

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Diana Zapata,
Petitioner
v.
State Board of Vehicle Manufacturers,
Dealers and Salespersons,
Respondent

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: No. 1739 C.D. 2024
: Submitted: July 24, 2026
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BEFORE: HONORABLE ANNE E. COVEY, Judge
HONORABLE LORI A. DUMAS, Judge
HONORABLE STACY WALLACE, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE WALLACE

FILED: October 6, 2026

Diana Zapata (Zapata), representing herself, petitions for review of the Final Adjudication and Order of the State Board of Vehicle Manufacturers, Dealers, and Salespersons (Board) mailed September 24, 2024, revoking her vehicle salesperson license. Also before the Court is the Board’s Application for Order Quashing Appeal (Application), asserting Zapata untimely filed her petition for review. After careful review, we deny the Application and affirm the Final Adjudication and Order.

BACKGROUND

The Department of State (Department) issued an Order to Show Cause on July 30, 2023, directing Zapata to address why the Board “should not suspend, revoke or

otherwise restrict [Zapata’s vehicle salesperson] license, impose a civil penalty, or impose the costs of investigation.” Supplemental Reproduced Record (Suppl. R.R.) at 2b. The Department alleged Zapata was charged with numerous criminal offenses related to her work as a vehicle salesperson at two docket numbers. *Id.* at 5b-8b. On September 21, 2022, at docket number CP-46-CR-0000401-2021, Zapata pled guilty to tampering with records or identification¹ and was sentenced to serve four years of probation, pay costs and fines, and pay \$900 in restitution.² *Id.* at 6b. The allegations in the criminal complaint were as follows:

a. From June 2019 through September 2019, [Zapata] notarized titles for individuals using fraudulent driver’s licenses.

. . . .

c. During the investigation, registration plates related to this scheme were found behind [Zapata’s] desk at [a car dealership].

d. The fraud scheme was perpetrated by charging foreign nationals \$1000 for car title and registration.

e. An individual was paid to obtain fraudulent driver’s licenses or another form of identification.

f. Once [Zapata] obtained the fraudulent documents, she delivered a large quantity of title transactions using the fraudulent documentation to a tag agency to obtain “washed” titles.

¹ See 18 Pa.C.S. § 4104(a) (“A person commits a misdemeanor of the first degree if, knowing that [s]he has no privilege to do so, [s]he falsifies, destroys, removes or conceals any writing or record, or distinguishing mark or brand or other identification with intent to deceive or injure anyone or to conceal any wrongdoing.”).

² Despite the Department’s averment that Zapata was sentenced to three years of probation at CP-46-CR-0000401-2021, the sentencing documents attached to the Order to Show Cause indicate she received a sentence of four years of probation. Suppl. R.R. at 23b.

g. A “washed” title is when a motor vehicle title is received after an application for title is made which includes materially false or ficti[t]ious information.

h. When this fraud was identified by [the Pennsylvania Department of Transportation], an administrative stop was placed on these title transactions.

i. In order to circumvent the administrative stop, [Zapata] requested dealer titles which removed the administrative stop.

j. The dealer titles [Zapata] requested and received were immediately retitled using the fraudulent documents obtained.

Suppl. R.R. at 4b-5b.

The same day, at docket number CP-46-CR-0001907-2022, Zapata pled guilty to a second offense of tampering with records or identification and was sentenced to serve a concurrent three years of probation and pay costs. *Id.* at 8b. The allegations in the criminal complaint against Zapata were as follows:

a. On or about January 25, 2021, [Zapata] sold a 2014 Ford Mustang Coupe from [a car] dealership.

b. [Zapata] owns [the dealership].

. . . .

d. [Zapata] also admitted that she collected sales tax from the purchasers for the sale of the car.

e. [Zapata] failed to turn over the sales tax she collected to the Commonwealth.

f. [Zapata] then . . . transferred the vehicle title into [the dealership’s] name rather than the purchaser.

g. This transfer to the dealership was done after the vehicle was already purchased.

h. On or about June 4, 2021, [the Pennsylvania State Police] init[i]ated a traffic stop on the 2014 Ford Mustang which still had the incorrect registration for the vehicle.

Suppl. R.R. at 7b. The Order to Show Cause raised six counts, alleging that Zapata pled guilty to crimes of moral turpitude while her vehicle salesperson license was in force, and that her crimes directly related to her profession, such that she “pose[d] a substantial risk to the health and safety of [Zapata’s] patients or clients or the public, or a substantial risk of further convictions.” *Id.* at 8b-10b.

