IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Gene Edward Pershwitz, M.D., Petitioner	:	
v.	:	
State Board of Medicine, Respondent	:	No. 1442 C.D. 2025
	:	Submitted: September 17, 2026

BEFORE: HONORABLE RENÉE COHN JUBELIRER, President Judge
HONORABLE ANNE E. COVEY, Judge
HONORABLE MATTHEW S. WOLF, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE COVEY FILED: November 18, 2026

Gene Edward Pershwitz, M.D. (Dr. Pershwitz) petitions this Court for review of the Commonwealth of Pennsylvania, Bureau of Professional and Occupational Affairs, State Board of Medicine's (Board) October 10, 2025 Final Adjudication and Order reprimanding his License No. MD468720 (License), due to Dr. Pershwitz's failure to report to the Board discipline imposed by the Colorado Department of Regulatory Agencies, Division of Professions and Occupations, Medical Board (Colorado Board). Dr. Pershwitz presents one issue for this Court's review: whether the Board's penalty was manifestly unreasonable under the circumstances. After review, this Court affirms.

Dr. Pershwitz is board certified in internal medicine by the American Board of Internal Medicine, and obesity medicine by the American Board of Obesity Medicine. He resides in Texas, but is licensed to practice as a medical physician and surgeon in several other states, including Colorado, Florida, and Pennsylvania. The

Board initially issued Dr. Pershwitz's License on August 27, 2019, and it is current through December 31, 2026.

By October 27, 2022 letter, the Colorado Board admonished Dr. Pershwitz for unprofessional conduct under Colorado law and warned him that repetition of his conduct may lead to more severe disciplinary action (Admonishment Letter). *See* Reproduced Record (R.R.) at 9a-10a. Specifically, the Colorado Board concluded that Dr. Pershwitz certified a patient's need for an emotional assistance animal without conducting an in-person or telemedicine evaluation as required by Colorado law. *See* R.R. at 14a. The Admonishment Letter declared that it was a permanent, public portion of his record reportable to entities requesting disciplinary information. *See* R.R. at 9a.

On November 14, 2022, Dr. Pershwitz applied to the Board to renew his License. On his renewal application, Dr. Pershwitz answered *No* to the question regarding whether any disciplinary action had been taken against any professional or occupational license issued to him in any state or jurisdiction. *See* R.R. at 4a. On March 17, 2023, after he became aware that the Florida Medical Board (Florida Board) considered the Admonishment Letter a disciplinary action, he reported it to the Board and the medical boards of the other states in which he was licensed. *See* R.R. at 13a.

On February 26, 2025, the Board issued an Order to Show Cause for Dr. Pershwitz to demonstrate why the Board should not suspend, revoke, or otherwise restrict his License, or impose other disciplinary sanctions as authorized by law, against him, for:

> Count 1 - violating Section 41(4) of the Medical Practice Act of 1985 (Act),[1] 63 P.S. § 422.41(4), in that he had

[1] Act of December 20, 1985, P.L. 457, *as amended*, 63 P.S. §§ 422.1-422.53.

> disciplinary action taken against a license by a proper licensing authority of another state;
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> Count 2 - violating Section 41(2) of the Act, 63 P.S. § 422.41(2), in that he made misleading, deceptive, untrue, or fraudulent representations to the Board in obtaining a license;
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> Count 3 - violating Section 41(8) of the Act, 63 P.S. § 422.41(8), in that he engaged in immoral conduct as defined under Section 16.61(b)(1) of the Board's Regulations, 49 Pa. Code § 16.61(b)(1), by misrepresenting the existence of a discipline on his out-of-state professional license in his November 14, 2022 renewal application to the Board;
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> Count 4 - violating Section 41(6) of the Act, 63 P.S. § 422.41(6), in that he violated Section 16.61(b)(1) of the Board's Regulations, by misrepresenting the existence of a discipline on his out-of-state professional license in his November 14, 2022 renewal application to the Board; and,
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> Count 5 - violating Section 3104(a)(1) of the [law governing the Bureau of Professional and Occupational Affairs, licensing boards and licensing commissions], 63 Pa.C.S. § 3104(a)(1), in that [Dr. Pershwitz] failed to report to the Board a disciplinary action taken against [him] by a licensing agency of another jurisdiction within 30 days.

See R.R. at 4a-5a.

