

STATE OF MAINE

KENNEBEC, ss.

SUPERIOR COURT

CIVIL ACTION

DOCKET NO. AP-04-39

DHM - KEN - 12/20/2004

PETER O'DONNELL,

Petitioner

v.

DECISION AND ORDER

MAINE STATE BOARD OF
NURSING,

Respondent

DONALD L. RAYBURN
CLERK OF COURT

DEC 20 2004

Once again Mr. O'Donnell is before the court on a M.R. Civ. P. 80C petition for review. In rather vague language, the petitioner complained to the Maine State Board of Nursing regarding activities of a licensed registered professional nurse approved as a nurse practitioner. The respondent dismissed petitioner's complaint on the basis of a finding of no violation of law regulating the practice of nursing.

An appeal of an administrative agency's imposition of a penalty is reviewed by the court for an abuse of discretion, errors of law or findings not supported by the evidence. *Maine Real Estate Commission v. Jones*, 670 A.2d 1385 (Me. 1996). This court will not attempt to second-guess the agency on matters falling within its realm of expertise. *Wood v. Supt. of Insurance*, 638 A.2d 67 (Me. 1994).

It is clear that licensing boards do not have jurisdiction over individuals who do not hold a license pursuant to that board. *Golz v. Maine Real Estate Commission*, 634 A.2d 1288 (Me. 1993). "To acquire standing to obtain judicial review of an administrative action, a person must demonstrate a particular injury therefrom . . . the agency's action must actually operate prejudicially and directly upon a party's property, pecuniary or personal rights." *Storer v. Dept. of Environmental Protection*, 656 A.2d 1191 (Me. 1995).

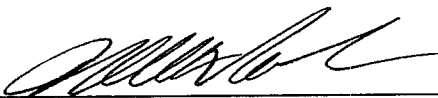
It would appear from petitioner's filings and oral argument that he believes that the nurse practitioner conducted an unnecessary medical examination. The proceedings before the Maine State Board of Nursing was concerned with the qualifications of the nurse practitioner to continue in her profession under her license. Since the petitioner in this case has no legal stake in the outcome of such a disciplinary matter, he has no standing to bring this petition for review. Furthermore, the nurse practitioner is a necessary party to any action reviewing the complaint as to her activities and such party has not been joined in this action.

In examining the record, the court finds no basis for concluding that the Maine State Board of Nursing abused its discretion in dismissing the complaint by the petitioner.

The entry will be:

The decision of the Maine State Board in Nursing in the matter of Sandra J. Picard dated June 10, 2004, is AFFIRMED.

Dated: December 20, 2004



Donald H. Marden
Justice, Superior Court

Date Filed 6/25/04

Kennebec

Docket No. AP04-39

County

Action Petition for Reivew

80C

J. MARDEN

Peter David O'Donnell

vs.

State of Maine, Board of Nursing

Plaintiff's Attorney

Peter David O'Donnell, Pro Se
277 Nelson Lane
Palermo, Maine 04354

Defendant's Attorney

John Richards, AAG
Office of Attorney General
6 State House Station
Augusta ME 04333-0006

Date of
Entry

6/25/04

Petition for Review, filed. s/O'Donnell, Pro Se
Application of Plaintiff to Proceed Without Payment of Fees, filed.
O'Donnell, Pro Se
Indigency Affidavit, filed. s/O'Donnell, Pro Se

7/2/04

ORDER ON APPLICATION TO PROCEED WITHOUT FEES, Marden, J.
It is ORDERED that the applicant pay \$200.00 toward the filing fee, service costs as follows: \$25.00 each week beginning August 1, 2004.
Copy mailed to Pltf.

7/14/04

Appearance and Statement of Position, filed. s/J. Richards, AAG.

7/15/04

Sheriff's Return of Service of service of the Notice of Petition was served in hand to Myra Broadway on 7/6/04, filed. (filed by Petitioner)

7/16/04

Letter requesting payments be made on the 4th of every month rather than the 1st of every month, filed. s/P. O'Donnell, Pro se Petitioner.

7/26/04

ORDER dated 7/21/04, filed. s/Studstrup, J.
Request GRANTED. Next payment due 8/4/04. Copy issued to P. O'Donnell, Pro se Petitioner. Pro Se Petitioner

7/30/04

Record, filed. s/Richards, AAG.
Notice of briefing schedule mailed to Pltf. and atty of record.

8/12/04

Petitioner's Brief, filed. s/Peter D. O'Donnell, Pro Se

Notice of setting for 11/3/04

sent to attorneys of record.

11/3/04

Hearing had with the Hon. Justice Donald Marden, presiding. Tammy Drouin, Peter O'Donnell, Pro Se Plaintiff and John Richards, AAG
Oral arguments made to the court. Court to take matter under advisement.