

No. 1-11-0190

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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FRED WEINER,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 10 CH 1573
	)	
ILLINOIS DEPARTMENT OF FINANCIAL AND	)	
PROFESSIONAL REGULATION; DANIEL E.	)	
BLUTHARDT, Acting Director of Professional Regulation;	)	
FERNANDO GRILLO, Secretary of the Department of	)	
Financial and Professional Regulation,	)	The Honorable
	)	Rita M. Novak,
Defendants-Appellees.	)	Judge Presiding.

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JUSTICE GARCIA delivered the judgment of the court.  
Presiding Justice Gordon and Justice Palmer concurred in the judgment.

**ORDER**

¶ 1 *Held:* The judgment of the circuit court affirming the agency's denial of restoration of the plaintiff's license is affirmed where the plaintiff's due process rights were not violated, the agency director did not refuse to restore the license solely because the plaintiff filed for bankruptcy, the agency director did not improperly require the plaintiff to prove rehabilitation, and the decision was not against the manifest weight of the evidence or arbitrary and capricious.

¶ 2 The trial court affirmed the decision of the Division Director (the Director) of the Department of Financial and Professional Regulation (the Department) to reverse the hearing officer and the hearing board, each of which recommended that plaintiff Fred Weiner's dental license be restored, under certain conditions. Weiner's dental license was originally suspended indefinitely in January 2004 by consent. The consent order provided reinstatement of Weiner's dental license upon completing a clinical course and imposed a three-year period of probation, during which Weiner was required to satisfy certain other conditions. The consent order provided for an immediate re-suspension of his license should a term of his probation be violated. Weiner's dental license was once again suspended indefinitely upon being charged with violating a term of his probation. An additional suspension order was issued based on his failure to pay the imposed fine. Three years later, Weiner filed a motion to have his license restored. A hearing officer recommended the motion be granted, and the hearing board agreed; the hearing board, however, did not issue its decision until more than nine months after the hearing officer issued his recommendation. After an additional delay of five months, the Director issued his decision not to restore the license. The Director determined that Weiner had not complied with the requirements of the original consent order. Weiner appeals, contending (1) the nine-month delay constituted a violation of his due process rights, (2) the Director improperly considered his decision to file for bankruptcy in denying restoration, (3) the Director improperly imposed on Weiner the burden to prove that he was rehabilitated, and (4) the Director's decision was against the manifest weight of the evidence. We reject each of Weiner's contentions and affirm.

¶ 3

### BACKGROUND

¶ 4 Fred Weiner was a licensed dentist, practicing general dentistry, when in 1999 and 2002 administrative complaints were filed alleging instances of malpractice. In November 2003, the Department<sup>1</sup> filed a third administrative complaint incorporating some of the allegations in the earlier complaints. The third administrative complaint contained six allegations against Weiner: (1) gross malpractice; (2) substandard treatment; (3) dishonorable, unethical, or unprofessional conduct; (4) aiding and abetting the unlicensed practice of dentistry; (5) abandonment of a patient; and (6) repeated malpractice. The Department requested that Weiner's dental license be suspended, revoked, or otherwise disciplined. The Department filed with the third administrative complaint a petition requesting temporary suspension of Weiner's license, which was granted.

¶ 5 In January 2004, the parties entered into a consent order. Weiner's dental license would be suspended for at least two months, or until he completed a 20-hour clinical course. Weiner agreed that upon reinstatement of his license, he would be placed on probation for at least three years. During his period of probation, Weiner was required to complete 100 hours of continuing education and pay a \$12,000 fine in \$500 monthly installments. The consent order also provided that upon resuming his dental practice, Weiner would escrow patient funds received in anticipation of dental work and that any unearned fees would be refunded to the patients. Weiner agreed that should he violate any condition of his probation, the Department could immediately suspend his license for a minimum of six months, after which he would have to seek restoration

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<sup>1</sup> At the time, the Department of Financial Regulation and Professional Regulation was called the Department of Professional Regulation.

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of his license.

