EFiled: Jul 29 2016 04:31PM EDT
Transaction ID 59350214
Case No. N15A-08-002 JAP

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

LEADS SCHOOL OF TECHNOLOGY PRACTICAL NURSING PROGRAM,	)	
Appellant,	)	
v.	)	C.A. No. N15A-08-002 JAP
DELAWARE BOARD OF NURSING,	)	
Appellee.	)	

FILED
PROTHONOTARY
2016 JUL 29 PM 3:58

OPINION

Leads School of Technology appeals from a decision of the Delaware Board of Nursing withdrawing its conditional approval to operate its nursing school. For the reasons stated below the Board's decision is reversed and the matter remanded for further proceedings.

Background

A. Nursing schools and the Board of Nursing

By statute the Board of Nursing is charged with ensuring the adequacy of nursing education programs within the state.[1] To this end it is vested with the power to

> (2) Approve curricula and develop criteria and standards for evaluating educational programs preparing persons for license under this chapter;
>
> * * *
>
> (4) Approve such programs as meet the requirements of this chapter and of the Board;
>
> (5) Deny or withdraw approval from educational programs for failure to meet approved curricula or other criteria.[2]

An institution which desires to start a nursing education program must begin the process by filing what is known as a Phase I application with the Board.[3] After evaluating the Phase I application (which evaluation includes a site visit) and assuring itself that all its preliminary requirements have been satisfied, the Board may allow the applicant to progress to Phase II. In this

---

[1] 24 *Del. C.* § 1901 ("In order to safeguard life and health, the general administration and supervision of the education, examination, licensing and regulation of professional and practical nursing is declared essential, and such general administration and supervision is vested in the Board of Nursing.").

[2] *Id.* at 1906.

[3] Reg. 2.4.1.1.

phase the Board examines the program's progress toward meeting detailed criteria set out in its regulations. When the Board is satisfied that the program is ready to admit students it grants the program "initial approval." Following the graduation of the first cohort,[4] the program submits a self evaluation report to the Board. If the Board is satisfied that the program meets all of its criteria it can grant the program "full approval;"[5] if not, the Board may still grant the school "conditional approval" to operate. Leads has never been granted full approval.

One important measure of the quality of a nursing education program is the pass rate of its graduates on a nationally administered examination known as the National Council Licensure Examination (usually referred to as "NCLEX", which is pronounced "N-clex"). The NCLEX is administered by the National Council of State Boards of Nursing which forwards to each state board the pass rate of the nursing education programs within that board's jurisdiction. State boards in turn often use a program's pass rate as a key tool for determining whether the program should be placed on probation or even closed. Delaware is no exception. The Delaware

[4] A "cohort" in this context is a group of students working together through the same academic curriculum.
[5] Regs. 2.4.3.3.

Board of Nursing regulations provide that the Board may withdraw its approval of a program if, after the first year, the pass rate dips below 60 percent in a single year or if its dips below 80 percent for three consecutive years.

B. Leads and its history with the Board

Leads draws many of its students from the African immigrant community, and for many of its students, English is a second language. The Board granted Leads conditional approval to operate in 2007. Although the NCLEX pass rate for Leads' first graduating class (in 2008) did not meet the Board's 80 percent standard, it came close with a 78.26 percent rate. The following year the pass rate fell to less than 60 percent, rose to 75 percent in 2010, but fell precipitously in 2011—when only 47 percent of its graduates passed. Under the Board's regulations this history would have justified withdrawing Leads' conditional approval.

Leads did not help its cause with the annual reports it was required to file with the Board. Each nursing education program in the state is required to submit an annual report on a form provided by the Board. The form requires, among other things, information

about the school's student population numbers; the NCLEX pass rate; the results of student and employer surveys; employment of graduates; fiscal resources; classroom, library and laboratory resources; information about the school administration and faculty; and information about the clinical sites used to train the students. The Board found Leads' reports to be of poor quality—at times indecipherable, frequently missing information, often internally contradictive, and submitted late.

Despite Leads' history of substandard pass rates and poor annual reports, the Board worked with the school in an effort to help it develop a satisfactory education program. It appears though that in 2011 the Board's patience approached its outer limits when it received yet another poorly prepared Leads' annual report and also learned that only 47 percent of Leads' graduates passed the NCLEX. On April 2, 2012 the Board met with Leads officials for what must have been a stern discussion about Leads' future. An April 25, 2012 letter from the Board purports to confirm what Leads was told at that meeting.[6] The Board listed three deficiencies

[6] The letter begins:

> In response to your letter dated March 23, 2012 and as a follow-up to our meeting of April 2, 2012, please accept this letter as clarification of the bases for

in that letter: (1) the NCLEX pass rate below 80 percent; (2) unclear annual reports; and (3) student complaints. Leads agreed at the meeting to revamp its program so as to address the report and NCLEX issues. This April 25, 2012 letter takes on considerable significance in this case because, according to the Board, it constitutes the notice to Leads and an opportunity to cure which is required by statute and regulation before the Board may withdraw its approval to operate.

C. Leads revamps its program in 2012

Leads officials set about to revamp its program. As part of its efforts the school retained Lucille Gambardella, Ph.D. to provide advice about revamping its program. Dr. Gambardella was an experienced nurse educator and former chair of the Department of Nursing at Wesley College who also served a stint as Chair of the Board of Nursing. With Dr. Gambardella's assistance Leads prepared an action plan which it submitted to the Board for review. The Board returned that plan with comments, which Leads incorporated into a revised action plan. The Board approved Leads'

Leads School of Technology's LPN program's continued approval, the Board's proposal to withdraw approval, and clarification of the issues raised in your letter and during our meeting.

revised plan in July, 2012, noting that it "had merit." The approved plan included, among other things, restructuring the curriculum, tightening admissions standards and raising the passing grade for its courses.

As would be expected, the Board monitored Leads' compliance with the plan. In May 2013 members of the Board conducted a formal site visit to Leads. Afterwards one of the visiting Board members wrote that "the plan of action was being implemented as anticipated from the June 2012 Action Plan." As a result of the visit the Board made recommendations, which Leads followed. In December, 2013 the Board's education committee wrote:

> Financial, clinical and teaching/learning resources were adequate. Previous Board recommendations indicated Leads addressed suggestions from the site visit.

