiff's argument that " 'the legislature plainly indicated the temporal reach by stating that the license of a health care worker who has been convicted of one of the triggering offenses shall by operation of law be permanently revoked without a hearing' " fails. (Pl. Br. 4) (quoting *Hayashi*, 2014 IL 116023, ¶ 24 (citing 20 ILCS 2105/2105-165)). Plaintiff cites this language to argue that he does not fall within the reach of the Act since he was not a "health care worker" when

[2] As enumerated in 68 Illinois Administrative Code § 1130.120, attempted murder is considered a forcible felony, for the purposes of applying 20 ILCS 2105/2105-165.

he was convicted of attempted murder. (Pl. Br. 4). Again, this line of reasoning by Plaintiff is wrong in light of the *Hayashi* Court's interpretation of "has been convicted" making no such distinction. *Hayashi*, 2014 IL 116023, ¶ 17. He then attempts to claim a retroactive effect because he can no longer possess a nursing license, has supposedly incurred further liability for a prior conviction, and faces additional "new duties" to qualify as a licensed nurse, even though his license is permanently revoked. (Pl. Br. 4).

The *Hayashi* Court put to rest any notion of retroactivity stemming from the Act when it wrote, "[T]he Act's reliance on convictions predating its enactment does not render it retroactive as that term has been defined in case law." *Hayashi*, 2014 IL 116023, ¶ 25. The *Hayashi* Court premised this holding on the longstanding and widely accepted principle that "'[a] statute does not operate 'retrospectively' merely because it is applied in a case arising from conduct antedating the statute's enactment, [citation], or upsets expectations based in prior law.'" *Id.* (quoting *Landgraf*, 511 U.S. at 269); *see also Cox v. Hart*, 260 U.S. 427, 435 (1922) ("A statute is not *made* retroactive merely because it draws upon antecedent facts for its operation.").

In no way does the Act "'reach back in time' to change the criminal penalties imposed on plaintiff's convictions, nor does it render unlawful conduct that was lawful at the time it was committed." *Hayashi*, 2014 IL 116023, ¶ 26. The Act only precludes Plaintiff from obtaining a license to practice nursing in the

future. At the end of the day, Plaintiff's retroactivity argument fails in light of the *Hayashi* Court's determination that "[t]he Act's impact . . . is solely prospective and not impermissibly retroactive within the meaning of the test articulated in *Landgraf*." *Id.*

III. Limiting The Reach of 20 ILCS 2105/2105-165 to Sex Offenders And "Health Care Workers Who Commit Criminal Offenses Against Their Patients" Contravenes Its Plain Language and Legislative Intent To Include All Forcible Felony Convicts

Plaintiff undercuts the plain language of the Act when he asserts that "license revocation is predicated upon . . . being convicted of a criminal or sexual offense against a patient, or . . . having to register as a sex offender." (Pl. Br. 7). He supports this assertion with passages in *Hayashi* stating that "Section 2105-165 imposes mandatory revocation of health care licenses on plaintiffs based on their convictions of certain criminal offenses during the course of patient care or treatment," (Pl. Br. 6) (quoting *Hayashi*, 2014 IL 116023, ¶ 32), and "the Act mandates the permanent revocation . . . of the license of a health care worker who has been convicted of certain criminal offenses, including criminal battery against any patient in the course of patient care or treatment and any criminal offense which requires registration under the Sex Offender Registration Act." (Pl. Br. 6) (quoting *Hayashi*, 2014 IL 116023, ¶ 8). Plaintiff fails to understand that none of

this language is dispositive of the Act applying outside of the patient context.

More importantly, the *Hayashi* Court references convictions arising from the patient context because, unlike *Plaintiff*, whose license was revoked pursuant to subpart (a)(3) of the Act, the license revocations in that case were subject to subpart (a)(2) of the Act, which specifically states "in the course of patient care or treatment." 20 ILCS 2015/2105-165. In *Hayashi*, all three defendants were convicted of either battery or sexual abuse of a patient. *Hayashi*, 2014 IL 116023, ¶¶5-7. Here, Plaintiff's conviction for attempted murder is a forcible felony, subject to subpart (a)(3) of the Act. 20 ILCS 2105/2105-165; 68 Illinois Administrative Code § 1130.120. Unfortunately for Plaintiff, unlike subpart (a)(2), subpart (a)(3) contains no language limiting the conviction of a forcible felony to the care or treatment of a patient. 20 ILCS 2105/2105-165.

According to the Illinois Supreme Court, "[t]he most reliable indicator of the legislative intent is the language of the statute itself, which must be given its plain and ordinary meaning." *Hayashi*, 2014 IL 116023, ¶ 16 (citing *Solon v. Midwest Med. Records Ass'n*, 236 Ill. 2d 433, 440 (2010)). If statutory language is "clear and unambiguous, a court may not depart from the plain language by reading into the statute exceptions, limitations, or conditions that the legislature did not express." *Hayashi*, 2014 IL 116023, ¶ 16 (citing *Evanston Ins. Co. v. Riseborough*, 2014 IL 114271, ¶ 15). A court, "in determining the plain meaning, [] must consider the statute in its entirety, the subject it

addresses, and the apparent intent of the legislature in enacting it." *Hayashi*, 2014 IL 116023, ¶ 16 (citing *Orlak v. Loyola Univ. Health Sys.*, 228 Ill. 2d 1, 8 (2007)).

Here, the language of subpart (a)(3) of the Act plainly states, "When a licensed health care worker, as defined in the Health Care Worker Self-Referral Act . . . has been convicted of a forcible felony . . . then, notwithstanding any other provision of law to the contrary, the license of the health care worker shall by operation of law be permanently revoked without a hearing." 20 ILCS 2105/2105-165. Subpart (a)(3) does not make reference to Plaintiff having to commit a forcible felony against a patient. When juxtaposed with other parts of the Act, the omission from subpart (a)(3) of the explicit reference to "patient care or treatment" found in (a)(2), *id.*, makes clear that the legislature intended subpart (a)(3) to apply to any and all forcible felony convictions committed by a licensed health care worker at any time. Looking to part (b) of the Act, which states that "[n]o person who has been convicted of any offense listed in subsection (a) or required to register as a sex offender may receive a license as a health care worker in Illinois," 20 ILCS 2105/2105-165, it only becomes further apparent that the legislature intended the Act to apply to Plaintiff's attempted murder conviction stemming from before his licensure.

As quoted earlier, the *Hayashi* Court stated that "[h]ad the General Assembly intended to limit the Act's reach only to convictions occurring after August 20, 2011, it would have made that intent explicit." *Hayashi*, 2014

IL 116023, ¶ 18. The same is true regarding any supposed legislative intent pertaining to forcible felonies under the Act. Furthermore, the legislative declaration of public policy to the Act employs broad language pertaining to "the public interest," 20 ICLS 2105/2105-10, which, not only is inclusive of Plaintiff and his attempted murder conviction, but also makes no limitation to the patient context.

IV. Pursuant to *Hayashi*, 20 ILCS 2105/2105-165 Is Rationally Related To Protecting the Public, and Ensuring Good Moral Character Among, And Protecting, the Health Care Profession

Even under Plaintiff's as-applied challenge, the Act easily withstands the rational basis test. Here, Plaintiff asserts that "[t]he Act bears no reasonable relationship to fulfilling its protection purpose when applied to Plaintiff," and that "there is no rational relationship between Plaintiff's non-nursing related felony conviction over 40 years ago as a[n] unlicensed private citizen. . . ." (Pl. Br. 5). Instead of directly refuting the legitimate state interests underlying the Act, Plaintiff conflates his past work as a nurse with the legislature's duty "to protect the public health, safety and welfare" (*Id.*). However, Plaintiff fails to acknowledge that his time as a licensed nurse neither immunizes him from "legislative interference," *Hayashi*, 2014 IL 116023, ¶ 31, nor does it erase legitimate state interests, including protection of public health, safety and welfare, in the legislature's regulation of health care workers.

Plaintiff asserts a right to continue practicing nursing, but admits that "[t]he right to pursue a profession is not a fundamental right for substantive due process purposes . . . and legislation infringing upon that right need only be examined using the rational basis test." (Pl. Br. 5) (quoting *Hayashi*, 2014 IL 116023, ¶ 29). Under the rational basis test, a court "must identify the public interest that the statute was intended to protect, determine whether the statute bears a reasonable relationship to that interest, and verify whether the means chosen to protect that interest are reasonable." *Id.* In spite of Plaintiff's years as a nurse, "[a]s long as there is a reasonably conceivable set of facts showing that the legislation is rational, it must be upheld." *Id.*

It is widely accepted that "[t]he legislature has broad regulatory powers to set licensing requirements which are rationally related to the legitimate state interest of protecting the public from unqualified medical practitioners." *Id.* at ¶ 31 (citing *Potts v. Ill. Dept. of Registration & Educ.*, 128 Ill. 2d 322, 330-33 (1989); *People ex rel. Sherman v. Cryns*, 203 Ill. 2d 264, 280-82 (2003); *Carter-Shields v. Alton Health Inst.*, 201 Ill. 2d 441, 462 (2002)). In passing the Act, the legislature exercised its wide-ranging regulatory authority to protect the public from "those who violate the public trust." 20 ILCS 2105/2105-10. Barring Plaintiff from the health care profession is reasonably related to safeguarding patients from the potential infliction of physical harm. There is a clear rational basis for the Act in

that a forcible felony conviction demonstrates a heightened propensity toward violent behavior.

It is irrelevant that Plaintiff has not been convicted of any other felonies since his attempted murder conviction. Much like how the Illinois Supreme Court found sex offender notification legislation rationally related to the "protection of the public," *People v. Malchow*, 193 Ill. 2d 413, 423 (2000), the Act provides additional protection of patients' physical autonomy by shielding them from those convicted of forcible felonies. Even if the Court disagrees with the General Assembly's method of achieving the protection of the public, "[w]hether the statute is wise or sets forth the best means to achieve the desired result are matters for the legislature, not the courts." *Hayashi*, 2014 IL 116023, ¶ 29. Moreover, the Illinois Supreme Court has recognized that "inherent in the State's power is the right to revoke the license of those who violate the standards it set." *Kaplan v. Dep't of Registration & Educ.*, 46 Ill. App. 3d 968, 975 (1977).

Coupled with its wide-ranging authority, "the legislature has a *duty* to require that applicants for medical licenses possess good moral character." *Hayashi*, 2014 IL 116023, ¶ 31 (citing *Abrahamson v. Ill. Dep't of Prof'l Regulation*, 153 Ill. 2d 76, 91 (1992)) (emphasis added). A forcible felony conviction for a crime, such as attempted murder, certainly calls into question the moral character of a health care worker. Similarly, Plaintiff's forcible felony conviction raises concerns for the legitimate state interest of "protecting . . . the standing of the medical profession in the eyes of the

public." *Kaplan*, 46 Ill. App. 3d at 975. It is neither in the public interest, nor that of the health care profession, if individuals cannot trust or become uncomfortable with, or fearful of, seeking medical attention, as a result of violent offenders handling their private and intimate medical needs. On the other hand, it is reasonable for the legislature, as a result of the Act, to expect the public to feel safer around, and to trust, health care workers knowing that none of them have ever been convicted of a forcible felony. Therefore, Plaintiff challenge pursuant to substantive due process principles fails..

V. Because License Revocation is Mandatory Under the Act, The Department In No Way Acted Unfairly Or Partially Toward Plaintiff

The Department acted fairly and impartially in fulfilling its non-discretionary, statutory duty under the Act, and revoking Plaintiff's nursing license, as mandated under the Act. 20 ILCS 2105/2105-165. Plaintiff unpersuasively relies on language in the Department of Professional Regulation Law, which states, "The Department has, subject to the provisions of the Civil Administrative Code of Illinois, the following powers and duties: . . . (2) To prescribe rules and regulations for a fair and wholly impartial method of examination of *candidates* to exercise the respective professions, trades, or occupations." 20 ILCS 2105/2105-15 (emphasis added). This statutory language is wholly inapplicable to Plaintiff, who was not a candidate seeking entry into the nursing profession when the Department issued its

order. Plaintiff already held a nursing license, which the Department revoked.

More importantly, the Department of Professional Regulation Law is not carte blanche for the Department to stray from the intent of the legislature, as sort forth under the clear and unambiguous language of the Act. Nonetheless, Plaintiff continues to imply that the Department had a choice in issuing its order revoking his nursing license, in accordance with the Act. He claims that the Act is inapplicable to him because the Department previously issued a nursing license to him, pursuant to the recommendation of the Committee of Nursing Examiners. (Pl. Br. 13). However, he cites no authority to support this contention. His line of reasoning posits that past determinations by unelected officials in the Department are immune from a legislative act signed into law, in direct contradiction of the long-standing holding that "[a]n administrative agency has no inherent or common law powers, but is empowered to act only pursuant to the authority it is granted by *law.*" *Baldermann v. Bd. of Trs. of Police Pension Fund of Vill. of Chi. Ridge*, 2015 IL App (1st) 140482, ¶ 46 (quoting *Rossler v. Morton Grove Police Pension Bd.*, 178 Ill. App. 3d 769, 773 (1st Dist. 1989)). Therefore, it comes as no surprise that the *Hayashi* Court upheld the disputed licensure revocations for three health care workers. *Hayashi*, 2014 IL 116023, ¶ 3. In similar fashion to the Department's past acceptance of the Committee of Nursing Examiners recommendation to license Plaintiff, the Department in *Hayashi* had also allowed for their licensing to continue after their convictions. *Id.* at ¶ 19.

Without re-hashing the points already discussed, the Act clearly and unambiguously provides for the revocation of Plaintiff's nursing license "by operation of law" and "without a hearing." 20 ILCS 2105/2105-165. The Act provides for permanent revocation, regardless of when Plaintiff was licensed or when he received his conviction. *Hayashi*, 2014 IL 116023, ¶ 17. Therefore, even after Plaintiff's response to the Petition to Issue Permanent Revocation Order, no circumstance allowed for the Department to continue licensing Plaintiff.

CONCLUSION

WHEREFORE, Defendants the Illinois Department of Financial and Professional Regulation, and Jay Stewart, in his official capacity as Director of the IDFPR Division of Professional Regulation, respectfully request that this Honorable Court affirm the Department's final order.

Respectfully Submitted,

LISA MADIGAN
Attorney General
of Illinois
#99000

/s/Daniel R. Waltz
DANIEL R. WALTZ
Assistant Attorney General
General Law Bureau
100 W. Randolph St.,
13th Floor
Chicago, Illinois 60601
(312) 814-7201
DWaltz@atg.state.il.us

**IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

BATU SHAKARI Plaintiff, v. ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION, and JAY STEWART, DIRECTOR, DIVISION OF PROFESSIONAL REGULATION, Defendant.	)	Case No.: 15 CH 16520 HON. FRANKLIN VALDERRAMA Cal. 03

NOTICE OF FILING

(Filed Aug. 17, 2016)

TO: Illinois Department of Financial
and Professional Regulation and
Jay Stewart, Director
ATTN: Daniel Waltz
100 W. Randolph Street 13th Floor
Chicago, IL 60601

PLEASE TAKE NOTICE that on August 17, 2016 the attached **PLAINTIFF'S REPLY BRIEF** was filed with the Clerk of the Circuit Court of Cook County,

Illinois, County Department, Chancery Division, at the Richard J. Daley Center, Chicago, Illinois 60602.

Respectfully Submitted,

/s/ Batu Shakari

Batu A. Shakari
15809 Hoyne Ave.
Harvey, IL 60426
(773) 437-7170

CERTIFICATE OF SERVICE

The undersigned individual certifies that a copy of the aforementioned document was served upon the above named individual at the above address by U.S. Mail, postage prepaid, on August 17, 2016.

