

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO

Dr. Trudy Bond,)	Case No. 11 CV 004711
Mr. Michael Reese,)	
Rev. Colin Bossen,)	Judge L. Beatty
Dr. Josephine Setzler,)	
)	PETITIONERS' REPLY
Petitioners)	MEMORANDUM ON REQUEST
)	FOR ORAL HEARING ON
v.)	RESPONDENT'S MOTION TO
)	DISMISS AND MOTION TO
Ohio State Board of Psychology,)	STAY DISCOVERY
)	
Respondent.)	
)	
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INTRODUCTION

Oral argument is appropriate in this case. Contrary to Respondent’s allegations, Petitioners did present legitimate reasons for oral argument in this case: the complex and important legal and factual issues make it an exceptional case and merit oral argument. The complexity emerges even at this procedural phase because the questions before this Court—whether Petitioners have standing and whether the Ohio State Board of Psychology (“the Board” or “Respondent”) abused its discretion—cannot be resolved without addressing the original complaint filed by Petitioners with the Board against Dr. Larry James. The complaint includes among its allegations of serious professional misconduct evidence indicating that this Ohio

psychology school dean oversaw a policy of torture while serving as a U.S. Army Colonel in Guantánamo. The grave nature of the allegations—the fact that the alleged conduct occurred in a military context, the high level of controversy and politicization surrounding the treatment of U.S. detainees during the “War on Terror,” the Board’s inexplicable and as yet unexplained refusal to investigate a credible complaint of misconduct, and the implications that the Board’s inaction could jeopardize the health and safety of Ohioans—render this a novel and complex case that raises issues of great public importance. Due to these factors, Petitioners believe that the Court would benefit from oral argument before reaching a decision.

Unfortunately, instead of addressing Petitioners’ arguments, the Board offered conclusory statements deriding Petitioners’ actions and intentions as illegitimate. Respondent went on to criticize Petitioners for citing Ohio law and instead pointed to non-controlling, distinguishable decisions from other jurisdictions to support its argument. Furthermore, the Board omitted the most relevant aspect of those out-of-state cases on the question immediately before the Court: that the judges in New York and Louisiana ruled only *after* first hearing oral argument. Finally, Respondent’s memorandum concludes regrettably by accusing Petitioners of requesting oral argument to advance their “personal agenda.” These attempts to sidestep the merits should not distract this Court from the central issue of this motion: that this case— involving a psychology board that refuses to take any action or to justify its inaction in response to evidence that a psychology dean, while a U.S. Army Colonel, demonstrably lied, admitted to grave conflicts of interest and oversaw a torture policy in one of the most infamous prisons of our time—is not just like all the other mandamus petitions involving licensing boards that come before this Court. As such, this Court should grant the motion for oral argument.

THIS CASE RAISES COMPLEX LEGAL AND FACTUAL ISSUES OF GREAT PUBLIC IMPORTANCE THAT MERIT DISCUSSION IN ORAL ARGUMENT.

a. Abuse of Discretion

Notably, the Board has not disputed Petitioners' allegation that it did not investigate the evidence presented in the complaint filed with the Board on July 7, 2010 (hereinafter "Board Complaint").¹ Instead, Respondent calls this allegation "over-the-top rhetoric" and insists that a mere "review" of the Board Complaint was sufficient to satisfy its legal duty. Petitioners do not agree that it is "over the top" to expect a psychology licensing board to take appropriate action in response to evidence of widespread torture by a licensee charged with teaching young people in Ohio how best to bring about healing and good mental health. Nor do Petitioners agree that the Board satisfies its legal duty to protect the public by merely reading a complaint that contains grievous *prima facie* ethical violations and choosing inaction without legal or factual basis.