On March 21, 2025, Dr. Pershwitz filed an Answer to the Order to Show Cause with New Matter, wherein he admitted that he failed to report the Admonishment Letter to the Board when he filed his renewal application, but claimed that he had not received the Admonishment Letter prior to completing the renewal application. *See* R.R. at 12a-14a. In addition, he claimed that he "simply misunderstood whether the Colorado [Board] action was disciplinary in nature." R.R. at 14a. Dr. Pershwitz also clarified that while he did not report the Admonishment Letter to the Board within 30 days, he voluntarily reported it to the

Board on March 17, 2023, when he became aware that it constituted a disciplinary action. *See* R.R. at 13a. He asserted that, with the exception of this Colorado Board action, he has never been disciplined in any state in which he is licensed; because the conduct for which the Colorado Board admonished him was not a violation of Florida law, the Florida Board opted not to discipline him; and the conduct for which the Colorado Board admonished him is not a violation of Pennsylvania law. On March 26, 2025, the Board filed a Reply to New Matter. *See* R.R. at 17a-20a.

On June 9, 2025, a hearing was held before Hearing Examiner Peter J. Faben (Hearing Examiner). *See* Supplemental Reproduced Record at 2b-54b. On August 18, 2025, the Hearing Examiner issued an Adjudication and Order reprimanding Dr. Pershwitz's License and directing him to pay a $250.00 civil penalty. *See* R.R. at 21a-40a. On August 27, 2025, Dr. Pershwitz filed with the Board an Application for Review and Stay of the Hearing Examiner's Adjudication and Order, therein claiming that although the Hearing Examiner imposed a modest discipline, Dr. Pershwitz felt it was an abuse of discretion considering the totality of the circumstances. *See* R.R. at 42a-45a. On August 28, 2025, the Board Issued a Notice of Intent to Review, wherein it stayed Dr. Pershwitz's sanctions and penalties pending its review. *See* R.R. at 46a-47a. On October 10, 2025, the Board entered its Final Adjudication and Order dismissing Counts 2 through 5, but upholding Count 1 and "impos[ing] a public reprimand as a formal acknowledgment of the Colorado [Board's] discipline and as a reminder of the continuing obligation to comply with all professional reporting requirements." R.R. at 62a; *see also* R.R. at 49a-61a, 63a. Dr. Pershwitz appealed to this Court.[2]

[2] On October 31, 2025, Dr Pershwitz filed an Application for Stay Pending Petition for Review (Application), which the Board opposed. After conducting oral argument, on December 5, 2025, this Court denied the Application due to Dr. Pershwitz's failure to first request a stay from the Board as required by Pennsylvania Rule of Appellate Procedure (Rule) 1781(a), Pa.R.A.P.

Dr. Pershwitz argues that the Board abused its discretion and/or committed an error of law in reprimanding his License in the face of sufficient mitigating evidence in favor of no disciplinary sanction. He specifically asserts that his conduct did not harm the public, he did not act in a dishonest or deceitful manner, and he acted promptly to correct the error; thus, the totality of the circumstances did not warrant the imposition of any discipline. The Board retorts that the Board properly exercised its discretion by imposing a public reprimand, a reciprocal discipline rationally related to the facts found and authorized by statute.[3]

"The [Commonwealth] has the right to regulate and license professionals to protect the public health; and an applicant for licensure bears the burden of proving that he or she meets the qualifications for obtaining a license to practice a profession or occupation." *Barran v. State Bd. of Med.*, 670 A.2d 765, 767 (Pa. Cmwlth. 1996). "The Board is the agency charged with the responsibility and authority to oversee the medical profession and to determine the competency and fitness of an applicant to practice medicine within the Commonwealth." *Id*.

Relevant here, Section 41 of the Act declares, in pertinent part:

> The [B]oard shall have authority to impose disciplinary or corrective measures on a [B]oard-regulated practitioner for any or all of the following reasons:
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> . . . .
>
> (4) Having a license or other authorization to practice the profession revoked or suspended or having other

1781(a), or offer sufficient justification under Rule 1781(b), Pa.R.A.P. 1781(b), why such action was not practicable.

[3] The Board also responds that Dr. Pershwitz waived his sanction challenge because he failed to develop a supported legal argument or cite legal authority addressing reciprocal discipline or sanction review. While it is true that arguments that are undeveloped and/or not supported by pertinent legal authority risk waiver, *see Rivera v. Unemployment Comp. Bd. of Rev.*, 310 A.3d 348 (Pa. Cmwlth. 2024); *see also* Pa.R.A.P. 2119(a), this Court concludes that Dr. Pershwitz includes sufficient legal authority in his brief for this Court to discern the argument he raises on appeal and, thus, this Court declines to find waiver in this instance. *See Rivera*.

> disciplinary action taken . . . by a proper licensing authority of another state[.]

