

THIRD DIVISION

[G.R. No. 188646, September 21, 2016]

**GEORGE C. CORDERO, PETITIONER, VS. BOARD OF NURSING,
RESPONDENT.**

DECISION

JARDELEZA, J.:

The case before us traces its origin from the controversial June 2006 Philippine Regulatory Commission (PRC) Nursing Licensure Exams which involved leakage of actual examination questions, damaging the credibility of the professional examinations in the country and tarnishing the reputation of the Philippine nursing profession. One of the review centers involved in the controversy is INRESS Review Center (INRESS) headed by petitioner George C. Cordero (Cordero).

On November 16, 2006, Cordero received a Summons^[1] dated November 8, 2006 from the Board of Nursing (Board) requiring him to file his counter-affidavit/verified answer to the attached Formal Charge^[2] for violation of Section 15 (a) of Republic Act (RA) No. 8981^[3] and Section 23 (a), (b) and (f) of Article IV of RA No. 9173.^[4] Both documents were signed by then Chairperson of the Board, Carmencita Abaquin (Abaquin). The Formal Charge described Cordero's violations as follows:

Being associated with the INRESS Review Center, you made known or caused to make known alone or together person/s, the licensure examination questions in Tests III and V of the June 2006 Nurse Licensure Examinations to your reviewees prior to the conduct of the said examination on June 11 and 12, 2006.

On June 8 and 9, 2006, prior to the conduct of the June 11 and 12, 2006 Nurse Licensure Examination, you and INRESS Review Center held a final coaching review session at a cinema in SM Manila. During the session, several topics were discussed through a powerpoint presentation where various questions on hypothetical scenarios and their corresponding answers were discussed. Among the topics discussed were on the subject Psych[i]atric Nursing (Test V) and Medical-surgical (Test III). Twenty five (25) items in Test III and ninety (90) items in Test V discussed during the aforesaid review session were actual test questions which came out in the June 2006 Nurse Licensure Examination. The powerpoint presentation disclosed that the same had identical contents with the photocopies of the various typewritten questions with corresponding choices of answers with an encircle on the prescribe answer and the one submitted by Ms. Anesia B. Dionisio to the Board of Nursing. A review of the answers given in Test V with the photocopies of various handwritten questions in Test III and Test V with the corresponding handwritten answers likewise confirmed the similarity in the answers in the

powerpoint presentation. The power point presentation showed test questions on Test III (Psychiatric Nursing) and Test V (Medical Surgical), prepared by Board members Anesia B. Dionisio and Virginia D. Madeja.^[5]

In his Answer,^[6] Cordero argued that the Formal Charge was not supported by documentary evidence or sworn statements covering the testimony of witnesses which would support the charges.^[7] Hence, there is no basis for the finding of a *prima facie* case against him. It also failed to apprise him of the nature and cause of the accusations against him thus violating his right to due process.^[8] He averred that the Board, in initiating a *motu proprio* administrative investigation, failed to follow the provisions in filing a formal complaint in accordance with Resolution No. 06-342 (A)^[9] Series of 2006 or the PRC Rules of Procedure (PRC Rules).^[10] The Board did not also file the complaint with the Legal Division of the Central Office or a Regional Office of the Commission having territorial jurisdiction over him.^[11] Moreover, the Board is acting as a complainant ^[12]

Cordero claimed that there is nothing in the Formal Charge to support the allegation that he had possession of the actual licensure examination questions prior to the conduct of the examinations on June 11 and 12, 2006.^[13] Until such time that the PRC computers have randomly chosen test questions using their Test Question Data Bank System (TQDS) and these tests are printed, there were no licensure examination questions that may be made known. Thus, if there was any leakage of the examination questions, the leak could not have come from anywhere else except from the PRC itself.^[14] Cordero pointed out that during the hearings at the House of Representatives, PRC officials testified that the alleged leaked questions that were circulated before, during and after the licensure examinations originated from the PRC.^[15]

