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FILED

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

2009 APR 14 AM 10:43

JAMES MICHAEL CASEY,
D.V.M., M.S.,

Petitioner,

v.

Civil Action Number: 07-MISC-204
Judge Jennifer F. Bailey

WEST VIRGINIA BOARD
OF VETERINARY MEDICINE,

Respondent.

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KATHY S. GATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT

ORDER GRANTING WRIT OF MANDAMUS

The Court has had under consideration the Petition for Writ of Mandamus and Petition for Declaratory Judgment filed by the petitioner, Dr. James Michael Casey. The Court has studied the petition, response thereto, oral arguments, and all other pertinent legal authorities. As a result of these deliberations, for the reasons set forth in the following opinion, the Court **GRANTS** the aforementioned Petition for Writ of Mandamus.

Standard of Review

The West Virginia Supreme Court of Appeals has held that the remedy of mandamus is a drastic one, to be invoked only in truly extraordinary situations in which the petitioner can show a clear and indisputable right to relief sought. *State ex rel. School Bldg. Authority of West Virginia v. Marockie*, 481 S.E.2d 730 (W.Va. 1996).

In West Virginia, a writ of mandamus will not issue unless three elements coexist: (1) existence of a clear right of the petitioner in the relief sought; (2) existence of a clear legal duty on the part of the respondent to do the thing which the petitioner seeks to compel; and (3) the absence of another adequate remedy at law. Syl. Pt. 2, *State ex rel. Kucera v. City of Wheeling*,

170 S.E.2d 538 (W.Va. 1969); Syl. Pt. 1, *State ex rel. McLaughlin v. West Virginia*, 549 S.E.2d 286 (W.Va. 2001).

Findings of Fact

The petitioner, James Michael Casey, D.V.M. (hereinafter "Dr. Casey"), is seeking a license to practice veterinary medicine in the State of West Virginia. Dr. Casey is currently a licensed veterinarian in eight states, including Maryland, Virginia, Pennsylvania, Delaware, Georgia, New Jersey, Kentucky and Florida. Dr. Casey specializes in the area of Equine Veterinary Medicine.

The respondent, the West Virginia Board of Veterinary Medicine (hereinafter "the Board"), is a statutorily created body designated to supervise the practice of veterinary medicine in the State of West Virginia.

Dr. Casey originally contacted the Board in 2004 seeking information regarding licensure. In March 2005, Dr. Casey submitted his application to the Board. In order to successfully apply for a license, the applicant must obtain passing scores on both the National Board Examination (hereinafter "NBE") and the state jurisprudence exam. The Rules also provide for license without examination in circumstances such as license by reciprocity.

Although Dr. Casey successfully completed the NBE in December 1987, he did not submit the results of said exam through the national testing service. Dr. Casey maintains that such national testing service was not in existence when he originally took the exam in 1987. Instead, the results of Dr. Casey's 1987 examination were submitted by the Georgia Secretary of State. On May 6, 2006, the Board contacted Dr. Casey via written correspondence and indicated this his application was incomplete due to his failure to forward exam results from the Veterinary Information Verification Agency.

Nonetheless, Dr. Casey was permitted to sit for the June 2005 West Virginia state jurisprudence examination. Dr. Casey passed said exam.

In regard to Dr. Casey's submission of test results through the State of Georgia, Dr. Casey contends that the standard deviation utilized by both West Virginia and Georgia is 1.5. As a result, the criteria for licensure in Georgia and West Virginia were essentially the same in 1987. Additionally, Georgia required applicants to successfully complete a Clinical Competency Exam in addition to the NBE. Therefore, the requirements to practice in Georgia were actually more stringent than those utilized by West Virginia.

In the past, West Virginia has had formal written reciprocity agreements with other states including Ohio, Kentucky, and Florida. However, there are no longer such written agreements due to cancellation by the other participating state.

Following the denial of his application, Dr. Casey filed the action currently pending before this Court. Specifically, Dr. Casey filed a Petition for Writ of Mandamus and Petition for Declaratory Judgment. The Court has since conducted a hearing on this matter and reviewed the written submissions of the parties.

Conclusions of Law

West Virginia Code §30-10-4(b) provides that the Board has the power to “[i]ssue, renew, deny, suspend, or revoke licenses...to practice veterinary medicine in this state...” Pursuant to West Virginia Code §30-10-6, “[i]f the board determines that an applicant possesses the proper qualifications, it shall admit the applicant to the next examination, or if the applicant is eligible for license without examination under the provisions of section eight of this article, the board may forthwith grant him a license.”