¶ 6 It appears Weiner's dental license was restored in the first half of 2004. In July 2004, Weiner violated the terms of his probation by failing to refund \$7,593 to patient number 1 and \$685 to patient number 2 for services the patients paid for but never received.<sup>2</sup> The Department issued a suspension of Weiner's license. Weiner requested a hearing on the suspension.

¶ 7 An administrative law judge (ALJ) for the Department conducted a two-day hearing on August 31, 2004, and September 1, 2004. Pete Vasiliades, a Department investigator, and patient number 2 testified for the Department. Weiner testified on his own behalf. Investigator Vasiliades testified regarding Weiner's failure to reimburse unearned fees to patient number 1. According to the evidence, patient number 1 paid Weiner \$16,434 in advance for dental work. After some of the work had been performed, the patient decided to discontinue treatment with Weiner. The patient asked for a refund of between \$10,000 and \$11,000; Weiner responded he owed her only \$6,284. Weiner's billing records reflected he owed her \$7,593. Weiner testified that he gave patient number 1 no refund because of the dispute.

¶ 8 Patient number 2 testified that she paid Weiner \$7,650 in advance for dental work. She received a portion of her treatment from Dr. James D'Alise, a dentist Weiner had hired to maintain his practice during his initial suspension. When Weiner's suspension ended, he sought to resume care of patient number 2. According to the patient, Weiner recommended a course of treatment she did not wish to pursue. She elected to continue her dental care with Dr. D'Alise. She requested a full refund, but Weiner sent her a check for only \$2,250. Weiner had deducted

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<sup>2</sup> At the administrative hearing, the participants agreed to identify each patient by number.

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\$1,200 for dentures patient number 2 never received. Weiner testified that at the time he issued the refund to the patient, he was not aware she had not received the dentures.

¶ 9 In October 2004, before the ALJ issued his recommendation, the Department issued a separate suspension of Weiner's license based on his failure to pay the monthly installments of his fine in August, September, and October 2004. Weiner objected on the ground that he could not be suspended twice for violating the same consent order. The Director upheld the second suspension in January 2005.

¶ 10 In December 2004, the ALJ issued a report and recommendation on the July suspension based on the two-day hearing in late August and early September. He found the witnesses for the Department "very credible," while "Weiner's testimony at best was self-serving and vague." The ALJ found that Weiner violated the consent order by failing to properly administer patient funds. The ALJ recommended the indefinite suspension remain in effect.

¶ 11 In April 2005, the Department adopted the findings of the ALJ and upheld the indefinite suspension. Weiner filed a motion for rehearing, arguing that the Department lacked jurisdiction to suspend his license as there had been no showing that he posed an immediate danger to the public. In July 2005, the Director denied the motion and allowed the indefinite suspension to remain in effect.

¶ 12 More than three years later, in June 2008, Weiner filed his motion to restore his license. In his motion, he conceded that he failed to pay the entire \$12,000 fine as set forth in the 2004 consent order. He claimed to lack financial resources because of the suspension of his license. On September 16, 2008, an evidentiary hearing was held before a different ALJ on Weiner's

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request for restoration of his license. Weiner was the only witness. His testimony established that he had not made a payment on the fine since August 2004. As of the date of the hearing, it appears Weiner had paid only \$4,000. Nor had Weiner completed the 100 hours of continuing education required by the consent order. Weiner further testified that he had not fully refunded the fees owed to patient number 1 and patient number 2. Weiner revealed that he had been disciplined in the 1980s for failure to pay student loans and in the 1990s for failure to pay taxes.

¶ 13 Weiner informed the ALJ that he filed for bankruptcy for a third time in 2005. He claimed to be unable recall whether he listed patient number 1 or patient number 2 as creditors in the bankruptcy filing. Weiner expressed his willingness to fully pay the refunds to the patients and the balance of his \$12,000 fine should the ALJ find the debts were not discharged by the bankruptcy. Weiner stated he would be willing to attend dental classes as a condition of restoring his license. During the hearing, Weiner's attorney claimed that federal law prohibited the ALJ from taking action against Weiner's professional license based on the 2005 bankruptcy.