On December 8, 2023, the Department filed a Motion to Deem Facts Admitted and Enter Default, alleging it sent copies of the Order to Show Cause to Zapata’s last known address via certified mail and first-class mail. Certified Record (C.R.) at 73-74.³ The Department alleged the copy of the Order to Show Cause sent via certified mail was delivered, and the copy sent via first-class mail was not returned. *Id.* at 74. Nonetheless, the Department alleged Zapata failed to file an answer. *Id.* The Board granted the requested relief by Order dated March 6, 2024, entering a default against Zapata, deeming the allegations against her admitted, and explaining it would issue an adjudication “in due course.” *Id.* at 82.

The Board issued its Final Adjudication and Order on September 24, 2024, in which it sustained all six counts against Zapata and revoked her vehicle salesperson license. The Board discussed the allegations in the Order to Show Cause, Zapata’s failure to file an answer, and its Order deeming the allegations admitted. C.R. at 96-103. The Board then considered the appropriate sanction. In relevant part, the Board explained the offense of tampering with records or identification is directly related to

³ We use electronic pagination when citing to the certified record. Notably, Zapata provided what she described as a reproduced record with her brief filed in this Court but included only a copy of her petition for review. The Board provided a supplemental reproduced record but included only a copy of the Order to Show Cause and related exhibits.

Zapata’s profession. *Id.* at 105. As a result, based on statutory law discussed below, the Board applied a rebuttable presumption that allowing Zapata to retain her license posed a substantial risk to her customers or the public or a substantial risk of further convictions. *Id.* at 106. The Board emphasized Zapata did not rebut the presumption because she failed to file an answer to the Order to Show Cause or present mitigating evidence. *Id.* at 109-11. The Board concluded as follows:

In assigning a sanction, the Board weighs the number and seriousness of the offense against any mitigating evidence. The Board is charged with the responsibility and authority to oversee the profession and to regulate and license professionals to protect the public health and safety. In carrying out its duty to protect the health and safety of the citizens of the Commonwealth, the Board has a duty to ensure that the sanction imposed reaches that end. In this matter, [Zapata] did not file an Answer to the [Order to Show Cause] or any response to the other filings of record and thus has not presented any mitigating evidence for the Board to consider. The Board cannot countenance such dishonest, criminal behavior from the members of its profession. Considering [Zapata’s] offenses and her lack of mitigating evidence, the Board believes that [Zapata’s] license should be revoked.

Id. at 111-12 (citation omitted).

Critically, the Board found Zapata’s “last known address on file” was in King of Prussia, Pennsylvania. C.R. at 88. Consistent with the averments in the Order to Show Cause, the Board found Zapata’s “current address” was in Plymouth Meeting, Pennsylvania, “[a]ccording to court records.” *Id.* The Final Adjudication and Order includes a mailing date of September 24, 2024, and a tracking number appearing to indicate the Board mailed it to Zapata at the King of Prussia address.⁴ The next item in the record is a letter addressed to Zapata, dated November 21, 2024, indicating the Board forwarded the Final Adjudication and Order to her via first-class and certified

⁴ The Final Adjudication and Order also appears to indicate the Board sent it to Zapata via e-mail.

mail at the Plymouth Meeting address, which it found using a “Thom[son] Reuters CLEAR Search.” C.R. at 117.

Zapata filed a petition for review in this Court on December 23, 2024, within 30 days of the November 21, 2024 letter, but not within 30 days of the September 24, 2024 mailing date of the Final Adjudication and Order.⁵ On June 17, 2025, the Board filed its Application, contending the petition for review was untimely. Zapata filed a Reply, arguing she did not receive the Final Adjudication and Order when the Board initially mailed it to her on September 24, 2024, and she timely filed her petition for review within 30 days of the November 21, 2024 letter.