Cordero stated that it is not unusual that questions discussed during last minute reviews come out in the actual examinations, considering that examiners and reviewers "share the same pool of knowledge from where the questions were drawn."^[16] He claimed that the content in the PowerPoint presentation shown in the enhancement review was different from the questions from the board examiner shown to him during the Senate investigation.^[17] Moreover, his participation in the final enhancement review was limited to welcoming "reviewees, give them some pep talk, brief them on the do and [don't's] x x x and x x x how to conduct themselves properly during the x x x examination."^[18] After such briefing, he left the premises as he does not personally conduct the reviews.^[19]

Finally, Cordero maintained that the Formal Charge failed to specify the factual basis constituting the unprofessional and unethical conduct being complained of and which violates the provisions of RA No. 8981, RA No. 9173 and the Code of Ethics for Registered Nurses that could be made the basis for the revocation or suspension of his certificate of registration/professional license.^[20]

Before the start of the pre-trial conference held on March 13, 2008, Cordero again raised the issue of jurisdiction and competence of the Board to hear and try his case.^[21] Subsequently, he filed a Manifestation and Motion^[22] where he emphasized that there is no complaint filed in accordance with the provisions of the

PRC Rules.^[23] Cordero argued that since the Board issued the Formal Charge based on the National Bureau of Investigation (NBI) findings in the latter's October 12, 2006 Report, the complainant should be the NBI. However, the NBI could not be the complainant since it is not an office, section or division of the PRC.^[24] If, on the other hand, it were the Board which had *motu proprio* filed the complaint, such *motu proprio* filing does not exempt it from complying with the provisions of Sections 1 and 2, Article II of the PRC Rules, that there must be a complaint and a complainant.^[25] If the Board is the complainant in this case, it would be unjust for him to be tried by the Board who simultaneously acts as the complainant, prosecutor and judge.^[26]

The Special Prosecutors of the Legal and Investigation Division, on the other hand, argued in their Comment/Opposition^[27] that the pleading filed by Cordero is a prohibited pleading since it is a motion to dismiss.^[28] Moreover, a liberal construction of procedural rules applies in administrative cases. The provisions invoked by Cordero must be harmonized with Section 1^[29] of Article III of the PRC Rules.^[30] The Prosecutors contend that by authority of RA No. 9173, the Board, in the exercise of its power to regulate the nursing profession and protect the public, is acting within its power to investigate, hear and decide complaints of violations of its rules and for unethical and unprofessional conduct.^[31] The Board, in filing the charge, is only a nominal party in *motu proprio* cases, while the prosecutors of the case will be the Special Prosecutor and not the Board itself.^[32]

In a Resolution^[33] dated May 16, 2008, the Board denied Cordero's Manifestation and Motion for lack of merit and set the pre-trial once more.^[34] It ruled that no verified complaint is necessary since it, or the PRC itself, may bring an administrative action against any registered professional whose practice and privileges come under its regulation. Further, nothing from the PRC Rules imposes the signing of the Formal Charge by the head of the office, section or division of the PRC. The Chairman, in signing the Formal Charge on the basis of reports against Cordero, merely affirmed the determination of a *prima facie* case against the latter. There is also no denial of due process because the Board will act as an adjudicating body and not the prosecutor; the job of the latter will be left to the special prosecutors.

Cordero subsequently filed a Motion for Reconsideration^[35] which was denied in a Resolution^[36] dated September 11, 2008.

Aggrieved, Cordero elevated the case to the Court of Appeals (CA) via a Petition for *Certiorari*,^[37] imputing grave abuse of discretion on the part of the Board.

In a Decision^[38] dated April 30, 2009, the CA denied the petition. It found that the Board did not act with grave abuse of discretion amounting to lack or excess of jurisdiction in proceeding with Administrative Case No. 419.^[39] Despite Cordero's insistence that there must first be a complaint, and that Section 2, Article II, of the PRC Rules should be construed as exclusively vesting upon the office, section or division of the PRC where the respondent committed the violation, the provision invoked does not negate the right of the Board, by itself, to initiate the

administrative case after a *prima facie* finding, by filing of a formal charge and in effect, be the complainant.^[40]