Dr. Gambardella's assistance was also reflected in much-improved annual reports. In December 2012 a member of the Board's Practice and Education Committee[7] commented that "this was the best report ever submitted by Leads because it was clearly written, organized, logical and sequential." A month later the Board reiterated that the report "was clearly written, well organized, and

[7] It appears the members of the Board's Practice and Education Committee were board members.

the information was presented in a logical, sequential manner." The next annual report was also well done. The Committee later had this to say about Leads' 2013 Annual report:

> The report was nicely written and section A – I were complete. The numbers added up and they had a low attrition rate reporting from December 2012 to April 2013 68 students started the program and 61 finished.

On January 13, 2014 the Board itself wrote to Leads that "the [2013] report was nicely written, the numbers added up and there was a low attrition rate reported."

A key element of the plan was the "2012 cohort," which for purposes of this opinion means the group of students beginning the Leads program in September, 2012. The Board and Leeds agreed that students in the pre-2012 cohorts could not participate in the revamped program. There is no doubt that the NCLEX results for graduates in the pre-2012 cohorts would not be a valid indicator of the success of the program revisions because the pre-2012 cohort graduates did not take part in the revised program.[8] The Board's Practice and Education Committee recognized this, and hinged Leads' continued approval on the success of the 2012 cohort.

[8] The rationale for not including pre-2012 cohort students in the revamped program was that earlier students had an expectation the program would remain the same as it was when they matriculated.

According to the minutes of a July 3, 2012 meeting of the Practice and Education Committee:

> Ms. Bastholm made a motion for the class entering September 2012 with the new curriculum/action plan, their NCLEX pass rate will be 80% or higher by the 2014 Annual Report to the Board. If not, the Board of Nursing will recommend withdrawal of program approval.

Shortly thereafter the Board as a whole accepted the committee's report.

D. The Board withdraws Leads' approval[9]

The NCLEX results for the pre-2012 cohort students continued to be poor. In 2012 it was 56 percent, in 2013, 32 percent and in 2014 it was again 32 percent. Importantly, none of these results involved students in the 2012-cohort. The poor NCLEX results drew the attention of the Board, which in January, 2015 voted to withdraw Leads' approval because of them. According to the Board's minutes:

> Leads School of Technology NCLEX-PN pass rate was 31.82%. The committee noted this is the 7th consecutive year the program has not met 80% rule standard for first-time test takers and Leads has never received full approval. An action plan was submitted

[9] In its brief the Board directs the court's attention to minutes of the Board's Practice and Education Committee's meeting of June 13, 2014. Those minutes suggest that, a few months before the Board proposed to close Leads, the Committee had significant concerns about the program. The court will not consider those minutes because they were never put in evidence at the hearing before the Board.

> in 2012 to correct the NCLEX deficiencies and the committee gave the program until 2014 to correct the deficiencies. The committee recommended withdrawal of initial approval of the LEADS PN Program with the right to a hearing before the full Board of Nursing. The motion was unanimously approved by the Board.

Three months later the Board sent a six page single-spaced letter to Leads advising Leads that it intended to withdraw its approval. (This letter will be referred to as the "2015 Notice".) The 2015 Notice expanded the reasons for withdrawal beyond that approved by the Board at its January meeting. In addition to the poor NCLEX results, the letter added "Leads' Annual Reports Remain Unclear." Leads availed itself of its right to a hearing before the Board which the Board conducted in June, 2015. Both the Board and Leads were represented by counsel. Leads called three witnesses at the hearing and the Board called none.

The NCLEX results for 2012 cohort students were becoming available by the time the Board conducted the hearing. Twenty two of the 23 2012-cohort graduates who took the exam passed, far exceeding the 80 percent standard imposed by the Board. Nonetheless after the hearing the Board issued a written decision withdrawing Leads' approval. It opined that the pass rate for Leads'

graduates, which included students who graduated before the revamped program was initiated, was only 31.82 percent. The Board also found that:

> Leads did not meet its burden of showing just cause to extend the period for correcting its deficiencies in regard to Regulations 2.5.10.6.5, providing adequate resources for cognitive learning and clinical practice; 2.5.10.6.3, maintaining faculty and administration of adequate size and resources; and 2.5.10.6.1, adhering to the school's stated philosophy and curriculum objectives, as Leads repeatedly misled the Board in regard to student population, curriculum objectives *vis a vis* program duration, and faculty size and resources.

Leads filed a timely appeal of the Board's decision to this court. After a hearing the court stayed the Board's decision pending the outcome of the appeal, and Leads has continued to operate during the interim.

Standard of Review

The Delaware Supreme Court summarized the standard of review in appeals from the Board of Nursing in *Camtech School of Nursing and Technological Sciences* v. *Delaware Board of Nursing*:

> This Court's review of an administrative agency's decision is the same as the Superior Court's. That is, we review the decision of the Nursing Board to determine whether [it] acted within its statutory authority, whether it properly interpreted and applied the applicable law, whether it conducted a fair hearing

> and whether its decision is based on sufficient substantial evidence and is not arbitrary. Substantial evidence is defined as evidence that a reasonable mind might accept as adequate to support a conclusion. Questions of law are reviewed *de novo*. But we also give judicial deference to an administrative agency's construction of its own rules in recognition of its expertise in a given field.[10]

One matter directly related to the standard of review warrants special mention here. In its post-hearing opinion the Board devoted considerable attention to the credibility of Leads' CEO, Dr. Aliu. It found that his testimony was "at best, lacking in transparency, and at worst, intentionally misleading the Board." The court emphasizes that nothing in its opinion questions the Board's assessment of Dr. Aliu's credibility because none of the court's analysis turns on his testimony.

Analysis

The Board justified its decision to withdraw Leads' approval on two independent grounds: First, it found that the NCLEX pass rate of Leads' graduates fell below the 80 percent minimum for the past seven years. Second, it found that Leads' annual reports were inadequate. The court finds that (1) the Board acted arbitrarily when it largely ignored Leads' contention, which is supported by the

[10] *Id.* at *2 (footnotes and quotation marks omitted).

evidence, that the Board agreed to consider only the NCLEX scores of the 2012-cohort graduates and (2) with one exception the Board did not give Leads the required notice and opportunity to cure the defects in its 2014 annual report or its findings of alleged defects in Leads' report are unsupported by any evidence. One issue remains: the Board found that Leads' 2014 report was deficient because it misstated the duration of its curriculum. The remaining matter will be remanded to the Board for its determination whether this deficiency alone warrants withdrawal of Leads' approval to operate.