DISCUSSION

Timeliness

We begin by considering the Board’s Application.⁶ A petition for review of a final adjudication and order of the Board “shall be filed with the prothonotary of the appellate court within 30 days after the entry of the order.” Pa.R.A.P. 1512(a)(1). In general, the date of entry of a final adjudication and order is the date the Board “mails or delivers copies of the order to the parties.” Pa.R.A.P. 108(a)(1). This Court has explained:

It is well established that failure to timely appeal an administrative agency’s action is a jurisdictional defect; consequently, the time for taking an appeal cannot be extended as a matter of grace or mere indulgence. An appeal *nunc pro tunc* may be allowed where the

⁵ Thirty days after November 21, 2024, was Saturday, December 21, 2024, meaning the deadline to appeal would be Monday, December 23, 2024. *See* Pa.R.A.P. 107; Pa.R.J.A. 107(b). The petition for review included a Form 3817 Certificate of Mailing, indicating Zapata mailed it on December 23, 2024. *See* Pa.R.A.P. 1514(a). The Board does not dispute the mailing date.

⁶ In its brief, the Board now “concedes that Zapata’s petition for review was timely.” Board’s Br. at 15 n.8. Because the timeliness of an appeal is jurisdictional, however, we will address the issue. *See G.R.S. v. Dep’t of Hum. Servs.*, 329 A.3d 770, 773 (Pa. Cmwlth. 2025).

delay in filing the appeal was caused by extraordinary circumstances involving fraud or some breakdown in the administrative process

A party seeking permission to file an appeal *nunc pro tunc* must also establish that (1) the appeal was filed within a short time after learning of and having an opportunity to address the untimeliness; (2) the elapsed time period is of very short duration; and (3) the appellee will not be prejudiced by the delay. The question of whether the appellant established entitlement to an appeal *nunc pro tunc* is a legal conclusion to be drawn from the evidence in the record and is fully reviewable by this Court.

H.D. v. Pa. Dep't of Pub. Welfare, 751 A.2d 1216, 1219 (Pa. Cmwlth. 2000) (citations omitted).⁷

In this matter, the 30-day appeal period from the Board's September 24, 2024 Final Adjudication and Order ended on Thursday, October 24, 2024. Zapata did not file her petition for review until December 23, 2024, well after the appeal period was over. The Board asserts it e-mailed the Final Adjudication and Order to Zapata and sent copies to the King of Prussia address on September 24, 2024, via first-class and certified mail.⁸ The Board explains the copy of the Final Adjudication and Order it sent via certified mail was returned as undeliverable, prompting it to send a second copy to the Plymouth Meeting address on November 21, 2024.

However, the Board was aware of the Plymouth Meeting address at the time it mailed the Final Adjudication and Order on September 24, 2024. The Board found, consistent with the averments in the Order to Show Cause, that Zapata's "last known

⁷ For many years, case law also permitted *nunc pro tunc* relief in the event of certain "non-negligent circumstances." See *H.D.*, 751 A.2d at 1219. The Pennsylvania Supreme Court recently expressed disapproval of granting relief on that basis, "absent express statutory language that can reasonably support a non-negligent-[circumstances] exception to the time limitation involved." *Carr v. First Commonwealth Bank* (Pa., Nos. 22 WAP 2025 & 23 WAP 2025, filed Sept. 10, 2026), slip op. at 14.

⁸ In addition, the Board asserts it posted notice of its revocation decision online.

address on file with the Board” was the King of Prussia address, but that her “current address” was the Plymouth Meeting address “[a]ccording to court records.” C.R. at 88. The Department mailed the Order to Show Cause to both of Zapata’s addresses. Nonetheless, the Department and the Board later mailed all documents, including the Final Adjudication and Order, to only the King of Prussia address.

Under these circumstances, where the Board knew, and indeed found as a fact, that Zapata’s address on file was not her current address according to court records, and where the Board did not initially send its Final Adjudication and Order to what it believed her current address to be, causing her undisputed failure to receive the Final Adjudication and Order in a timely manner, we must conclude that an administrative breakdown has occurred.⁹ *See Harris v. Unemployment Comp. Bd. of Rev.*, 247 A.3d 1223, 1231 (Pa. Cmwlth. 2021) (recognizing an administrative breakdown occurs if the agency is at fault for mailing its decision to the incorrect address). Accordingly, Zapata is entitled to appeal *nunc pro tunc*, and we deny the Application.