According to the CA, the Board not only has adjudicatory powers but has regulatory and investigatory powers as well for the public interest.^[41] The Board, as the aggrieved party and acting on behalf of the public, should be the proper complainant.^[42] The power to investigate and prosecute violations of the PRC/Board rules and regulations is an adjunct and an intrinsic element to the Board's regulatory powers in the practice of the nursing profession.^[43] Moreover, in administrative proceedings, technical rules of procedure and evidence are not strictly applied and administrative due process cannot be folly equated with due process in its strict judicial sense.^[44] Finally, the Board's impartiality could not be questioned. Abaquin, on behalf of the Board, nominally signed the Formal Charge. The case was filed only on *prima facie* evidence which is subject to refutation.^[45]

The CA denied Cordero's Motion for Reconsideration in a Resolution^[46] dated June 26, 2009. Hence, this Petition for Review on *Certiorari*.^[47]

Cordero maintains that the Board is not exempt from complying with the procedure in initiating an administrative complaint as clearly spelled out in Article II of the PRC Rules, and that in the absence of a complaint and a complainant, the Board has no jurisdiction to hear and decide the case.^[48] He claims that he is being deprived of his right to due process on account of the absence of a complaint and a complainant.^[49] Lastly, his right to a fair and impartial trial is not guaranteed because the Board, who is acting as complainant, will also render the decision.^[50]

The Board, in its Comment,^[51] argues that it has jurisdiction to issue a formal charge against Cordero, and to hear and decide the administrative case. While the PRC Rules prescribe who may file a complaint for purposes of order in procedure, it does not preclude the Board from initiating an administrative action.^[52] Administrative rules are not to be applied rigidly. Lastly, the Board argues that Cordero has not been denied due process because he was not denied an opportunity to be heard.^[53] In fact, the administrative investigation against him has not yet advanced because of his persistent attempts to stall it.^[54] The Board has not in any way shown partiality against him.^[55]

We deny the petition.

The PRC is responsible for the administration, implementation and enforcement of regulatory policies on the regulation and licensing of various professions and occupations under its jurisdiction.^[56] Under Section 5 of RA No. 8981, the PRC is mandated to establish and maintain a high standard of admission to the practice of all professions and at all times ensure and safeguard the integrity of all licensure examinations. Under the same law, the various professional regulatory boards of the PRC, the Board of Nursing included, are given the following powers, functions and responsibilities:

Sec. 9. Powers, Functions and Responsibilities of the Various Professional Regulatory Boards. — The various, professional regulatory boards shall

retain the following powers, functions and responsibilities:

- (a) **To regulate the practice of the professions** in accordance with the provisions of their respective professional regulatory laws;

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- (c) **To hear and investigate cases arising from violations of their respective laws, the rules and regulations** promulgated thereunder and their Codes of Ethics and, for this purpose, may issue summons, *subpoena* and *subpoena duces tecum* to alleged violators and/or witnesses to compel their attendance in such investigations or hearings: *Provided, That*, the decision of the Professional Regulatory Board shall, unless appealed to the Commission, become final and executory after fifteen (15) days from receipt of notice of judgment or decision;

X X X

- (g) After due process, to **suspend, revoke or reissue, reinstate certificate** of registration or licenses for causes provided by law.

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(Emphasis supplied.)

These powers are echoed in the provisions of RA No. 9173.^[57]

Pursuant to RA No. 8981, the PRC issued Resolution No. 06-342 (A) in 2006, providing for the rules of procedure governing administrative investigations in the PRC and the Boards under it. These rules governed the proceedings in this case.^[58]

Cordero does not deny the power of the Board to initiate administrative investigations against erring professionals.^[59] However, he insists that the Board did not acquire jurisdiction to hear and decide the administrative case against him because of the former's failure to comply with the procedure in initiating an administrative complaint. We disagree.

Article II of the PRC Rules provides how a complaint should be filed, to wit:

Sec. 1. *Complaint.* - A complaint shall be in writing and **under oath or embodied in an affidavit.**

Sec. 2. *Who May File.* — The complaint may be filed by any person, firm, partnership, association or corporation, through its duly authorized representative. The Commission or **the Board may, *motu proprio*, initiate an administrative investigation, in which case, the complainant shall be the office, section, or division of the Commission where the respondent committed the actionable conduct or violation of the rule or regulation of the Commission or the Board.**

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Sec. 5. *Where to File a Complaint.* - A complaint may be filed at the **Legal and Investigation Division (Legal Division) of the Central Office or at the Regional Office of the Commission having**