2019 IL App (1st) 182415-U

No. 1-18-2415

Order filed December 20, 2019

Fifth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

ATHINA DANIGELES, D.D.S.,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
	)	
	)	
v.	)	No. 18 CH 2780
	)	
DEPARTMENT OF FINANCIAL AND	)	
PROFESSIONAL REGULATION, and	)	
CECILIA ABUNDIS, Director of the Division of	)	
Professional Regulation of the Department	)	
of Financial and Professional Regulation,	)	Honorable
	)	Peter A. Flynn,
Defendants-Appellees.	)	Judge, presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Delort concurred in the judgment.

ORDER

¶ 1 *Held*: The finding of the director of the Division of Professional Regulation of the Department of Financial and Professional Regulation that plaintiff violated the Illinois Dental Practice Act was supported by the evidence, and the discipline imposed was not an abuse of discretion.

¶ 2 Plaintiff Athina Danigeles appeals an order of the circuit court affirming the decision of the director of the Division of Professional and Financial Regulation (Director) of the Department of Financial and Professional Regulation (Department) to revoke her dental license for eight years. On appeal, plaintiff contends that the Director's determination must be reversed because she has already been sanctioned for the conduct at issue and mitigating factors were ignored, and because the eight-year revocation of her dental license was an abuse of discretion. For the reasons that follow, we affirm.

¶ 3 Plaintiff was licensed as a dentist by the Department in 1987. On August 14, 2012, the Department filed an amended complaint consisting of 27 counts arising from plaintiff's treatment and billing of G.M. and his three minor children, M.M., K.M., and C.M. (the M family). The underlying facts of the case were that in 2007 and 2008, plaintiff billed insurance companies for services that were not performed. On February 28, 2014, the Director ordered that plaintiff's license be revoked for five years, she be prohibited from petitioning for the restoration of her license until February 28, 2019, and she pay a $125,000 fine. This determination was affirmed on appeal. *Danigeles v. Illinois Department of Financial & Professional Regulation,* 2015 IL App (1st) 142622.

¶ 4 On April 23, 2015, plaintiff entered a plea of guilty to mail fraud in the United States District Court for the Northern District of Illinois in case number 13 CR 872. Specifically, plaintiff pled guilty to count IV of the superseding indictment (the indictment) which alleged that between 2005 and 2012, she knowingly participated in a scheme to defraud four insurance companies by submitting claims for services performed on a patient, J.K., that plaintiff knew were not actually

performed. Count I of the indictment referenced M.M. and K.M. Plaintiff was sentenced to nine months in prison.

¶ 5 In July 2015, the Department filed a one-count complaint against plaintiff based on her guilty plea in federal district court, alleging that her conviction constituted a violation of section 23(12) of the Illinois Dental Practice Act (Act) (225 ILCS 25/23(12) (West 2014)). The complaint sought to revoke, suspend, or otherwise discipline plaintiff's dental license.

¶ 6 On October 26, 2016, an administrative law judge (ALJ) conducted a hearing. The Department did not present any witnesses; rather, it relied on certified copies of the guilty plea agreement and the judgment and amended judgment in the federal case, as well as certified copies of prior disciplinary actions taken by the Department against plaintiff.

¶ 7 The plea agreement stated that plaintiff entered a plea of guilty to mail fraud in that between 2005 and 2012, she knowingly participated in a scheme to defraud four insurance companies by submitting claims for services performed on J.K., that plaintiff knew were not actually performed. The prior disciplinary orders indicated that in 1994, plaintiff received a 45-day suspension, 2-year probation, and a $12,500 fine for allegations she engaged in insurance irregularities by submitting claims and receiving payment for services she did not render. In 2001, plaintiff received a reprimand and a $5000 fine for failing to maintain proper dental records. In 2009, she received a one-month suspension, four-year probation, and $35,000 fine for allegations she billed and received payment from insurance companies for services that were not performed.

