

SCHAUM LAW OFFICES

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TO: MEMBERS OF THE LONG ISLAND JEWISH ORGANIZED MEDICAL STAFF

The power of the Bureau for Professional Medical Conduct was successfully challenged in a recently reported case and the decision deserves mention.

The physician was charged with eleven allegations of misconduct with regard to care of some four separate patients and by a notice dated December 22, was informed of a hearing to be held on January 25th. Some six days prior to the scheduled date the new attorney for the physician requested a brief adjournment to become fully briefed on the matter – and – the request was denied. Two days prior to the hearing date an answer was filed and the answer was denied admission, as it had been filed less than ten days prior to the scheduled hearing date. “Upon what doth this our Caesar feed....?” Might properly be asked at this juncture. The Administrative Law Judge ruled that there was no remedy for the alleged failure to properly file. As the hearing progressed the Hearing Committee was directed to only consider the penalty to be invoked and disregard any defenses. This resulted in a license revocation.

Physician filed suit claiming an arbitrary denial of her right to defend and the counter argument presented was there had been no “reasonable excuse” for the alleged default.

The court ruled in favor of the physician and stated that the Administrative Law Judge had discretion to permit a late filing and relieve on of a default and found that in the instant proceeding no discretion could be found in denying the late answer. In researching the creation of the statute – and the filing of answers – the Court made the interesting observation that the initial statute did not even require an answer to be filed. The object of the requirements was to expedite hearings and the filing of an answer at any time prior to the hearing itself would not cause an unreasonable delay or, perhaps any delay at all.

In essence it was found that the Board and Administrative Judge had acted in an arbitrary and capricious manner. We could add our own comment that in matters as grave as the loss of a professional license it is disturbing that both state agency and Administrative Judge would act in such a fashion. We have had our own experience on defending physicians that delays can occur due to unforeseen circumstances affecting either party to the proceeding. Members of a hearing panel may suddenly find it impossible to attend on a given day. Does anyone believe the physician would be given a pass on the trial because of this and have the hearing dismissed?

Respectfully submitted,

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