Imposition of Sanctions

We may now turn to the merits of Zapata’s appeal. This Court reviews a final adjudication and order of the Board for violations of constitutional rights, violations of practice and procedure, and other errors of law. 2 Pa.C.S. § 704. We also review whether substantial evidence in the record supports the findings of fact necessary to sustain the Board’s decision. *Id.* Regarding the Board’s imposition of sanctions:

Absent an accusation of bad faith or fraud, our review of a licensing board’s disciplinary sanction is limited to determining whether there has been a manifest and flagrant abuse of discretion or a purely arbitrary execution of the agency’s duties or functions. Further,

⁹ We note Zapata filed her petition for review within a reasonably short time, i.e., within 30 days of the November 21, 2024 letter and within 3 months of the September 24, 2024 mailing date, and we discern no prejudice to the Board. *See H.D.*, 751 A.2d at 1219.

a professional licensing board exercises considerable discretion in policing its licensees. The weight to be given to evidence of mitigating circumstances is a matter of agency discretion. Nevertheless, this Court must correct abuses of discretion in manner or degree of penalties imposed.

Knelly v. Pa. Dep't of Health, 307 A.3d 808, 816 (Pa. Cmwlth. 2023) (citations and quotation marks omitted).

Zapata argues the Board's decision to revoke her vehicle salesperson license was unduly harsh and constituted an abuse of discretion. Zapata's Br. at 6-10. Thus, we focus our analysis on that aspect of the Final Adjudication and Order. The Board explained Zapata's offenses of tampering with records or identification were directly related to her profession. C.R. at 105. The Board relied on the schedule of offenses published online, based on the following provision:

(a) Duty of commissioner.--After consultation with the licensing boards, licensing commissions and representatives of the business community with knowledge of the respective professions, the commissioner [of the Bureau of Professional and Occupational Affairs] shall have the power and duty to publish a schedule of criminal convictions that may constitute grounds to refuse to issue, suspend or revoke a license, certificate, registration or permit for each occupation or profession under the respective practice acts. The following shall apply:

(1) The schedule shall indicate which offenses are those that the licensing board or licensing commission deems as directly relating to the occupation, trade or profession.

....

(c) Dissemination.--Within 180 days of the effective date of this subsection, the schedule of offenses in subsection (a) shall be provided in writing to each applicant for a license, certificate, registration or permit issued by a licensing board or licensing commission as part of the application and shall be made part of the best practices guide under section 3116 (relating to best practices guide). The following shall apply:

(1) Within 180 days of the effective date of this subsection, the schedule shall be published on the publicly accessible Internet website of the Department of State.

. . . .

(d) Application.--The schedule shall be used by the licensing boards and licensing commissions when:

. . . .

(2) determining which criminal convictions may result in discipline of a licensee;

63 Pa.C.S. § 3117(a)(1), (c)(1), (d)(2). The schedule, available on the Department’s website as part of the *Act 53 of 2020 Best Practices Guide*, provides tampering with records or identification, graded as a misdemeanor, is “directly related to the practice of the vehicle sales profession.”¹⁰

Given the Board’s determination that Zapata’s offenses were directly related to her profession, it applied a rebuttable presumption that permitting her to maintain a vehicle salesperson license posed a substantial risk to customers or the public or a substantial risk of further convictions. The Board relied on the following provision:

(b) Analysis of criminal convictions.--Except as provided in subsections (d), (e) and (f), a licensing board or a licensing commission shall engage in a two-stage analysis of the criminal convictions of the applicant. The following shall apply:

(1) The first stage of the analysis shall determine whether the criminal conviction directly relates to the occupation, trade or profession for which the individual seeks licensure by reviewing the schedule of offenses If the

¹⁰ This schedule is available at <https://www.pa.gov/agencies/dos/resources/professional-licensing-resources/act-53-of-2020-best-practices-guide> (last visited Oct. 5, 2026). Notably, the schedule is now included as part of a regulation adopted October 19, 2024, shortly after the Board issued its Final Adjudication and Order. See 49 Pa. Code § 43b.450.

offense is found on the list of offenses that are directly related to the occupation, trade or profession, the licensing board or licensing commission shall then determine whether licensure of the individual would pose a substantial risk to the health and safety of the individual's patients or clients or the public or a substantial risk of further criminal convictions by conducting the individualized assessment specified in subsection (c). There shall be a rebuttable presumption that licensure of the individual with a criminal conviction that directly relates to the occupation, trade or profession would pose a substantial risk to the health and safety of the individual's patients or clients or the public or a substantial risk of further criminal convictions. The individual may rebut the presumption by showing evidence of rehabilitation, as specified in the factors in subsection (c).

....