¶ 8 Plaintiff testified that she had wanted to be a dentist since childhood, received a dental license in 1987, and opened her own practice in 1992. During her dental career, she helped patients who could not afford services by doing work for free. Her dental license was revoked on February

28, 2014, due to billing irregularities and she was fined $125,000. Plaintiff would not be able to petition for restoration until 2019.

¶ 9 When plaintiff was indicted in federal court in 2013, the case with the Department was ongoing. Plaintiff explained that she pleaded guilty to one count of mail fraud covering the time period, 2005 to 2012. The patients who were the subject of the Department's 2010 case, the M family, were also the subject of the federal case. The Department filed the instant case in July 2015 after having already revoked plaintiff's license in 2014. In the federal case, plaintiff was sentenced to nine months in prison and six months of supervised release. She served eight months in prison before being released to a half-way house. During her incarceration, she did not see her two teenage children. Her incarceration was the "worse thing" that ever happened to her, she understood the mistakes she had made, and would "never" do anything to put her "family *** through something like that" again.

¶ 10 Plaintiff was disciplined in the past for billing irregularities and poor record keeping. Although she believed herself to be a good dentist, she admitted that she did not have "business sense" and that "a lot of mistakes" happened in her office. If her license was restored, she would hire "outside people" to perform billing, "probably work for somebody else" rather than having her own practice, and work one day per week in a free clinic. Plaintiff regretted the actions that led to the hearing and took responsibility for them.

¶ 11 During cross-examination, plaintiff testified that she had her own practice from 1992 until 2014 and considered herself to be an ethical person. She acknowledged the discipline she received in 1994, 2001, and 2009, and that these reprimands were due to "questionable billing practices" and the failure to maintain proper records. In 2014, a formal hearing resulted in a five-year

revocation of her dental license and a fine based upon improper billing practices and the failure to maintain proper records. In the federal case, plaintiff was convicted of mail fraud and was ordered to pay restitution to four insurance companies for improper billing between 2005 and 2012. She admitted her mistakes and believed that she had "paid very dearly" for them. Although she profited financially from the mistakes, when she discovered mistakes, she would correct them and refund the money. Plaintiff worked long hours and raised her children, and did not pay the attention to the business aspect of her practice that she should have.

¶ 12 On January 31, 2017, the ALJ issued a report and recommendation which concluded that the Department had proven by clear and convincing evidence that plaintiff had violated section 23(12) of the Act (225 ILCS 25/23(12) (West 2014)). The ALJ noted in aggravation the seriousness of the offenses, plaintiff's prior disciplinary history, and the impact, motive, and the financial gain of the offenses. In mitigation, the ALJ considered plaintiff's contrition, her cooperation with the Department and other authorities, and restitution. The ALJ noted, however, that plaintiff showed a lack of acknowledgment or understanding that her "actions constituted the defrauding or exploitation of insurers and must not be repeated." Moreover, even though plaintiff had previously been disciplined by the Department, similar mistakes continued to occur. The ALJ therefore concluded that a further sanction, in addition to the prior revocation order, was warranted. The ALJ recommended that plaintiff's license be revoked and that she be prohibited from applying for restoration for a minimum of eight years concurrent to the prior revocation, and that a $10,000 fine be assessed.

¶ 13 On September 26, 2017, the Illinois Board of Dentistry (Board) issued its recommendation to the Director, adopting the ALJ's findings of fact and conclusions of law, but recommending that the proposed eight-year revocation run consecutive to the previously imposed five-year revocation.

¶ 14 Plaintiff filed a motion for action contrary to the Board's recommendation, alleging, *inter alia*, that the recommended eight-year revocation was "overly harsh," and that she had already been disciplined by the Department for the billing errors which were the basis of her guilty plea in federal court. In its response, the Department argued that plaintiff continued to characterize her disciplinary history as the result of unintentional mistakes when, in fact, she benefited financially from those actions, and failed to acknowledge that her disciplinary history was based on poor record keeping and billing irregularities. The Department further argued that the previous administrative discipline case covered 2007 and 2008 and the M family, whereas the criminal case covered conduct from 2005 to 2012 and additional patients.

