2015 IL App (1st) 141625-U

FIFTH DIVISION
JUNE 12, 2015

No. 1-14-1625

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

	)	Appeal from the
DAVID L. CHIN, M.D.,	)	Circuit Court of
	)	Cook County
Plaintiff-Appellant,	)	
	)	
v.	)	No. 12 CH 45008
	)	
THE AMERICAN BOARD OF PREVENTIVE	)	
MEDICINE, INC.,	)	Honorable
	)	Franklin U. Valderrama,
Defendant-Appellee.	)	Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Presiding Justice Palmer and Justice McBride concurred in the judgment.

ORDER

¶ 1 *Held*: The judgment of the circuit court of Cook County denying a physician's motion for injunctive relief and dismissing his complaint is affirmed; the defendant medical board's failure to hold an in-person hearing regarding the revocation of the physician's board certification based upon a restriction on his medical license did not warrant injunctive relief.

¶ 2 David L. Chin, M.D. (Chin),[1] a physician licensed to practice medicine by the State of

[1] The appellant's brief refers to the appellant as "Daniel L. Chin, M.D." and also as "Dr.

Texas, became board certified in 1995 as a specialist in Public Health and General Preventive Medicine by the American Board of Preventive Medicine, Inc. (the Board or the ABPM), a medical board domiciled in Chicago, Illinois. In 2012, the Board revoked Chin's certification based on his failure to maintain an unrestricted medical license. Chin filed a verified complaint for injunctive relief and "Plaintiff's Motion for Permanent Injunction or, Alternatively, For Preliminary Injunction" against the Board in the circuit court of Cook County, seeking to restrain the Board from revoking his certification and to compel the Board to hold a "due process hearing" regarding the revocation. On appeal, Chin contends that the circuit court erred in denying his motion and dismissing his complaint. Chin asserts that he "pled a clear violation of his procedural due process rights when the Board revoked his lifetime Board certification without first conducting a hearing, as required by law and Board [b]ylaws." The Board contends, among other things, that an in-person hearing was not required under its bylaws or applicable law.

¶ 3 As discussed below, we agree with the Board that its bylaws and procedures did not mandate an in-person hearing prior to revocation of Chin's certification. Although Illinois courts have deviated, under certain circumstances, from a general policy of judicial non-intervention into the workings of private entities such as the Board, we do not believe that such intervention is warranted in this case. For the reasons that follow, we affirm the judgment of the circuit court denying Chin's motion for injunctive relief and dismissing this matter in its entirety.

¶ 4 BACKGROUND

¶ 5 The Texas Medical Board issued Chin a license to practice medicine in Texas on March 7, 1992. On May 20, 1994, Chin signed his application to the Board for admission to "the

---

Diamond." However, the record indicates that the appellant's correct name is "David L. Chin."

Examination for Certification as a Diplomate of the ABPM" in the field of "Public Health and General Preventive Medicine." The application provided, in part, that Chin agreed to "accept and be bound by the terms and conditions governing certification as a Diplomate of the ABPM as set forth in the Articles of Incorporation, Bylaws, Rules, Regulations, and Policies of the ABPM, as they now exist and as they may be amended from time to time in the future." Chin received a satisfactory score on the certifying examination and became certified by the Board as a specialist in Public Health and General Preventive Medicine in 1995.

¶ 6 Chin was a Lieutenant Colonel in the United States Air Force (the USAF).[2] According to his complaint, Chin worked in a flight medicine clinic at a military facility in Japan from 2007 to 2009. Chin alleged that he was ordered to perform clinical primary care, "even though [he] had limited clinical training and had been for many years a board-certified specialist in Public Health and Preventive Medicine, which by nature is a non-clinical medical specialty."

¶ 7 During his tenure at the clinic in Japan, the medical staff noted several serious deficiencies with respect to Chin's assessments, diagnoses, and treatments provided to multiple patients. The Risk Management Operations Division of the USAF Medical Operations Agency (AFMOA) completed a formal review of Chin's care provided to several patients and determined that, in multiple cases, Chin failed to meet the standard of care. In 2008, Chin underwent a five-month remediation period during which time he provided clinical care under the supervision of senior physicians. At the conclusion of the five-month period, the AFMOA determined that Chin had not shown sufficient progress in the area of clinical care.

