

STATE OF VERMONT
WASHINGTON COUNTY

FILED

IN RE: GLENN MYER)
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Washington Superior Court 2006 SEP 25 P 4: 20
Docket No. 600-10-05 Wncv

SUPERIOR COURT
WASHINGTON COUNTY

DECISION

Appeal of Summary Suspension Order of June 2, 2005

Based on allegations of unprofessional conduct, the Board of Pharmacy summarily suspended Glenn Myer's license to practice pharmacy "pending proceedings for revocation or other action." See Summary Suspension Order of June 2, 2005 at 2; see generally 26 V.S.A. §§ 2021-2076 (governing the practice of pharmacy). Arguing that the summary proceedings and order violated his due process rights, Myer appealed pursuant to 3 V.S.A. § 130a to the director of the office of professional regulation. Prior to a decision by the appointed appellate officer in September 2005, the Board issued a final decision on the charges, resulting in a one-year suspension, among other things. Myer appealed the final order in a separate case, Docket No. 52-1-06 Wncv. The appellate officer in this case then raised the issue of whether the appeal of the summary order had become moot.

Following briefing and oral argument on the issue of mootness, the appellate officer ruled on September 13, 2005 that the appeal from the summary order was moot, essentially because Myer's license would remain suspended under the final order even if the summary order were reversed. Myer appealed to this court pursuant to 3 V.S.A. § 130a(c). He filed his brief on October 19, 2005. The State did not respond.

"The central question of all mootness problems is 'whether decision of a once living dispute continues to be justified by a sufficient prospect that the decision will have an impact on the parties.'" All Cycle v. Chittenden Solid Waste Dist., 164 Vt. 428, 432 (1995) (quoting 13A Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction 2d § 3533, at 212). The collateral or practical consequences of a judgment—"such as adverse impact on a party's reputation"—may demonstrate such an impact. 13A Wright, Miller & Cooper, supra § 3533.3, at 292; see State v. J.S., 174 Vt. 619, 620 (2002) (applying collateral consequences doctrine to deny mootness of appeal of initial order of involuntary hospitalization where a subsequent order had been issued by the time of appeal).

Notwithstanding the subsequent final order, there can be little doubt that the summary suspension of a professional license has a significant effect on a professional's reputation in his community. The summary suspension of Myer's license, as an event separate from the final order, will negatively reflect on him wherever he practices pharmacy or seeks to obtain a license to practice in the future. The implication of the Summary Suspension Order is that Mr. Myer represented such a risk that the public needed to be protected from him on an emergency basis. The impacts resulting from the existence of such an order are not so theoretical or remote as to

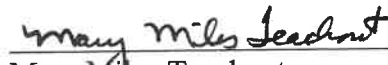
suggest mootness. Thus, resolution of Myer's appeal from the summary suspension order is not moot.

Because the court concludes that collateral consequences flowing from the otherwise superseded summary suspension order mean the appeal is not moot and the decision is reviewable, it is unnecessary to examine whether the circumstances of this case are capable of repetition yet evading review. That is a separate basis for proceeding to decision on a case that otherwise may be claimed moot. See, e.g., *E.S. v. State*, 2005 VT 33, ¶ 6-8, 178 Vt. 519 (the two doctrines are distinct grounds supporting appellate review against claim of mootness). Appellant is entitled to a decision by the appellate officer on the merits of the appeal.

Order

The appellate officer's September 13, 2005 order dismissing Myer's appeal is reversed. This case is remanded to the appellate officer for further proceedings consistent with this opinion.

Dated at Montpelier, Vermont this 25th day of September 2006.



Mary Miles Teachout
Superior Court Judge