Upon first look it might appear that the issues here are squarely controlled by the Supreme Court's judgment order in *Camtech School of Nursing and Technological Services v. Board of Nursing*[11] wherein the Court upheld the Board of Nursing's decision to withdraw its approval of Camtech. But upon closer inspection it becomes apparent *Camtech* and the instant case are critically different:

> (1) In *Camtech* the Supreme Court refused to consider Camtech's argument that the Board arbitrarily refused to consider evidence of its graduates' recent NCLEX pass

[11] 2014 WL 4179199 (Del.).

rate because Camtech did not preserve that argument in its briefing.[12] Here Leads' argument about the pass rate (which differs from the argument made by Camtech) has been properly preserved.

(2) In *Camtech* the Supreme Court found that multiple notices to the school provided the necessary notice and opportunity to cure.[13] Here however the Board relies upon only one notice, the substance of which, for the most part, does not provide the required notice and opportunity to cure.

(3) In *Camtech* the Supreme Court upheld the Board's finding that Camtech was not entitled to additional time to cure because the school failed to establish "good cause" under 29 *Del. C.* §1919(b).[14] Although the instant parties devote much attention in their briefing to whether Leads has shown "good cause", the court will not reach that issue. Rather this case turns on the court's

---

[12] *Id.* ("[Camtech argues] the Board failed to consider new evidence of its improved passage rate.").

[13] *Id.* at *3 ("Camtech next argues that the Board failed to specify Camtech's deficiencies in a timely manner so that it could adequately correct them and continue its nursing education program.").

[14] *Id.* ("Camtech next contends that the Board erred as a matter of law in its interpretation of the "good cause" requirement to permit Camtech's continued operations because its opinion was arbitrary and capricious.").

conclusions that (a) under the facts of this case the Board acted arbitrarily when it based its decision to withdraw Leads' approval on the NCLEX pass rate of pre-2012 cohort graduates, and (b) for the most part the Board's April 2012 letter to Leads did not provide the required notice and opportunity to cure.

I. The Board acted arbitrarily when it relied upon the NCLEX pass rate of pre-2012 cohort graduates to justify closing the school.

The primary bone of contention here is whether the Board committed to using only the pass rate of 2012-cohort graduates when deciding whether the school would continue to receive its conditional approval. According to Leads, in 2012 the Board committed to using the pass rate of the 2012 cohort. But the Board relied upon the pass rate of pre-2012 cohort graduates (who did not have the benefit of the revamped program) when it withdrew Leads' approval to operate. Leads argues that if the Board had, as promised, considered only the pass rate of the 2012-cohort graduates, Leads would have met the 80 percent standard.

The court has some question about whether Leads' argument was fairly presented below. Certainly the argument was not the centerpiece of its presentation before the Board. Insofar as the court can tell, Leads never articulated its argument before the Board except through its questioning of Leads' CEO. Neither side made written a submittal to the Board, nor is there any mention of Leads' contention in the oral argument presented by counsel to the Board. And there was no discussion of Leads' instant contention during the Board's deliberations.

On balance, however, two factors lead this court to conclude that the issue was fairly presented to the Board. First, the Board's post-hearing opinion shows it was aware of Leads' argument—it summarized Leads' instant argument in that opinion:

> Dr. Aliu then testified about his understanding of the Committee's instruction to the school regarding the NCLEX pass rate. Dr. Aliu stated that he understood that all that was required of the school was that one cohort of students, those entering the program in September of 2012, would be given two years to achieve an 80% pass rate on the NCLEX.

Later in the opinion the Board observed that Dr. Gambardella "testified that she believed that Leads was focusing on improving NCLEX test scores for the September 2012 cohort." Any residual

doubt the Board was aware of Leads' contention is erased by the Board's conclusion that Leads' approval should be withdrawn even "[a]ssuming, *arguendo*, that the Board agreed with Leads that only the NCLEX scores of students beginning the program after September of 2012 were relevant to the 80% benchmark." The second factor leading to the court's conclusion is the Board never argued in its brief before this court that the issue was not fairly presented below. It made no mention in the "Jurisdiction and Standard of Review" that Leads' argument was not fairly presented below, nor did it make any such contention in the text of its argument. The court therefore finds that the Board was aware of Leads' contention and it was therefore fairly presented below.

Turning to the merits the court finds that the Board acted arbitrarily when (1) it failed to consider Leads' argument and (2) it withdrew Leads' approval despite the NCLEX pass rate of the 2012-cohort.

A. The Board acted arbitrarily when it did not consider Leads' contention.

Whatever else the term "arbitrary" might connote, it encompasses decisions by an administrative agency made without

regard to the facts and circumstances of the case. In *Camtech School of Nursing and Technological Services v. Board of Nursing*[15] the Delaware Supreme Court cited with approval the Court of Chancery's definition in *Harmony Construction, Inc. v. State Department of Transportation*,[16] wherein the Court of Chancery wrote:

> The case law addressing the "arbitrary and capricious" standard contemplates that the scope of judicial inquiry is not limited to the adequacy of the evidence considered by the decision-making agency. The inquiry may also include the adequacy of the process by which the relevant evidence and facts were obtained. If the law were otherwise, an agency could rely solely upon selected facts or evidence that would support one particular outcome while at the same time blinding itself—or refusing to inquire into—material facts or evidence that might compel an opposite outcome. That approach, if countenanced, would be the essence of arbitrariness.

Here the Board did not address Leads' contention that the Board committed to using only the pass rate of the 2012 cohort. Its decision was therefore arbitrary.

---

[15] 2014 WL 4179199 (Del.).
[16] 668 A.2d 746 (Del. Ch. 1995).

B. The Board acted arbitrarily when it withdrew Leads' approval despite the 2012-cohort's NCLEX results.

The second reason the Board acted arbitrarily stems from its decision to withdraw Leads' approval despite the NCLEX pass rate of the 2012-cohort. Ordinarily the Board's factual findings are entitled to deference by this court. However, when the Board ignores an argument—in this case Leads' contention that the Board agreed to use only the NCLEX pass rate of the 2012 cohort—its findings are not entitled to that deference.

1. The Board agreed to consider only the pass rate of the 2012-cohort.

Leads contended that in 2012 the Board agreed to use only the NCLEX result of the 2012 cohort. Nonetheless the Board made no express factual finding in its opinion whether there was such an agreement. Accordingly the Board's factual findings (actually the absence of any such findings) in this regard are not entitled to judicial deference, and the court must itself review the factual record. Upon doing so it finds the record contains overwhelming evidence that the Board in fact committed to using only the pass rates of the 2012-cohort graduates.

a. The implicit decision of the Board that it did not commit to using only the pass rate of the 2012-cohort graduates is not entitled to judicial deference.