/s/ Batu Shakari

Batu A. Shakari

**IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

BATU SHAKARI, Plaintiff, v. ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION and JAY STEWART, DIRECTOR, DIVISION OF PROFESSIONAL REGULATION, Defendant.	)	Case No.: 15 CH 16520 HON. FRANKLIN VALDERRAMA Cal. 03

PLAINTIFF'S REPLY BRIEF

(Filed Aug. 17, 2016)

Plaintiff, Batu Shakari, submits the following Brief in reply to Defendant's Brief In Response To Plaintiff's Complaint, and respectfully requests that this Honorable Court reverse the Department's revocation order.

INTRODUCTION

Defendant's Response Brief (heretofore to be cited as "DRB") omits important facts of record in this case, draws several conclusions about laws and court rulings that are not supported by the laws or court rulings themselves, and fails to respond to many of the legal

arguments made by Plaintiff in his Brief previously filed.

PLAINTIFF'S REPLY TO "STATEMENT OF FACTS" IN DEFENDANT'S BRIEF

Defendant begins by omitting important facts of record, and misrepresenting the basis for Plaintiff's action in this case.

In Defendant's Response Brief it states in relevant part: "Plaintiff submitted a response to the Notice of Intent to Issue Permanent Revocation Order, and argued that the Act was not applicable to him because his conviction, at one point, was reversed and remanded by the Illinois Appellate Court. (R. 15)" DRB at 2. This is a gross omission of several other facts of record, and misrepresents Plaintiff's basis for action in this case. The portion of the record omitted by Defendant states in relevant part: "In March of 2014, Respondent began the process of renewing his RN license on a timely basis and completed all of the necessary paperwork including informing the Department as a part of the renewal process of the past conviction as required by the renewal documents. The IDFPR again requested information with regard to the past felony conviction and after consideration of this information, renewed Respondent's RN license in June of 2014." (R. 17) It is also stated in the record, "Respondent has practiced as a nurse in the State of Illinois for 33 years. At no time has he had any disciplinary action taken against his license. The criminal conviction which has

triggered the petition at issue here occurred prior to the Respondent becoming a licensed nurse in the State of Illinois. The Illinois Department of Financial and Professional Regulation has held hearings and gathered information with regard to this past felony conviction on multiple occasions including the occasion of approval of sitting for the Nursing Board exam in 1981 and 1989, and in authorizing and licensing the Respondent as a nurse in the State of Illinois beginning in 1981 and then again in 1989. The Illinois Department of Financial and Professional Regulation regularly renewed the Respondent's license to practice nursing in the State of Illinois including June of 2014 subsequent to the enactment of the Statute at issue in this case." (R. 17) The significance of these additional facts of record is that not only had Plaintiff been a practicing nurse for 33 years, but during this time his RN license was renewed by Defendant 2 times (in 2012 and 2014) after passage of the Act in 2011. And this was done by Defendant with full knowledge of Plaintiff's past felony conviction, which means Defendant's subsequent decision to revoke Plaintiff's RN license in 2015 clearly violated its own 2 previous judgments that Plaintiff's past felony conviction was not a bar to him being granted licensure.

PLAINTIFF'S REPLY TO DEFENDANT'S ARGUMENTS

I. Reply To Defendant's Argument That *Hayashi's* "Has Been Convicted" Language Applies To The Revocation of Plaintiff's Nursing License.

In Defendant's Response Brief it states in relevant part: "The *Hayashi* Court directly addressed Plaintiff's contention and held, " 'Has been convicted', as used in the Act, thus refers to *health care workers* who hold the status of having been convicted of a particular offense, no matter when that status was obtained." (emphasis added) DRB at 3. DRB also states in relevant part: ". . . . the phrase, 'has been convicted', in reference to three of the four triggering offenses (including forcible felony) in subsection 2105-165(a), is in the present perfect tense. The present perfect tense is 'a verb form used to denote action beginning in the past and continuing to the present.' " DRB at 3-4. *Hayashi's* elaboration on the meaning of the term "has been convicted" does not in any way alter *the subject/predicate relationship* stated in the Act. The use of the term "has been convicted" in the Act is not divorced from the subject being referenced, which is "a *licensed health care worker.*" Plaintiff has no felony convictions as a licensed health care worker, and therefore the Act has no applicability to Plaintiff.

II. Reply To Defendant's Argument That *Hayashi* Already Dispelled Any Notion of Retroactivity Stemming From The Act.

In Defendant's Response Brief it states in relevant part: "The *Hayashi* Court put to rest any notion of retroactivity stemming from the Act when it wrote, "The Act's reliance on convictions predating its enactment does not render it retroactive as that term has been defined in case law." DRB at 5. *Hayashi's* statement here was not made in a vacuum, instead it was stated by the court only after the court defined the conditions under which *retroactivity does occur.* In Plaintiff's case, the decision made by Defendant to revoke his RN license was clearly and manifestly retroactive according to the standards established by *Hayashi.* This point is argued more fully in Plaintiff's Brief In Support of Complaint, and therefore need not be re-stated here.

III. Reply To Defendant's Argument That Limiting The Reach of The Act To Sex Offenders and Health Care Workers Who Commit Criminal Offenses Against Their Patients Contravenes Its Plain Language and Legislative Intent.

In Defendant's Response Brief it states in relevant part: "When a *licensed health care worker*, as defined in the Health Care Worker Self-Referral Act. . . . has been convicted of a forcible felony. . . . the license of the health care worker shall by operation of law be permanently revoked without a hearing." (emphasis added) DRB at 7. As stated earlier, Plaintiff has no felony

convictions as a licensed health care worker, and therefore the Act cannot be applied to him without being clearly and manifestly retroactive as established by *Hayashi.* This point is argued more fully in Plaintiff's Brief In Support of Complaint, and therefore need not be re-stated here.

DRB also states in relevant part: ". . . . the legislature intended subpart (a)(3) to apply to any and all forcible felony convictions committed by a *licensed health care worker* at any time. Looking to part (b) of the Act, which states that "no person who has been convicted of any offense listed in subsection (a) or required to register as a sex offender *may receive a license* as a health care worker in Illinois." (emphasis added) DRB at 7-8. This portion part (b) of the Act clearly applies to *those who are seeking licensure – not to those who are already licensed* Plaintiff was *already licensed*, and had been licensed as a nurse for 33 years without any felony or sex convictions of any kind since becoming licensed, nor had he incurred any disciplinary action against his license in all of his years of nursing practice. Under these circumstances, revoking the license of a health care worker who is *already licensed* is clearly not supported by anything stated in part (b) of the Act. Consequently, Defendant's revocation of Plaintiff's RN license automatically produced a retroactive impact, and thus is grounds for Defendant's revocation order to be reversed.

IV. Reply To Defendant's Argument That Applying The Act To Plaintiff Is Rationally Related To Protecting The Public, Ensuring Good Moral Character and Protecting The Health Care Profession.

In Defendant's Response Brief it states in relevant part: ". . . . as long as there is a reasonably conceivable set of facts showing that the legislation is rational, it must be upheld." DRB at 9. Plaintiff's felony conviction (resulting from his acceptance of a plea bargain offered by the State of Illinois after his conviction was reversed and remanded by the Illinois Appellate Court for re-trial) occurred over 40 years ago, and since this occurrence Plaintiff has been gainfully employed in the nursing profession for 33 years without any felony or sex convictions of any kind, nor any disciplinary actions ever taken against his nursing license at any time. There is no rational basis for applying the Act to Plaintiff given his exemplary history and nursing service to the People of Illinois.

DRB also states in relevant part: "In passing the Act, the legislature exercised its wide-ranging regulatory authority to protect the public from "those who violate the public trust." DRB at 9. Plaintiff has proven his public trustworthiness over the course of 33 years of unblemished professional nursing service in caring for the healthcare needs of the People of Illinois.

DRB also states in relevant part: "There is a clear rational basis for the Act in that a forcible felony conviction demonstrates a heightened propensity toward

violent behavior." DRB at 9. Not only is this a baseless assumption that is clearly contradicted by Plaintiff's 33 years of delivering professional nursing care with distinction to the People of the State of Illinois, but the fact that Plaintiff has incurred no felony or sex convictions of any kind in the past 40 years indicates that Defendant's contention is without merit.

DRB also states in relevant part: ". . . . the legislature has a duty to require that applicants for medical licenses possess good moral character. A forcible felony conviction for a crime, such as attempted murder, certainly calls into question the moral character of a health care worker." DRB at 10. Plaintiff's good moral character has been demonstrated by the 33 years of quality patient care that he has rendered in healing the sick and injured among the People of the State of Illinois, and in so doing has exemplified the honor and dignity of the health care profession. Clearly, the Act has no rational applicability to Plaintiff on any grounds related to his moral character.

V. Reply To Defendant's Argument That Because License Revocation Is Mandatory Under The Act, The Department Did Not Act Unfairly Or Partially Towards Plaintiff.

In Defendant's Response Brief it states in relevant part: ". . . . the Department of Professional Regulation Law is not carte blanche for the Department to stray from the intent of the legislature, as sort forth under the clear and unambiguous language of the Act.

Nonetheless, Plaintiff continues to imply that *the Department had a choice in issuing its order revoking his nursing license*, in accordance with the Act." (emphasis added) DRB at 11. According to Department of Professional Regulation Law (20 ILCS 2105/2105-15), it states in relevant part: "The Department has, subject to the provisions of the Civil Administrative Code of Illinois, the following powers and duties: . . . . (2) To prescribe rules and regulations for a fair and wholly impartial method of examination of candidates to exercise the respective professions, trades, or occupations." (cited in Plaintiff's Brief In Support of Complaint at 10) The process of revoking Plaintiff's RN license could not have occurred without Defendant having to examine the Plaintiff and the circumstances that would justify or nullify such a revocation, and this examination must be fair and impartial according to law. *Defendant's simple statement of what the law says does not qualify as a fulfillment of its legal mandate to be fair and impartial in enforcing the law.* Defendant demonstrates a gross misreading and misunderstanding of its own regulatory law. 20 ILCS 2105/2105-15, as well as other sections of this law, makes it clear that Defendant is not some *powerless rubber-stamp regulatory body* that has no authority to make determinations which ensures that enforcement of the Act is done in a manner that is fair and impartial. Yet, Defendant certainly seems to think so as evidenced by this statement found in DRB, "The Department lacks discretion under the Act, and must revoke Plaintiff's nursing license." DRB at 2. This statement by Defendant indicates that Defendant is either clueless about the "powers and

duties" given to it by the Illinois Legislature and mandated to be used in carrying out its function relative to the Act, or Defendant is completely ignoring its legal responsibility to be fair and impartial in determining who and under what conditions the Act applies.

DRB also states in relevant part: "He claims that the Act is inapplicable to him because the Department previously issued a nursing license to him, pursuant to the recommendation of the Committee of Nursing Examiners. His line of reasoning posits that past determinations by *unelected officials* in the Department are immune from a legislative act signed into law, in direct contradiction of the long-standing holding that "an administrative agency has no inherent or common law powers, *but is empowered to act only pursuant to the authority it is granted by law*." (emphasis added) DRB at 11. The "*unelected officials*" that Defendant cites are precisely those whom the Illinois Legislature gave the "*powers and duties*" to administer and enforce the Act. In fact, the Nursing Committee that granted Plaintiff's licensure in 1981 did so with the acceptance of IDFPR and the signature of its Director. (R. 36) In addition, every RN license issued to Plaintiff bears the signature of IDFPR's Director at the time of issue (R. 94 is offered as an example), which indicates that IDFPR made the determination that the holder so named on the license is legally entitled to possess it. The point being made here is that there are no licenses issued by "*unelected officials*" at IDFPR acting independently of those appointed by law to supervise their duties as erroneously implied by Defendant.

DRB also states in relevant part: "In similar fashion to the Department's past acceptance of the Committee of Nursing Examiners recommendation to license Plaintiff, the Department in *Hayashi* had also allowed for their licensing to continue after their convictions." DRB at 11-12. This is clearly not the case here. *Defendant revoked Plaintiff's RN license in 2015, which was 4 years after passage of the Act. However, Plaintiff's license was renewed by the Defendant 2 times after passage of the Act (in 2012 and 2014)*. (R. 77 and 101) None of the Appellants in the *Hayashi* case were granted licensure after passage of the Act. In fact, when Plaintiff applied for renewal of his RN license in 2014, the question of Plaintiff's past felony conviction was asked on the application, which Plaintiff answered truthfully in the affirmative (Plaintiff Exhibit A), even though this was information that was in Defendant's possession since 1981. However, as a consequence of Plaintiff's affirmative answer, his past felony conviction of over 40 years ago was once again reviewed and scrutinized by Defendant for over 2 months, even causing Plaintiff's RN license to expire and forcing him to suffer removal from his employment without pay for several days. (R. 96, 97 and 99) *Yet, despite the lengthy period of time used by Defendant to review and scrutinize Plaintiff's already known felony conviction of over 40 years ago, and the resulting professional and financial hardship suffered by Plaintiff as a result of Defendant's delay in renewing his RN license*, Defendant did in fact conclude that Plaintiff's past felony conviction was not a bar to him being granted licensure, and consequently Defendant renewed Plaintiff's RN license on

June 5, 2014. (R. 102) But even after all of this transpired, Defendant returned the following year (2015), and revoked Plaintiff's RN license. According to 20 ILCS 2015/2015-15, it states in relevant part: "The Department has, subject to the provisions of the Civil Administrative Code of Illinois, the following powers and duties:. . . . (5) To conduct hearings on proceedings to revoke, suspend, refuse to renew, place on probationary status, or take other disciplinary action as authorized in any licensing Act administered by the Department with regard to licenses. . . . (7) To formulate rules and regulations necessary for the enforcement of any Act administered by the Department." The point being made here is that the Illinois Legislature has given Defendant the power to judge and execute their decisions relative to granting or revoking health care licenses in Illinois, and therefore Defendant possesses competent jurisdiction to render a final judgment on whether or not a health care worker can possess licensure. In this case before the Court, Defendant made the judgment to revoke Plaintiff's RN license in 2015, but this was done after 2 previous judgments were made by Defendant to grant his license in 2012 and 2014 under the same Act. *Consequently, a matter that was previously litigated and judged involving the same case, under the same Act, dealing with the same issue, between the same parties was relitigated and re-judged by the Defendant in clear violation of Collateral Estoppel*, which is clearly a substantive due process violation, and grounds for Defendant's revocation order to be reversed. Indeed, given the powers and duties bestowed upon the Defendant by the Illinois Legislature as cited

previously, *the Defendant is clearly an agency acting in a judicial capacity, and therefore a clear violation of Administrative Collateral Estoppel certainly applies in this case.*

DRB also states in relevant part: "The Act provides for permanent revocation, regardless of when Plaintiff was licensed or when he received his conviction. Therefore, even after Plaintiff's response to the Petition to Issue Permanent Revocation Order, *no circumstance allowed for the Department to continue licensing Plaintiff.*" (emphasis added) DRB at 12. Neither of these arguments have any merit. Relative to the first portion of Defendant's argument this point is fully argued in Plaintiff's Brief In Support of Complaint, and therefore need not be re-stated here. Relative to the second portion, in Plaintiff's Response To Petition To Issue Permanent Revocation Order (R. 15-19), there was more than enough information contained in Plaintiff's Petition detailing the circumstances of his case to inform Defendant of the lack of justification for revoking Plaintiff's RN license, *ranging from its openly obvious retroactive impact to its egregious re-judgment of a case where 2 previous judgments had already been made by Defendant on the same issue since passage of the Act.* Defendant simply ignored all of the information given by the Plaintiff, and revoked Plaintiff's RN license without just cause. And consequently, Defendant's revocation order should be reversed.

CONCLUSION

Plaintiff was a licensed health care worker in the State of Illinois for 33 years who never violated any of the provisions of the Act used to revoke his RN license. The Act is clear in its language as to whom it applies, and Defendant clearly was not justified in using it to permanently revoke Plaintiff's RN license.

