

quorum voted on the Board's recommendations and conclusions, and the discipline imposed upon Gupta and his co-defendants was not arbitrary or unreasonable.

¶ 2 Plaintiff, Ashok K. Gupta, appeals the order of the circuit court denying his motion for a stay of defendant Illinois Department of Financial and Professional Regulation's (Department) decision to suspend his license as a registered pharmacist. On appeal, Gupta contends (1) the trial court erred in denying the stay because the Department's order to suspend his license was signed by less than a quorum of Illinois State Board of Pharmacy (Board) members, and therefore the Board acted without statutory authority¹; (2) the discipline imposed upon him was not consistent with that given to co-defendant Navaid; and (3) the Department's order is void because no Board member attended the hearing before the administrative law judge (ALJ). For the following reasons, we affirm.

¶ 3 JURISDICTION

¶ 4 The trial court's denial of a motion for a stay forms the basis for an interlocutory appeal under Illinois Supreme Court Rule 307(a)(1). The trial court denied the stay on June 8, 2012. Gupta filed his notice of appeal on June 28, 2012. Accordingly, this court has jurisdiction pursuant to Rule 307(a)(1) governing interlocutory appeals. Ill. S. Ct. R. 307(a)(1) (eff. Feb. 26, 2010).

¶ 5 BACKGROUND

¶ 6 Gupta is a registered pharmacist licensed in Illinois since 1979. On May 8, 2008, the Department filed a four count complaint against Gupta alleging that he knowingly purchased a substantial quantity of stolen prescription medications at a discounted rate and sold the pharmaceuticals at his pharmacy, in violation of the Illinois Pharmacy Practice Act (Pharmacy Act)

¹At oral argument, appellant conceded this issue and now agrees that the Board acted with proper statutory authority.

(225 ILCS 85/30(a) (West 2010) and the Illinois Wholesale Drug Distribution Licensing Act (Drug Distribution Act) (225 ILCS 120/20, 55(4) (West 2010). On June 19, 2009, Gupta pled guilty in federal court to the unauthorized sale, purchase or trade of pharmaceuticals. He received a sentence of three years' probation, 500 hours of community service, and joint and several liability with co-defendant Syed Navaid for \$670,000 in restitution payments. Navaid was sentenced to 18 months' imprisonment followed by three years of supervised release.

¶ 7 The Department filed an amended complaint alleging a violation of section 30(a)(14) of the Pharmacy Act because Gupta pled guilty to a felony in federal court.² In his answer to the complaint, Gupta admitted the Department's allegations. A hearing was held before the ALJ on October 19, 2011. No Board member was present at the hearing. The ALJ issued a report containing his findings of fact, conclusions of law, and recommendations.

¶ 8 The ALJ found that Gupta pled guilty in federal court to the aforementioned felony and was sentenced on June 19, 2009. Gupta admitted the Department's allegations, but argued that "the level of discipline the Department seeks is too harsh in relation to his conduct." In support, Gupta contends that co-defendant Navaid entered into a consent order with the Department in which his license was placed on probation for two years. The Department, however, argued that Gupta engaged in "a pattern of wrongful conduct for monetary profit as evidence by his prior disciplinary history." As support, it presented a 1988 consent order resolving allegations that Gupta "repeatedly dispensed generic medication while billing third parties for brand name medication." The ALJ noted

²Gupta does not include the Department's complaints in the record; we presume, based upon his argument and the ALJ's discussion in his findings, that the Department sought the suspension or revocation of Gupta's license in its complaint.

that the prior misconduct was "remote, having occurred more than 23 years ago. As such, his prior discipline should be weighted accordingly." The ALJ concluded that the Department proved by clear and convincing evidence that Gupta violated section 30(a)(14) of the Pharmacy Act; in fact, Gupta admitted the allegation. He recommended to the Board that Gupta's "license as a registered pharmacist be indefinitely suspended for a minimum of two years."

¶ 9 At a meeting on January 10, 2012, the Board adopted and incorporated the ALJ's findings of fact and recommendation in its report to the director. Five of the eight Board members attended the meeting, and four members signed off on the report. Gupta filed a motion for a rehearing which the director denied on April 26, 2012. On this date, the director also issued his order indefinitely suspending Gupta's license for a minimum period of two years. Gupta filed a complaint for administrative review in the circuit court on May 29, 2012. On June 6, 2012, Gupta filed an emergency motion seeking to stay enforcement of the Department's disciplinary action. In support of his motion, Gupta argued that a stay is required to preserve the status quo because his family relies on his "continued ability to practice his profession." He also argued that he has served his community well for 34 years, and that the Department and its director lacked statutory authority to impose disciplinary action on him because less than a quorum of the Board signed the recommendation to the director. After a hearing, the trial court denied Gupta's motion for a stay. Gupta filed this timely interlocutory appeal.