Ordinarily this court's review of an administrative board's finding of fact is limited to a determination whether that finding is supported by substantial evidence. But where, as here, an administrative board has chosen not to address a party's contention and has ignored the evidence in support of that contention, that board's factual findings are not entitled to the usual judicial deference.[17]

The Board never addressed whether it had agreed with Leads to use only the 2012-cohort pass rate.[18] It avoided the issue by writing only:

> Despite the fact that Leads' NCLEX scores clearly have not improved in the time allotted to it by the Board, at the time of the hearing, Leads argued that the Board advised or implied to the school that only the NCLEX scores of students entering the school in September of 2012 would be considered when determining whether Leads met the 80% requirement of Board Regulation 2.5.10.6.7. To that end, Leads contends that the

[17] *Harmony Construction, Inc. v. State Department of Transportation*, 668 A.2d 746, 749 (Del. Ch 1995) (agreeing with proposition that agency's "determination . . . merits no deference because it was based upon a flawed decision-making process.").

[18] In its April 2015 Notice of Intent to Withdraw Approval, the Board justified its decision to include non-2012 cohort graduates when determining whether Leads' revamped program had met its pass rate goal on the basis that "Regulation 2.5.10.6.7 states that failure to do so is grounds for withdrawal of initial approval and does not distinguish between students in a school assigned cohort versus all other first time test takers." This overlooks the earlier commitment to use only the 2012-cohort pass rates as the measuring stick.

> NCLEX scores of five students, who took the exam over two years after the school was notified of its deficiencies on April 25, 2012, are enough to constitute just cause for the school to remain in operation. The Board rejects this argument. The Board finds that Leads was provided two years to improve its test scores, instead of the one requested, so that its proposed 12 month program would have ample time to implement its action plans and thus improve its NCLEX scores. Despite being provided an entire year more than it claimed it needed, Leads' NCLEX scores did not improve and, in fact, worsened.[19]

Because the Board ignored Leads' contention about the agreement, its findings in this regard are not entitled to judicial deference.[20] Rather in such instances the court is obligated to review the record and determine whether the substantial evidence supports Leads' contention there was an agreement.[21]

b. Substantial evidence shows that the Board agreed to use only the 2012-cohort NCLEX pass rate.

There is substantial, if not overwhelming, evidence that in 2012 the Board committed to using only the pass rate of the 2012 cohort. At the Board's Practice and Education Committee's July 3,

---

[19] Op. at 11.
[20] *Murphy & Landon, P.A. v. Pernic*,121 A.3d 1215, 123 (Del. 2015)("The Board could not simply ignore the abundant unrebutted evidence supporting the Firm's rendition of events without reasoned explanation.").
[21] *Id.*

2012 meeting the committee pondered what to do about Leads' regular substandard pass rate:

> Dr. Evans-Mitchell then asked the committee "What is the timeframe we set? How long, or how much longer do we continue. At what point do we propose to withdraw their approval?" Dr. Fernsler stated this committee needs to make this decision.

The Committee then decided upon this standard: by 2014 eighty percent of the 2012 cohort graduates who take the NCLEX must pass. The July 3, 2012 minutes reflect that

> Ms. Bastholm made a motion *for the class entering September 2012 with the new curriculum/action plan*, their NCLEX pass rate will be 80% or higher by the 2014 Annual Report to the Board. If not, the Board of Nursing will recommend withdrawal of program approval.[22]

The Board was aware that pre-2012 cohorts would not participate in the revamped program because of the agreement with Leads to exclude them. In its opinion the Board recounted that Dr. Gambardella (the nursing education adviser retained by Leads) "testified she believed that Leads was focusing on improving the NCLEX test scores for the September 2012 cohort." Leads' submittals to the Board describing its efforts to revamp the program also left no doubt that pre-2012 cohort students were not

[22] Emphasis added.

participating. Those submittals expressly addressed Leads' expectation that the measuring stick would be the NCLEX results of the 2012 cohort. For example, one entry in Leads' remediation plan under a column labeled "Objective/Measurable Outcome" states:

> At least 80% of the students utilizing the new improved curriculum alignment will pass NCLEX at the first attempt.

and

> And NCLEX outcome from Sept/Oct 2012 class cohort graduates will meet the minimum 80% performance level or higher.

The Board understood using the pass rates of pre-2012 cohort graduates would not be a measure of the adequacy of the revamped program. For example, when setting a deadline holding Leads to the 80 percent standard, the Board opted to set the deadline for 2014—not 2013—because only pre-2012 cohort students would be taking the NCLEX by 2013. According to the minutes:

> Dr. Fernsler read Leads' goal of 80% by the 2013 reporting period October 1, 2012-September 30, 2013. Members discussed this was not realistic as the class that starts in September 2012 will begin the new remediation and action plan. They will not graduate until September 2013 and therefore will not have taken the boards before September 30, 2013. *Therefore, Leads would not see these students' NCLEX results until the 2014 report to the Board of Nursing.*[23]

[23] July 3, 2012 minutes at 3.

The Executive Director of the Board expressed the same view. In June 2013 she noted that the latest Leads' graduates' pass rate was only 34.8%, but, of particular importance here, "she added this does not reflect any changes implemented in their action plan from last year."

In effect the Board changed the rules it set for Leads when it reneged on its agreement to evaluate the school on the basis of the pass rate of the 2012-cohort. In *Harmony Construction* the Court found that an agency acted arbitrarily when it did not communicate all of the rules of a bidding process to all of the bidders:

> If an agency decides to deviate from that purpose, it must satisfy the Court that its determination not to award the contract to the lowest responsible bidder was the product of a rational fact gathering and decision-making process. * * * That showing cannot be made here, because the process utilized by the Department involved not communicating the rules to a bidder that was expected nonetheless to comply with them.[24]

A fortiori the Board of Nursing acted arbitrarily when it changed the ground rules it set for Leads.

---

[24] 668 A.2d at 751-2.