The applicable governing rules for Dr. Casey's March 2005 application are found in the Code of State Rules. *See* CSR § 26-1-1 *et seq*, effective April 28, 1992.¹ According to CSR §26-1-3 (3.10) (1992):

[a]ll veterinary applicants, unless qualified for license without written examination, must have received a passing score on the National Veterinary Boards. The passing score for the National Veterinary Board will be the 1.5 standard deviation from the mean of the criterion group. It is the applicant's responsibility to have the national testing service forward a copy of his or her national board scores to the secretary-treasurer of the board.

Additionally, CSR §26-1-8 (8.3) provides that the board may waive the requirement of national board scores for applicants by reciprocity. The Code of State Rules further explains the process for application by reciprocity. CSR §26-1-8 (8.1).

West Virginia statutory law also provides that the board may issue a license without written examination. W.Va. Code §30-10-8. The statute specifically provides that:

(a) The board may issue a license without written examination, and, subject to the provisions of subsection (b) of this section, without any type of examination, to a qualified applicant who is a resident of this state and furnishes satisfactory proof that he is a graduate of a veterinary school and who:

(1) Has for the five years prior to filing his application been a practicing veterinarian licensed in a state, territory, or district of the United States whose license requirements, at the time the applicant was first licensed, were substantially equivalent to the requirements of this article; or

(2) Has within the three years next prior to filing his application successfully completed an examination conducted by the national board of veterinary examiners.

(b) In its discretion, the board may orally or practically examine any person qualifying for licensing under this section, and may enter into agreements for reciprocal licensing with other jurisdictions having substantially similar requirements for licensure.

¹The Court notes that the applicable rules have changed several times since Dr. Casey applied in 2005. However, the Court will consider the rules in effect at the time of Dr. Casey's application.

The Code of State Rules dictates that upon the satisfactory application for license by reciprocity “the West Virginia Board of Veterinary Medicine shall schedule a personal interview for the applicant.” CSR §26-1-8 (8.2).

Decision

The Court holds that Dr. Casey has met the qualifications for application by reciprocity. As a result, he is entitled to an interview by the West Virginia Board of Veterinary Medicine as provided for in the Code of State Rules.

Although the Code of State Rules alludes to compliance with a reciprocity agreement, there is no rule requiring that such an agreement must exist in order for an applicant to apply by reciprocity. Additionally, the West Virginia Code makes absolutely no mention regarding the requirement of a formal agreement.

The Court further holds that the Board’s denial of Dr. Casey’s license is arbitrary and capricious. The facts presented by the parties indicate that Dr. Casey not only successfully completed the NBE, but he also successfully completed a clinical competency exam which is not even required by the State of West Virginia. Additionally, there is no evidence that Dr. Casey has had his license revoked or suspended in any of the eight states where he is licensed to practice. The facts further indicate that Dr. Casey has been practicing veterinary medicine for more than twenty years.

The Court finds that the Legislature clearly intended that qualified veterinarians be granted a license by reciprocity when West Virginia Code §30-10-8 was adopted. Furthermore, a reading the Code of State Rules provides for application by reciprocity. Although the Code of State Rules provides that such application is at the discretion of the board, the Court concludes that the denial of Dr. Casey’s application was arbitrary and capricious because substantial

evidence exists that Dr. Casey has practiced in eight other states and has surpassed the requirements for licensure in the State of West Virginia.

In conclusion, Dr. Casey has proven the necessary elements for the issuance of a writ of mandamus. Specifically, he has a clear right to the relief sought. The Code of State Rules provides that the West Virginia Board of Veterinary Medicine *shall* schedule a personal interview for a qualified applicant. CSR §26-1-8 (8.2). Secondly, the respondent has a clear legal duty to do that which the petitioner seeks to compel. Again, the Code of State Rules provides that the West Virginia Board of Veterinary Medicine *shall* schedule a personal interview for a qualified applicant. CSR §26-1-8 (8.2). Lastly, there is no other adequate remedy at law. The petitioner's only adequate remedy is the Board's consideration of his application by reciprocity.

Accordingly, this Court **ORDERS:**

The Petition for Writ of Mandamus is **GRANTED** and the petitioner shall be scheduled for a personal interview by the West Virginia Board of Veterinary Medicine. There being nothing further pending before this Court, this matter is hereby **DISMISSED** and **STRICKEN** from the docket of this Court. The Circuit Clerk shall provide copies of this Order to all counsel and *pro se* parties of record. This is a Final Order.

Enter this Order the 10th day of April, 2009.



JENNIFER F. BAILEY, Judge
Thirteenth Judicial Circuit

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF THE CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 15
DAY OF April, 2009


CATHY S. GATSON, CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA