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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5184-14T2

IN THE MATTER OF THE SUSPENSION
OR REVOCATION OF THE LICENSE OF

LEONARD JOACHIM, M.D.
LICENSE NO. 25MA04752700

TO PRACTICE MEDICINE AND SURGERY
IN STATE OF NEW JERSEY

Argued November 2, 2016

Before Judges Accurso and Higbee.

Telephonically re-argued February 28, 2017 –
Decided April 26, 2017

Before Judges Accurso and Manahan.

On appeal from the New Jersey State Board of
Medical Examiners.

Joseph M. Gorrell argued the cause for
appellant Leonard Joachim, M.D. (Brach
Eichler, LLC, attorneys; Mr. Gorrell, of
counsel and on the brief; Shannon Carroll,
on the brief).

Doreen A. Hafner, Deputy Attorney General,
argued the cause for respondent New Jersey
State Board of Medical Examiners
(Christopher S. Porrino, Attorney General,
attorney; Andrea M. Silkowitz, Assistant
Attorney General, of counsel; Ms. Hafner, on
the brief).

PER CURIAM

Following appellant Leonard Joachim's third disciplinary proceeding for sexual misconduct involving patients and his second conviction for criminal sexual contact with them, respondent New Jersey State Board of Medical Examiners revoked his medical license and imposed civil penalties of \$60,000 and costs of \$74,000, \$50,000 of which had been assessed in the 2010 proceeding and stayed providing there were no further violations. Joachim appeals, contending the revocation sanction as well as the penalties and costs assessed were arbitrary and capricious and lack support in the record. We disagree and affirm.

There is no dispute over Joachim's disciplinary history or the facts giving rise to the current disciplinary action. Joachim was first disciplined in 1995 after he pled guilty pursuant to a negotiated agreement to a reduced charge of fourth-degree criminal sexual contact, N.J.S.A. 2C:14-3a, and was sentenced to five years' probation. The victim was a patient in her twenties, and the crime took place in his office during a scheduled appointment. He entered into a stipulation of settlement with the Board whereby he admitted having engaged in an act of professional misconduct with regard to the same

victim, N.J.S.A. 45:1-21e, and was reprimanded. A second count alleging similar conduct with a different patient was dismissed. Joachim was assessed a \$2500 civil penalty and costs of \$7676.09. He was ordered to serve a two-year period of probation and was prohibited from seeing any female patient in his office without a chaperone present.

In 2003, another patient in her twenties alleged Joachim had touched her inappropriately during an office visit. Joachim contested the allegations. Following a trial on the Board's complaint in the Office of Administrative Law and a final decision by the Board suspending Joachim's license, we reversed and remanded for a new hearing because we found the doctor's prior bad acts had been improperly admitted under N.J.R.E. 404(b). In re Joachim, No. A-4723-06 (App. Div. Dec. 24, 2007) (slip op. at 2), certif. denied, 195 N.J. 419 (2008).

The parties thereafter entered into a stipulation of settlement in 2010, in which the Board determined Joachim's conduct with the patient provided "grounds for disciplinary action" under N.J.S.A. 45:1-21e (professional misconduct), 45:1-21h (violation of a board regulation) and N.J.A.C. 13:35-6.3 (sexual misconduct) and ordered him to serve a six-month period of probation. The Board's requirement that Joachim not see female patients without a chaperone was continued, and he was

ordered to submit to a psychosexual evaluation, complete a boundaries course and participate in the Professional Assistance Program. No penalty was imposed, but Joachim was assessed costs of \$50,000, which assessment was "stayed until such time as the Board finds that [Joachim] engaged in any future violation of the Board's statutes and/or regulations."

The incident giving rise to this matter occurred in August 2011 when Joachim met a patient in her twenties, unchaperoned, in his office for an appointment scheduled after hours, and had sex with her in his examining room. The month before, Joachim had appeared before a Preliminary Evaluation Committee of the Board, asking it to lift the restrictions on his license. He testified under oath at that time that the boundaries course required by the Board had "help[ed] a great deal where to draw a line" with patients, that he had "made a policy for [himself]" to always have a chaperone, and claimed he would discharge any patient unwilling to have a chaperone present.

Joachim was arrested on a charge of second-degree sexual assault, N.J.S.A. 2C:14-2c(1), on September 13, 2011. The following week, the Attorney General filed an administrative complaint against the doctor, and he voluntarily surrendered his license pending disposition of the criminal charge and further order of the Board. Joachim entered a negotiated plea to

fourth-degree criminal sexual contact, N.J.S.A. 2C:14-3b, and in October 2013 received a suspended sentence of eighteen months in State prison and four years' probation.