2. The pass rate of the 2012-cohort graduates met the Board's 80 percent standard.

The Board did not decide whether the pass rate of the 2012-cohort exceeded its 80 percent standard, nor did it address Leads' evidence on this point. For the reasons stated above, therefore, the Board's opinion is not entitled to any deference on this factual question. The court finds, on the basis of the largely (if not entirely) uncontested evidence, that the pass rate of the 2012-cohort graduates taking the NCLEX exceeded the Board's 80 percent standard.

The evidence shows that 22 of the 23 members of the 2012 cohort who took the NCLEX passed. In order to understand this evidence it is necessary to briefly delve into some background about how the pass rate is reported. The National Council of State Boards of Nursing periodically provides each state board with NCLEX results for each school within the state board's jurisdiction. Those reports do not list the names of the graduates taking the examination, but they do list by graduation date the number of students taking the test, the number who passed and the number who failed. It is possible to gain a good approximation of the pass

rate of the 2012-cohort by examining the pass rate in the Council's report of students graduating after September, 2013. The data supplied by the National Council for Leads' students graduating after September, 2013 show a very high pass rate:

May 2014	5 passed	1 failed
June 2014	3 passed	0 failed
Sept. 2014	7 passed	0 failed
Oct. 2014	7 passed	0 failed

In other words, 21 out of 22 Leads students with graduation dates after September 2013 passed the NCLEX. There is therefore no substantial evidence that *less* than 80 percent of the 2012 cohort graduates passed, whereas there is substantial evidence that more than 80 percent passed. As noted earlier, any finding by the Board about the pass rate of the 2012-cohort is not entitled to the usual deference because the Board ignored the pertinent evidence. Consequently, the court finds that if the Board had applied the standard to which it committed, Leads would have satisfied the 80 percent requirement.

In sum, the court holds that Leads acted arbitrarily when it withdrew Leads' conditional approval on the basis of the NCLEX pass rate of pre-2012 cohort graduates.

II. Leads did not receive the required notice and opportunity to cure most of the deficiencies in its Annual Report found by the Board.

The second reason given by the Board is that "Leads' Annual Reports Remain Unclear." According to the Board, "Lead's Annual Report does not clearly communicate the information necessary for the Board to adequately assess compliance with the rules." The court finds that the Board's decision based upon Leads' Annual Reports Remain Unclear" must for the most part be reversed because the (1) Board failed to give Leads the mandatory opportunity to cure many of the alleged deficiencies in the report; and (2) other of the Board's findings are unsupported by any evidence or otherwise arbitrary.

A. The deficiencies found by the Board in Leads' 2014 Annual report.

The first step here is to ascertain exactly what deficiencies the Board found in Leads' annual reports. The Board did not specifically enumerate those deficiencies in its opinion; instead they are interspersed throughout the Board's "Findings of Fact and Conclusions of Law". The court has combed through that portion of

the opinion in order to identify all of the Board's findings of deficiencies in the 2014 Annual Report. It has gleaned the following:

1. The report is deficient because it does not disclose how many students were enrolled at Leads on any given day.[25]
2. Leads' 2014 Annual Report contains inconsistent information about the number of students enrolled.
3. The report is deficient because disclosing the student population is insufficient to allow the board to determine whether Leads' programs are adequate.[26]
4. Leads' programs are deficient.[27]
5. The CEO's testimony at the hearing was lacking in transparency or intentionally misleading.[28]
6. The 2014 Annual Report is deficient because it does not disclose the names of the individuals teaching the academic classes.[29]
7. The report does not disclose when Leads students began and completed the program.[30]

[25] Op. at 11, 13.
[26] *Id.*
[27] *Id.* at 14.
[28] *Id.* at 12.
[29] *Id.* at 12.

8. The report does not disclose the duration of the program's curriculum.[31]

9. The report does not disclose why students graduate at different times of the year.[32]

10. The report does not disclose why students do not graduate until well after the 12 months allotted to the program.[33]

B. Leads did not receive the mandated notice and opportunity to cure.

Delaware law and the Board's own regulations both require the Board to give notice of deficiencies and an opportunity to cure before the Board withdraws a school's approval. The Board relies upon a single letter, dated April, 2012, as providing the requisite notice and opportunity to cure. But this letter did not mention many of the deficiencies upon which the Board eventually relied. As one Board member aptly put it during the Board's deliberations:

> [E]ven today, after years of asking questions, we still couldn't even get a straight answer with some of these questions. And granted, *those were not necessarily*

---

[30] *Id.* at 11.
[31] *Id.*
[32] *Id.*
[33] *Id.* at 11-12.

items that were specifically cited in the Board's concerns in the letters. . . [34]

1. Delaware law and the Board's regulations required the Board to give Leads notice and an opportunity to cure any alleged deficiencies.

Delaware law and the Board's regulations both require that, before a Board may sanction a school or withdraw its approval, it must give notice to the school of the deficiencies and an opportunity to cure. Delaware law provides:

> If the Board determines that any approved nursing education program is not maintaining the standards required by this chapter and by the Board, written notice thereof, specifying the deficiency and the time within which the same shall be corrected, shall immediately be given to the program.[35]

The Board of Nursing Regulations similarly provide:

> If the Board determines that a program is not maintaining the standards of Section 2.5 of these Rules and Regulations, the program shall be granted conditional approval and given a reasonable period of time to correct the deficiencies.[36]

> A program that fails to correct these deficiencies to the satisfaction of the Board within a reasonable time shall be discontinued after a hearing in which facts regarding such deficiencies are established.[37]

---

[34] Tr. At 167.
[35] 24 *Del C*, §1919(b).
[36] Reg. 2.5.10.4.
[37] Reg. 2.5.10.8.

In its opinion the Board recognized its obligation to give notice and an opportunity to cure. It wrote:

> Where, as here, the Board determines that any approved nursing education program is not maintaining the standards required . . . written notice thereof, specifying the deficiency, and the time within which it shall be corrected shall immediately be given to the program.[38]

2. The Board relies exclusively upon its April, 2012 letter to establish the requisite notice.

In order to determine whether Leads received the requisite notice and opportunity to cure, it is first necessary to identify the notice actually given to Leads. In *Camtech* the Board relied upon all the prior correspondence between it and the school to establish notice under the due process clause, and the Supreme Court found that this correspondence provided ample notice to the school of the deficiencies. The Court reasoned:

> The Board provided more than adequate notice to Camtech about deficiencies in its program. While Camtech seeks in its Reply Brief to exclude all correspondence between the school and the Board prior to February 2012 when withdrawal was first discussed, alleging that such correspondence was not part of the administrative record, a review of the official record of the proceedings provided by the Board reflects a history of correspondence stretching back until 2009. In that early correspondence there were already discussions about the issues that eventually

[38] Op. at 9.