¶ 14 In October 2008, the ALJ issued a report recommending reinstatement of the license. The report noted a serious concern:

"[Weiner's] testimony relating to the financial management of his former practice was vague and demonstrates a complete disregard for the importance of fiscal management in a solo practice. His financial history which the evidence demonstrated includes a bankruptcy and default on educational loans is also indicative of his financial mismanagement."

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However, the ALJ proposed reinstatement of Weiner's license, subject to several conditions.

Weiner should be placed on indefinite probation for a minimum of three years; the balance of his fine of \$8,000 should be paid in advance of his reinstatement; also, prior to restoration of his license, Weiner should complete 20 hours of continuing education, with an additional 30 hours of continuing education each year during his probation. The report stated the hours of continuing education were in addition to the hours mandated annually for all practicing dentists. Finally, the report recommended that Weiner restrict his practice to general dentistry and be employed with and supervised by a licensed dentist.

¶ 15 Over nine months after the ALJ issued its report, in July 2009, the Board of Dentistry (the Board) adopted the findings and conclusions of the ALJ. However, it proposed that the Weiner's employment specified in the ALJ recommendation be modified: Weiner should be "directly" supervised by another dentist and the supervising dentist should not have had his license disciplined within the last 10 years.

¶ 16 Five months after that, on December 17, 2009, the Director<sup>3</sup> rejected the recommendation of the ALJ and the Board, and denied Weiner's motion for restoration of his license. The Director determined that Weiner had failed to prove by a preponderance of the evidence that his license should be restored. He noted that Weiner had not provided any evidence that he had been rehabilitated. Weiner had also failed to comply with the consent order because he had not completed the required continuing education hours, paid the \$12,000 fine, or issued full refunds

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<sup>3</sup> At the time this decision was issued, Daniel E. Bluthardt was the Director. He has since been replaced by Jay Stewart.

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to patients number 1 or number 2. The Director stated, "The sum total of [Weiner's] case [for reinstatement] was answering 'No, absolutely not' when asked whether there was any reason why he believed he could not practice dentistry." The Director noted that "[Weiner] avoided his responsibilities to refund monies to patients for services not rendered by filing for bankruptcy on dental practices three times."

¶ 17 On January 13, 2010, Weiner filed a complaint for administrative review of the Director's decision in the circuit court. The Department filed an answer to the complaint, along with the record of the proceedings before the agency. The court ordered the parties to file briefs setting out their arguments on the issues for review. Weiner filed a "motion for summary judgment," which the court treated as a brief. The brief requested reversal of the Director's decision based on several arguments that are identical to those he raises before this court. The Department filed a response and Weiner filed a reply. The circuit court affirmed the Director's decision in a January 11, 2011 order. Weiner filed this appeal on January 18, 2011.

¶ 18 ARGUMENT

¶ 19 Weiner first claims that his due process rights were violated when the Board failed to issue its recommendation within 60 days of the ALJ's report. He contends the Board's tardiness contravened the Dental Practice Act (225 ILCS 25/30 (West 2010)). Weiner also contends the Director violated the United States Bankruptcy Code (11 U.S.C. § 525(a) (2006)) when he considered Weiner's bankruptcy filings in denying restoration of his dental license. Finally, he attacks his ongoing suspension as excessive when compared to other dentists and contends that



the Director erred when he ruled Weiner was required to show rehabilitation. Generally, he contends the decision is against the manifest weight of the evidence.

¶ 20 The Department contends Weiner's appeal should be dismissed because of deficiencies in his brief. As to the merits of the appeal, the Department contends that no due process violation occurred because Weiner did not object to the delay, nor did the delay cause him any prejudice. With regard to the mention of Weiner's bankruptcy filings, the Department argues that the Director did not violate the Bankruptcy Code because the bankruptcy filings were not the "sole" reason for denying restoration. Finally, the Department asserts the Director was within his discretion to consider whether Weiner was rehabilitated in the course of ruling on his request to restore his license and to allow the indefinite suspension to remain, which the Department argues was not excessive, even compared to penalties imposed on other dentists.