WHEREFORE, Plaintiff respectfully requests of this Honorable Court that (1) the Defendant's order to permanently revoke Plaintiff's RN license be reversed, and (2) Plaintiff's RN license be restored and returned to him.

Respectfully Submitted,

/s/ Batu Shakari

Batu A. Shakari
15809 Hoyne Ave.
Harvey, IL 60426
(773) 437-7170

1-17-0285

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

BATU SHAKARI,

Plaintiff-Appellant

v.

ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION, and JAY STEWART, In his official capacity as DIRECTOR of the DIVISION OF PROFESSIONAL REGULATION,

Defendants-Appellees

Appeal from the Circuit Court of Cook County,
Illinois County Department,
Chancery Division, No. 15 CH 16520
The Honorable Franklin Valderrama Presiding

AMENDED BRIEF AND ARGUMENT OF PLAINTIFF-APPELLANT

(Filed May 31, 2017)

Lillian Walanka
Crick Walanka Law Group, Ltd.
111 W. Washington St.
Suite 1820

Chicago, Illinois 60602
(312) 335-8860

ORAL ARGUMENT REQUESTED

[i] TABLE OF CONTENTS

[ii] **POINTS AND AUTHORITIES**

[1] **NATURE OF THE CASE**

This action seeks relief from Defendants' administrative ruling permanently revoking Plaintiff's Illinois registered nurse license. Plaintiff filed a Complaint for Administrative Review alleging that the Defendants' final administrative decision warranted reversal

because the Defendants' revocation of Plaintiff's license violated the Illinois and Federal constitutional prohibitions against double jeopardy, 20 ILCS 2105/2105-165 does not apply to Plaintiff, and the Defendants were, and continue to be, estopped from revoking Plaintiff's registered nurse license. Plaintiff worked as a nurse in Illinois for thirty-three (33) years prior to the Defendants' permanent revocation of his license pursuant to 20 ILCS 2105/2105-165 and 68 Ill. Admin. Code 1130.100. Defendants are an Illinois administrative agency and the former Director of the administrative agency, sued in their official capacity, charged with regulating health related professions in accordance with Department of Professional Regulation Law (20 ILCS 2105/2105-15).

The circuit court affirmed the Defendants' decision on the basis that the statutory language under which the Defendants permanently revoked Plaintiff's license was properly relied upon, is not improperly retroactive, and Defendants were not estopped from disciplining Plaintiff's license.

[2] **JURISDICTIONAL STATEMENT**

Jurisdiction over this appeal is pursuant to Illinois Supreme Court Rule 301, as an appeal from a final judgment of the Circuit Court affirming the Defendants' action on administrative review. On November 20, 2015, Plaintiff filed a Complaint in the Circuit Court of Cook County, alleging that the Defendants' final administrative decision permanently revoking

Plaintiff's registered nurse license violated Department of Professional Regulation Law, collateral estoppel and various other legal principles. On January 5, 2017, the Circuit Court affirmed the Defendants' administrative decision. Plaintiff filed a timely Notice of Appeal on February 1, 2017.

[3] **ISSUES FOR REVIEW**

1) Whether the Circuit Court erred in applying 20 ILCS 2105/2105-165 and the *Hayashi* precedent to Plaintiff's case when Plaintiff's conviction for a forcible felony occurred before he was a licensed health care worker.

2) Whether the Circuit Court erred in affirming Defendants' final judgment permanently revoking Plaintiff's registered nurse license pursuant to 20 ILCS 2105/2105-165, after Defendants had twice renewed Plaintiff's license, making any further decision on the same merits a violation of collateral estoppel.

3) Whether the Circuit Court erred in basing its ruling upon the argument introduced by the Defendant of equitable estoppel, while completely ignoring the argument introduced by the Plaintiff of collateral estoppel.

[4] **STATEMENT OF FACTS**

Batu Shakari, Plaintiff-Appellant in this case, formerly David E. Beverly before he legally and completely changed his name, had been a licensed health care professional in the State of Illinois from 1982 until

September 30, 2015 when the Defendants-Appellees, Illinois Department of Financial and Professional Regulation and former director Jay Stewart ("the Department"), entered a Permanent Revocation Order revoking Plaintiff's registered nurse license. R.V1, C73-75.

Plaintiff, in 1979 after successfully completing the probation related to his criminal conviction for attempted murder, attended Dawson Skill Center, part of the City Colleges of Chicago, and graduated in 1981 with his licensed practical nurse degree. R.V1, C79. Prior to sitting for the Nursing Board examination and obtaining his license, Plaintiff was required to attend a hearing specifically dealing with his past felony conviction. *Id*. After the hearing, Plaintiff was able to sit for the Nursing Board examination and the Department granted Plaintiff a Licensed Practical Nurse (LPN) license in 1982. *Id*.

Plaintiff wanted to be more involved in health care so he returned to school and attended Olive-Harvey College and received an associate's degree in applied science in nursing in 1989. *Id*. Once again, the Department requested information about his past felony conviction before Plaintiff was able to sit for the State Boards for his Registered Nurse (RN) license. *Id*. The Department approved Plaintiff's request to sit for the license and the Department granted Plaintiff an Illinois RN License in 1989. *Id*. Both the Practical Nurse License and the RN License were granted subsequent to Plaintiff's guilty plea to attempted murder on May 14, 1979 and with the Department having full

knowledge of the felony at the time of licensure. *Id*. Every renewal of Plaintiff's license was granted by the Department, and from 1989 through September [5] 30, 2015, a period of twenty-six years, his RN license was never disciplined by the Department. R.V1, C80.

In 2011, the Illinois state legislature passed 20 ILCS 2105/2105-165 ("the Act"), which provides that "[w]hen a licensed health care worker, is defined in the Health Care Worker Self-Referral Act . . . (3) has been convicted of a forcible felony . . . then, notwithstanding any other provision of law to the contrary, the license of the health care worker shall by operation of law be permanently revoked without a hearing." 20 ILCS 2105/2105-165. The Illinois Administrative Code lists attempted murder as a "forcible felony." 68 Ill. Admin. Code § 1130.120.

In 2012 and 2014, Plaintiff completed all the necessary paperwork and timely filed his application for the renewal of his RN license. R.V1, C80. In 2012 and 2014, the Department reviewed Plaintiff's renewal applications for his RN license and granted him his license with full knowledge of his past conviction and after the Act went into effect. R.V1, C240. In fact, Plaintiff exchanged communication with the Department regarding his 2014 renewal application and the Department responded that his renewal was taking a longer time to process because of his positive answer to whether or not he had ever been convicted of a felony. R.V1, C233-46. Ruth Lawson, the former Supervisor of the Health Services Section of the Division of Professional Regulation at the Department, and Jerry

Miller, Board Liaison, both confirmed that Plaintiff's license was renewed after review. R.V1, C240, 242.

On August 17, 2015, the Department filed a Notice of Intent to Issue Permanent Revocation Order and served Plaintiff on September 5, 2015. R.V1, C140. Pursuant to the Notice, Plaintiff submitted his response to the Notice of Intent to Issue Permanent Revocation Order and argued that the Act was not applicable to him. R.V1, C78. After review of Plaintiff's [6] response, the Department entered a Permanent Revocation Order on September 30, 2015 permanently revoking Plaintiff's RN license. R.V1, C73. On November 12, 2015, Plaintiff timely filed his Complaint in Administrative Review with the Clerk of the Circuit Court of Cook County. R.V1, C3. The Department filed a 2-619.1 Combined Motion to Dismiss on December 17, 2015, which the Court denied on March 29, 2016. R.V1, C10. On January 5, 2017, the Honorable Franklin Valderrama affirmed the Department's permanent revocation of Plaintiff's RN license on the basis that the Act applied to health care professionals who committed forcible felonies before they were health care professionals, and that the Department was not estopped from revoking Plaintiff's license after they renewed his license in 2012 and 2014. R.V3, C24. Plaintiff timely appealed the circuit court's decision to this court on February 1, 2017.

[7] STANDARD OF REVIEW

In an appeal from a lower court's decision to grant judgment on the pleadings, this Court must accept as true all well-pleaded facts and draw any and all reasonable inferences in favor of the non-moving party. *Brandt v. MillerCoors, LLC*, 2013 IL App (1st) 120430, ¶ 12, 993 N.E.2d 116, 119. On review of an administrative decision, the Appellate Court reviews the decision of the agency, not the decision of the circuit court. *Outcom, Inc. v. Illinois Dep't of Transp.*, 233 Ill. 2d 324, 337, 909 N.E.2d 806, 814 (2009). The issues presented are issues of law, and therefore, the review of this court is *de novo*, independent of the reasoning of the trial court. *T & S Signs, Inc. v. Village of Wadsworth*, 261 Ill. App. 3d 1080, 1084, 634 N.E.2d 306, 199 Ill. Dec. 467 (1994).

[8] ARGUMENT

I. THE CIRCUIT COURT ERRED IN AFFIRMING THE DEPARTMENT'S PERMANENT REVOCATION OF PLAINTIFF'S LICENSE BECAUSE THE ACT DOES NOT APPLY TO FORCIBILE FELONY CONVICTIONS THAT OCCURRED BEFORE BEING LICENSED AS A REGISTERED NURSE.

The circuit court erred in its interpretation of both the Act and the Illinois Supreme Court's decision in *Hayashi v. Illinois Department of Financial & Professional Regulation* when it held that the Act's "has been convicted" language applied to the forcible felony Plaintiff was convicted of *before* he was a licensed

health care professional. 2014 IL 116023, 25 N.E. 3d 570, 388 Ill. Dec. 878 (2014). In reaching this decision, the circuit court gave cursory consideration to Plaintiff's arguments as to why his case does not fall under *Hayashi* and did not address the factual differences between *Hayashi* and Plaintiff's case. At no point has the Plaintiff argued that his conviction does not fall under the guidelines for a forcible felony according to the Act. In fact, if his conviction occurred while he was a registered nurse there would be no issue in this case as to whether or not the Act applies, and Plaintiff would proceed to the collateral estoppel and equitable estoppel arguments.

Agency interpretations of statutes are not binding on the courts, and courts must overturn any agency action that is inconsistent with a statute. *Gilchrist v. Human Rights Comm'n*, 312 Ill. App. 3d 597, 602, 728 N.E.2d 566, 570 (2000). The Supreme Court in *Hayashi* held that the legislature clearly intended the Act to subject health care professionals who were convicted prior to enactment of the Act. *Hayashi v. Ill. Dep't of Fin. & Prof'l Regulation*, 25 N.E. 3d 570, 388 Ill. Dec. 878 (2014). "[T]he legislature plainly indicated the temporal reach by stating that the House of a health care worker who has been convicted of one of the triggering offenses shall by operation of law be permanently revoked without a hearing." *Id*. at ¶ 24. However, *Hayashi* did [9] not rule on whether or not the Act can be applied to individuals who were convicted prior to enactment of the Act *and* were not licensed at the time of the conviction. Plaintiff's case

falls squarely in this unresolved area as the Plaintiff's conviction occurred when he was an unlicensed private citizen.

During the case in circuit court, the Department argued that since Plaintiff was a licensed health care worker in 2015, the Act automatically applies to him regardless of his profession at the time of the felony. R.V2, C317. The Department regularly claimed that Plaintiff's case was analogous to *Hayashi*, R.V2, C315-25. This cannot be the case as, first and foremost, the Act has no jurisdiction over unlicensed private citizens. The legislative declaration of public policy that the Act falls under is as follows:

> "The practice of the regulated professions, trades, and occupations in Illinois is hereby declared to affect the public health, safety, and welfare of the People of this State and in the public interest is subject to regulation and control by the Department of Professional Regulation.
>
> It is further declared to be a matter of public interest and concern that standards of competency and stringent penalties for those who violate the public trust be established to protect the public from unauthorized or unqualified *persons representing one of the regulated professions, trades, or occupations*; and to that end, the General Assembly shall appropriate the necessary funds for the ordinary and necessary expenses of these public interests and concerns as they may exceed the funding available from the revenues collected from the

> fees and fines from the regulated professions, trades, and occupations.
>
> (Emphasis added.)

20 ILCS 2105/2105-10

Plaintiff was at no point engaging in the practice of nursing up to and including the time he was convicted of a forcible felony. The purpose of the Act is to protect the public by creating appropriate standards for health care workers. *Id*. The purpose of the Act is not served by stretching the limits of whom the Act was meant to punish. Nowhere is this clearer than in [10] Plaintiff's case where the Department repeatedly held that Plaintiff's felony conviction was not a danger to the public both before and after enactment of the Act. We know this because the Department issued Plaintiff a RN license in 1989, and renewed his license at every renewal after 1989 up to 2014, which would not have occurred if Plaintiff was seen as any sort of threat to patients or the public at large. R.V1, C79-80.

In *Hayashi*, the forcible felonies used as the basis for permanently revoking the plaintiffs' medical licenses occurred while they were licensed health care workers and involved patients under their care. 2014 IL 116023, ¶¶ 5-7. The Illinois Supreme Court had no reason to rule on the applicability of the Act to an unlicensed private citizen who committed a forcible felony before the Act went into effect because those facts were not at issue in *Hayashi*. *Id*. There is a clear factual line separating Plaintiff from the plaintiffs in *Hayashi*. While both cases involved felony convictions

before enactment of the Act, only Plaintiff's case involved a felony conviction before he was a licensed health care worker. It should go without saying that in only relying on Hayashi to dismiss Plaintiff's claim that the Act does not apply to his case, the circuit court failed to adequately rule on this issue. Judge Valderrama offered three paragraphs (via transcript) of explanation as to why the Act applies to Plaintiff, completely relying on *Hayashi* as being controlling despite these glaring factual differences. R.V3, C20.

In the Illinois Supreme Court's analysis of why the Act did not violate the *Hayashi* plaintiffs' constitutional right to practice medicine, it stated "we find that the Act, which bars health care workers previously convicted of certain criminal offenses *involving their patients* from practicing their professions, bears a reasonable relationship to the legitimate state interest of regulating the medical profession for the protection of the public." *Hayashi*, 2014 IL 116023, ¶ 31 (emphasis added). The Supreme Court doubled down on its understanding of the purpose of [11] the Act when it held "[s]ection 2105-165 imposes mandatory revocation of health care licenses on plaintiffs based on their convictions of certain criminal offenses *during the course of patient care or treatment*." *Id.* at ¶ 32 (emphasis added). This holding is crucial because the court was ruling on the official purpose of the Act. The Court ruled on the purpose of the Act because the plaintiffs in *Hayashi* were arguing that the Act was unconstitutional and without a state interest that passed the rational basis test, which would have made the Act

unconstitutional. *Id*. ¶ 28. The Court found that the legitimate state purpose was the state's interest in barring health care workers who had been previously convicted of a forcible felony during the course of their treatment of patients. *Id*. ¶ 31. The circuit court in Plaintiff's case did not follow the Illinois Supreme Court's understanding as to the purpose of the Act. Not only did the circuit court extend the Act's purpose to criminal acts not involving patient care, the circuit court went even farther by extending the purpose to criminal acts not related to patients and not while Plaintiff was licensed. R.V3, C20.

Additionally, the circuit court dismissed Plaintiff's linguistic argument as having already been decided in *Hayashi*, without acknowledging that the linguistic argument is dependent on the factual differences presented in Plaintiff's case. R.V3, C20. Plaintiff is not rehashing the same argument in *Hayashi*, because in Plaintiff's case he was not a health care worker at the time of the forcible felony, and the language of the Act does not take into account someone in that position. The plain language of the Act includes the phrase "has been convicted" which refers to "a licensed health care worker," the subject in that sentence. The Department's argument before the circuit court, and Judge Valderrama's ruling, only go as far as to say "has been convicted" refers to health care workers regardless of when that status has been obtained. *Id*. This argument addresses an issue of "present perfect tense" but does not answer the issue of the predicate [12] subject relationship outlined above. The use of the term "has been

convicted" in the Act is not independent from the subject being referenced, which is once again, "a *licensed* health care worker." Plaintiff's felony conviction never occurred during any time that he was a licensed health care worker, and therefore, the Act has no applicability to Plaintiff.