63 P.S. § 422.41.

In *Tandon v. State Board of Medicine*, 705 A.2d 1338 (Pa. Cmwlth. 1997), this Court concluded that Section 41(4) of the Act "is neither unreasonable nor arbitrary and constitutes a valid exercise of the statute's police power." *Id*. at 1345 (quoting *Johnston v. State Bd. of Med. Educ. & Licensure*, 410 A.2d 103, 106 (Pa. Cmwlth. 1980)). Accordingly, "[t]he statutory authorization to take disciplinary action against Pennsylvania license holders on the basis of reciprocal discipline has been repeatedly upheld by the Commonwealth Court." *Khan v. State Bd. of Auctioneer Exam'rs*, 842 A.2d 936, 950 (Pa. 2004); *see also Tandon*; *Shoenhair v. State Bd. of Nurse Exam'rs*, 459 A.2d 877 (Pa. Cmwlth. 1983); *Johnston*.

The *Tandon* Court further explained:

> Because the [] Board has no real independent ability to monitor the performance of Pennsylvania-licensed physicians who conduct their practices out-of-state, [**this Court**] **view**[**s**] **the authority of the** [] **Board to act swiftly upon official verification of disciplinary action in another state as most salutary**.

[*Johnston*, 410 A.2d at 106.]

In addition, in *Johnston* [this Court] noted that:

> **Since the** [] **Board is acting on the *fact* of disciplinary action in another state** . . . rather than the underlying events leading to that action, **the substance of the charges** and the procedure utilized in their resolution **must**, for purposes of [the prior version of Section 41(4) of the Act], **be considered immaterial**.

Id. . . . ([italic] emphasis in original).

Tandon, 705 A.2d at 1345 (bold emphasis added); *see also Khan*. "As a result, no evidence of patient harm or the potential for such harm was required to support the action taken by the [B]oard in this case." *Tandon*, 705 A.2d at 1345. The mere fact that the Colorado Board took disciplinary action against Dr. Pershwitz - a fact that he admitted - was alone sufficient for the Board to sanction him under Section 41(4) of the Act.[4]

Moreover, "[t]he Board, as does any licensing board, exercises considerable discretion in policing its licensees . . . [and] decides the weight to be assigned to mitigating evidence." *Elder v. Bureau of Pro. & Occupational Affs.*, *State Bd. of Med.*, 206 A.3d 94, 104 (Pa. Cmwlth. 2019). Further, the Pennsylvania Supreme Court has held that "it was the sole task of the [] Board to determine what sanction . . . fit the offense, which the [] Board had full and final statutory authority to do." *Telang v. Bureau of Pro. & Occupational Affs.*, 751 A.2d 1147, 1152 (Pa. 2000). "Unless the occupational licensing board is accused of bad faith or fraud, an allegation not made by [Dr. Pershwitz]," *Ake v. Bureau of Pro. & Occupational Affs.*, *State Bd. of Acct.*, 974 A.2d 514, 519 n.6 (Pa. Cmwlth. 2009), "[t]his Court's review of a licensing board's disciplinary sanction determines 'whether there has been a manifest and flagrant abuse of discretion or a purely arbitrary execution of the

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[4] This Court acknowledges that, in *Khan*, our Supreme Court declared:

> [I]n order to render the imposition of reciprocal discipline improper, the [licensee] must show either that: [(]1) there was no disciplinary action taken in the foreign disciplinary proceeding; [(]2) an appeal from the disciplinary action is pending; [(]3) the foreign disciplinary proceeding was *ultra vires* or lacking in the fundamentals of due process; or [(]4) the misconduct established in the foreign adjudication justifies substantially different discipline in this Commonwealth.

Khan, 842 A.2d at 943. However, none of those exceptions apply here.

agency's duties or functions.'" *Elder*, 206 A.3d at 104 n.9 (quoting *Goldberger v. State Bd. of Acct.*, 833 A.2d 815, 817 n.1 (Pa. Cmwlth. 2003)).

> The Pennsylvania Supreme Court has explained an abuse of discretion as follows:
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> > An abuse of discretion is not merely an error of judgment, but if in reaching a conclusion the law is overridden or misapplied, or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias or ill-will, as shown by the evidence or the record, discretion is abused. . . . We emphasize that an abuse of discretion may not be found merely because the appellate court might have reached a different conclusion.
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> *Paden v. Baker Concrete Constr*[.]*, Inc.*, . . . 658 A.2d 341, 343 ([Pa.] 1995). . . . An error of law occurs where, for example, an agency imposes a sanction that is not expressly authorized by statute.