¶ 15 The Director accepted the Board's findings of fact and conclusions of law and adopted the ALJ's recommendation. In so doing, the Director noted that it was difficult to "assess" plaintiff's "contrition" when she failed to acknowledge her lengthy disciplinary history, and that although the case in federal court involved most of the same patients, "most" of the same patients did not equate to "the exact same" patients as her previous administrative discipline case. The Director rejected plaintiff's argument that the additional eight-year prohibition on petitioning for her license was unwarranted, when despite repeated discipline and increasingly severe penalties, plaintiff continued to have the "same issues." Thus, the Director revoked plaintiff's license for eight years, beginning on January 17, 2018, and assessed a $10,000 fine. This revocation was to run concurrent to the five-year revocation and plaintiff could petition to restore her license in January 2026.

¶ 16 Plaintiff filed a complaint for administrative review in the circuit court, which affirmed the Director's order. Plaintiff filed a timely notice of appeal.

¶ 17 On appeal, plaintiff contends that the Director's order is against the manifest weight of the evidence because plaintiff has already been disciplined for the conduct at issue in the federal case and in a prior case before the Department, and the mitigating factors "overwhelmingly" weigh in favor of significantly less discipline.

¶ 18 In administrative review cases, we review the decision of the administrative agency, rather than that of the circuit court. *Exelon Corp. v. Department of Revenue*, 234 Ill. 2d 266, 272 (2009). Our standard of review varies depending on the question before us. *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 210 (2008).

¶ 19 An administrative agency's findings of fact are deemed to be *prima facie* correct (735 ILCS 5/3-110 (West 2016)), and a reviewing court should not substitute its judgment or reweigh the evidence when reviewing an agency's factual findings (*Cinkus*, 228 Ill. 2d at 210). An agency's factual findings will be reversed only when they are contrary to the manifest weight of the evidence (*id.*), that is, when the opposite conclusion is clearly evident (*Ford Motor Co. & Affiliates v. Department of Revenue*, 2019 IL App (1st) 172663, ¶ 42). An agency's conclusions of law are reviewed *de novo*. *Id.* ¶ 41.

¶ 20 When the issue presents a mixed question of law and fact, we review the decision to determine whether it is "clearly erroneous." *Cerone v. State*, 2012 IL App (1st) 110214, ¶ 13. Mixed questions of law and fact involve "questions in which historical facts are admitted or established, the rule of law is undisputed, and the issue is whether the facts satisfy the statutory standard, or to put it another way, whether the rule of law as applied to the established facts is or

is not violated." *Id.* ¶ 12 (internal quotations omitted). An administrative decision is clearly erroneous only when the reviewing court is left with "the definite and firm conviction that a mistake has been committed." *Exelon*, 234 Ill. 2d at 273.

¶ 21 In the case at bar, it is undisputed that plaintiff entered a plea of guilty to mail fraud in federal court on April 23, 2015. A conviction for any crime in any jurisdiction in the United States that is a felony under Illinois law is a violation of the Act. See 225 ILCS 25/23(12)(i) (West 2014). Thus, the Director's conclusion that plaintiff violated the Act is not clearly erroneous.

¶ 22 Plaintiff, however, contends that this determination is wrong because she had already been punished by the Department for the conduct at issue in the federal case, and cannot be punished again. Plaintiff notes that the Department revoked her license on February 28, 2014, because between 2007 and 2008, plaintiff billed insurance companies for services that were not performed on the M family. She further notes that M.M. and K.M. were identified in the superseding indictment in the federal case and that the plea agreement referenced a "scheme to defraud" that took place between 2005 and 2012. Plaintiff acknowledges that she entered a plea of guilty to count IV in the federal case, "which does not specifically mention the patients that were part of the 2010 case as it deals with allegations of improper billing for Patient J.K.," but argues that because the 2010 case was part of the investigation that led to her guilty plea, she has already been punished for that conduct. We disagree.