> became the basis of the Board's decision. At the time, the Board categorized these issues as being of "significant concern." Camtech cannot argue that it was blindsided by the Board's decision to withdraw approval. It is true, as Camtech argues, that some issues arose later in the process, but the primary problem of Camtech's NCLEX pass rate was consistent over the multiple years it was placed on probation. Camtech was given more than one opportunity to solve this problem and continued to submit programs that failed to adequately address its issues.[39]

This case is different. Here the Board relies exclusively on its April 25, 2012 letter to supply the necessary notice. The court therefore need not, and should not, scour the correspondence between the parties over the years (most of which is not in the record) to determine whether the deficiencies now relied upon by the Board were at some time brought to Leads' attention.

In its post-hearing opinion the Board specifically identified its April 2012 letter as providing the requisite notice. According to the Board:

> On April 9, 2015, the Board noticed Leads by letter of its intent to withdraw Leads' approved status based on the deficiencies identified in its April 25, 2012 letter, and the school's failure to address those deficiencies over the preceding two and a half years.[40]

---

[39] 2014 WL 604980 at *5.

[40] Ex. 27 at 2. Elsewhere in its opinion the Board wrote:

> On April 25, 2012 Dr. Pamela Zickafoose, Executive Director of the Board addressed a letter to Barbara Robinson, Program Director of Leads . . . providing written notice of the program's deficiencies."

Later in the opinion the Board again referred to its April 25, 2012 letter as the notice of deficiencies to Leads:

> On April 25, 2012, Dr. Pamela Zickafoose, Executive Director of the Board addressed a letter to [Leads] . . . providing Leads with written notice of the program's deficiencies; and providing Leads a deadline to submit an action plan addressing those deficiencies to the Board.[41]

The Board reiterated this in its conclusion, writing that "[b]ack on April 25, 2012 the Board advised Leads . . . ."

Other documents also show that the Board relied exclusively on its April, 2012 letter as providing the required notice and opportunity to cure. The Board's 2015 Notice to Leads also states that it is relying upon its April, 2012 letter:

> The Board's proposal to withdraw its approval of Leads School of Technology Practical Nursing program is based on the deficiencies the Board identified in its April 25, 2012 letter, and the school's failure to address those deficiencies over the past two and a half years.

And in its brief in this court the Board reasserted that it was relying upon the April, 2012 as providing the requisite notice and opportunity to cure. It wrote:

---

[41] Op. at 9.

> Consistent with this statutory scheme, on April 25, 2012, the Board provided Leads a notice of deficiency, which outlined with specificity the program's failures to comply with the Board Rules as well as advising the program to submit an action plan outlining its proposal to cure these deficiencies.

Later in its brief the Board reiterated that:

> Contrary to the assertion in the Opening Brief, the Board relied upon and complied with both its statute and regulations when it determined that the Leads' program was not adequately educating its students and withdrew its conditional approval. (*See* Ex. 19, Board's Six-page, single-spaced April 9, 2015 letter outlining Leads' deficiencies; Ex. 3, Board's eight paged single-spaced April 25, 2012 letter outlining Leads' specific deficiencies; and Ex. 27, Board's fifteen page July 16, 2015 Opinion and Order).

Although this passage of the Board's brief cites three documents to support its contention that it "complied with both its statute and regulations," the other two documents did not supply the mandatory opportunity to cure. Needless to say, the Board's post-hearing opinion (the "fifteen page July 16, 2015 Opinion and Order") could not have done so because it was written after the Board's decision was finalized. Less obvious, perhaps, is that the Board's "April 9, 2015 letter outlining Leads' deficiencies" could likewise not constitute the requisite notice and opportunity to cure because the Board did not allow Leads an opportunity to cure in that letter. All that remains, therefore is the "Board's eight paged single-spaced April 25, 2012 letter outlining Leads' deficiencies."

The Board does not cite to any document in its brief, other than its April 2012 letter, as providing the requisite notice and opportunity to cure. To be sure, on two occasions in its brief it referred to other notices provided to Leads. For example:

> The Board complied with Rule 2.5.10.7 by affording Leads countless opportunities to respond to its noted deficiencies.[42]

And

> Leads is mistaken as to the detailed notices it was provided by the Board before its approval status was withdrawn and as to the Board's numerous and expressly-articulated bases to withdraw its approval status.[43]

The Board's assertions are not persuasive. The first, (Leads was afforded "countless opportunities to respond to its noted deficiencies") is supported almost entirely by documents not in the record.[44] The second ("numerous and expressly articulated bases to withdraw its approval") is not supported by any citations to the record. The only document cited by the Board which is in the record

---

[42] Board Br. at 22.

[43] *Id.* at 16.

[44] The Board refers to documents dated September 3, 2008; February 9, 2009; April, 2009; March 6, 2010; February 21, 2011; and February 13, 2012. (*Id.* at 23-4). According to the Board's Opinion, "[t]he following documents were admitted into evidence:" (*Id.* at 3). With the exception of the Board's April 2012 letter, none of these documents is mentioned in this list.

is the Board's April 25, 2012 letter—the letter the court finds to be the sole relevant notice and opportunity to cure provided to Leads.

3. The notice provided by the April, 2012 letter.

Having concluded that the Board's April 2012 letter is the sole notice upon which the Board relied, the court must next determine precisely what notice is provided by that letter. The April 2012 letter is divided into three labeled parts: (1) "NCLEX pass rate below 80% for first time candidates"; (2) "Annual Reports are unclear"; and (3) "Student complaints regarding violations of academic and/or admission policies." The NCLEX pass rate and the Board's commitment to use the pass rate of the 2012-cohort is discussed in part I of this opinion, so part (1) of the April 2012 letter will not be scrutinized here. Likewise it is not necessary to examine part (3) because the Board concluded that in that part that the "Student complaints . . . ." were matters best handled by the Delaware Department of Education.[45] In any event, nothing in part (3) was the basis for the Board's decision to withdraw its approval.

[45] The Board's April 25, 2012 letter stated that "because the Board understands that the Department of Education recently raised these complaints to Leads' attention, rather than request duplicative action, Leads need only restate to the Board the corrective plan of action it is developing with the Department of Education." (Bd. April 25, 2012 ltr. at 7 (A-3)).