Kyu Son Yi v. State Bd. of Veterinary Med., 960 A.2d 864, 878-79 (Pa. Cmwlth. 2008).

Section 42(a) of the Act declares:

> When the [B]oard is empowered to take disciplinary or corrective action against a [B]oard-regulated practitioner under the provisions of this [A]ct or pursuant to other statutory authority, **the [B]oard may**:
>
> (1) Deny the application for a license, certificate[,] or any other privilege granted by the [B]oard.
>
> (2) **Administer a public reprimand** with or without probation.
>
> (3) Revoke, suspend, limit[,] or otherwise restrict a license or certificate.
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> (4) Require the [B]oard-regulated practitioner to submit to the care, counseling[,] or treatment of a physician or a psychologist designated by the [B]oard.

> (5) Require the [B]oard-regulated practitioner to take refresher educational courses.
>
> (6) Stay enforcement of any suspension, other than that imposed in accordance with [S]ection 40 [of the Act], and place a [B]oard-regulated practitioner on probation with the right to vacate the probationary order for noncompliance.
>
> (7) Impose a monetary penalty in accordance with this [A]ct.

63 P.S. § 422.42(a) (emphasis added).

Here, the Board imposed a reprimand, reasoning:

> In determining the appropriate sanction, the Board has carefully considered [Dr. Pershwitz's] exceptions and the totality of the circumstances. In his exceptions, [Dr. Pershwitz] raises two primary concerns. First, he argues that any sanction, including a reprimand, would cause undue hardship because it may require him to report this additional disciplinary action to each of the numerous jurisdictions where he is licensed. [Dr. Pershwitz] explains that he already notified all jurisdictions of the Colorado [Board's] admonition and fears that a Pennsylvania sanction could trigger new reporting requirements and additional proceedings elsewhere. The Board is sympathetic to [Dr. Pershwitz's] concern and acknowledges that multistate licensure can create administrative burdens beyond those intended by any single jurisdiction. However, the Board's responsibility is to apply Pennsylvania law as written. The fact that other states may take action based on this proceeding does not relieve the Board of its duty to recognize discipline imposed by a sister state or to ensure the consistency and integrity of licensure within this Commonwealth.
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> Second, [Dr. Pershwitz] contends that he should not be subject to a reprimand or civil penalty because he acted in good faith, did not intend to conceal the Colorado [Board's] action, and promptly self-reported once he understood that the [Admonishment Letter] constituted formal discipline. The Board finds this testimony credible. The record reflects that the underlying conduct in Colorado did not involve patient harm and that [Dr.

> Pershwitz's] misunderstanding of the reporting requirement was reasonable under the circumstances. These factors resulted in the dismissal of several counts and significantly mitigated the severity of the violation.
>
> After weighing all evidence and considering [Dr. Pershwitz's] exceptions, the Board concludes that the purposes of the Act - protection of the public and maintenance of professional integrity - can be achieved through the least restrictive sanction available. [Dr. Pershwitz's] prompt cooperation, candor, and lack of prior disciplinary history persuade[s] the Board that no civil penalty is necessary. Accordingly, the Board will impose a public reprimand as a formal acknowledgment of the Colorado [Board's] discipline and as a reminder of the continuing obligation to comply with all professional reporting requirements.

Final Adjudication and Order at 12-13.

The Board was authorized to discipline Dr. Pershwitz solely due to the Colorado Board's action. *See Tandon*. Based on the circumstances before it, the Board felt compelled to impose some discipline in the interest of public protection and maintenance of professional integrity, but imposed the least restrictive sanction available. This Court finds no error in the Board's conclusion. Even if this Court had a different opinion regarding Dr. Pershwitz's discipline, it "may not substitute judicial discretion for administrative discretion." *Haentges v. State Bd. of Dentistry*, 307 A.3d 823, 834 (Pa. Cmwlth. 2023). Accordingly, the Board did not abuse its discretion and/or commit an error of law in reprimanding Dr. Pershwitz's License.

Based on the foregoing, the Board's Final Adjudication and Order is affirmed.

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ANNE E. COVEY, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Gene Edward Pershwitz, M.D., Petitioner	:	
v.	:	
State Board of Medicine, Respondent	:	No. 1442 C.D. 2025

O R D E R

AND NOW, this 18th day of November, 2026, the Commonwealth of Pennsylvania, Bureau of Professional and Occupational Affairs, State Board of Medicine's October 10, 2025 Final Adjudication and Order is affirmed.

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ANNE E. COVEY, Judge