¶ 21 *Dismissal of Appeal*

¶ 22 The Department asks that we dismiss Weiner's appeal because his brief does not conform to Illinois Supreme Court Rules 341 and 342. The brief violates Rule 341 by omitting a list of points and authorities, a paragraph stating the nature of the action, a statement of the issues, a statement of jurisdiction, a proper statement of facts, and a section labeled "argument." Ill. Sup. Ct. R. 341 (eff. July 1, 2008). The brief violates Rule 342 by failing to include an appendix with a table of contents for the record on appeal and copies of documents from the lower court proceedings. Ill. Sup. Ct. R. 342 (eff. Jan. 1, 2005).

¶ 23 It appears that after the Department raised these objections, Weiner filed an amended brief in an effort to correct the cited deficiencies. Although authority exists that an appeal may

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be dismissed "[w]here an appellant's brief fails to comply with supreme court rules" (*Epstein v. Galuska*, 362 Ill. App. 3d 36, 42 (2005)), we decline to do so in this case. Weiner's amended brief substantially complies with the rules. We note the statement of facts appears to have been copied verbatim from the complaint he filed before the circuit court.

¶ 24

*Due Process*

¶ 25 Weiner argues that the Department violated his right to due process when the Board failed to consider the ALJ's determination within 60 days of its issuance. To rectify this deprivation, Weiner requests that the Director's decision to deny restoration be declared void. The Department responds that this argument is forfeited because Weiner failed to raise it before the Department. Further, the Department argues that, because the Board ruled in Weiner's favor, its delay caused no prejudice. Finally, the Department argues that declaring the judgment of the Director void is not a proper remedy for a violation of the statutory 60-day time limit.

¶ 26 We review the issue of whether the Department violated Weiner's due process rights *de novo*, as it raises a question of law. *Lyon v. Department of Children & Family Services*, 209 Ill. 2d 264, 271 (2004).

¶ 27 Section 30 of the Dental Practice Act provides that a hearing officer—typically an ALJ—has the authority to conduct a hearing and issue a recommendation in a proceeding challenging the Department's refusal to issue or restore a license. 225 ILCS 25/30 (West 2010). The ALJ then sends this recommendation to the Board and the Director. *Id.* The Board, without hearing additional evidence, may then issue its own recommendation to the Director within 60 days. *Id.* If the Board fails to act within the 60 days, the Director "shall issue an order" based on

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the report of the ALJ. *Id.* The statute does not specify the consequences should the Director fail to act when the Board fails to issue a timely recommendation. *Id.*

¶ 28 Generally, an agency is governed by its enabling statute and the rules and procedures by which it must abide. *Stull v. Department of Children & Family Services*, 239 Ill. App. 3d 325, 332 (1992). However, provisions under which an agency acts may be mandatory or directory. *Id.* A directory provision serves to guide an agency's decision. *Id.* A mandatory provision must be followed. *Id.* Failure to abide by a mandatory provision renders void an agency's decision. *Id.* If an agency contravenes a directory provision, its decision may be overturned if the due process rights of the impacted individual were violated. *Id.* at 334-35.

¶ 29 There is no authority that declares section 30 of the Dental Practice Act either mandatory or directory. But see *Morgan v. Department of Financial and Professional Regulation*, 374 Ill. App. 3d 275 (2007), for an analogous statute found to be directory. In fact, we discovered no case that cites section 30. Weiner, however, does not contend section 30 is a mandatory provision. His claim is simply that his due process rights were violated. A due process claim may be raised when a provision that directs action be taken within a specified time is not followed and the ensuing delay is said to be unreasonable in light of the interests at stake. We thus do not resolve whether section 30 is mandatory. We address only Weiner's due process claim premised on section 30 being directory to determine whether the nine-month delay abridged Weiner's due process rights.