This leaves the matters discussed in part (2) of the Board's letter—"Annual Reports are unclear."

The Board wrote in part (2) of its April, 2012 letter that

> Leads' 2011 Annual Report does not clearly communicate the information necessary for the Board to adequately assess compliance with its rules. * * * Leads must provide a proposed corrective plan of action and projected timeline to remediate the problem of unclear reporting going forward. That is, provide the Board with the specific steps that will be taken to ensure that in the future, all reports will be accurate and clearly present the requisite information.[46]

It then addressed the "specific deficiencies in the 2011 Annual Report to be addressed are clarified below."[47] Following that are seven numbered paragraphs, each of which discusses at some length the matters necessary to repair Leads' faulty 2011 Annual Report. By itself the discussion of the 2011 report has little relevance here. Of particular importance however are instructions in each of these paragraphs on what Leads should include in its corrective action plan and future reports. For want of a better term, the court will borrow a phrase used by the Board and refer to its instructions concerning as the "going forward" instructions. The

---

[46] At 2-3.
[47] *Id.*

"going forward" segment of each numbered paragraph reads as follows:

> 1. "Leads' corrective action plan should include the proposed remedial measure for ensuring student populations are accurately reported going forward."[48]
>
> 2. "Leads' corrective plan of action should include proposed remedial measure for ensuring student populations are accurately reported going forward in a manner that clearly communicates the [student population] information"[49]
>
> 3. "Leads' corrective plan of action should include a specific remedial measure that will be taken to ensure NCLEX pass rates are accurately reported going forward."[50]
>
> 4. "Leads' corrective action plan of action should include proposed remedial measures for ensuring survey results are clearly reported going forward."[51]
>
> 5. "Leads' corrective plan of action should include proposed remedial measures for ensuring administrative support is accurately reported going forward."[52]
>
> 6. "Leads' corrective action plan of action should include specific steps to insure clinical training provides adequate hands-on training and that the majority are not observational."[53]
>
> 7. Leads should "revise its curriculum structure in its corrective action plan of action by: 1) reworking the

---

[48] Bd. April 25, 2012 let. at 3 (A-3).
[49] *Id.* at 4.
[50] *Id.*
[51] *Id.* at 5
[52] *Id.*
[53] *Id.* at 6

components of 'Peds/OB/Psych (LST 205)' so that they are spread out adequately . . . ." [54]

4. Leads did not receive the required notice of many of the violations found by the Board.

Having identified the alleged deficiencies in Leads' 2014 report and the notice given to Leads in 2012, the next step is to compare the two. Before doing so, the court notes the obvious: the Board's April 2012 notice could not have provided specific notice of any deficiencies in an Annual Report written two years later. Nonetheless, the court concludes that, to the extent the 2012 letter identified problems which persisted in the 2014 Annual Report, Leads had notice of those deficiencies.

The court holds that Leads was not provided with notice and an opportunity to cure the following deficiencies identified in the Board's 2015 opinion:

> *2. "Leads' 2014 Annual Report contains inconsistent information about the number of students enrolled."*

Leads reported there were 25 students enrolled in the "Enrollment" portion of its 2014 report. Later, in the "Summary of Student Surveys" section of the report, Leads wrote that

---

[54] *Id.*

"[q]uestionnaires were distributed to a total of 40 students." In its 2015 opinion the Board seized upon this as "inconsistent information about the number of students enrolled." Obviously no notice was, or could have been, provided about this deficiency in the Board's 2012 Notice. Therefore, the Board cannot justify its decision on the basis of this deficiency. The court notes that the absence of notice here is not a mere technicality. The whole point of the statutory and regulatory requirement of an opportunity to cure is that matters such as this could easily be clarified or corrected. Here, Leads had no chance to do so.

4. "Leads' programs are deficient."

In its opinion the Board wrote:

> The Board further concludes that Leads did not meet its burden of showing just cause to extend the period for correcting its deficiencies in regard to regulations 2.5.10.6.5, providing adequate resources for cognitive learning and clinical practice; 2.5.10.6.3 maintaining faculty and administration of adequate size and resources; and 2.5.10.6.1, adhering to the school's stated philosophy and curriculum objectives, as Leads repeatedly mislead the Board in regard to student population, curriculum objects *vis a vis* program duration, and faculty size and resources.[55]

[55] Op. at 13-4.

It is unclear whether the Board is (a) relying upon defects in the school's actual programs or (b) saying that it is unable to tell if the actual programs are satisfactory because of deficiencies in the reporting of the student population. The latter appears to be the case. Earlier in its opinion the Board wrote that Leads' "Annual reports . . . are unclear such that a determination of adequacy regarding resources . . . cannot be made."[56] This position also appears in the Boards' 2015 Notice. If the court is mistaken and the Board is indeed relying upon programmatic deficiencies, the required notice and opportunity to cure were not provided in the Board's 2012 Notice.[57]

5. "The CEO's testimony at the hearing was lacking in transparency or intentionally misleading."

This refers to the testimony of Dr. Aliu at the Board's 2015 hearing. Although his testimony could well be a source of frustration to the Board and can be considered by the Board when evaluating Leads' evidence at the hearing, it is not an independent

---

[56] *Id.* at 3.

[57] The Board's April, 2012 Notice contains two arguable references to a programmatic deficiency. In that Notice the Board wrote that Leads should " include specific steps to insure clinical training provides adequate hands-on training and that the majority are not observational" and elsewhere it wrote Leads should "revise its curriculum structure in its corrective action plan of action by: 1) reworking the components of 'Peds/OB/Psych (LST 205)' so that they are spread out adequately . . . ." The Board did not refer to any deficiencies about "adequate hands-on training" or "LST 205" in its August 2015 opinion withdrawing Leads' approval.

basis for withdrawing Leads' approval because, obviously, Leads was never given notice of this and an opportunity to cure in the Board's 2012 Notice.

> *6. "The 2014 Annual Report is deficient because it does not disclose the names of the individuals teaching the academic classes."*

As is the case in several other instances, the Board's 2012 Notice could not possibly have provided notice and an opportunity to cure this particular deficiency. This is not a "gotcha." Contrary to the Board's assertion, Leads' 2014 report in fact contains the names, qualifications and teaching areas of its faculty members.