¶ 23 First, although plaintiff argues that the M family was mentioned in the indictment in federal court, the count to which plaintiff entered a guilty plea, count IV, stated that between 2005 and 2012, plaintiff knowingly participated in a scheme to defraud four insurance companies by submitting claims for services performed on J.K. that plaintiff knew were not actually performed.

While it may be true that the indictment in the federal case encompassed more patients, the offense to which plaintiff entered a guilty plea concerned only J.K. Second, the Act states that a felony conviction, by itself, is grounds for discipline. See 225 ILCS 25/23(12)(i) (West 2014). Moreover, the record reveals that the Director specifically addressed this argument when entering her order, noting that although the case in federal court involved most of the same patients, "most" was not "the exact same." After reviewing the record, we are not left with "the definite and firm conviction" that a mistake was made (*Exelon*, 234 Ill. 2d at 273), and consequently, cannot agree that the Director's finding that plaintiff violated the Act was clearly erroneous.

¶ 24 Plaintiff next contends that the disciplinary sanction is an abuse of discretion because it is arbitrary, overly harsh, and unrelated to the purpose of the Act. She argues that the eight-year license suspension in this case, concurrent to the previously imposed five-year suspension, effectively ends her dental career because "it has the effect of permanently ending [p]laintiff's ability to return to the practice of dentistry." Plaintiff notes that she will have to show competency before her dental license can be restored because she will be away from practice for more than five years, that is, she will have to retrain and take a competency exam before she can return to clinical practice.

¶ 25 This court will not reverse an agency's choice of sanction merely because we " 'would decide upon a more lenient sanction' " or " 'would conclude in view of the mitigating circumstances * * * that a different penalty would be more appropriate.' " *Launius v. Board of Fire & Police Commissioners*, 151 Ill. 2d 419, 436 (1992) (quoting *Sutton v. Civil Service Comm'n*, 91 Ill. 2d 404, 411 (1982)). Rather, the sanction imposed by the agency is reviewed for an abuse of discretion and will be reversed only if it is arbitrary and capricious or if the sanction

is overly harsh in view of mitigating circumstances. *Kazmi v. Department of Financial & Professional Regulation*, 2014 IL App (1st) 130959, ¶ 21.

¶ 26 Here, plaintiff's license was revoked for eight years. This punishment was not overly harsh when it is undisputed that plaintiff entered a guilty plea to mail fraud in federal court, and admitted at the hearing that "mistakes" in billing were made at her practice but that she worked long hours while raising a family and did not pay attention to the business side of her practice. Plaintiff also acknowledged a disciplinary history dating from 1994 concerning improper billing practices and the failure to maintain proper records. To the extent plaintiff argues that the evidence in mitigation was not considered, we disagree. The ALJ's report and recommendation stated that plaintiff's contrition, cooperation with authorities, and restitution paid were considered in mitigation, but that the fact remained that plaintiff showed a lack of understanding that her actions defrauded insurers and should not be repeated. Although plaintiff expressed contrition and cooperated with authorities, based on plaintiff's actions and disciplinary history, the sanctions imposed were not overly harsh, arbitrary, or unreasonable.

¶ 27 We next consider whether the punishment was unrelated to the purpose of the Act, which is to protect the public health and welfare from those not qualified to practice dentistry. *Danigeles*, 2015 IL App (1st) 142622, ¶ 105. Here, plaintiff was found to have billed insurance companies for work that was not actually performed, and her disciplinary history showed that throughout her career her record keeping and billing practices subjected her to discipline. Rather than excessively piling on punishment, as plaintiff contends, the discipline imposed serves to protect the public. Although plaintiff is correct that the eight-year license revocation means that she will be away from clinical practice until 2026, the fine and license suspension is intended to deter future

misconduct and prevent additional record-keeping and billing errors. The discipline was related to the purpose of the Act and was not an abuse of discretion.

¶ 28 For the foregoing reasons, we affirm the circuit court's decision to uphold the Director's order.

¶ 29 Affirmed.