As noted above, Respondent's memorandum ignores Petitioners' argument that the issues presented in this case are complex. Respondent merely repeats that it "reviewed . . . [the] complaint and determined there was no basis to proceed." Resp't's' Mem. Contra Pet'r's Req. for Oral Arg. 1. Yet, Petitioners' core argument is that the Board could not reasonably reach that conclusion on the basis of the facts and law presented in the Board Complaint. After numerous briefs, the Board has yet to explain how it could find "no basis to proceed" despite, among other things: (1) admissions by Dr. James that constitute violations on their face (acknowledging that

¹ Petitioners take the Board's failure to dispute the lack of investigation as an acknowledgment that it did not conduct a factual investigation before reaching its determination that "there was no basis to proceed." Resp't's' Mem. Contra Pet'r's Req. for Oral Arg. 1. Indeed, this is why Petitioners have requested a copy of the Board's investigative file, so that the Court can ascertain precisely what the Board did, if anything, in response to the Board Complaint. Thus, the pending discovery request should not be deferred until after this Court's ruling on dismissal.

he served as both supervisory caregiver and interrogation advisor to young boys kidnapped and detained incommunicado, the explicit mission of the latter role being to exploit children's dependency and weaknesses for intelligence); (2) documented evidence of conduct that serious abuse occurred under his professional watch (e.g., reports that a young Canadian national detained by U.S. forces at the age of 15 was threatened with rape and death; repeatedly lifted by the neck and arms and forcefully dropped to the floor; short-shackled in painful positions for hours; left to urinate on himself; dragged through a mixture of pine oil and urine; and forced to remain in soiled clothing for two days); and (3) an opinion by an expert in psychological ethics concluding that, if true, the conduct described would constitute the worst case of professional misconduct encountered in his career. See Board Complaint at ¶¶ 44-49, 78-82, Petitioners' Verified Complaint for Writ of Mandamus at ¶ 50.

It is significant that the Board has not disputed a single factual or legal allegation made by Petitioners, begging the very legitimate question of how it could reasonably conclude that "there was no basis to proceed". This issue lies at the heart of the abuse of discretion question before the Court. It is an inquiry that cannot be separated from the underlying facts and violations alleged in the Board Complaint, and as such, it warrants the most thorough review this Court can offer, including oral argument.

b. Standing

The question of standing, particularly that of public interest standing, is also complex in this case as the questions surrounding the dismissal of this complaint raise matter of tremendous importance to the Ohio public. At stake is an inquiry into the fitness to practice of a psychology school dean entrusted with teaching young people to use their skills and training to bring about

healing and good mental health. Petitioners’ “agenda” in bringing the complaint against Dr. James to the Board is not a personal one. They are not alone in questioning whether an Ohio psychologist allegedly responsible for numerous ethical violations, including torture, is fit to treat Ohio patients, let alone oversee the professional education of future psychologists in this state. Over the last two years, hundreds of Ohioans have expressed concern with Dr. James’s past; dozens of them have written to ask the Board to investigate Dr. James’ behavior. Pet’r’s Compl. at ¶¶ 51. The interest Petitioners share with the larger Ohio public—in their state psychology board taking basic steps to investigate a psychology dean’s alleged overseeing of torture, and his admitted conflict of interests, including acting as care provider and exploiter to boys as young as 11—form the basis for Petitioners’ claim of public interest standing.

Petitioners rely on *Bowers v. Ohio Dental Board* (10th Dist. 2001), 142 Ohio App. 3d. 376, among other cases, because *Bowers* preserved the doctrine of public interest standing. As explained in Petitioners’ Opposition to Respondent’s Motion to Dismiss, the ultimate outcome of *Bowers* is easily distinguishable on the facts. See Pet’r’s Opp’n to Resp. Mot. to Dismiss 17-20. In terms of public interest standing, this case is closer to *State ex rel. Ohio Academy of Trial Lawyers et al. v. Sheward* (1999), 86 Ohio St.3d 451, 715 N.E.2d 1062. However, neither *Sherman*, *Bowers*, nor prior decisions involving challenges of board dismissals have dealt with issues of this magnitude (allegations of torture), or with boards that make inexplicable and unexplained decisions in the face of such grave, well-documented complaints. It is precisely because public interest standing is a doctrine of limited application that, when a *prima facie* case for it is made, as Petitioners have done, that oral argument is warranted.

CONCLUSION

For these reasons, Petitioners respectfully reiterate their request that the Court hear oral arguments before ruling on Respondents' motions to dismiss and stay discovery.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion of Petitioners to Request Oral Hearing on Respondents' Motion to Dismiss and Motion to Stay Discovery was sent by me via regular U.S. mail, postage prepaid this 8th day of September, 2011 to Roger F. Carroll, Esq., Assistant Attorney-General, 30 East Broad St., 26th floor, Columbus, OH 43215-3400.

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