¶ 8 In December 2008, Chin was notified that a USAF "Medical De-Credentialing Board Hearing" would be convened to investigate allegations that Chin did not meet the standard of

[2] During oral argument, Chin's counsel indicated that Chin has retired from the USAF.

care on 28 separate occurrences. In a memorandum from Chin and his military defense counsel dated February 10, 2009, Chin offered a conditional waiver of his rights associated with such a hearing. In accordance with Chin's conditional waiver, the USAF restricted Chin's clinical privileges. His privileges in certain non-clinical areas were restored to "code 1," meaning that he would be deemed "[f]ully competent within defined scope of practice."

¶ 9 The Texas Medical Board (the TMB) initiated proceedings against Chin, based on his failure to meet the standard of care in his evaluation and treatment of ten flight medicine clinic patients. On April 29, 2011, Chin appeared with counsel at an "Informal Show Compliance Proceeding and Settlement Conference" in response to a letter of invitation from the TMB staff. On the recommendation of the TMB's representatives and with Chin's consent, the TMB entered an agreed order on August 26, 2011, restricting Chin to "an administrative, non-clinical practice of medicine only." The agreed order, by its own terms, "constitutes a restriction on [Chin's] license ***."

¶ 10 In a letter to Chin dated September 23, 2011, the executive director of the ABPM stated, in part:

> "Your name was identified through the Federation of State Medical Boards (FSMB) as a physician who was the subject of a disciplinary action and either suspension or revocation of your license to practice medicine.
>
> Article XI, Section 5A of the Bylaws of the ABPM provides that:
> 'The Corporation reserves the absolute right to revoke the Certification and Diplomate status of any physician if…
>
> 4. The license of the physician to whom the Certificate was granted and issued shall have been revoked, suspended, restricted, qualified, or otherwise

limited by any state in which the physician was licensed to practice ***'

Accordingly, pursuant to the 'Procedures For Processing Complaints Involving Potential Revocation or Suspension of Certification and Diplomate Status' [hereinafter 'Procedures'], a copy of which is enclosed herewith as Enclosure 1, you are hereby notified that your Certification and Diplomate Status is subject to revocation on the basis of the limitations described in the FSMB report.

Pursuant to Section 3c of the 'Procedures', you are invited to provide the ABPM, in writing, with any further information concerning the status of the proceedings before any State Medical Board or any information in explanation or clarification of the actions taken by the State Medical Board which, in your opinion, might justify the ABPM in not revoking or suspending your Certification and Diplomate Status.

In accordance with the 'Procedures', which you should carefully review and follow, you have forty-five (45) days after the date you receive this letter of notification in which to provide ABPM with such information as well as any relevant documentation and the names and addresses of any witnesses or other persons with whom the ABPM might communicate, with your permission, for pertinent information.

The 'Procedures' fully describe your rights. In particular, you should note the applicable time table for the Preliminary Decision, any Appeal of the Preliminary Decision, and the Final Decision. ***"

¶ 11 In a letter to the executive director of the Board dated January 14, 2012,[3] Chin provided information regarding the restrictions on his medical license. Chin discussed the USAF and the TMB proceedings and described his current responsibilities with the USAF. Chin noted that his abilities in the area of preventive medicine were never questioned and stated, "I feel that I still have much to contribute to in the field of Preventive Medicine." The letter included contact information for his supervisor in Japan, "Lieutenant Colonel (Dr.) Cheryl Lowry," and included the "credentialing agreement from the base in Japan which indicates that [his] non-clinical Public Health/Preventive Medicine duties were returned to full unsupervised status," and the TMB "settlement" to "show that only clinical activities were restricted." Chin concluded the letter: "Thank you for the opportunity to clarify my situation to the Board."

¶ 12 In a letter to Chin dated September 17, 2012, the executive director of the Board stated, in part: "The ABPM reviewed your response and other materials and the ABPM has concluded that the factual allegations of the complaint concerning your medical licensure status are true. Consequently, in accordance with the ABPM *Bylaws* and the enclosed *ABPM Procedures for Processing Complaints Involving Potential Revocation or Suspension of Certification and Diplomate Status,* your Certification by the American Board of Preventive Medicine is hereby revoked." (Emphasis in original.)