(c) Individualized assessment.--A licensing board or licensing commission shall conduct an individualized assessment of the individual with respect to criminal convictions and rehabilitation. The licensing board or licensing commission shall only consider the following factors in order to determine whether the individual meets the requirements for issuance of a license, certificate, registration or permit under subsection (b)(1) or (b)(2):

- (1) Whether the criminal conduct for which the individual was convicted involved an act or threat of harm against the individual. For purposes of this paragraph, the term "harm" includes harm to the victim, the personal property of the victim or reputation of the victim.
- (2) The facts and circumstances surrounding the criminal conviction.
- (3) The number of criminal convictions.
- (4) Increase in age or maturity of the individual since the date of the criminal conviction.
- (5) The individual's criminal history or lack of criminal history after the date of conviction.

(6) Successful completion of education and training activities, including those in a county correctional facility or the Department of Corrections.

(7) References from employers or others, including personnel of the county correctional facility or the Department of Corrections.

(8) Progress in personal rehabilitation since the conviction.

(9) Whether the individual meets all other licensing qualifications of the applicable practice act, including any examination requirements.

(10) The individual's criminal history, or lack of criminal history, after the date of the criminal conviction while engaged in the same or similar profession or occupation.

(11) Any other factor deemed relevant to the licensing board or licensing commission regarding the fitness of the individual for licensure.

63 Pa.C.S. § 3113(b)-(c).¹¹

The Board discussed each of the factors listed above, emphasizing Zapata did not file an answer or present mitigating evidence. C.R. at 108-11. Thus, the Board concluded Zapata did not rebut the statutory presumption, and revoking her vehicle salesperson license was appropriate. The Board further reasoned it was appropriate to revoke Zapata's license because it "cannot countenance such dishonest, criminal behavior from the members of its profession." *Id.* at 112. The Board's analysis was proper under applicable law.

¹¹ Although the language of Section 3113 focuses on applicants for licensure, its provisions apply to disciplinary decisions as well. *Ghaderi v. State Bd. of Osteopathic Med.*, 302 A.3d 240, 245 (Pa. Cmwlth. 2023) (en banc).

Zapata contends the Board weighed an equal number of factors for and against her, showing its decision to revoke her vehicle salesperson license was “draconian” and “a clear abuse of discretion.” Zapata’s Br. at 6-8. In the Final Adjudication and Order, the Board weighed factors (1) and (2) against Zapata, weighed factors (3) and (5) in favor of Zapata, and found the remaining factors did not apply or could not be given weight, primarily because Zapata did not file an answer or present mitigating evidence. The Board’s equal weighing of factors is consistent with its reasoning that Zapata failed to rebut the statutory presumption against her and does not support the conclusion that the Board abused its discretion.

Further, Zapata argues the Board abused its discretion because her punishment is more severe than what the Board imposed in *Burnworth v. State Board of Vehicle Manufacturers, Dealers and Salespersons*, 589 A.2d 294 (Pa. Cmwlth. 1991), which notably predated 63 Pa.C.S. § 3113.¹² This Court in *Burnworth* affirmed the Board’s decision suspending the petitioner’s licenses and imposing civil penalties, where the petitioner “pled guilty to forty-one violations of . . . filing false and fraudulent sales tax returns, and one violation of . . . income tax evasion” and was sentenced to a term of incarceration, among other things. *Id.* at 295. *Burnworth* confirms that this Court must defer to the Board’s exercise of discretion when it imposes sanctions. The fact that the Board may have imposed a lesser sanction under different circumstances and a different statutory scheme does not warrant reversal of the Final Adjudication and Order in this case.

CONCLUSION

For the foregoing reasons, Zapata failed to timely file her petition for review, but we conclude she is entitled to *nunc pro tunc* relief and deny the Application. As

¹² Section 3113 was enacted as part of the Act of July 1, 2020, P.L. 575.

for the merits of Zapata's appeal, we discern no basis to disturb the Board's decision revoking her vehicle salesperson's license, and we affirm the Final Adjudication and Order.

STACY WALLACE, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Diana Zapata,	:
Petitioner	:
	:
v.	: No. 1739 C.D. 2024
	:
	:
State Board of Vehicle Manufacturers,	:
Dealers and Salespersons,	:
Respondent	:

ORDER

AND NOW, this 6th day of October 2026, the Application for Order Quashing Appeal filed by the State Board of Vehicle Manufacturers, Dealers and Salespersons is **DENIED**, and the Final Adjudication and Order mailed September 24, 2024, is **AFFIRMED**.

STACY WALLACE, Judge