> *7. "The report does not disclose when Leads students began and completed the program."*
>
> and
>
> *9. "The report does not disclose why students graduate at different times of the year."*

Although the Board's 2012 Notice required Leads to take measures to ensure "student populations are accurately reported going forward" and "in a manner that clearly communicates [student population] information," this did not provide Leads with reasonable notice that it was obligated to specify when its students "began and completed the program," nor does it put Leads on notice

it must "disclose why students graduate at different times of the year" in its Annual Reports. These are not an instances in which Leads, like an ostrich, has buried its head in the sand. Rather the Board's annual report form does not call for this information.

III. Some of the Board's findings were arbitrary because the Board never requested the allegedly missing information.

According to the Board its "chief concern" was that Leads' annual report did not disclose "how many students are enrolled at the school at any one time." It wrote:

> Back on April 25, 2012, the Board advised Leads that it was unable to determine if Leads was maintaining a faculty and administration of adequate size and qualifications as require by Board Rule 2.5.10.6.3, as the school had not submitted an accurate report of the student population. Despite that advisement, the Board is still unable to make that determination as it remains, to this day, wholly unclear from all of Leads Annual and Interim Reports how many students are enrolled in the school at any one time.[58]
>
> Yet, after numerous written advisements to Leads and over four hours of hearing testimony, the Board finds that it is still unclear how many students are enrolled in the school at any one time.[59]

The Board's finding that this is a deficiency is arbitrary because, as conceded by the Board at oral argument, this information is not

---

[58] Op. at 13.
[59] *Id.*

called for by the Board's Annual Report form. Leads cannot be faulted for failing to give information in its Annual Report it was never asked to provide.

For the same reason the court holds that other Board findings are arbitrary. These are:

> 1. *The report is deficient because it does not disclose how many students were enrolled at Leads on any given day.*[60]
>
> 2. *The report does not disclose when Leads students began and completed the program.*[61]
>
> 3. *The report does not disclose why students graduate at different times of the year.*[62]
>
> 4. *The report does not disclose why students do not graduate until well after the 12 months allotted to the program.*

The Board's conclusion that Leads' 2014 Annual Report is defective because it does not include the above information is arbitrary because the Board's Annual Report Form does not ask for it. The above information is clearly something to which the Board is entitled and is a legitimate subject of Board inquiry. The point is,

---

[60] Op. at 11, 13.
[61] *Id.* at 11.
[62] *Id.*

however, that Leads cannot be faulted for failing to provide it in its Annual Report when the Board's form did not ask for it.

IV. Certain of the Board's findings were unsupported by any substantial evidence

Other Board findings are not supported by any substantial evidence. These are:

1. Leads' programs are deficient.[63]

As discussed earlier, it is not entirely clear whether the Board found there were programmatic deficiencies at Leads or whether the Board found it could not determine if such deficiencies exist because of inadequate reporting of student population. If the Board is contending the former, the court holds that the findings of deficiencies in the programs themselves are unsupported by any evidence.

> *The 2014 Annual Report is deficient because it does not disclose the names of the individuals teaching the academic classes.*

The names, credentials and teaching areas are, in fact, listed at pages 25 through 27 of Leads' 2014 report.

---

[63] Op. at 14.

IV. One Board Finding Survives.

There is one finding by the Board of which Leads was given proper notice and which is supported by evidence: Leads' Annual Report misrepresents the length of time it takes to complete its curriculum. According to the 2014 Annual Report, the full time (day) program is 12 months and the part time (evening) program lasts 15 months. The Board found that no students are completing the program within this time frame.

The notice provided by the Board in its April, 2012 letter suffices, but just barely. When discussing Leads' 2011 Annual Report in that letter the Board referred to 93 students apparently identified somewhere in that report. (Leads' 2011 Annual Report is not part of the record, so the significance of these 93 students is not known to the court). Buried in its eight page single-spaced April 2012 letter is a passage in which the Board instructed Leads to "clarify how all students are 'scheduled to complete within the next reporting period' and be in compliance with the full-time and part-time program periods on page one of the 2011 Annual Report." Leads therefore had notice that the Board was concerned about the accuracy of the statement in Leads' Annual Report that its students

graduate (depending upon the program) within 12 or 15 months. He court holds that substantial evidence was adduced at the hearing that listed timeframe is untrue.

To some extent Leads' failure to correct this misstatement is understandable. As noted, the comment is buried in a lengthy letter, and it is not mentioned in the "Going Forward" portion which was previously discussed by the court. Further, no mention is made of the problem in the Board's letters to Leads commenting on the school's 2012 and 2013 Annual Reports. Indeed, judging from the minutes of Board and Committee meetings taking place after the Board sent its April, 2012 letter, the stated length of Leads' curriculum was not even discussed for more than two years after the Board's 2012 letter. It was not discussed until the Committee's December 16, 2014 meeting at which the issue appeared again.[64] Finally it bears mention that the parties agree that Leads did not benefit financially from the prolonged stay of its students and thus had nothing to gain by prolonging the curriculum beyond the stated twelve months. Leads charged a one-time tuition at matriculation

[64] Those minutes state in part the "action plan indicates that students are not graduating within 12 months which has been an ongoing problem."

which covered the student's entire education, no matter how long it took the student to graduate.

The court's decision to uphold the Board's finding concerning the misstated length of the curriculum is not sufficient, at this juncture, to sustain the Board's decision to withdraw Leads' approval. Although the Board found that the faults in Leads' 2014 Annual report, in their entirety, justified withdrawal of Leads' approval, it made no finding that the misstatement of the curriculum length alone justified such an extreme measure. The court, of course, is not equipped to make that decision, and therefore the matter will be remanded to the Board for its determination of that issue.

CONCLUSION

The overturning of an administrative board's decision is a comparatively unusual event, which prompts the court to briefly comment. Nothing in this opinion should be interpreted as a criticism of the Board of Nursing. The court has no doubt that its members acted in good faith and exercised their best professional judgment. Further, nothing in this opinion should be understood

as expressing an opinion whether the Leads program is good, bad or indifferent. The Board, not the court, is qualified to make those judgments.

The decision of the Board is therefore **REVERSED**, and the matter **REMANDED** for proceedings consistent herewith. Jurisdiction is not retained.

July 29, 2016

John A. Parkins, Jr.
Superior Court Judge

FILED
PROTHONOTARY
2016 JUL 29 PM 3:58

oc: Prothonotary

cc: Matthew F. Boyer, Esquire; Mary I. Akhimien, Esquire, Connolly Gallagher LLP, Wilmington, Delaware
Jennifer L. Singh, Esquire, Department of Justice, Dover, Delaware