¶ 13 In a letter to the executive director of the Board dated November 9, 2012, Chin stated that he was appealing the "Preliminary Decision" in accordance with the "*ABPM Procedures for Processing Complaints Involving Potential Revocation or Suspension of Certification and Diplomate Status*" (the Procedures). Chin stated, among other things, that he had "engaged legal counsel because procedural due process has not been accorded to me." He referenced section 6

[3] There appears to be no issue with the timeliness of Chin's response.

of the Procedures regarding a "Preliminary Decision" and a right to appeal under section 7 of the Procedures, and stated that he was not apprised of any " 'Final Decision', per Section 8 of the Procedures." "Without any formal Preliminary Decision and/or Final Decision having been properly made by the Executive Committee and/or Board," Chin contended, "no revocation of my board certification can obtain."[4]

¶ 14 The Board did not respond to Chin's November 9, 2012 letter, and Chin filed a Verified Complaint for Injunctive Relief in the circuit court on December 24, 2012.[5] Chin alleged in part:

> "[I]t was a denial of procedural due process, and not a substantive medical decision, that defendant utterly failed to comply with its own corporate bylaws and 'Procedures' in not apprising plaintiff of any Preliminary and/or Final Decisions concerning his lifetime board certification revocation, expressing to him no right of appeal, expressing to him no right to be heard and to show cause, as its Bylaws require, and expressing to him no awareness by its Board of board certification revocation action which its administrative staff had decreed on the basis of mere letters exchanged between defendant and plaintiff, in derogation of the due process referenced in its bylaws." (Emphasis in original.)

In an answer filed on February 13, 2013, the Board denied that Chin was entitled to relief and sought dismissal of the complaint with prejudice.

---

[4] The record on appeal also includes a letter from Chin to the executive director of the Board dated November 7, 2012. Portions of the November 7 letter are identical to Chin's November 9, 2012 letter. One noteworthy distinction is that the November 7 letter does not reference Chin's retention of counsel and instead provides, in part: "Since my position does not include clinical practice, would it be more acceptable in the view of the Board if I were to pursue converting my medical license to a Public Health License or to an Administrative License? I may be able to pursue such a course of action."

[5] Chin's complaint provides, in part, "Between September-November, 2012, plaintiff attempted to appeal (through defendant) the revocation, then plaintiff engaged legal counsel."

¶ 15 On May 10, 2013, Chin filed "Plaintiff's Motion for Permanent Injunction or Alternatively, for Preliminary Injunction." In the motion, Chin asked the court to "enter a permanent injunction or, alternatively, a preliminary injunction enjoining the defendant from revoking the plaintiff's lifetime board certification in Preventive Medicine and to compel the defendant to accord the plaintiff a due process hearing, as prescribed in defendant's Bylaws, regarding the revocation of his board-certified Diplomate status in Preventive Medicine."

¶ 16 In a response filed on June 27, 2013, the Board contended, among other things, that "[i]n revoking [Chin]'s certification, the ABPM followed its own Bylaws and afforded [Chin] adequate due process protections in defending his rights." In his reply, Chin argued, in part, that he was "denied a full and fair due process hearing" because he was "denied the opportunity to present his witness, Dr. Lowry, to the Board who could have testified, in writing, per telephone, or in person, as to the events in question."[6]

¶ 17 In an order entered on April 23, 2014, the circuit court denied Chin's motion and dismissed the matter in its entirety. The court found that Chin failed to plead any underlying cause of action. The court continued, "In the absence of an underlying cause of action, Plaintiff cannot prevail in establishing a likelihood of success on the merits" and thus did "not meet the requirements for issuance of permanent injunction." The court further stated that "[e]ven if the Court were to liberally construe Plaintiff's one-count Complaint to assert a cause of action for violation of Plaintiff's due process rights, Plaintiff would not satisfy the fourth element for a permanent injunction, likelihood of success on the merits." Referring to the Board as a "private, voluntary association," the court reasoned that Chin "is not likely to succeed on the merits of a

[6] Chin also asserted that, based on his lifetime board certification, he was not required to maintain an unrestricted medical license. Chin does not raise this argument on appeal and thus we need not address it herein. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013).

due process violation claim as [he] does not allege any state action." Chin timely filed this appeal.

¶ 18 ANALYSIS

¶ 19 Chin contends on appeal that the circuit court erred in denying his motion for injunctive relief and dismissing his complaint because he "had clearly stated a claim for violation of his procedural due process rights." Specifically, Chin asserts that the Board's revocation of certification "without first conducting a hearing" violated the Board's bylaws and applicable law.

