

No. 1-12-2157

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ANGEL CHIRE,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	
)	No. 11 CH 44030
THE DEPARTMENT OF FINANCIAL)	
AND PROFESSIONAL REGULATION;)	
BRENT ADAMS, Secretary of the)	
Department of Financial and Professional)	
Regulation; and JAY STEWART, Director)	
of the Division of Professional Regulation of)	
the Department of Financial and Professional)	
Regulation,)	Honorable
)	Neil H. Cohen,
Defendants-Appellees.)	Judge Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Rochford and Delort concurred in the judgment.

ORDER

- ¶1 *Held:* Circuit court did not err in dismissing the plaintiff's complaint, because section 2105-165 of the Illinois Department of Professional Regulation Law (20 ILCS 2105/2105-165 (West 2012) is not unconstitutional, facially or as applied to the plaintiff.
- ¶2 At issue in this appeal is the constitutionality of section 2105-165 of the Illinois Department

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of Professional Regulation Law (20 ILCS 2105/2105-165 (West 2012)) (hereinafter referred to as the Act) as applied to the health-care-worker plaintiff. Subsection (a) of the Act provides that the license of a health care worker as defined in the Health Care Self-Referral Act (225 ILCS 47/1 *et seq.* (West 2012)) who: "(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) who is required as part of a criminal sentence to register under the Sex Offender Registration Act *** shall by operation of law be permanently revoked without hearing." 20 ILCS 2105/2105-165(a) (West 2012). The Act became effective on August 20, 2011.

¶ 3 The plaintiff, Angel Chire, was licensed under the Medical Practice Act (225 ILCS 60/1 *et seq.* (West 2010)) as a chiropractic physician, licensed to treat human ailments without the use of drugs and without operative surgery. Subsequent to being licensed, Chire pled guilty to a crime involving a lewd act upon a child in California in October 2007. As a result of that conviction, Chire served a period of incarceration and was sentenced to three years' probation. He was also required to register as a sex offender. On April 30, 2010, the defendant, the Department of Financial and Professional Regulation (the Department), suspended Chire's medical license for a minimum two-year period, but provided him the opportunity to petition for restoration of his license upon successful completion of his criminal sentence.

¶ 4 On December 1, 2011, Chire received notice that the Department was permanently revoking his license pursuant to the Act. He filed his complaint against the defendants: the Department; Brent

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Adams, Secretary of the Department; and Jay Stewart, the Director of its Division of Professional Regulation. Shortly thereafter, the complaint was dismissed by the circuit court upon the defendants' motion pursuant to section 2-619(a)(9) of the Code of Civil Procedure (735 ILCS 5/2-619(a)(9) (West 2012)). Chire appeals that dismissal.

¶ 5 Chire argues that the Act is unconstitutional because the Act applies retroactively. He further argues that the Act: (1) violates the prohibition against *ex post facto* laws; (2) imposes an excessive penalty in violation of the proportionate penalties clause of Illinois constitution; and (3) offends separation of powers principles by abridging the Department's discretionary authority. We rejected each of these arguments in our recent opinion, *Consiglio v. Department of Financial & Professional Regulation*, 2013 IL App (1st) 121142. We further determined that the Act was neither retroactive nor punitive in its nature and application. *Id.*, ¶¶ 16, 30. We find no reason to deviate from our previous holding in this case.

¶ 6 In addition to the arguments that we addressed in *Consiglio*, Chire argues that the consent order entered by the Department, which provided him the right to seek reinstatement of his license, created a vested right. This argument essentially is a restatement of the argument that the Act impairs the contractual obligations of the parties, which we previously rejected. *Consiglio*, 2013 IL App (1st) 121142, ¶ 40. Further, Chire argues that *Valdez v. Zollar*, 281 Ill. App. 3d 329, 665 N.E.2d 560 (1996), provides that a vested right is established by relying on a statute as it existed at the relevant time. In *Valdez*, the court determined that a change in rules pertaining to the number of times a nurse may take her board exams could not be applied to the plaintiff, because its retroactive application interfered with her vested right in the rule as it existed at the time she began

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testing. *Valdez*, 281 Ill. App. 3d at 334-35. We reject Chire's reliance on *Valdez*, because it involved a retroactive change in a nursing license law. *Id.* We similarly reject Chire's reliance on *Gonzales-Blanco v. Clayton*, 110 Ill. App. 3d 197, 206, 441 N.E.2d 1308 (1982), which also involved a retroactive change in medical licensing rules. In *Consiglio*, we determined the Act is not retroactive in nature (*Consiglio*, 2013 IL App (1st) 121142, ¶ 16) and therefore *Valdez* and *Gonzales-Blanco* are inapplicable. Accordingly, Chire's contention that the Act affects a vested right fails.

¶ 7 For these reasons, Chire's complaint fails to state claims upon which relief might be granted, and it was properly dismissed by the circuit court of Cook County.

¶ 8 Affirmed.