Strict reliance on *Hayashi* falls short as the extent of *Hayashi*'s plain language determination was that "the plain language of the Act clearly indicates that the legislature intended it to apply to convictions predating its effective date." 2014 IL 116023, ¶ 19. Plaintiff's argument is not, and has never been, that the Act shouldn't encompass convictions earlier than 2011. The circuit court erred by failing to address the predicate subject relationship between "has been convicted" and "licensed health care worker." Put plainly, Plaintiff was not a health care worker at the time of his felony conviction; therefore, there is no "health care worker" who "has been convicted" in this case. For this reason alone, the Department's permanent revocation of Plaintiff's RN license should be reversed, and his license should be reinstated to active status because the Act does not apply to a health care worker whose forcible felony occurred before they became licensed. This is especially true in this case because the Department reviewed the circumstances of Plaintiff's felony conviction at the time it issued his LPN license, again when it issued his RN license, and then at every renewal over a period of twenty-six years. For the foregoing reasons, Plaintiff requests this court reverse the Department's decision permanently revoking Plaintiff's RN license,

because the Act under which the Department was acting does not apply to Plaintiff as he was not a licensed health care worker who committed a forcible felony.

[13] II. THE CIRCUIT COURT ERRED IN DETERMINING THAT THE DEPARTMENT WAS NOT ESTOPPED FROM PERMANENTLY REVOKING PLAINTIFF'S LICENSE WHEN THE DEPARTMENT PERMANENTLY REVOKED PLAINTIFF'S LICENSE AFTER ALREADY REACHING A FINAL JUDICIAL DECISION ON WHETHER OR NOT HE WOULD CONTINUE TO RETAIN HIS LICENSE.

The circuit court inaccurately based its ruling partly on an equitable estoppel argument that Plaintiff never presented to the court when it held that "plaintiff cannot rely on that unauthorized [a]ct (renewal of Plaintiff's license) to support a claim for equitable estoppel." R.V3, C23 (explanatory edits supplied). There are many differences between equitable and collateral estoppel, and the differences are significant enough that the circuit court needed to adequately respond to Plaintiff's collateral estoppel argument separately. Clearly, the circuit court incorrectly responded to Defendants' equitable estoppel argument as if it were the argument being made by the Plaintiff, and in so doing the circuit court's ruling effectively ignored and ran contrary to established case law on collateral estoppel.

When an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot be raised between the same parties in any future

proceeding. *Ashe v. Swenson*, 397 U.S. 436, 443 (1970). This is the doctrine of collateral estoppel, which is the principle that bars relitigation between the same parties on issues already determined. *Id*. The Supreme Court of the United States recognized that the doctrine of collateral estoppel is incorporated in the Fifth Amendment's Double Jeopardy clause. *Id*. at 445. The double jeopardy clause of the Illinois Constitution is to be construed in the same manner as the double jeopardy clause of the federal constitution. *In re P.S.*, 175 Ill. 2d 79, 82, 676 N.E.2d 656, 658 (1997). Thus, "if collateral estoppel is embodied in that guarantee, then its applicability in a particular case is no longer a matter to be left for state court determination within the broad bounds of 'fundamental fairness,' but a matter of constitutional fact we must decide through an examination of the entire record." [14] *Ashe*, 397 U.S. at 442-43. The doctrine of collateral estoppel serves the purpose of promoting judicial economy and preventing repetitive litigation. *Hayes v. State Teacher Certification Bd.*, 359 Ill. App. 3d 1153, 1161, 835 N.E.2d 146, 154 (2005). Although collateral estoppel as a principle was first developed in civil cases, it has routinely been applied in both the criminal and administrative settings. *Bhalerao v. Illinois Dep't of Fin. & Prof'l Regulation*, 834 F. Supp. 2d 775 (N.D. Ill. 2011).

Fact issues finally decided in an administrative proceeding that is judicial in nature precludes litigation of those same fact issues in a subsequent proceeding. *Vill. of Oak Park v. Illinois Dep't of Empl. Sec.*, 332 Ill. App. 3d 141, 143, 772 N.E.2d 951, 953 (1st Dist.

2002). Issue preclusion applies when: (1) a material fact issue decided in the earlier adjudication is identical to the one in the current proceedings, (2) there was a final judgment on the merits in the earlier adjudication, and (3) the party against whom estoppel is asserted was a party or was in privity with a party in the earlier adjudication. *Id*. The Department's permanent revocation of Plaintiff's RN license passes every element of the *Village of Oak Park* test. First, the material fact at issue in this case is whether or not Plaintiff's forcible felony created the grounds for permanent revocation of his license. The Department reviewed the facts present in his renewal application, including his decades old felony conviction numerous times over a period of twenty-six years, and specifically after the permanent revocation statute went into effect, and issued a final judgment: the renewal of his license. Second, the Department's renewal of his license was a final judgment granting Plaintiff license to practice nursing in Illinois. And third, the Department was the party determining the renewal and the revocation.

The Department has been empowered by the Illinois state legislature to preside over investigations and hearings "in the same manner as prescribed by law in judicial proceedings in [15] civil cases in circuit courts of this State." 20 ILCS 2105/2105-105. Collateral estoppel is "applicable to the decisions of administrative agencies, as long as the agency was acting in an adjudicatory, judicial, or quasi-judicial capacity and the disputed issue is identical to the issues present in the new claim." *Gallaher v. Hasbrouk*, 2013 IL App

(1st) 122969, ¶ 21, 3 N.E.3d 913, 923. License renewals are at the very least quasi-judicial, comfortably falling within the guidelines of this Court's ruling in *Gallaher*. "Quasi-judicial hearings concern agency decisions that affect a small number of persons on individual grounds based on a particular set of disputed facts that were adjudicated." *Am. Fed'n of State. Cty. & Mun. Empls. Council 31, AFL-CIO v. Dep't of Central Mgmt. Svcs.*, 288 Ill. App. 3d 701, 711, 681 N.E.2d 998, 1005 (1997). The renewal of a license is text book quasi-judicial as the Department reviewed the facts presented in the renewal application, requested a written response from Plaintiff, and issued a final determination: the renewal of Plaintiff's RN license. Plaintiff's case is analogous to granting or denying a variance or a permit from agency, which has been found by this court to be quasi-judicial. *E.P.A. v. Pollution Control Bd.*, 308 Ill. App. 3d 741, 748, 721 N.E.2d 723, 728 (1999). Therefore, even if this Court were to determine that the renewal of Plaintiff's license, or the revocation of his license, was not a final judicial decision, it was clearly a final quasi-judicial decision bringing the license renewal under the collateral estoppel requirements under *Gallaher*.

Judge Valderrama and the assistant attorney general representing the Department in the circuit court expressed confusion over Plaintiff's estoppel argument, and proceeded to argue that the Department was not *equitably estopped* from revoking Plaintiff's RN license. Plaintiff did not raise an equitable estoppel argument, but instead a collateral estoppel argument, which is evident from the *pro se* brief in support of

Plaintiff's Complaint. R.V2, C304-305 (Plaintiff's initial brief); R.V2, C337 (Plaintiff*'s pro se* Reply Brief); R.V3, C4-18 (Plaintiff s attorney oral [16] argument before Judge Valderrama). Nonetheless, the Department ignored Plaintiff's collateral estoppel argument and proceeded to argue the matter based on equitable estoppel, thereby shifting the focus of the argument with the result that Judge Valderrama never ruled on the collateral estoppel argument. Early during the oral argument in front of Judge Valderrama, attorney for Plaintiff mentioned that the Department should have been collaterally estopped from revoking Plaintiff's license. R.V3, C5. Judge Valderrama interrupted Plaintiff's attorney to ask if there was an estoppel argument in the brief, and the attorney explained that it was in fact on page 12 and 13 of the brief, though not specifically called "collateral estoppel" as the brief was filed *pro se.* R.V3, C6. However, it was in fact specifically called "collateral estoppel" by Plaintiff in his Reply Brief. R.V2, C337. Significantly, Defendant never filed a motion to strike Plaintiff's Reply Brief on the grounds that it was improper. The assistant attorney general agreed to respond to the argument. R.V3, C14. While the phrase "collateral estoppel" was never used in the brief in support of the complaint, the phrase was used in Plaintiff's Reply Brief and repeatedly by Plaintiff's attorney in front of Judge Valderrama, R.V3, C11. Counsel for Defendants incorrectly referred to the collateral estoppel argument as "plaintiff's equitable estoppel argument" and simply reiterated his response to the retroactivity argument. R.V3, C14. Not only was the argument by counsel for Defendants

non-responsive, but it misdirected the circuit court from the claim actually presented. Plaintiff's attorney once again referred to his argument as collateral estoppel on page 18 of the transcript, and Judge Valderrama stated that Plaintiff's "estoppel argument is properly before the court." R.V3, C21. However, Judge Valderrama used equitable estoppel as the basis for making his final determination instead of collateral estoppel. R.V3, C19-24.

[17] The Department reasoned that the Act was simply an additional licensing requirement, and as discussed in *Hayashi*, one additional factor that the Department will consider when evaluating whether or not someone should be licensed as a health care professional. However, that argument cuts against the Department because if the Act was truly an additional licensing requirement they must have determined that Plaintiff satisfied that requirement when he renewed his license in 2012 and 2014. The Department reviews every renewal application to determine whether or not the individual satisfies the requirements of the relevant statute. In this case, the Department determined, after consideration of the felony conviction in 1979, that they would not revoke Plaintiff's license in 2012 and 2014 despite the existence of the Act, which estopped them from then permanently revoking his license in 2015.

In Plaintiff's case, the Department made three final judgements: when Plaintiff's RN license was initially granted in 1989, when his RN license was renewed in 2012, and when his RN license was again

renewed in 2014. It is crucial to remember that collateral estoppel does not just prevent relitigation of an issue, but "refers to the preclusive effect that a final judgment on the merits has on the parties, in that it forecloses litigation of any claim that was, *or could have been*, raised in an earlier suit between the parties or their privies." *Gallaher v. Hasbrouk,* 2013 IL App (1st) 122969, ¶ 21, 3 N.E.3d 913, 922; *see also River Park, Inc. v. Highland Park*, 184 Ill. 2d 290, 302, 703 N.E.2d 883, 889 (1998); *Rein v. David A. Noyes & Co.*, 172 Ill. 2d 325, 334, 665 N.E.2d 1199, 1204 (1996). The Department had the incentive, opportunity and responsibility to revoke Plaintiff's license in 2012 if they believed that Plaintiff fell under the mandate of the Act when he filed for renewal, and again in 2014 when he filed for renewal. In fact, it is apparent from the record that in 2014 the Department's Nurse Board Liaison was concerned about his felony conviction, and took some time to determine if he would be renewed again. In 2012 and [18] again in 2014, the Department had both the incentive and opportunity to take action to permanently revoke Plaintiff's RN license and chose not to do so. Instead, the Department reviewed the conviction along with the Department's relevant rules and regulations, and made a final decision to renew Plaintiff's license.

Furthermore, in Plaintiff's case, because the Act was enacted in 2011, and his license was renewed in 2012 and 2014, there was no change in the law between the final decision granting him the renewal of his license in 2014, and the decision to revoke his license in

2015. The Act was already taken into account when the Department renewed his license in 2014. R.V1, C80. Every case rejecting collateral estoppel arguments with regard to an administrative action relied on the 2011 change in the law. At the very least, the Department had an opportunity to make a final judicial judgment in 2012 and 2014 when it renewed Plaintiff's license, and it decided he was not precluded from continuing to hold his RN license. As stated previously, merely an opportunity for a decision on the merits triggers the doctrine of collateral estoppel.

Even if this Court were to disagree with Plaintiff, and decide that the circuit court properly responded to an equitable estoppel argument instead of a collateral estoppel argument, the Department was also equitably estopped from revoking Plaintiff's RN license in 2015. To invoke equitable estoppel against a public entity, like the Department, "there must be an affirmative act on the part of the public entity and the inducement of substantial reliance by the affirmative act." *Gersch v. Ill. Dep't of Prof'l Regulation*, 308 Ill. App. 3d 649, 660, 720 N.E.2d 672, 681 (1999); *see also, Hamwi v. Zollar,* 299 Ill. App. 3d 1088, 702 N.E.2d 593 (1998); *Halleck v. Cnty. of Cook*, 264 Ill. App. 3d 887, 894, 637 N.E.2d 1110 (1994); *Lindahl v. Des Plaines*, 210 Ill. App. 3d 281, 295, 568 N.E.2d 1306 (1991). Moreover, the act which the party relied upon must be an act "of the public body itself . . . rather than the unauthorized acts of a ministerial officer or a [19] ministerial misinterpretation." *Gersch*, 308 Ill. App. 3d at 660. The granting of Plaintiff's RN license in 2012 and 2014 were clearly

acts of the Department itself, and this is confirmed by the fact that these licenses bore both the signature of the Department's Director as well as the Seal of the State of Illinois. *See*, *e.g.*, R.V1, C232 (state licenses are signed by the Director and affixed with the state seal).

There can be no question that the Department is a public entity. The Department made an affirmative act when it chose to renew Plaintiff's RN license in 2012 and 2014, and Plaintiff relied on that affirmative act by practicing as a registered nurse from 2012 until the permanent revocation of his license in 2015. Moreover, the renewal of Plaintiff's license was an authorized act as the Department is the only agency with the authority to renew a RN license. Plaintiff's license was properly submitted to the Department, and Board Liaisons Jerry Miller and Ruth Lawson verified that the Department approved the 2014 renewal. R.V1, C240. There was also no "ministerial misinterpretation" on the part of the Department. The Act does not state that the Department is barred from renewing a health care professional license if they had ever been convicted of a forcible felony. In fact, the Act does not mention renewals anywhere. 20 ILCS 2105/2105-165. The instant Plaintiff relied on that renewal, the doctrine of equitable estoppel went into effect. *Gersch v. Ill. Dept of Prof'l Regulation*, 308 Ill. App. 3d 649, 660, 720 N.E.2d 672, 681 (1999).

If this Court were to disagree with Plaintiff, and hold that the *Gersch* test does not apply, for reasons of fundamental fairness the revocation of Plaintiff's RN license must be reversed. Unlike other cases in which

plaintiffs argued that they were exempt from the Act's reach, Plaintiff's case involves a forcible felony that occurred well *before* he was a licensed health care worker, and a revocation that occurred *after* two separate renewals were approved post-enactment of the [20] Act. Plaintiff made a terrible choice when he was young, and he was sufficiently punished by the state for his actions. Even with a felony on his record, he went back to school to receive two different nursing degrees and served the public for 33 years as a nurse. Throughout all those years, neither Plaintiff's practical nurse license nor his registered nurse license were ever disciplined by the Department. Plaintiff has always been open about his criminal history, and the Department has never once expressed that he was a danger to the public.

The purpose of collateral estoppel is to prevent inconsistent judgments. In this case, the Department held that Plaintiff was qualified to continue practice as a registered nurse in 2012 and 2014, and then created an inconsistent judgment when it revoked his license in 2015. No matter what interpretation this Court decides to apply to the purpose of the Act, keeping nurses like Plaintiff from practicing does not fall under it. He was never convicted of a forcible felony as a health care worker, and the Department decided on two separate occasions that they would not revoke his license under the Act. To allow the Department to have a third bite at the apple violates the doctrines of collateral estoppel, equitable estoppel, and fundamental fairness that permeate and are the foundation of our judicial

system. The Department's order permanently revoking Plaintiff's RN license should be reversed, because the Department was collaterally and equitably estopped from reaching an additional contrary final judicial decision based on Plaintiff's felony conviction when it had already considered the felony conviction, made a determination not to permanently revoke under the Act, and renewed his RN license in 2012 and 2014.

[21] **CONCLUSION**

The circuit court erred in affirming the Department's revocation of Plaintiff's RN license when it held that the Act applied to health care workers who committed forcible felonies before they were licensed, when it ruled that the doctrine of equitable estoppel did not apply to Plaintiff's case, and when it failed to address Plaintiff's collateral estoppel argument that the Department's renewal of Plaintiff's RN license in 2012 and 2014 prevented the Department from permanently revoking his license in 2015.

WHEREFORE, for the foregoing reasons, Plaintiff-Appellant Batu Shakari respectfully requests that this court reverse the order permanently revoking his RN license, and order the Department to reinstate said license.

Respectfully submitted,
Batu Shakari

By: /s/ Lillian Walanka

Lillian Walanka
Crick Walanka Law Group, Ltd.
111 W. Washington St., Ste. 1820
Chicago, Illinois 60602
(312)335-8860
Attorney for Plaintiff-Appellant

No. 1-17-0285

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

BATU SHAKARI, Plaintiff-Appellant, v. ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION and JAY STEWART, in his official capacity as DIRECTOR of the DIVISION OF PROFESSIONAL REGULATION, Defendants-Appellees.	Appeal from the Circuit Court of Cook County, Illinois, County Department, Chancery Division 15 CH 16520 The Honorable FRANKLIN U. VALDERRAMA, Judge Presiding.

BRIEF OF DEFENDANTS-APPELLEES

LISA MADIGAN
Attorney General
State of Illinois

DAVID L. FRANKLIN
Solicitor General

100 West Randolph Street
12th Floor
Chicago, Illinois 60601
(312) 814-3312

Attorneys for
Defendants-Appellees

BRIDGET DIBATTISTA
Assistant Attorney General
100 West Randolph Street
12th Floor
Chicago, Illinois 60601
(312) 793-0793
Primary e-service:

CivilAppeals@atg.state.il.us
Secondary e-service:
BDiBattista@atg.state.il.us

ORAL ARGUMENT REQUESTED

[i] **POINTS AND AUTHORITIES**

PAGE(S)

[1] NATURE OF THE CASE

Plaintiff-Appellant Batu Shakari sought administrative review of an order of the Illinois Department of Financial and Professional Regulation ("Department") permanently revoking his nursing license pursuant to section 2105-165 of the Department of Professional Regulation Law (20 ILCS 2105/2105-165 (2016)). The circuit court affirmed the Department's decision. Shakari appealed.

[2] ISSUES PRESENTED FOR REVIEW

1. Whether section 2105-165 requires the Department to revoke the license of a licensed health care worker who has committed a forcible felony prior to becoming licensed.

2. Whether the doctrines of equitable and collateral estoppel do not apply to bar the Department from revoking Shakari's license.

[3] JURISDICTIONAL STATEMENT

On January 5, 2017, the circuit court issued an order affirming the Department's final order. (C354).* Shakari filed a notice of appeal on February 1, 2017, (C355), which was timely based on Ill. Sup. Ct. R. 303(a)(1) because it was within 30 days of the circuit court's judgment. Thus, this court has jurisdiction over this appeal under Ill. Sup. Ct. R. 301.

[4] STATEMENT OF FACTS

I. Background.

In 1975, Shakari was convicted of attempted murder. (C146). Following an appeal of his conviction, he entered into a plea bargain in 1979, agreeing to enter a plea of guilty to attempted murder in exchange for time served. (C228-29; T6-7).

Shakari thereafter obtained a Licensed Practical Nurse (LPN) license in 1982, following a hearing in which he explained the circumstances regarding his conviction. (C175). In 1989, he obtained a Registered Nurse (RN) license. (C232, 239). Shakari disclosed in his application for his RN license that he had been convicted of a crime. (C223).

In 2011, the General Assembly passed section 2105-165. 20 ILCS 2105/2105-165 (2016). That section

---

* The record on appeal consists of two common-law volumes, cited as "C___," and a third volume containing the report of proceedings, cited as "T___." Shakari's opening brief is cited as "Br. at ___."

requires the Department to permanently revoke the license of a health care worker who has been convicted of a forcible felony without a hearing. *Id.*

Following the passage of section 2105-165, Shakari's RN license was renewed in 2012 and 2014. (C233-46). In 2014, Ruth Lawson, a Department section supervisor, informed him that his renewal was delayed "due to a positive answer [he] provided on [his] personal history questions on [his] renewal form." (C240). Following the 2014 renewal, Jerry Miller, a Department nursing board liaison, confirmed with Shakari that his license had been renewed. (C242).

[5] **II. The Department's Revocation Of Shakari's License.**

In 2015, the Department issued a Notice of Intent to Issue Permanent Revocation Order with respect to Shakari's RN license pursuant to section 2105-165. (C140). Specifically, the notice stated the Department intended to revoke his license because he had been previously convicted of attempted murder, a forcible felony under section 2105-165. (*Id.*). Shakari responded to the notice, and argued that section 2105-165 should not apply to him because he was not licensed at the time of his conviction of a forcible felony. (C78-82).

Following a review of Shakari's response, the Department issued a Permanent Revocation Order on September 30, 2015. (C73-75). The Department rejected Shakari's argument that section 2105-165 should not apply to those who have committed forcible

felonies prior to licensure, relying on the Illinois Supreme Court decision in *Hayashi v. Ill. Dep't of Fin. & Prof'l Regulation*, 2014 IL 116023. (C74). Specifically, the Department cited *Hayashi*'s holding that "the plain language clearly indicate[s] the legislative intent to subject persons to the Act without regard to the date of their convictions." (*Id.*). The Department also concluded Shakari's reading would contravene the intent of the legislature, citing that portion of section 2105-165 which prevents the Department from issuing licenses in the first instance to those who have committed forcible felonies prior to seeking licensure. (C75). Shakari thereafter sought administrative review in the circuit court. (C3).

[6] **III. Proceedings Before The Circuit Court.**

In the circuit court, as at the administrative level, Shakari argued that section 2105-165 should not apply to revoke his license because he was not a licensed health care worker at the time of his conviction. (C255-72). He also asserted for the first time before the circuit court in his reply brief that the Department's 2012 and 2014 renewals should collaterally estop it from revoking his license. (C337).

Following a hearing, the circuit court affirmed the Department's decision to revoke Shakari's license. (C354; T19-24). As did the Department, the court relied on the Illinois Supreme Court's decision in *Hayashi*, 2014 IL 116023, in which it held that the phrase "ha[s] been convicted" within section 2105-165 "clearly

indicates legislative intent to subject persons to the Act without regard to the date of their conviction." (T20). With respect to the estoppel issue, the circuit court understood Shakari to be raising an equitable estoppel argument. (*Id.*). Relying on *Gersch v. Ill. Dep't of Prof'l Regulation*, 308 Ill. App. 3d 649, 660 (1st Dist. 1999), it first noted that courts are reluctant to apply the doctrine of equitable estoppel against a public entity. (T22). The court further determined that the doctrine cannot be applied with respect to an unauthorized ministerial act. (*Id.*). Because it determined that Shakari's 2014 renewal was an unauthorized action under section 2105-165, it refused to apply the doctrine of equitable estoppel. (T23).

[7] While noting that Shakari had presented a "very sympathetic case," the court determined that it "lack[ed] authority to depart from the General Assembly's mandate." (*Id.*). Finally, it noted that section 2105-165 had been amended in January 2017 to allow those whose licenses had been revoked for forcible felony convictions to petition the Department for restoration of their licenses. (*Id.*). Shakari appealed. (C355).

[8] **ARGUMENT**

I. The Department Properly Revoked Shakari's License Because Section 2105-165 Applies To Licensed Healthcare Workers Who Committed Forcible Felonies Prior To Licensure.

In 2011, the Illinois General Assembly passed section 2105-165, which requires the Department to permanently revoke the license of a health care worker who has been convicted of a forcible felony without a hearing. 20 ILCS 2105/2105-165 (2016). Specifically, the section 2105-165 provides as follows:

> § 2105-165. Health care worker licensure actions; sex crimes.
>
> (a) When a licensed health care worker . . . (3) has been convicted of a forcible felony . . . , then, notwithstanding any other provision of law to the contrary, except as provided in this Section, the license of the health care worker shall by operation of law be permanently revoked without a hearing.

Id. The section does not involve a discretionary determination of discipline, but rather serves to revoke a license "by operation of law" when a licensed health care worker has been convicted of a forcible felony. *Id.* Section 2105-165 further provides that unlicensed individuals who have been convicted of a forcible felony may not receive a license:

> (b) No person who has been convicted of any offense listed in subsection (a) or required to

> register as a sex offender may receive a license as a health care worker in Illinois.

Id. Additionally, the section is not limited to forcible felonies committed against patients. *Id.*; *Shushunov v. Ill. Dep't of Fin. & Prof'l Regulation*, 2017 IL App (1st) 151665, ¶36.

[9] On appeal, as he argued below, Shakari maintains that section 2105-165 should not apply to him, because he was not a licensed health care worker at the time of his forcible felony conviction. (Br. at 8-12). Put another way, he maintains that section 2105-165 operates to revoke licenses only of health care workers who committed a forcible felony *after* they became licensed. Shakari's argument presents a question of statutory interpretation, which is reviewed *de novo. Grady v. Ill. Dep't of Healthcare & Family Servs.*, 2016 IL App (1st) 152402, ¶9.

When statutory language is clear, the court affords the language its plain meaning, and may not "construe a statute in a manner that alters the plain meaning of the language adopted by the legislature." *Murray v. Chi. Youth Ctr.*, 224 Ill. 2d 213, 245 (2007). As such, this court has held that it "has no power to restrict the plain meaning of an unambiguous statute." *Mockbee v. Humphrey Manlift Co., Inc.*, 2012 IL App (1st) 093189, ¶45.

Here, Shakari's proposed reading runs afoul of the above principles in that it both contravenes the plain terms of the statute, and because it seeks to read restrictions into section 2105-165. First, by its plain

terms, the Department must revoke the license of a licensed health care worker when he or she "has been convicted of a forcible felony." 20 ILCS 2105/2105-165 (2016). In his brief, Shakari argues that "there is no 'health care worker' who 'has been convicted' in this case." (Br. at 12). That is plainly incorrect. [10] Shakari is a licensed health care worker who "has been convicted of a forcible felony."

Shakari maintains that he has presented a "linguistic argument" in support of his reading. (Br. at 11). Specifically, he argues that the phrase " 'has been convicted' in section 2105-165 is not independent from the subject being referenced, which is . . . 'a *licensed* health care worker.' " (Br. at 12) (emphasis in the original). But the Department has not asserted that the phrase "licensed health care worker" must be read independently from "has been convicted" to apply to individuals who committed forcible felonies prior to licensure. Rather, the two phrases, read together, plainly state that section 2105-165 applies to a licensed health care worker who has been convicted of a forcible felony. Again, because Shakari is a licensed health care worker who has been convicted of a forcible felony, section 2105-165 applies.

Shakari's above linguistic argument constitutes his sole affirmative argument in support of his proposed interpretation. Rather than demonstrate why the legislature would have exempted health care workers who committed forcible felonies prior to licensure from the section 2105-165's reach, Shakari instead dedicates the bulk of his analysis to distinguishing

Hayashi v. Ill. Dep't of Fin. & Prof'l Regulation, 2014 IL 116023. (Br. at 8-12).

In *Hayashi*, the Illinois Supreme Court held that section 2105-165 applied to licensed health care workers who committed offenses prior to its passage in 2011. *Id.* at ¶17. The court held that the past-perfect phrase "has [11] been convicted," as used in section 2105-165, "refers to health care workers who hold the status of having been convicted of a particular offense, no matter when that status was obtained." *Id.*

Shakari maintains that *Hayashi* is distinct from his case because the issue before the court was the effect of section 2105-165 on licensed health care workers who had been convicted—while licensed—prior to section 2105-165's passage in 2011. (Br. at 10). As an initial matter, although the particular facts in *Hayashi* involved pre-enactment offenses committed by licensed workers, the reasoning articulated in support of the court's holding is not so limited. For example, the court noted that "the only reasonable interpretation of the phrase, 'has been convicted' is to refer to *individuals* convicted of certain offenses before or after the Act's effective date." *Id.* at ¶18 (emphasis added); *see also id.* ("[T]he plain language clearly indicates the legislative intent to subject *persons* to the Act without regard to the date of their convictions.") (emphasis added). The court placed no limitations in its reasoning which would prevent section 2105-165 from similarly applying to individuals convicted of an offense prior to licensure.

Further, as noted, beyond violating the plain meaning of the statute, Shakari's proposed interpretation contravenes basic statutory interpretation by reading restrictions into section 2105-165. The reasoning of *Hayashi* is instructive on this basis as well. As noted above, courts may not restrict the language of an unambiguous statute. *Mockbee*, 2012 IL App (1st) 093189, ¶45. [12] In accord with this principle, the court in *Hayashi* held that "[h]ad the General Assembly intended to limit the Act's reach only to convictions occurring [after the Act's effective date], it would have made that intent explicit." 2014 IL 116023, ¶18.

Here, similarly, the legislature could have made explicit a purported limitation that the section 2105-165 apply only to offenses committed by health care professionals *while* licensed. Because it did not do so, this court should apply the same reasoning employed in *Hayashi* to hold that the legislature intended no such limitation.

Alternatively, even if the statute is ambiguous, Shakari's interpretation should be rejected because it contravenes the apparent intent of the legislature. A statute is ambiguous if it is "susceptible to two equally reasonable and conflicting interpretations." *Land v. Bd. of Educ. of Chi.*, 202 Ill. 2d 414, 426 (2002). In such a case, the court affords the statute a construction that "will effectuate or carry out its purpose or object." *Petition of K.M.*, 274 Ill. App. 3d 189, 195 (1st Dist. 1995). When a statute is ambiguous, the court discerns legislative intent by use of statutory construction aids, including giving the statute "the fullest, rather than the

narrowest, possible meaning to which [it is] susceptible." *City of Chi. v. Janssen Pharm., Inc.*, 2017 IL App (1st) 150870, ¶22. Additionally, to discern legislative intent, "a statute must be read as a whole and all [13] relevant parts must be considered by the court." *Advincula v. United Blood Servs.*, 176 Ill. 2d 1, 16-17 (1996).

First, giving the statute its fullest, rather than its narrowest, interpretation, militates in favor of holding that section 2105-165 applies to licensed health care workers who committed forcible felonies prior to licensure. Second, when read as a whole, the statute evinces the legislature's intent to include this class of licensed worker within its scope.

Specifically, as described above, section 2105-165 contains a provision that unlicensed individuals who have been convicted of forcible felonies may not obtain a license in the first instance. 20 ILCS 2105/2105-165(b) (2016). Shakari provides no explanation why the legislature would seek to prevent individuals who were convicted of forcible felonies from becoming licensed, yet permit the continued licensure of health care professionals who were convicted of a forcible felony prior to licensure. Rather, that the legislature did not want those convicted of a forcible felony to become licensed in the first instance evinces its intent that section 2105-165 also apply to revoke the licenses of those who committed forcible felonies prior to licensure.

Shakari also asserts that his interpretation is the proper one because "the Act has no jurisdiction over

unlicensed private citizens." (Br. at 9). But as discussed above, section 2105-165 *does* apply to unlicensed private citizens seeking licenses. 20 ILCS 2105/2105-165(b) (2016). Further, in revoking Shakari's license, the Department was properly exercising its jurisdiction over [14] a licensed individual. Just as the Department may refuse licensure to one who has committed a forcible felony prior to licensure, so too may it revoke the license of an individual who committed a forcible felony prior to licensure. 20 ILCS 2105/2105-165 (2016). Because Shakari is within this class of individuals, the Department correctly revoked his license pursuant to section 2105-165.