¶ 30 As we stated, due process concerns may be raised when an agency fails to process an individual's challenge to an agency's decision in accordance with a directory provision. *Lyon*,

209 Ill. 2d at 276-77. Our supreme court followed the United States Supreme Court in adopting three factors to determine when such a delay violates due process protections. *Id.* at 277 (citing *Federal Deposit Insurance Corp. v. Mallen*, 486 U.S. 230, 242 (1988)). The *Mallen* factors are (1) the importance of the private interest and the harm to the interest due to the delay, (2) the government's justification for the delay and its connection to the government interest at stake, and (3) the likelihood that the interim decision might have been mistaken. *Id.* The paramount concern in the due process context is whether the agency acted reasonably. *Stull*, 239 Ill. App. 3d at 335. When considering whether violation of a non-mandatory deadline violates due process, the deadline provides guidance for what is considered reasonable. *Id.* at 334-35. "[A] gross deviation from [the] time limitations [set by the legislature] would be deemed to be unreasonable and contrary to the legislative intent." *Id.* at 334.

¶ 31 In Weiner's case, he filed his initial request to reinstate his dental license on June 10, 2008. The ALJ held an evidentiary hearing on September 16, 2008, and issued a decision to the Board on October 10, 2008. The Board adopted that decision on July 17, 2009, 280 days later, with no explanation for the delay. The Director rejected the Board's decision on December 17, 2009, 153 days after the Board's decision.

¶ 32 We note that Weiner has objected only to the approximately nine-month delay between the ALJ's decision and the Board's decision. He claims that the Director erred in allowing this delay to occur as the statute required the Director to intervene if the Board failed to act.

Although some courts have considered the due process implications of a lengthy delay between the initial request for a hearing and the ultimate disposition of the issue, Weiner has not

complained of such a delay in his case. We therefore make our decision based only on the nine-month delay, which concerns the Board's failure to act and the Director's failure to intervene.

¶ 33 Weiner cites several cases that addressed delays in agency proceedings and applied the *Mallen* factors to find a due process violation. In the *Lyon* case, DCFS received a complaint about a teacher having inappropriate sexual contact with his students. *Lyon*, 209 Ill. 2d at 268. After an investigation, DCFS issued an "indicated report" finding that the allegations were credible. *Id.* The indicated report meant only that DCFS had conducted an independent investigation, without the benefit of a hearing or the teacher's involvement, and found the allegations to be "supported by credible evidence." *Id.* at 267. Upon issuance of the indicated report, the teacher's name was posted on the State central register, impairing his ability to seek employment as a teacher. *Id.* at 273. After a lengthy delay, DCFS held a hearing to address the teacher's challenge to the charges and to determine whether his name should remain on the register. *Id.* at 275-76. At this hearing, DCFS was required to prove the allegations by a preponderance of the evidence, a much higher threshold than proof of credible evidence. *Id.* at 279.

¶ 34 The supreme court found the quantum of proof for the agency's indicated report to be the deciding issue on the due process claim based on the delay. *Id.* DCFS violated the teacher's due process rights when it did not hold a prompt hearing to determine the validity of the charge given that the teacher's name was posted on the central register based on the minimal proof for an indicated report. *Id.* at 283. The court determined that when minimal proof is relied upon to trigger the posting, the agency was required to strictly comply with statutory deadlines to ensure

fairness in the process for the subject individual. *Id.* at 282-83. The court expressly discussed the third *Mallen* factor concerning a higher likelihood of a mistake in an interim decision when the agency's adverse action was driven by a minimal threshold of proof. *Id.* at 279.

¶ 35 *Stull* is another case involving a DCFS indicated report against a teacher, resulting in the posting of the teacher's name on the State central register. *Stull*, 239 Ill. App. 3d at 330. The teacher requested a hearing to expunge the record as part of the appeals process. *Id.* The administrative rule required that a hearing be scheduled within 30 days of the request and that a decision be issued within 90 days of the commencement of the appeals process. *Id.* at 330-31. However, DCFS did not issue its final decision denying expungement of the indicated report until 456 days after the appeals process began. *Id.* at 330.

¶ 36 The *Stull* court held that the delay was "unreasonable." *Id.* at 334-35. The grave impact on a teacher's job prospects when his or her name is listed on the State registry compelled a hearing "within a short time." *Id.* at 335. The court expressed concern that during the unreasonable delay in the DCFS appeals process, the teacher's name remained listed on the central register, depriving him of employment opportunities and "brand[ing] [him] a child abuser." *Id.* Under these circumstances, not holding a hearing for nearly a year past the time provided in the administrative rule violated the teacher's due process rights. *Id.*

¶ 37 The case of *Morgan*, 374 Ill. App. 3d at 275, applied *Lyon* and *Stull* and reached the same result that a due process violation occurred. In *Morgan*, the Department filed an administrative complaint against a licensed clinical psychologist, alleging that the psychologist engaged in inappropriate sexual contact with his patients. *Id.* at 278. The Department then issued a

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summary suspension of the psychologist's license and, one month later, an ALJ held a hearing.

*Id.* at 278-79. The Department was subject to follow an identical procedure as under the Dental Act. Upon receipt of the ALJ recommendation, the governing board was required to issue a decision within 60 days. If the board did not timely act, the Director was to act based on the ALJ recommendation only. *Id.* at 303-04. Following the hearing, three months passed before the ALJ issued a decision; the Board failed to act for an additional four-and-a-half months after that; the Director did not make a final decision until 15 months after the license was first suspended. *Id.* at 303. In the meantime, when no final decision was issued after the passage of six and a half months, the clinical psychologist persuaded a chancery court judge to issue a temporary restraining order lifting the suspension. *Id.* The chancery court held that the six-and-a-half-month delay during which the license was suspended constituted a violation of the psychologist's due process rights. *Id.* at 303-05.

¶ 38 Following *Lyon*, *Morgan* emphasized that the lower threshold of proof, which permitted a suspension of the license, compelled a prompt final decision. "[W]here an agency uses a lower standard of proof to support a prehearing deprivation, the necessity of acting promptly is heightened." *Id.* at 302. As to the first *Mallen* factor, the court found that both the agency and the psychologist had compelling interests. *Id.* However, considering the low burden of proof required for a summary suspension and the length of time for which the psychologist was prevented from practicing his profession, the court held that the balance of the factors favored finding a due process violation. *Id.* at 304-05.

¶ 39 The instant case is not like the most similar case of *Morgan*. Weiner's license was subject to a term of probation pursuant to an agreed-upon order. The consent order imposed certain conditions on Weiner to maintain his license. Weiner's license was again suspended when he violated several terms of the consent order. The posture of this case concerns Weiner's motion to restore his license. The case does not involve a prehearing deprivation of a professional license under an lower standard of proof as in *Morgan*.

¶ 40 As made clear by his motion to restore his license, which initiated the proceedings before the Department, it was Weiner's burden to demonstrate compliance with the terms of the consent order. Weiner cannot and does not dispute that he violated the consent order, which lead to the indefinite suspension of his license in July 2004. During his testimony seeking to have his license restored, Weiner admitted to violating the consent order and not fulfilling other requirements of the consent order, such as completing the continuing education classes, when he filed his motion to reinstate his license. Under the facts and circumstances of this case, we agree with the Department that the nine-month delay did not deprive Weiner of any right to practice dentistry during that period. Unlike in *Morgan*, no due process violation occurred in this case, even in the absence of justification for the nine-month delay. The 2004 indefinite suspension was entirely warranted.

¶ 41 *Merits of the Director's Decision*

¶ 42 Even without a due process violation, Weiner argues that the Director's decision should be reversed because (1) the Director improperly considered his decision to file for bankruptcy in denying the restoration, (2) the Director required Weiner to prove rehabilitation, which is not his



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obligation under the Dental Practice Act and (3) the decision resulted in harsher penalties than imposed on other sanctioned dentists.

¶ 43 Our review is limited by the provisions of the Administrative Procedure Act (APA). *Wedeburg v. Department of Registration & Education*, 94 Ill. App. 2d 451, 455 (1968). The APA states that, on review of an agency's decision, "the findings and conclusions of the administrative agency on questions of fact shall be held to be *prima facie* true and correct." 735 ILCS 5/3-110 (West 2008). Following the suspension of a professional license, the Director "may" grant restoration of the license. 225 ILCS 25/31 (West 2010). "It is well settled that the courts will not interfere with the discretionary authority vested in administrative bodies unless such authority is exercised in an arbitrary or capricious manner, or the administrative order is against the manifest weight of the evidence." *People ex rel. Stephens v. Collins*, 35 Ill. 2d 499, 500 (1966). A reviewing court does not reweigh the evidence to determine whether it would have reached the same conclusion as the agency. *Wedeburg*, 94 Ill. App. 2d at 456. Rather, it is "limited to determining whether that conclusion was supported by substantial evidence, or was it contrary to the manifest weight of the evidence." *Id.*

¶ 44 Weiner challenges the Director's decision as improperly based on his previous bankruptcy filings. Weiner argues that this consideration constitutes unlawful discrimination as expressly prohibited by the Bankruptcy Code. The Department responds that the Director did not discriminate against Weiner in violation of the Bankruptcy Code because restoration was not denied "solely" based on the bankruptcy filings.

¶ 45 The United States Bankruptcy Code states that "a governmental unit may not deny, revoke, suspend, or refuse to renew a license \*\*\* of, or discriminate with respect to employment against, a person that is or has been a debtor \*\*\* under the Bankruptcy Act." 11. U.S.C. § 525(a) (2006). This section of the Bankruptcy Code has been interpreted to mean that a license cannot be denied on the basis of failure to pay a dischargeable debt. *Federal Communications Commission v. Next Wave Personal Communication*, 537 U.S. 293, 301-02 (2003). If alternative reasons are given to deny the license, the court must look to the agency's main purpose in refusing the license; for an agency to violate the Bankruptcy Code, the bankruptcy filing must be "the act or event that triggers the agency's decision." *Id.* at 302.

¶ 46 In his written opinion rejecting the recommendations by the Board and the ALJ to reinstate Weiner's license, the Director listed his reasons for doing so. He gave three, one of which was that "[Weiner] avoided his responsibilities to refund monies to patients for services not rendered by filing for bankruptcy on dental practices three times."

¶ 47 Weiner claims not to know whether his debts owed to patients number 1 and number 2 and the balance of the Department imposed fine were "dischargeable" in his 2005 bankruptcy filing. Before the ALJ, he asked that the ALJ make that determination. However, Weiner testified that he could not recall whether he listed patient number 1 or patient number 2 as creditors in the bankruptcy filing. No citation is required to conclude that if the patients were *not* listed as creditors, Weiner's debts to these patients could not have been discharged. Based on the record before us, Weiner has made no showing that his debts were discharged, which renders the prohibition in the Bankruptcy Code inapplicable. Weiner, as appellant, had the burden to

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demonstrate error by the Department. Ill. Sup. Ct. R. 341 (eff. July 1, 2008). His equivocal statement that his unpaid debts may have been discharged in bankruptcy fails to satisfy the requirements of Rule 341 and is therefore forfeited. *Vincent v. Doeber*, 183 Ill. App. 3d 1081, 1087 (1989).

¶ 48 Even assuming the debts were discharged, no violation of the prohibition has been shown. As the Department correctly points out, the Bankruptcy Code prohibits discrimination based "solely" on a bankruptcy filing. 11 U.S.C. § 525(a). The Director gave three equally valid reasons to deny restoration. Weiner had not only failed to pay his debts to his patients, he had also failed to complete the terms of his probation, and he failed to show any reason to have his license restored. Weiner cannot show that his license was not restored based "solely" on his bankruptcy filing.

¶ 49 Additionally, the Director referred to the bankruptcy filings as part of his determination that Weiner cannot be trusted to handle patient funds, consistent with the ALJ's findings in 2004. Weiner's problems under the consent order stem not from his filing for bankruptcy, but his failure to maintain an escrow fund to refund client fees that have not been earned as he was directed to do. The mention of bankruptcy in the Director's report did not "impair [Weiner's] fresh start," as he claims. It merely called attention to Weiner's pattern of "financial mismanagement," as the ALJ found in 2004. The bankruptcies were not "the act or event that triggered the agency's decision." *Next Wave Personal Communication*, 537 U.S. at 301.

¶ 50 Weiner next argues that the Director's decision was against the manifest weight of the evidence as he imposed a burden on Weiner he claims he should not bear. Weiner contends

rehabilitation is not a requirement for restoration. While Weiner is correct that the Dental Practices Act does not explicitly require restoration of a license to be conditioned upon a showing of rehabilitation, he gives us no reason to conclude that compelling a showing of rehabilitation violates the Dental Act. Weiner cites no cases or statutes stating that considering rehabilitation, even if it is not a requirement of restoration, renders a denial of restoration improper.

¶ 51 As stated, the Director's exercise of discretion in issuing a final decision, includes his own assessment of the evidence and consideration of the recommendations of the Board and ALJ. For a dentist subject to an indefinite suspension arising from a violation of the terms of his probation following an initial suspension of his license, it seems supremely reasonable for the Director to consider rehabilitation in deciding whether to restore a license to practice dentistry. Although Weiner states that "[t]he actions of the Director in refusing to reinstate the license of Fred S. Weiner is [*sic*] without legal or factual support," it was Weiner's burden to show that he merited reinstatement, not the Director's burden to show that he did not. The Director's mention of a lack of rehabilitation did not heighten this burden or place an extra hurdle in Weiner's path, it was merely a common sense consideration. The mention of Weiner's lack of rehabilitation did not render the Director's decision against the manifest weight of the evidence or arbitrary and capricious.

¶ 52 Finally, Weiner attacks the Director's decision as more severe than penalties imposed on other dentists. Weiner claims his penalty was "imposed solely to set an example." He states, "No other dentist has been suspended for seven years for failing to return a patient's deposit."

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He also claims that the “ ‘civil’ penalty in the instant action is the highest ‘civil’ penalty imposed on any individual, regardless of occupation, in the history of the [Department].”

¶ 53 To support these assertions, Weiner provides a list of dentists, along with their infractions and the action taken against each by the Department. He asks that we take judicial notice of this list, which was taken from the Department's Web site and provides an "example" of cases that occurred between January 2008 and March 2010. Even if his request for judicial notice is proper, the cases of other dentists sanctioned by the Department do little to suggest the Weiner's continuing indefinite suspension is against the manifest weight of the evidence. Weiner, himself, testified that he violated the terms of his probation, following the entry of the consent order. At the time of his hearing in 2008 to restore his license, Weiner still had not complied with many of the requirements of the 2004 consent order.

¶ 54 We see no fault in the Director's decision to deny restoration and continue the suspension arising from Weiner's violations of the 2004 consent order, which he never rectified.

¶ 55 CONCLUSION

¶ 56 Under the facts and circumstances seeking a restoration of a dental license, Weiner's due process claim has no merit where he has not shown compliance with the probation terms of the original consent order that issued upon findings of negligence. Weiner's reliance on a prohibition in the Bankruptcy Code is misplaced where the mention in the Director's decision that Weiner had numerous bankruptcy filings did not trigger the decision. The Director's decision to maintain the indefinite suspension was not against the manifest weight of the evidence or arbitrary and capricious where Weiner failed to demonstrate that the Director's finding that Weiner showed no

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rehabilitation was factually erroneous or otherwise improper. Weiner is precluded from challenging the penalties imposed in the 2004 consent order in this appeal, which only addresses the Director's decision to maintain a license suspension. The Department's decision is affirmed.

¶ 57 Affirmed.