¶ 20 The Board responds that denial of his motion and dismissal of his complaint was proper, given that (a) the complaint did not plead any underlying cause of action; (b) Chin failed to allege any "state action" as would be required to maintain a due process violation claim; and (c) neither the Board's rules nor "rudimentary due process" required an in-person hearing. We address the denial of Chin's motion and the dismissal of the complaint below.

¶ 21 I. Denial of Chin's Motion for Injunctive Relief

¶ 22 Citing sections 11-101 and 11-102 of the Illinois Code of Civil Procedure (735 ILCS 5/11-101, -102 (West 2012)),[7] Chin's motion sought a permanent injunction or, alternatively, a preliminary injunction. The circuit court denied the motion. In his notice of appeal, Chin requested "[r]eversal of denial of permanent injunction" and "issuance of permanent injunction." The notice of appeal does not reference the denial of Chin's request for a preliminary injunction. "A notice of appeal confers jurisdiction on a court of review to consider only the judgments or parts of judgments specified in the notice of appeal." *General Motors Corp. v. Pappas*, 242 Ill. 2d 163, 176 (2011). Furthermore, in his appellate brief, Chin contends that the circuit court erred in "denying the request for a permanent injunction." He does not specifically address the denial

[7] Section 11-101 addresses temporary restraining orders; section 11-102 addresess preliminary injunctions. 735 ILCS 5/11-101, -102 (West 2012).

of his request for a preliminary injunction. Illinois Supreme Court 341(h)(7) provides, in part, that points not argued in the appellant's brief are waived. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013). We need not consider the circuit court's denial of Chin's request for a preliminary injunction and thus turn to the question of whether the court erred in denying his request for a permanent injunction.

¶ 23 Permanent injunctions are "designed to extend or maintain the status quo indefinitely when the plaintiff has shown irreparable harm and that there is no adequate remedy at law." *Butler v. USA Volleyball*, 285 Ill. App. 3d 578, 582 (1996). "While the purpose of a preliminary injunction is to preserve the status quo pending resolution of the merits of the case [citation], the purpose of a permanent injunction is to maintain the status quo indefinitely following a hearing on the merits." *In re Marriage of Seffren*, 366 Ill. App. 3d 628, 637 (2006). In order to be entitled to a permanent injunction, the party seeking the injunction must demonstrate: (1) a clear and ascertainable right in need of protection; (2) that he or she will suffer an irreparable harm if the injunction is not granted; and (3) that there is no adequate remedy at law. *Id.*; *Kopchar v. City of Chicago*, 395 Ill. App. 3d 762, 772 (2009) (same). An injunction is an "extraordinary remedy." *Sadat v. American Motors Corp.*, 104 Ill. 2d 105, 115 (1984); *Kopchar*, 395 Ill. App. 3d at 772-73.

¶ 24 The issuance of an injunction is contingent upon a plaintiff prevailing at trial on the merits of his or her claim. *City of Chicago v. Beretta U.S.A. Corp.*, 213 Ill. 2d 351, 431 (2004). "This necessarily means that there must be a recognized cause of action underlying the request for injunctive relief and that the party seeking such relief must first prevail on the merits of that underlying cause of action." *Town of Cicero v. Metropolitan Water Reclamation Dist. of Greater Chicago*, 2012 IL App (1st) 112164, ¶ 46. "[W]hen, as here, the case raises pure

questions of law, we find that the determination of the merits of the permanent injunction are subject to *de novo* review." *Butler*, 285 Ill. App. 3d at 582.

¶ 25 Chin's verified complaint for injunctive relief contains a single count: "For Permanent Injunction." The circuit court found – and the Board contends on appeal – that Chin's failure to plead any underlying cause of action is fatal to his request for a permanent injunction. The Board further asserts that even if the complaint were construed liberally as a cause of action for violation of Chin's due process rights, "[c]onstitutional due process violations giving rise to a cause of action for violation thereof apply only to actions by the state in relationship to individuals." (Emphasis added.) *USA I Lehndorff Vermoegensverwaltung GmbH & Cie v. Cousins Club, Inc.*, 64 Ill. 2d 11, 20-21 (1976). Because Chin does not assert that the Board's revocation of his certification constituted a "state action," the Board claims that Chin failed to state a due process violation claim.

¶ 26 While we agree with the Board's observation that Chin failed to plead any "state action," we observe that Chin presents a different "due process" argument. Chin acknowledged in his pleadings in the circuit court that "[d]isciplinary proceedings conducted by voluntary associations do not require strict compliance with judicial standards of due process." Chin instead argues that the Board's bylaws and various cases addressing the due process obligations of *private* entities mandate an in-person hearing prior to revocation of his certification by the Board. We address each argument in turn.

¶ 27 A. The Board's Bylaws

¶ 28 The record on appeal includes four versions the ABPM bylaws. The initial pages of each of the documents respectively state, in part, as follows: (a) a "proposed revision" of the bylaws that was "Reviewed and Adopted by the Board on August 5, 1994"; (b) bylaws "Updated August

1996"; (c) bylaws "Updated November 1998"; and (d) bylaws "Version: January 2012" (the 2012 Bylaws). The letter from the Board to Chin, dated September 23, 2011, quoted "Article XI, Section 5A of the Bylaws." The quoted language is identical to the language in the 2012 Bylaws, not the earlier versions of the bylaws included in the record on appeal.

¶ 29 In Article XI, Section 5A of the 2012 Bylaws, the Board reserved the "absolute right to revoke" the certification of any physician under five enumerated circumstances, including that the physician's license "shall have been revoked, suspended, restricted, qualified or otherwise limited by any state in which the physician was licensed to practice ***." Section 5B of the 2012 Bylaws provides:

> "B. The Corporation shall establish procedures which grant any Diplomate whose alleged conduct or circumstances would constitute grounds for revocation under Section 5A of this Article of these Bylaws *the opportunity to be heard* and to show cause why his/her Certificate and Diplomate status should not be revoked. Such procedures shall afford the Diplomate due process. A copy of the Procedure, as from time to time amended, shall be made an Appendix to these Bylaws and a copy shall be provided to each Diplomate whose Certification is subject to revocation under Section 5A of this Article with the Notice of the grounds for revocation." (Emphasis added.)

The earlier versions of the bylaws also provide for revocation of a physician's certification based upon the imposition of limitations on his or her medical license.[8]

¶ 30 Chin was sent a copy of the "Procedure" referenced in Section 5A. However, by the

[8] While we note that the earlier versions of the bylaws required the revocation to be approved by a 2/3 vote of the "Trustees present at a meeting of the Board at which a quorum is present," Chin's arguments on appeal are limited to the issue of whether an in-person hearing was required.

Board's own admission, Chin was provided with an outdated version. The version sent to Chin provided for a "Preliminary Decision," an appeal process, and a "Final Decision."[9] We observe, however, that neither the outdated version provided to Chin nor the "Policies and Procedures Manual"—which was "Updated August 2010" and which the Board contends was in effect—expressly provide for an in-person hearing.

¶ 31 Chin argues on appeal that an "opportunity to be heard," as provided in the bylaws, required an "actual hearing" rather than "just the exchange of written materials and documents through mail and email." However, Chin cites no support for the proposition that the phrase "opportunity to be heard" necessarily means an in-person hearing. Furthermore, nothing in the record indicates that Chin requested an in-person hearing prior to the filing of his complaint in the circuit court. Reviewing the language of the bylaws, we agree with the Board that the phrase "opportunity to be heard" does not mandate an in-person hearing and that the exchange of written documentation did provide Chin with the "opportunity to be heard." We thus turn to the question of whether applicable law otherwise imposes such a requirement.

¶ 32 B. Applicable Case Law

¶ 33 Illinois courts have long recognized that voluntary associations[10] have great discretion in conducting their internal affairs, particularly when their conduct relates to the interpretation and enforcement of the association's rules and regulations. *Finn v. Beverly Country Club*, 289 Ill.

[9] We thus understand some of the seeming confusion expressed in Chin's November 9, 2012 letter to the Board. We note, however, that Chin agreed in his 1994 application to the Board to be bound by the bylaws and policies of the Board, as they may change in the future.

[10] The Board, a corporation, identifies itself as a "voluntary association" – a characterization that has not been challenged by Chin. Illinois courts have characterized certain corporate entities as voluntary associations. See, *e.g.*, *Kendler v. Rutledge*, 78 Ill. App. 3d 312 (1979) (referring to non-profit corporation as a voluntary association); *Virgin v. American College of Surgeons*, 42 Ill. App. 2d 352, 355 (1963) (same); see also *Butler*, 285 Ill. App. 3d at 583 (court referred to defendant USA Volleyball as a "voluntary association"; the challenged bylaws referred to USA Volleyball as "this Corporation").

App. 3d 565, 568 (1997); *Lee v. Snyder*, 285 Ill. App. 3d 555, 558 (1996). "Generally, a court will not interfere with the internal affairs of voluntary associations absent mistake, fraud, collusion or arbitrariness." *Finn*, 289 Ill. App. 3d at 568. "If there has been no mistake, fraud, collusion or arbitrariness, our supreme court has endorsed the exercise of jurisdiction only when a substantial property, contract, or other economic right that implicates due process is at stake." *Finn*, 289 Ill. App. 3d at 568; *Lee*, 285 Ill. App. 3d at 559.

¶ 34 "Not all economic injuries implicate due process concerns. Review has been limited to cases that concern 'economic necessity.' " *Finn*, 289 Ill. App. 3d at 568. For example, in *Austin v. American Ass'n of Neurological Surgeons*, 253 F.3d 967 (2001), the Seventh Circuit Court of Appeals, interpreting Illinois law, concluded that a neurosurgeon suspended from the American Association of Neurological Surgeons (the AANS) failed to show an "important economic interest" given that AANS membership was not a precondition to the practice of neurosurgery, the AANS was not the only association of such surgeons, and the neurosurgeon continued to practice neurosurgery notwithstanding his suspension and subsequent voluntary resignation from AANS. *Id.* at 971. The court stated, "Where membership is optional, expulsion (or suspension, or denial of admission) is not deemed the invasion of an important economic interest." *Id.* at 972. In *Treister v. American Academy of Orthopaedic Surgeons*, 78 Ill. App. 3d 746 (1979), where a board-certified orthopedic surgeon challenged the denial of his application for membership in the American Academy of Orthopaedic Surgeons, the court held that "our courts can review the application procedures of a private association when membership in the organization is an economic necessity," but that the surgeon had not alleged that membership in the voluntary professional organization was an economic necessity. *Id.* at 755.[11] See also

[11] In a dissent, Justice Simon stated that "the majority opinion is needlessly reluctant about

Brandner v. American Academy of Orthopaedic Surgeons, 760 F.3d 627, 628 (7th Cir. 2014) (noting that Illinois law "does not allow judicial review of a private group's membership decisions unless membership is an 'economic necessity' or affects 'important economic interests' "); *Knapp v. Northwestern University*, 1996 WL 495559, *2 (N.D. Ill.) (holding that student athlete who was deemed medically ineligible to play intercollegiate basketball was unable to establish a "substantial economic interest that affects his ability to earn a livelihood" and thus the court would not interfere in the university's "internal operations.")

¶ 35 Even if the actions of a voluntary association affect a party's economic and property interests, thereby triggering due process protections, "it is settled that voluntary associations need not accord their members all of the due process protections provided in the Federal Constitution." (Internal quotation marks omitted.) *McMahon v. Chicago Mercantile Exchange*, 221 Ill. App. 3d 935, 947 (1991). "Rather, a voluntary association must simply treat its members in accordance with its rules and rudimentary due process, *i.e.*, the association must act fairly and impartially, and without denial of essential rights." *Id.* Specifically, in cases involving the suspension, revocation or reduction of a physician's hospital privileges, the "hospital's action is subject to limited judicial review to determine whether the decision made was in compliance with the hospital's bylaws." *Adkins v. Sarah Bush Lincoln Health Center*, 129 Ill. 2d 497, 506-07 (1989). If there was not such compliance, the violations must be "substantial" to require judicial intervention, *i.e.*, the plaintiff must show "the violations prejudice the plaintiff. [Citation.]" (Internal quotation marks omitted.) *Ramos v. Kewanee Hospital*, 2013 IL App (3d) 120001, ¶ 45.

¶ 36 Chin challenges the revocation of his board certification without an in-person hearing.

---

intervening in the affairs of quasi-public entities." *Treister*, 78 Ill. App. 3d at 759-60 (Simon, J., dissenting).

We surmise, although need not decide, that while board certification technically is optional, revocation of a physician's board certification is more akin to the loss of hospital privileges than to suspension or expulsion from a professional association. Chin's complaint alleged that the "with a revoked lifetime certification in his field of medical expertise, [Chin's] reputation will be permanently injured, causing him threatened loss of both livelihood and ability to maintain continuous employment and earnings." Even assuming *arguendo* that the Board's revocation of Chin's certification concerns an "economic necessity" and imposes due process obligations, however, we do not believe that the Board violated its own bylaws by failing to hold an in-person hearing, as discussed above. Furthermore, we do not view the absence of an in-person hearing as a violation of rudimentary due process. Indeed, an examination of key cases where the court did, in fact, intervene, highlights the "rare occasions" where the "rule of non-intrusion in the affairs" of a voluntary entity should be relaxed. *Lee*, 289 Ill. App. 3d at 559.

¶ 37 In *Virgin v. American College of Surgeons*, 42 Ill. App. 2d 352 (1963), after his expulsion from the American College of Surgeons, an orthopedic surgeon sued the college, seeking the issuance of a writ of mandamus directing his reinstatement as a Fellow of the college. *Id.* at 354. The appellate court ordered reinstatement of the surgeon, observing that he "never received any registered mail as the bylaws required, nor was he at anytime allowed to confront his accusers or given a fair hearing on the charges against him." *Id.* at 371. The court further stated that the surgeon "was never given any idea of what charges were presented against him." *Id.* Concluding that the "hearing did not in any way meet the requirements of due notice and proper hearing," the court set aside the expulsion. *Id.* at 371.

¶ 38 In *Van Daele v. Vinci*, 51 Ill. 2d 389 (1972), certain members of a private, voluntary organization of independent retail grocers were expelled; the organization's purpose was to

secure lower prices through large volume purchasing. *Id*. at 390. The expelled members had been pursuing a derivative class action suit against the board of the organization, alleging that the board members should have known about malfeasance by an organization employee. *Id.* at 391. Discussing the lack of impartiality of the board members, the Illinois Supreme Court held that the circuit court had properly enjoined the organization from enforcing its expulsion resolutions. *Id.* at 395. Our supreme court agreed that the board followed the procedure set out in the bylaws for disciplinary hearings but concluded that "[t]here are too many factors indicating that the proceedings were in fact not good faith disciplinary proceedings, but in reality, an attempt to silence and censure dissident members of the association." *Id.* at 393.

¶ 39 Unlike in *Virgin*, Chin was provided with clear notice of the "charge" presented against him, *i.e.*, the potential revocation of his Board certification based upon the imposition of a restriction on his medical license. Furthermore, the initiation of the college's action in *Virgin* appears to have been prompted by the "personal antagonism or feud" between Dr. Virgin and another doctor. *Id.* at 357. In contrast, the Board's interaction with Chin was the result of Chin's identification through the Federation of State Medical Boards. Furthermore, unlike in *Van Daele*, there is no allegation that the Board acted in any impartial manner toward Chin.

¶ 40 We recognize that certain cases cited by Chin arguably suggest that an in-person hearing is required. *See Adkins*, 129 Ill. 2d at 509-10 (stating that the "basic protections which must be accorded a doctor subject to a disciplinary action which could seriously affect his or her ability or right to practice medicine" include "notice and a fair hearing"); *Van Daele*, 51 Ill. 2d at 395-96 (noting that a party subject to a disciplinary action by a voluntary association "should be accorded a hearing before a fair and impartial tribunal); *Virgin*, 42 Ill. App. 2d at 371 (stating that the physician was not "allowed to confront his accusers or given a fair hearing upon the

charges against him"). In *O'Brien v. Matual*, 14 Ill. App. 2d 173, 198 (1957), the court stated that "rudimentary rights" include "reasonable notice [of any charges made], an opportunity to be present at a hearing, to confront and cross examine his or her accusers, to make a defense, and to endeavor to refute any evidence adduced in support of the charges." However, we agree with the Board's observation that "none of Dr. Chin's cited cases address whether a voluntary association that affords its member an opportunity to be heard via a written response to a notice of revocation proceedings—as expressly provided in its own bylaws/rules—satisfies the 'rudimentary due process' standard." Furthermore, the cases cited by Chin addressed whether an association violated its own bylaws (*Adkins* and *Virgin*), violated its own constitution (*O'Brien*) or acted with bias in conducting authorized proceedings (*Van Daele*). As discussed above, we do not believe that the Board's failure to hold an in-person hearing violated the Board's bylaws, and there is no allegation that the Board acted with bias.[12]