II. Neither Equitable Estoppel Nor Collateral Estoppel Applies To Bar The Department From Revoking Shakari's License.

In his brief, Shakari argues that the circuit court and opposing counsel below "expressed confusion" regarding his collateral estoppel argument. (Br. at 15). This confusion is understandable for several reasons. First, a collateral estoppel argument was never raised at the administrative level by Shakari's counsel. (C78-83). On this basis alone, the argument has been forfeited, and should not be considered by this court. *SMRJ, Inc. v. Russell*, 378 Ill. App. 3d 563, 576 (1st Dist. 2007).

Further, the argument was raised for the first time in Shakari's reply brief to the circuit court. While Shakari argues it is "evident" that he was raising a

collateral estoppel argument in his opening brief, he candidly concedes he did not even use the term "collateral estoppel" until his reply brief. (Br. at 16).

Additionally, that Shakari's assertion of collateral estoppel led to confusion is not surprising, given that he cites no case in which the doctrine has been considered—let alone applied—in the context of a license renewal. [15] Rather, courts considering the estoppel effect of prior administrative actions typically consider the doctrine that the circuit court believed Shakari to be asserting: equitable estoppel. *See*, *e.g.*, *Gersch v. Ill. Dep't of Prof'l Regulation*, 308 Ill. App. 3d 649, 660 (1st Dist. 1999). In any event, as explained below, under either doctrine, the Department was not estopped from revoking Shakari's license.

A. The Doctrine Of Equitable Estoppel Does Not Apply.

Although Shakari asserts that he did not raise an equitable estoppel argument below, he nevertheless proceeds to argue the doctrine on appeal. (Br. at 18-19). A legal conclusion that the doctrine of equitable estoppel does not apply is reviewed *de novo. Morgan Place of Chi. v. City of Chi.*, 2012 IL App (1st) 091240, ¶33. To successfully bring a claim of equitable estoppel against a public entity, as Shakari notes, one must show "an affirmative act on the part of the public entity and the inducement of substantial reliance by the affirmative *act*." *Gersch*, 308 Ill. App. 3d at 660; (Br. at 18). Shakari proceeds to argue that he meets this

showing because the renewal of his license was an affirmative act on the part of the Department, and that he relied on that act by continuing to practice as a registered nurse until his license revocation. (Br. at 18).

Shakari fails to note, however, that to successfully bring a claim of equitable estoppel, one must demonstrate that one relied to his or her *detriment* on the act of the public entity. *Gersch*, 308 Ill. App. 3d at 660. [16] Shakari can make no such showing. Rather, he has shown only that he was permitted to continue practicing as a registered nurse until the time of his license revocation in 2015. If anything, this reliance inured to his benefit, rather than detriment. Having failed to demonstrate any detrimental reliance or other prejudice, Shakari's equitable estoppel argument necessarily fails.

Alternatively, even if Shakari were able to demonstrate detrimental reliance, any claim of equitable estoppel should be rejected. *Gersch* is instructive here. In that case, the Department erroneously issued a clinical social worker's license to Gersch—rather than the lower tier social worker's license—despite the fact that Gersch lacked a masters or doctorate degree as required under the law for a clinical license. *Id.* at 653. Upon discovering the error approximately five years later, the Department sought to revoke Gersch's license. *Id.* at 655. Gersch challenged the revocation, arguing the Department should be equitably estopped from doing so. *Id.* at 660.

In rejecting application of the equitable estoppel doctrine, the court first noted that courts disfavor the use of equitable estoppel against a public body. *Id.* It further stated that Gersch had not demonstrated any detrimental reliance or other prejudice suffered from issuance of the license. *Id.*

Finally, the court held that it would not apply the doctrine to prevent the Department from correcting its error. *Id.* It reasoned that if it applied the doctrine to bind a public entity to an "unauthorized act of a governmental employee, then that entity would remain helpless to remedy errors and forced [17] to permit violations to remain in perpetuity." *Id*. at 660-61. The court noted the issuance of the license "obviously resulted from a mistake by a ministerial officer," and that the Department "must be permitted to correct its error." *Id.* at 661.

Here, as in *Gersch*, the evidence demonstrates that Shakari's license was renewed by ministerial officers. The record shows, and he concedes, that the renewal decisions were administered by a nursing board liaison and a Department section supervisor. (C240-42; Br. at 5). In arguing that the renewals were "acts of the Department itself," Shakari asserts that "these licenses bore both the signature of the Department's Director as well as the Seal of the State of Illinois." (Br. at 19). The record does not contain documentation relative to Shakari's license renewals, however. Rather, he cites his initial registered nurse's license issued in 1989. (C232). This evidence, at most, relates to the decision to initially license Shakari. It does not

demonstrate that the decisions to renew his license were anything more than ministerial decisions. As in *Gersch*, the Department should have the opportunity to correct the ministerial error of renewing Shakari's license. To hold otherwise, as held in *Gersch*, the doctrine would permit the error of licensing Shakari to "remain in perpetuity." 308 Ill. App. 3d at 660.

[18] **B. The Doctrine Of Collateral Estoppel Does Not Apply.**

Similarly, the doctrine of collateral estoppel does not apply. Whether the doctrine of collateral estoppel applies is reviewed *de novo. Pedersen v. Vill. of Hoffman Estates*, 2014 IL App (1st) 123402, ¶42.

The doctrine of collateral estoppel—a branch of the *res judicata* doctrine—is an equitable one, and is employed to prevent relitigation of issues previously decided in prior proceedings. *Id.* A party asserting the doctrine has the burden of establishing its application by "clear, concise, and unequivocal evidence." *Id.* Collateral estoppel applies only when "the issue decided in the prior adjudication is identical with the one presented in the suit in question, there was a final judgment on the merits in the prior adjudication, and the party against whom estoppel is asserted was a party or in privity with a party to the prior adjudication." *Id.*

As Shakari notes, the doctrine may apply to prior decisions of administrative agencies that are adjudicatory, judicial, or quasi-judicial in nature. *Id.*; (Br. at 15). Shakari asserts that the decisions to renew his license

were "quasi-judicial," such that the doctrine of collateral estoppel should apply. (Br. at 15).

Despite this contention, however, the appellate court has held that an agency does not act in a "quasi-judicial" capacity when it is "not called upon to conduct any hearing, to engage in fact finding of a judicial nature, or to pass upon any controversial point of law." *Braglia v. McHenry Cty. State's* [19] *Attorney's Office*, 371 Ill. App. 3d 790, 795 (2d Dist. 2007) (superseded by statute on other grounds); *cf. Bagnola v. SmithKline Beecham Clinical Labs.*, 333 Ill. App. 3d 711, 718 (1st Dist. 2002) (finding final judgment element of *res judicata* satisfied due to "extensive adversarial hearing conducted under oath and on the record" and affirmance of administrative decision by circuit court).

Further, the court has held that when agencies are acting in an investigatory capacity, they do not act in a quasi-judicial manner. *O'Rourke v. Access Health, Inc.*, 282 Ill. App. 3d 394, 403 (1st Dist. 1996) (holding determination of agency resulting from investigation did not qualify as quasi-judicial when there was "no evidence that judicial procedures were followed").

Here, there is no evidence that Shakari's license renewals were quasi-judicial actions. Although he correctly notes that administrative agencies are empowered to act in a quasi-judicial capacity, (Br. at 15), he has failed to demonstrate that the Department did so in renewing his license. As in *Braglia*, there was no hearing, no fact-finding of a judicial nature, nor resolution of a controversial point of law with respect to

Shakari's license renewals. Put simply, there was no "adjudication" at all. Shakari baldly asserts that the renewal of his license was a "final judgment," (Br. at 14), but cites no evidence or authority in support of this contention. This lack of evidence is far from the "clear, concise, and unequivocal evidence" needed to establish collateral estoppel. *Pedersen*, 2014 IL App (1st) 123402 ¶42.

[20] Shakari nevertheless asserts that a license renewal is "text book [sic] quasi-judicial as the Department reviewed the facts presented in the renewal application, requested a written response from [him], and issued a final determination." (Br. at 15). Again, however, he cites no authority for the proposition that mere "review of facts" qualifies an agency action as "quasi-judicial." He also cites no portion of the record demonstrating that the Department "requested a written response" from him. But even if it had, at most, the Department was engaged in investigatory fact finding—rather than "fact finding of a judicial nature" as required to qualify as "quasi-judicial" action. *See Braglia*, 371 Ill. App. 3d at 795. And, as noted in *O'Rourke,* investigatory fact finding does not qualify as quasi-judicial conduct. 282 Ill. App. 3d at 403.

The only case Shakari attempts to analogize to the facts here is one in which the doctrine of collateral estoppel was not even at issue, *E.P.A. v. Pollution Control Bd.*, 308 Ill. App. 3d 741 (1999). That case involved the administrative review of a final determination of the Illinois Pollution Control Board permitting an adjusted standard for a company's emissions of volatile

organic material. *Id.* at 743. At the administrative level, the company's petition was opposed by the Illinois EPA, and two evidentiary hearings were held before the Board. *Id.* at 745. On review of the decision, for purposes of determining the appropriate standard of review, the appellate court held that the determination was quasi-judicial in nature. *Id.*

[21] In relying on *E.P.A.*, Shakari asserts that his case "is analogous to granting or denying a variance or permit from an agency." (Br. at 15). Beyond this blanket statement, however, he provides no analysis as to why a professional license renewal is analogous to a determination regarding the adjustment of a pollution emissions standard. Even were he able to successfully analogize these scenarios, however, *E.P.A.* is distinguishable for two reasons.

First, the issue of collateral estoppel was not even considered in this case—rather, the analysis of whether the board determination was quasi-judicial was undertaken to determine the appropriate standard of review. *Id.* at 748. Second, unlike here, evidentiary hearings were held in an adversarial proceeding before the board that led to a final agency determination. *Id.* at 745. In the present case, as noted above, no such quasi-judicial action or adjudication occurred with respect to Shakari's license renewals. As such, *E.P.A.* is distinguishable and does not support Shakari's position.

Additionally, applying collateral estoppel here would simply work an end-run around the policy

enunciated by Illinois courts in refusing to apply equitable estoppel in this context. Specifically, as noted in *Gersch*, applying equitable estoppel to prevent the correction of an unauthorized ministerial error would allow the error to "remain in perpetuity." *Gersch*, 308 Ill. App. 3d at 660. A party should not be permitted to assert collateral estoppel—also an equitable doctrine—to the same effect.

[22] Finally, contrary to Shakari's apparent contention, (Br. at 16), that the circuit court understood him to be asserting an equitable—rather than collateral—estoppel argument is irrelevant. On administrative review, this court reviews the decision of the administrative agency—not the circuit court. *Marzano v. Cook Cty. Sheriff's Merit Bd.*, 396 Ill. App. 3d 442, 446 (1st Dist. 2009). Because the Department properly revoked Shakari's license pursuant to section 2105-165, its decision should be affirmed.

C. Shakari May Petition The Department For Restoration Of His License.

Finally, Shakari asserts that "fundamental fairness" dictates that his license not be revoked. In support, he notes that the forcible felony conviction occurred when he was young and that he has served for 33 years as a nurse. (Br. at 19-20). Yet, a process—which the circuit court acknowledged below—exists for reinstatement of licenses in cases similar to those of Shakari. Specifically, section 2105-165 was amended in January 2017 to allow individuals convicted of forcible

felonies other than sex offenses to petition for restoration of their licenses if more than five years have passed since the date of the conviction. 20 ILCS 2105/2105-165(a-1). Factors considered in review of the petition include the date of the conviction. *Id.* Thus, Shakari is not without recourse, and the court should not feel compelled to resort to application of inapposite equitable doctrines.

[23] Under section 2105-165, the Department was without discretion to continue Shakari's licensure, and was required by law to revoke his license. Its decision to do so must therefore stand.

[24] CONCLUSION

For the foregoing reasons, the Defendants-Appellees request that this Court affirm the Department's decision revoking Shakari's license.

Respectfully submitted,

LISA MADIGAN
Attorney General
State of Illinois

DAVID L. FRANKLIN
Solicitor General
100 West Randolph Street
12th Floor
Chicago, Illinois 60601
(312) 814-3312

BRIDGET DIBATTISTA
Assistant Attorney General
100 West Randolph Street
12th Floor
Chicago, Illinois 60601
(312) 793-0793

Attorneys for
Defendants-Appellees

Primary e-service:

CivilAppeals@atg.state.il.us
Secondary e-service:
BDiBattista@atg.state.il.us

Docket No. 17-0285

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

Batu Shakari, Plaintiff-Appellant, v. Illinois Dep't of Financial and Professional Regulation, And Jay Stewart, in his Official Capacity as Director of the Division of Professional Regulation Defendant-Appellee.	Cir Ct. No. 2015 CH 16520 Judge Franklin Valderama

Amended Reply Brief of Batu Shakari

Dore Law Offices LLC
Attorneys for Plaintiff-Appellant
134 N. La Salle St.,
Suite 1208
Chicago, IL 60602
P: 312-726-8401;
F: 844-272-4628

E-FILED
Transaction ID:
1-17-0285

File Date: 11/30/2017 2:08 PM
Thomas D. Palella
Clerk of the Appellate Court
APPELLATE COURT 1ST DISTRICT

E: james@dorelawoffices.com

ORAL ARGUMENT REQUESTED

I. THE DOCTRINE OF COLLATERAL ESTOPPEL APPLIES IN THIS CASE BECAUSE A QUASI-JUDICIAL FINAL JUDGMENT TO RENEW PLAINTIFF'S LICENSE WAS MADE BY THE SAME DEPARTMENT THAT LATER REVOKED HIS LICENSE BASED ON FACTS ALREADY RULED UPON.

Defendant erroneously lumps *collateral estoppel*, *equitable estoppel and Res Judicata* together as if all of these legal concepts are either the same or does not apply in this case, neither of which is accurate because all 3 of them are different. All 3 of these legal concepts have distinctly different meanings and legal applications. In this regard, Defendant's Brief states in relevant part: "The doctrine of collateral estoppel – a branch of the res judicata doctrine – is an equitable one . . . " (Def. Br., 18). Also, "Additionally, applying collateral estoppel here would simply work an end-run around the policy enunciated by Illinois courts in refusing to apply equitable estoppel in this context." (Def. Br., 21). Also, "A party should not be permitted to

assert collateral estoppel – also an equitable doctrine – to the same effect." (Def. Br., 21).

For the sake of clarity, not as an insult or disrespect to the court in any way, but to fully argue this important issue and underscore the fundamental difference between *collateral estoppel*, *equitable estoppel and res judicata* relative to Plaintiff's argument before this court, the following definitions from *Black's Law Dictionary*, *Tenth Edition*, are cited here:

Collateral Estoppel is a doctrine barring a party from relitigating an issue determined against that party in an earlier action, even if the second action differs significantly from the first one (also termed *issue preclusion*).

Equitable Estoppel is a defensive doctrine preventing one party from taking unfair advantage of another when, through false language or conduct, the person to be estopped has induced another person to act in a certain way, with the result that the other person has been injured in some way. This doctrine is founded on principles of fraud.

Res Judicata is an affirmative defense barring the same parties from litigating a second lawsuit on the same claim, or any other claim arising from the same transaction or series of transactions and that could have been – but was not – raised in the first suit (also termed *claim preclusion*).

IDFRP's violation of *collateral estoppel* by revoking Plaintiff's RN license in 2015, after renewing it in

2012 and 2014 after passage of the Act in 2011, has always been the central issue raised by the Plaintiff in this case – *not equitable estoppel nor res judicata.* And this fact is confirmed throughout Plaintiff's filings in this case both with IDFPR and the circuit court.

In fact, from the very beginning of this case, with Plaintiff's filing of his Response To Petition To Issue Permanent Revocation Order, the issue of *collateral estoppel* was clearly argued before IDFPR. This fact is supported by the record, which states in relevant part: "In March of 2014, Respondent began the process of renewing his RN license on a timely basis and completed all of the necessary paperwork including informing the Department as a part of the renewal process of the past conviction as required by the renewal documents. The IDFPR again requested information with regard to the past felony conviction and after consideration of this information, renewed Respondent's RN license in June 2014." R. V 1, C156. Also, "Respondent has practiced as a nurse in the State of Illinois for 33 years. At no time has he had any disciplinary action taken against his license. The criminal conviction which has triggered the petition at issue here occurred prior to the Respondent becoming a licensed nurse in the State of Illinois. The Illinois Department of Financial and Professional Regulation has held hearings and gathered information with regard to this felony conviction on multiple occasions including the occasion of approval of sitting for the Nursing Board exam in 1981 and 1989, and in authorizing and licensing the Respondent as a nurse in the State of Illinois beginning

in 1981 and then again in 1989. The Illinois Department of Financial and Professional Regulation regularly renewed the Respondent's license to practice nursing in the State of Illinois including June of 2014 subsequent to the enactment of the Statute at issue in this case." R. V1, C156. The evidence is clear: This filing with IDFPR is clearly a *collateral estoppel argument* in that it emphatically stated that IDFPR had renewed Plaintiff's RN license since passage of the Act (both in 2012 and 2014), consequently making them culpable for violating *collateral estoppel* if they should decide to revoke. IDFPR simply chose to ignore Plaintiff's argument, ignore their 2 previous final judgments to renew Plaintiff's RN license, and instead decided to relitigate and revoke.

Subsequent to IDFPR's Revocation Order, Plaintiff has consistently argued before the circuit court that his 33 years of nursing practice and RN license renewals in the State of Illinois, followed by IDFPR's revocation of his RN license in 2015, was clearly a violation of their previous judgments on the issue of his past felony conviction – which encompassed license renewals in 2012 and 2014 both occurring after passage of the Act in 2011. The same *collateral estoppel argument* that was filed with IDFPR was filed with the circuit court. R. V2. C293-305. However, when Plaintiff filed his pro se Reply Brief with the circuit court he had become aware that the term *collateral estoppel* was the appropriate legal terminology that described his legal argument, and consequently he used it. Plaintiff's legal argument never changed as evidenced by

the record – the only thing that changed was his use of the appropriate legal terminology to describe his argument. R. V2, C337. Plaintiff is not an attorney, but rather a private citizen who researched and filed his case predominantly pro se. This court should not punish Plaintiff for failing to *name* an argument at every stage in which it was clearly articulated before an attorney for the Defendant and a circuit court judge, especially in light of the fact that no case law was provided by the Defendant indicating that the correct legal name is required in order for an argument to be properly raised.

In Defendant's Brief, it states in relevant part: "Here, as in *Gersch*, the evidence demonstrates that Shakari's license was renewed by ministerial officers." (Def. Br., 17). Unless Jay Stewart, Director of the Division of Professional Regulation, is considered a "ministerial officer", this statement is clearly false. Why? Because Plaintiff's RN license both in 2012 and 2014 was renewed with both the signature of Jay Stewart and the State of Illinois Seal on it. Also, as Plaintiff stated in his original brief, *all* state licenses are signed by the Director and affixed with the State Seal, not just the original license. (Pl. Br., 19). This is a fact of public knowledge which cannot be reasonably denied by the Department. Due to procedural history of the circuit court case, no complete administrative record was ever filed in answer to the complaint for review. Therefore, the original license was provided in the record as an example of this practice (R. V1, C232), but it defies logic for the Department to assert that they are

unaware if Plaintiff's renewals also included the signature and seal. (Def. Br., 17). Director Jay Stewart is clearly not a ministerial officer. As the Director of the Department and a licensed attorney, he was specifically charged with making final determinations. His signature and the State Seal on Plaintiff's 2012 and 2014 renewed licenses is clear evidence of his approval of the renewals, and more than sufficient evidence of a final quasi-judicial decision.

In addition to being Director of the Division of Professional Regulation at the time of the inception of this case, Jay Stewart is also an attorney with a strong background in law, and has worked as an attorney both in the private and government sectors. The point being made here is that Mr. Stewart is no stranger to the law. Yet, in Defendant's Brief, it states in relevant part: "First, a collateral estoppel argument was never raised at the administrative level by Shakari's counsel." (Def. Br., 14). This is an extremely significant misstatement of fact in this case. because it was Jay Stewart who signed the Notice of Intent To Issue Permanent Revocation Order against Plaintiff (R. V1, C112-113), it was Jay Stewart who apparently reviewed Plaintiff's Response To Petition To Issue Permanent Revocation Order (R. V1, C154-158), and subsequent to his review it was Jay Stewart who signed the Permanent Revocation Order against Plaintiff (R. V1, C19-21). This action was clearly a violation of *collateral estoppel* in that Mr. Stewart had previously signed and renewed Plaintiff's RN license both in 2012 and 2014 after passage of the

Act in 2011, thereby producing an inconsistent judgment.

IDFPR is not a "private entity" that has no legal mandate to be fair in how they go about the business of prosecuting their cases. On the contrary, IDFPR is a "governmental entity" that has a clear legal mandate given to it by the Illinois Legislature that requires it by law to be fair in how they go about the business of prosecuting their cases against Illinois citizens (20 ILCS 2105/2105-15). Yet, IDFPR has prosecuted its case against the Plaintiff as if no legal mandate to be fair exists.

In Defendant's Brief, it states in relevant part: "Under section 2105-165, the Department was without discretion to continue Shakari's licensure. and was required by law to revoke his license." (Def. Br., 23). This is clearly erroneous. IDFPR made 2 final judgments to renew Plaintiff's RN license after passage of the Act, and in so doing they became culpable to violating *collateral estoppel*. A violation of *collateral estoppel* is a violation of both federal and state law relative to double jeopardy (Ashe v. Swenson, 397 U.S. 436, 443; In Re PS, 676 N.E.2d 656, 658). As a governmental body mandated by the Illinois Legislature to be fair in carrying-out its duties, IDFPR had a legal responsibility to obey federal and state law in doing so. Also, the judgments that were made by IDFPR in 2012 and 2014 to renew Plaintiff's RN license after passage of the Act in 2011 were most certainly "final judgments" for two openly evident reasons: (1) IDFPR's judgment to renew Plaintiff's license in both cases resulted in Plaintiff

being granted definitive legal authority to practice nursing in the State of Illinois, and (2) IDFPR is the only legal body in Illinois that possesses the legal authority to issue RN licenses. This is clear, concise and unequivocal evidence that the renewal of Plaintiff's RN license was a "final judgment."

In Defendant's Brief, it states in relevant part: "In his brief, Shakari argues that the circuit court and opposing counsel below "expressed confusion" regarding his collateral estoppel argument. This confusion is understandable for several reasons." (Def. Br., 14). This makes no rational sense, because no experienced attorney nor experienced judge should be confused about the simple matter of knowing the difference between the argument being made by the Plaintiff in a case vs. the Defendant in a case. The Plaintiff in this case clearly stated in his Initial Brief (R. V2, C304-305), in his Reply Brief (R. V2, C337), and during Oral Argument (R. V3, C4-18) that his argument was *collateral estoppel*, while the Defendant in this case stated during Oral Argument that *equitable estoppel* was what he was arguing (R. V3, C14). Consequently, whatever "confusion" may have existed was apparently created intentionally for the purpose of avoiding dealing with Plaintiffs *collateral estoppel* argument. Given the fact that Plaintiff stated his case to be *collateral estoppel* both orally before the court and in his briefs, no other explanation makes any sense. In fact, the notion that an experienced attorney and an experienced judge simply became "confused" – despite dealing with this same case over a period of more than a year – not only

fails to make any rational sense, but it's highly prejudicial against Plaintiff in that by the court failing to rule on Plaintiffs *collateral estoppel* argument it effectively denied him due process of law.

In Defendant's Brief, it states in relevant part: "Here, there is no evidence that Shakari's license renewals were quasi-judicial actions. Although he correctly notes that administrative agencies are empowered to act in a quasi-judicial capacity, he has failed to demonstrate that the Department did so in renewing his license. As in *Braglia*, there was no hearing, no fact-finding of a judicial nature, nor resolution of a controversial point of law with respect to Shakari's license renewals. Put simply, there was no "adjudication" at all." (Def. Br., 19). Here, Defendant demonstrates a gross misunderstanding of the law relative to the requirements needed to enforce a violation of *collateral estoppel.* In Plaintiff's Brief, it states in relevant part: "Collateral estoppel is "applicable to the decisions of administrative agencies, as long as the agency was acting in an adjudicatory, judicial, or quasi-judicial capacity and the disputed issue is identical to the issues present in the new claim." (Pl. Br., 15). Also, "In Plaintiffs case, the Department made three final judgments: when Plaintiffs RN license was initially granted in 1989, when his license was renewed in 2012, and when his RN license was again renewed in 2014. It is crucial to remember that collateral estoppel does not just prevent relitigation of an issue, but "refers to the preclusive effect that a final judgment on the merits has on the parties, in that it forecloses litigation of

any claim that was, *or could have been*, raised in an earlier suit between the parties or their privies." The Department had the incentive, opportunity and responsibility to revoke Plaintiff's license in 2012 if they believed that Plaintiff fell under the mandate of the Act when he filed for renewal, and again in 2014 when he filed for renewal." (Pl. Br., 17). Also, "Furthermore, in Plaintiff's case, because the Act was enacted in 2011, and his license was renewed in 2012 and 2014, there was no change in the law between the final decision granting him the renewal of his license in 2014, and the decision to revoke his license in 2015. The Act was already taken into account when the Department renewed his license in 2014. Every case rejecting collateral estoppel arguments with regard to an administrative action relied on the 2011 change in the law. At the very least, the Department had an opportunity to make a final judicial judgment in 2012 and 2014 when it renewed Plaintiff's license, and it decided he was not precluded from continuing to hold his RN license. As stated previously, merely an opportunity for a decision on the merits triggers the doctrine of collateral estoppel." (Pl. Br., 18).

Despite Defendant's claims to the contrary, the record in this case clearly shows that IDFPR did engage in a process of "adjudication" to renew Plaintiff's RN license as evidenced by Plaintiff's RN license renewal application (R. V2, C313-313A), and the communications of Ruth A. Lawson, IDFPR Supervisor Licensure and Testing Unit (R. V1. C240), which was clearly fact-finding of a quasi-judicial nature to resolve

a controversial point of law caused by the passage of the Act that triggered a question relative to Plaintiff's continued license renewal – which culminated in Plaintiff's RN license being renewed by IDFPR in 2014. This occurrence was followed by IDFPR's relitigation and revocation of Plaintiff's RN license in 2015, thereby producing an inconsistent judgment that contradicted its 2012 and 2014 judgments to renew under the same Act. Clearly, the fact that IDFPR had both the incentive and opportunity to adjudicate the issue of Plaintiff's past conviction since passage of the Act in 2011, as well as having actually adjudicated this issue in 2014 and renewing Plaintiff's license after doing so, clearly makes them culpable to being held liable for their violation of *collateral estoppel* in 2015.

II. THE CIRCUIT COURT ERRED IN AFFIRMING THE DEPARTMENT'S PERMANENT REVOCATION OF PLAINTIFF'S LICENSE BECAUSE THE ACT DOES NOT APPLY TO FORCIBLE FELONY CONVICTIONS THAT OCCURRED BEFORE BEING LICENSED AS A REGISTERED NURSE.

In Defendant's Brief, it states in relevant part: in 2011, the Illinois General Assembly passed section 2105-165, which requires the Department to permanently revoke the license of a health care worker who has been convicted of a forcible felony without a hearing." (Def. Br., 8). This point is thoroughly argued in Plaintiff's Brief (Pl. Br., 8-12), and therefore need not be re-stated here.

III. CONTRARY TO WHAT THE DEPARTMENT ASSERTS, PLAINTIFF HAS NO OTHER RECOURSE TO REMOVING THE REVOCATION FROM HIS LICENSE.

The Department asserts that "Shakari is not without recourse, and the court should not feel compelled to resort to application of inapposite equitable doctrines." (Def. Br., 22). Putting aside the well supported argument that doctrines of collateral estoppel and fairness compel this court to rule in Plaintiff's favor, the recourse the Department offers will not make Plaintiff whole. While the 2017 amendment to 2105/2105-165 that the Department references, does allow Plaintiff to attempt to petition to have his license restored, this provision or the restoration of his RN license would never remove the revocation of his license from his disciplinary history. Plaintiff's disciplinary history will remain with him for the rest of his life – on the Department's License Look Up website, on the agency's Monthly Enforcement Report, and he will have to report the revocation on every employment application or credentialing application that contains a question as to whether he has ever had his license disciplined. The Department's cavalier suggestion that he can apply to restore and get his license back to active status misses the point entirely. A permanent record of the revocation will remain detrimentally affecting his job prospects in the future, something that would not be the case should this court find that his license should be reinstated and the revocation must be removed from his record entirely.

As stated in Plaintiff's original brief, the purpose of collateral estoppel is to prevent inconsistent judgments. (Pl. Br., 20). In this case, the Department held that Plaintiff was qualified to continue practice as a registered nurse in 2012 and 2014, and then created an inconsistent judgment when it revoked his license in 2015. This court needs to look not only to Defendant's violation of federal and state law relative to the issue of double jeopardy that has been raised here, but also to what is fundamentally fair and the Department's proposed alternative of petitioning to have his license reinstated is not fundamentally fair. Plaintiff's nursing license should be fully restored without any restrictions or burdens arising from this improper revocation.

CONCLUSION

The circuit court erred in affirming the Department's revocation of Plaintiff's RN license when it failed to address Plaintiff's collateral estoppel argument that the Department's renewal of Plaintiff's RN license in 2012 and 2014 prevented the Department from permanently revoking his license in 2015, when it held that the Act applied to health care workers who committed forcible felonies before they were licensed, and when it based its ruling in this case on the doctrine of equitable estoppel erroneously introduced to the court by the Defendant making the false claim that it was Plaintiff's argument.

WHEREFORE, Plaintiff-Appellant Batu Shakari respectfully requests that this court reverse the circuit court's affirmation of the Department's revocation of Plaintiff's license, reverse the Department's order permanently revoking his RN license, order the Department to reinstate said license, for his costs, and for all other relief the Court deems just.

/s/ James M. Dore

Dore Law Offices LLC
Attorneys for Plaintiff-Appellant
134 N. LaSalle St., Suite 1208
Chicago, IL 60602
P: 312-726-8401; F: 844-272-4628;
E: james@dorelawoffices.com

Docket No. 17-0285

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

Batu Shakari, Plaintiff-Appellant, v. Illinois Dep't of Financial and Professional Regulation, And Jay Stewart, in his Official Capacity as Director of the Division of Professional Regulation Defendant-Appellee.	Cir Ct. No. 2015 CH 16520 Judge Franklin Valderama

Order on Plaintiff's Motion for Leave to File an Amended Reply Brief

This matter before the Court upon Plaintiff's Motion for Leave to File an Amended Reply Brief, due notice having been served, IT IS ORDERED:

1. Plaintiff's Motion is GRANTED ~~or DENIED~~ [Clerk to w/draw original Reply Brief]

2. ~~Plaintiff IS or IS NOT granted leave to file the amended reply brief instanter.~~

Dore Law Offices LLC
Attorneys for Plaintiff-Appellant /s/ Daniel J. Pierce
134 N. La Salle St., Suite 1208
Chicago, IL 60602
P: 312-726-8401;
F: 844-272-4628
E: james@dorelawoffices.com

Docket No. _____

IN THE SUPREME COURT OF ILLINOIS

Batu Shakari, Plaintiff-Appellant, v. Illinois Dep't of Financial and Professional Regulation, And Jay Stewart, in his Official Capacity as Director of the Division of Professional Regulation Defendant-Appellee.	Cir Ct. No. 2015 CH 16520 Judge Franklin Valderama Appellate Case No. 2018 IL App (1st) 170285

Petition for Leave to Appeal to the Illinois Supreme Court of Batu Shakari

Dore Law Offices LLC
Attorneys for Plaintiff-Appellant
134 N. La Salle St., Suite 1208
Chicago, IL 60602
P: 312-726-8401; F: 844-272-4628
E: james@dorelawoffices.com

ORAL ARGUMENT REQUESTED

E-FILED
4/12/2018 10:37 AM
Carolyn Taft Grosboll
SUPREME COURT CLERK

Prayer for Leave to Appeal

Now Comes Plaintiff-Appellant Batu Shakari ("Plaintiff"), by his attorneys Dore Law Offices LLC, and prays for leave to appeal to the Illinois Supreme Court from a decision of the First District Appellate Court, pursuant to Illinois Supreme Court Rule 315.