¶ 10

ANALYSIS

¶ 11 Gupta contends that the trial court erred in denying his motion for a stay because his argument that the Board acted without authority is likely to succeed on the merits. Upon

administrative review, this court reviews the decision of the Board, not the determination of the trial court. *Ahmad v. Board of Education of the City of Chicago*, 365 Ill. App. 3d 155, 162 (2006). The Board's findings are considered *prima facie* true. *Board of Education of the City of Chicago v. Box*, 191 Ill. App. 3d 31, 37 (1989). Therefore, a reviewing court may not substitute its judgment for that of the Board, but must sustain the Board's findings unless they are against the manifest weight of the evidence. *Gilliland v. Board of Education of Pleasant View Consolidated School District No. 622 of Tazewell County*, 67 Ill. 2d 143, 153 (1977). Findings are against the manifest weight of the evidence if the opposite conclusion is clearly evident. *Ahmad*, 365 Ill. App. 3d at 162. However, this court may affirm the Board's decision on any basis supported by the record. *Younge v. Board of Education of the City of Chicago*, 338 Ill. App. 3d 522, 530 (2003).

¶ 12 Section 3-111(a)(1) of the Administrative Review Law (735 ILCS 5/3-111(a)(1) (West 2010)) authorizes the trial court to stay an administrative agency decision pending a final disposition of the case. It may issue a stay, however, only upon a showing of good cause. Good cause requires the movant to show "(I) that an immediate stay is required in order to preserve the status quo without endangering the public, (ii) that it is not contrary to public policy, and (iii) that there exists a reasonable likelihood of success on the merits." 735 ILCS 5/3-111(a)(1) (West 2010). The trial court has discretion to stay an agency decision pending review, and this court will reverse the trial court's determination only if it abused that discretion. *Marsh v. Illinois Racing Board*, 179 Ill. 2d 488, 498 (1997). The party seeking a stay bears the burden of proving justification for the relief sought. *Kenny v. Kenny Industries, Inc.*, 406 Ill. App. 3d 56, 65 (2010).

¶ 13 To establish good cause, the movant must prove all three statutory elements. *Metz v.*

Department of Professional Regulation, 332 Ill. App. 3d 1033, 1037 (2002). Although Gupta briefly addressed the first two elements at the hearing on his motion for a stay, he does not address these factors in his appellate brief.³ Points not raised in the main brief are waived for review. *Stephens v. Industrial Commission*, 284 Ill. App. 3d 269, 276 (1996). Since Gupta failed to establish on appeal all three elements of good cause, he cannot prevail in his argument that the trial court abused its discretion in denying a stay.

¶ 14 Gupta also argued at the hearing that the Department was not consistent in its discipline of Gupta and other co-defendants. Specifically, Gupta contends the Department's indefinite suspension of his license for a minimum of two years is more onerous than the discipline received by co-defendant Navaid, who received a harsher sentence in federal court. The Department, pursuant to a consent decree, placed Navaid's license on probationary status for two years and fined him \$7,000.

¶ 15 When determining the appropriate sanction to protect the public interest, courts defer to the expertise and experience of the administrative agency. *Massa v. Department of Registration & Education*, 116 Ill. 2d 376, 388 (1987). Therefore, we will not reverse penalties imposed by an agency unless they are arbitrary or unreasonable. *Wilson v. Illinois Department of Professional Regulation*, 317 Ill. App. 3d 57, 66 (2000). At the hearing, the Department argued that Gupta's actions in the case at bar warranted greater discipline than Navaid's because only Gupta had a prior history of discipline. It also pointed out that another co-defendant received "a sentence of indefinite suspension for a minimum of three years. That's a year longer than Mr. Gupta." The Board's

³At the hearing, he argued that a stay is required to preserve the status quo because Gupta's family relies on his "continued ability to practice his profession," and it is not contrary to public policy because Gupta has served his community well for 34 years.

sanctions do not appear to be arbitrary or unreasonable.

¶ 16 Gupta further argues that his stay should have been granted because no Board member was present at the hearing before the hearing officer in violation of section 35.7 of the Pharmacy Act. Gupta did not make this argument at the hearing on his motion. Issues not raised before the trial court may not be raised for the first time on appeal. *Eagan v. Chicago Transit Authority*, 158 Ill. 2d 527, 534 (1994). Although Gupta acknowledges the waiver, he asserts that since the Department conducted the hearing without the presence of a Board member, it had no statutory authority to act. Therefore its order is void and a void order is subject to attack at any time. See *Business and Professional People for the Public Interest v. Illinois Commerce Commission*, 136 Ill. 2d 192, 244 (1989).

¶ 17 Gupta, however, fails to distinguish "between agency orders which are void and subject to collateral attack, and those which are merely voidable and subject to attack only through the applicable administrative and judicial review proceedings." *Newkirk v. Bigard*, 109 Ill 2d 28, 39 (1985). As our supreme court explained in *Newkirk*, Gupta's argument that an agency's order is void because it acted in violation of the statute "would allow a collateral attack on an order whenever the agency has failed to follow the exact letter of a statutory provision." *Id.* *Newkirk* declined to adopt such a rule. *Id.* We find that on this issue, Gupta has not shown that there exists a likelihood of success he would prevail.

¶ 18 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 19 Affirmed.