¶ 41 A party seeking a permanent injunction must demonstrate: (1) a clear and ascertainable right in need of protection; (2) that he or she will suffer an irreparable harm if the injunction is not granted; and (3) that there is no adequate remedy at law. *Kopchar*, 395 Ill. App. 3d at 772. Even assuming *arguendo* that the right to an in-person hearing was a "clear and ascertainable

[12] A decision of the United States District Court for the Northern District of Illinois suggests that written submissions satisfy due process requirements. In *Peoria School of Business, Inc. v. Accrediting Council for Continuing Education and Training*, 805 F. Supp. 579, 583 (1992), the court considered whether an association's withdrawal of a school's accreditation was "arbitrary and unreasonable." The association had afforded the school "prior written notice regarding the concerns over its financial stature." *Id.* at 583. The school was "given the opportunity to respond in writing to the report generated as a result of [the association]'s on-site inspection of [the school]." *Id.* "In the face of adverse action," the school was granted an appeal, during which the school "was able to submit a written brief detailing its position." The appeal board remanded the matter for reconsideration, and the school ultimately did not prevail. *Id.* Despite the apparent absence of an in-person hearing, the court concluded that the association's decision to withdraw the school's accreditation did "not violate principles of fundamental fairness." *Id.* at 584. Although the *Peoria* court did not apply Illinois law, its implicit conclusion that the absence of an in-person hearing was not dispositive is instructive.

right in need of protection," we do not believe that Chin would suffer an "irreparable harm" because of the Board's failure to hold such a hearing. If the requested injunction were issued – and the Board held an in-person hearing – the result for Chin would be the same. Under every version of the bylaws included in the record on appeal, the Board has the right to revoke Chin's certification based on a restriction on his medical license. The actions of the Texas Medical Board – memorialized in an agreed order signed by Chin – expressly constitute a "restriction" on Chin's medical license. The ABPM invited Chin to provide the ABPM, in writing, any "further information concerning the status of the proceedings before the State Medical Board or any information in explanation or clarification of the actions taken by the State Medical Board which, in your opinion, might justify the ABPM in not revoking or suspending your Certification and Diplomate status." As the Board observes, Chin "submitted a lengthy and detailed written Response[.]" However, the submission did not – and could not – change the undeniable facts that (a) Chin's medical license was restricted and (b) the Board had the right to revoke his certification based on such a restriction. An in-person hearing likewise would not alter these facts.

¶ 42 In light of the foregoing, we do not view this case as one of the "rare occasions" where our "rule of non-intrusion in the affairs" of a voluntary entity should be relaxed. *Lee*, 285 Ill. App. 2d at 559. We affirm the circuit court's denial of Chin's motion for injunctive relief.

¶ 43 II. Dismissal of Chin's Complaint

¶ 44 The final paragraph of the circuit court's April 23, 2014 order provides: "For the foregoing reasons, Plaintiff, David L. Chin, M.D.'s Motion for Permanent Injunction, or alternatively, for Preliminary Injunction against Defendant, The American Board of [Preventive] Medicine, Inc. is denied. Therefore, this matter is dismissed in its entirety." On appeal, Chin

contends that the circuit court "erred in dismissing the Complaint for failing to state a cause of action." The Board responds, in part, that "Dr. Chin's failure to plead any underlying cause of action is fatal to both his request for a permanent injunction and the viability of his Complaint."

¶ 45 The sole count in Chin's December 24, 2012 complaint was captioned "FOR PERMANENT INJUNCTION." Chin sought a permanent injunction in his motion filed May 10, 2013. For the reasons stated above, we have concluded that denial of the motion was proper; the relief requested in Chin's complaint was the same as, or arguably narrower than,[13] the relief requested in his motion.

¶ 46 Simply put, as discussed above, Chin is not entitled to the relief he sought in the complaint: the issuance of a permanent injunction. Therefore, the trial court's dismissal of "this matter *** in its entirety" was proper.

¶ 47 CONCLUSION

¶ 48 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County denying Chin's motion for injunctive relief and dismissing this matter in its entirety.

¶ 49 Affirmed.

[13] Chin also sought a preliminary injunction in his motion filed May 10, 2013.