Statement of Appellate Judgment

The First District Appellate Court published its Opinion on February 20, 2018. See Appendix, pp. 1-15. Plaintiff filed a timely Petition for Rehearing in the Appellate Court; his Petition for Rehearing was denied on March 9, 2018. Appendix, p. 16. This Petition, being filed within 35 days of the denial of his Petition for Rehearing, is timely pursuant to Rule 315(a)(1).

Points and Authorities

[3] **Statement of Facts**

The facts in this matter are straight-forward and largely uncontested. Plaintiff was formerly known as David E. Beverly before he legally changed his name to Batu Shakari. He was a licensed health care professional, in good standing, in Illinois from 1982 through September 30, 2015.

On September 30, 2015, Defendants-Appellees, Illinois Department of Financial and Professional Regulation and former director Jay Stewart (cumulatively "Defendant"), entered a Permanent Revocation Order, revoking Plaintiff's registered nurse license. R. VI, C73-75. Plaintiff, in 1975, was convicted of attempted murder. C146. His conviction was reversed; afterwards, he entered into a plea bargain with the State wherein he entered a plea of guilty to attempted murder in exchanged for time served and probation. C228-29; T6-7.

After completing probation, Plaintiff attended Dawson Skill Center, part of the City Colleges of Chicago; he graduated in 1981 with his licensed practical nurse degree. Prior to sitting for the Nursing Board examination and obtaining his license, Plaintiff was required to attend a hearing specifically addressing his past felony conviction. After the hearing, Plaintiff was able to sit for the Nursing Board examination, and Defendant granted Plaintiff a Licensed Practical Nurse ("LPN") license in 1982. R.VI, C79.

Thereafter, Plaintiff attended Olive-Harvey College where he received an associate's degree in applied science in nursing in 1989. Prior to sitting for his State Boards to obtain a registered nurse ("RN") license, Defendant requested information about his past felony conviction. Plaintiff complied and provided the [4] requested information; Defendant approved Plaintiff's request to take the RN examination and granted him an Illinois RN License in 1989. R.VI, C79.

Since 1989, Plaintiff has maintained his RN license through the Defendant; Defendant renewed Plaintiff's RN license each year until September 30, 2015. Plaintiff disclosed his felony conviction to Defendant prior to its grant of licensure to him. For over a quarter of a century, Plaintiff worked as a licensed health care worker without any formal discipline or issues raised by the Defendant. R.VI, Cp. 79-80.

In 2011, the Illinois legislature passed 20 ILCS 2105/2105-165 ("the Act"), which provides that "(w]hen a licensed health care worker, as defined in the Health

Care Worker Self-Referral Act . . . (3) has been convicted of a forcible felony . . . then, notwithstanding any other provision of law to the contrary, the license of the health care worker shall by operation of law be permanently revoked without a hearing." 20 ILCS 2105/2105-165(a). The Illinois Administrative Code lists attempted murder as a "forcible felony." 68 Ill. Admin. Code § 1130.120.

In 2012 and 2014, after the passage of the Act, Defendant reviewed and renewed Plaintiff's RN license. Defendant did this with full knowledge of Plaintiff's past conviction. R.VI, C240.

Particularly notable are Plaintiff's and Defendant's interactions relating to the 2014 renewal. Defendant acknowledged that the 2014 renewal was delayed due to the conviction of a forcible felony in Plaintiff's past. R. VI, C233-46. After [5] a full review though, Defendant again reissued and renewed Plaintiff's RN license. R.VI, C240 and 242.

On August 17, 2015, Defendant filed its Notice of Intent to Issue Permanent Revocation Order ("Notice of Intent"). R.VI, C140. Plaintiff submitted his response to the Notice of Intent and argued, *inter alia*, that the Act was not applicable to him. R.VI, C78. Plaintiff's hired attorney of record addressed Defendant's Notice of Intent. Having reviewed the submissions of the parties, Defendant entered a Permanent Revocation Order on September 30, 2015; the Order permanently revoked Plaintiff's RN license. R.VI, C7.

Plaintiff filed a Complaint in Administrative Review with the Clerk of the Circuit Court of Cook on November 12, 2015. On January 5, 2017, the trial court affirmed Defendant's Permanent Revocation Order, relying on the Act. It believed the Act applied to health care professionals who committed forcible felonies *before* they attained the status of health care professionals, and that the Department was not estopped from revoking Plaintiff's license after they renewed his license in 2012 and 2014. R. V3, C24. The trial court believed the Supreme Court case of *Hayashi v. Illinois Department of Financial & Professional Regulation*, 2014 IL 116023, mandated its findings in favor of the Defendant.

Plaintiff timely filed his Notice of Appeal to the Appellate Court on February 1, 2017. The parties submitted Opening, Response, and Reply briefs to the Appellate Court. In addition, the Appellate Court allowed Defendant to cite supplemental authority in support of its positions.

[6] On February 20, 2018, the Appellate Court published its Opinion, affirming the Defendant's Permanent Revocation Order. App., p. 1. Similar to the trial court, the Appellate Court interpreted *Hayashi* so as to affirm the findings in favor of Defendant. The Appellate Court dismissed Plaintiff's two primary arguments: 1) proper statutory construction of the Act did not require the revocation of Plaintiff's license and 2) Defendant was estopped from such revocation because it had renewed Plaintiff's RN license in 2012 and 2014, after the Act came into effect.

With regard to statutory construction, the Appellate Court believed *Hayashi* required the revocation of Plaintiff's license. *Hayashi* held that the revocation of a health care worker's license under the Act can be based upon a conviction "predating the effective date of the statute". App., Opinion, ¶ 23.

Relying on the wording of the Act, Plaintiff argued that, for a legal revocation, a person had to be a licensed health care worker *at the time of the conviction.* The plaintiffs in *Hayashi* were health care workers at the time of their convictions. Since Plaintiff was not a licensed health care worker at the time of his conviction, his license could not be revoked under the Act.

The Appellate Court construed the "had been convicted" language in the Act to dismiss Plaintiff's interpretation. App., Opinion, ¶ 27. The relevant inquiry is only if a licensed health care worker has ever been convicted of a forcible felony; it is irrelevant whether such a conviction occurred before or after that person became a licensed health care worker.

[7] To dismiss Plaintiff's estoppel arguments, the Appellate Court held that estoppel could not "be based on the unauthorized act of an administrative agency." App., Opinion, ¶ 37. Defendant had not taken the position that its renewal of Plaintiff's RN license in 2012 and 2014 was unauthorized; the Appellate Court took this position. Estoppel cannot lie where an agency acts without authorization. App., Opinion, ¶¶ 38-39

Plaintiff filed his timely Petition for Rehearing, identifying the misapplication of law contained in the

Opinion. The Petition for Rehearing was denied on March 9, 2018.

Argument

I. Statutory Construction

The Illinois Constitution at Section 12 provides: "Right to Remedy and Justice. Every person shall find a certain remedy in the laws for all injuries and wrongs which he receives to his person, privacy, property or reputation. He shall obtain justice by law, freely, completely, and promptly."

In this case, both the trial court and the Appellate Court recognized the unfairness to Plaintiff. The trial court stated: "Plaintiff here presents, beyond words, a very sympathetic case. Plaintiff has, by all accounts, been a contributing member to society who has more than paid his share for his previous acts." App., Opinion, ¶ 15. The Appellate Court noted Plaintiff's "well-taken" concerns regarding the harshness of the consequences that have afflicted him. App., Opinion, ¶ 41. Yet, no court has taken steps to actually address the inequity; words without action are just that . . . words.

[8] The issues are of great import. From a legal standpoint, there are unresolved questions remaining after *Hayashi* as to the applicability of the Act. A fair reading of the Act establishes that a revocation may occur when a "health care worker" commits a forcible felony. For the Act to apply, the person must be both: 1)

a health care worker 2) who committed a forcible felony at the time the felony occurred. Both contingencies must be present at the same time for a revocation to occur. *Hayshi* established that a person who is health care worker who commits a forcible felony is subject to revocation at any time before the Act's effect or after.

The Appellate and trial courts expanded this ruling; now, a person who was not a health care worker at the time of the forcible felony is still subject to his/her later-gotten license being revoked. Plaintiff believes this expansion is neither supported by *Hayashi* nor the Act's language.

The issue in the Act's statutory construction will not disappear. Because of the harshness of the result, there needs to be clarity as to the reach of the statute. Can it be said that the legislature truly intended for persons like Plaintiff, who pled guilty to a forcible felony over a quarter of a century before the statute's passage, who has maintained a nursing license without impeachment for decades, to be suddenly subject to automatic revocation?

Plaintiff believes not. It is more logical for a person who was a health care worker *at the time* of the forcible felony to be subject to the Act's revocation provision in Section 2105-165. The Act already provides a provision that regulates persons who committed a forcible felony *prior to* becoming a health [9] care worker. See 20 ILCS 2105/2105-165(b) ("No person who has been convicted of any offense listed in subsection (a) or [is] required to

register as a sex offender may receive a license as a health care worker in Illinois.").

The Act now prohibits persons who committed forcible felonies from obtaining a health care license. 20 ILCS 2105/2105-165(b). There was no such statute in effect when Plaintiff, a person who committed a forcible felony before seeking a health care license, received his license. Defendant has never argued that this provision applies to require revocation of Plaintiffs license; likely, it would not be successful given that it has licensed him repeatedly over the past 33 years. However, a provision such as this one would have been the statute that prohibited Plaintiff from receiving his license back in 1989 . . . had it been in effect.

Because it cannot apply 20 ILCS 2105/2105-165(b), Defendant stretches the language and intent of Section 2105-165(a) to revoke Plaintiff's licensure. The Act does not sustain the revocation of Plaintiffs license because he was not a health care worker at the time of the forcible felony.

II. Estoppel

In dismissing Plaintiff's contentions related to collateral estoppel, the Appellate Court did not analyze the elements of either collateral or equitable estoppel. App., Opinion, ¶ 37. It stated that estoppel could not lie where Defendant acted without authority to issue Plaintiff his nursing license *ab initio*.

The Appellate Court's authority for holding estoppel cannot be applied in this instance is distinguishable. In *Gersch v. IDFPR*, 720 N.E.2d 672, 682, 308 Ill. App.3d 649 (1st Dist., 1999), there was "no evidence" that the Plaintiff relied [10] to his detriment on the agency's decision because his employer did not require a license and his position was not prejudiced in any way. Here, Plaintiffs employment as a nurse certainly depends on his ability to maintain a nursing license.

In *Armond v. Sawyer*, 563 N.E.2d 900, 903, 205 III.App.3d 936 (1st Dist., 1990), plaintiff's admission that he knew that a referendum revoking his license applied to his tavern's license provided the factual basis for the trial court and administrative agency to find estoppel did not apply.

In *Lake Shore Riding Academy, Inc. v. Daley*, 350 N.E.2d 17, 38 III.App.3d 1000 (1st Dist., 1976) and *People ex rel. Satas v. City of Chicago*, 282 N.E.2d 739, 5 Ill.App.3d 109 (1st Dist., 1972), both courts stated that the ordinances precluded the plaintiffs rights so clearly to indicate that the defendant governmental agencies acted outside of their authority, precluding estoppel. To the contrary, the Act's language does not read as clearly, see *supra*. There is an issue whether 20 ILCS 2105/2105-165(a) applies to Plaintiff, who was not a health care worker at the time of the forcible felony.

In this space of ambiguity, it appears less that Defendant provided an "unauthorized renewal" of Plaintiffs license and more like the Defendant reviewed the

Act in 2014 to interpret it as to not apply to Plaintiff. Licensing Plaintiff as a nurse in 2014 stands as an admission by the Defendant that the Act does not apply to him. The agency and courts in this matter have not recognized the admission, instead rushing to a conclusion that the licensure was unauthorized.

[11] There has been no dispute to the authority of the Defendant to license and regulate the nursing profession in Illinois. Moreover, Defendant reviewed Plaintiffs application in 2014 with detail, causing a delay in the decision of whether to grant his license. After its careful review, and with presumed knowledge of the Act, Defendant issued the nursing license to Plaintiff.

No consideration has been given the explanation that the Defendant rightly interpreted the Act in 2014. Defendant implicitly acknowledged Plaintiff's right to a nursing license because he did not commit his forcible felony while he was a health care worker. Concluding simply that Defendant was "unauthorized" does not give proper analysis to the issues and factual history of the case. App., Opinion, ¶ 40. This is where the Supreme Court's authority is necessary – to provide a full review on a matter having a profound effect on a man's life.

Lastly, Defendant and the Appellate Court have suggested remedies for the harsh outcomes to Plaintiff in their proffered application of the Act. App., Opinion, ¶¶ 41-42. Plaintiff can petition for restoration of his license and ask that the disciplinary history remain confidential.

However, no remedy exists for the professional and personal consequences Plaintiff suffers with a revocation in his history. It will be Plaintiff who alone must explain to potential employers of the revocation of his license. It will be Plaintiff who must suffer the indignation of being punished, 40 years after he completed his sentence, and after decades of unquestioned professional performance. While the Appellate Court sees an ability of Plaintiff to "mitigate" harsh consequences, Plaintiff sees a completely new punishment and a threat to [12] a quality professional career. In addition, such a suggested remedy means giving Defendant a "4th bite at the apple" in this case, which is a further violation of collateral estoppel, and consequently a further violation of both federal and state constitutional law.

Conclusion

The Appellate Court should be reversed because: 1) its statutory construction to apply the Act to mandate revocation of Plaintiff's nursing license is erroneous and 2) it simply dismissed Plaintiff's estoppel arguments rather than address them; estoppel applies based upon the Defendant's admission and decision to license Plaintiff in 2012 and 2014.

At the center of the sometimes-dry discussion of verb tenses and tenets of statutory construction is a man's life. Plaintiff has shown an extraordinary amount of redemption and perseverance in attaining a

professional status held in high regard in today's society.

There is no logical argument to support a construction of the Act that applies to punish Plaintiff for an Act that occurred over 40 years ago. Without question, he has overcome numerous obstacles to become and remain a successful member of the nursing profession.

This case represents a misapplication of a law to produce the most unjust result, given the factual situation. The law should apply to provide the most equity, the most justice in its application. Plaintiff prays to the Supreme Court to fix the injustice.

[13] **Wherefore**, Plaintiff respectfully requests the Court to grant his Petition for Leave to Appeal, grant him leave to file a further brief in support of the Petition, grant oral argument in this matter, reverse the Appellate Court Opinion in this case, and for all other relief the Court deems just.

Dated: April 11, 2018

/s/ James M. Dore

Dore Law Offices LLC
Attorneys for Plaintiff-Appellant
134 N. LaSalle St., Suite 1208
Chicago, IL 60602
P: 312-726-8401; F: 844-272-4628;
E: james@dorelawoffices.com