Following that conviction, the Attorney General moved for summary decision on its four-count complaint seeking the revocation of Joachim's license. Joachim did not contest the motion and indeed stipulated to the facts of the complaint: that he had unconsented sex with a patient in his office at an appointment after hours, resulting in a criminal conviction; that he had repeatedly violated the 2010 consent order requiring that he not see female patients without a chaperone; and that he had failed to cooperate with a Board investigation. He further admitted his conviction was to a crime involving moral turpitude and relating adversely to the practice of medicine, thus presenting grounds for discipline pursuant to N.J.S.A. 45:1-21f; that he had violated the Board's sexual misconduct regulation, N.J.A.C. 13:35-6.3; failed to maintain good moral character, N.J.S.A. 45:9-6; and that his conduct constituted gross malpractice, N.J.S.A. 45:1-21c.

Joachim testified at the mitigation hearing, acknowledging his conduct was both morally wrong and illegal and had violated his obligation to his patient. He claimed to have struggled to find an answer to "[w]hy, having been sanctioned before and

about to be considered for an unrestricted license, did [he] do something like this?" Although having engaged in therapy to try to understand his conduct, Joachim acknowledged he has "yet to find an answer that's satisfactory." He testified he had lost his home and that his wife had to go back to work to help support their family. He presented three years of tax returns to document the reduction in his income and the financial hardship the loss of his license would impose. In response to questions from the Board, the doctor admitted he had earned in excess of \$71,000 reviewing medical records and assisting in preparing reports for Sall/Myers Medical Associates during 2014 and that his wife earned in excess of \$100,000 as a physician practicing in Florida.

Joachim also presented the testimony of Dr. Steven H. Dane, Medical Director at Sall/Myers, who testified Joachim was a knowledgeable and compassionate physician, well-liked by his patients. Dr. Dane testified that Sall/Myers was prepared to re-hire Joachim as a licensed physician and arrange for him to treat only male patients in a supervised environment. Sall/Myers' long-time office manager testified she had known Joachim for almost twenty years as a well-respected and knowledgeable doctor, who had treated her elderly parents as well as her brother. Having heard Dr. Dane's testimony, she

expressed her belief that Sall/Myers "could accommodate [Joachim], and that [its] patients would benefit from having him."

Finally, Joachim offered the testimony of a licensed psychologist, Philip Witt, who evaluated Joachim and opined he posed a low risk "to individuals other than adult women." On cross-examination, Dr. Witt acknowledged he was unaware of several relevant facts, including the terms of the Board's 2010 consent order and that Joachim's most recent offense was committed after completing a course on boundaries required by the Board. In response to questions by the Board, Dr. Witt admitted that had he been asked whether "Dr. Joachim would present a risk if allowed to continue treating female patients, [his] answer probably would be yes."

After considering Joachim's admissions to the factual and legal allegations of the complaint and the testimony and exhibits presented at the mitigation hearing, the Board determined to revoke his license, impose a penalty of \$60,000 (\$20,000 on each factually distinct count in the State's four-count complaint) and costs of \$24,731 and to require payment of the \$50,000 in costs conditionally stayed as part of the sanctions imposed in 2010. In its written opinion, the Board found the "matter involves an extraordinarily heinous act by a

physician engaging in sexual conduct including intercourse with a patient during the course of and while administering treatment on the examination table."

Noting Joachim's history of violations, the Board found "[a]stoundingly, this is the third time [Joachim] is before the Board on allegations and findings of a sexual nature, and the second time [Joachim] appears with a criminal conviction involving sexual contact with a patient." The Board noted it had permitted Joachim to continue in practice in 1995, despite his very serious sexual transgressions with a patient, "imposing probation, a reprimand, penalties and costs together with continuation of a chaperone requirement for female patients as agreed at the time of the 1992 incident." Notwithstanding, Joachim was back before the Board again in 2003 on allegations by a patient that in the course of an examination, he had taken "her hand, forcing it to his erect penis and kissing her on the mouth." That matter was resolved by the 2010 consent order, requiring Joachim to serve six months' probation, undergo a psychosexual evaluation, a boundaries course and a continuing chaperone requirement.

The Board concluded:

Despite the Board providing [Joachim] with a lifeline to remain in practice, via repeated opportunities to rehabilitate, and

despite all of the remedial measures we have attempted, [Joachim] once again has failed to observe appropriate professional boundaries – and after three years of therapy, testified he is unable to explain why.

Most disturbing, the serious current allegations of a variety of sexual acts by [Joachim] with a patient including oral sex and sexual intercourse during an office visit for treatment occurred while [Joachim] was subject to and in violation of a Consent Order requiring continuous presence of a chaperone whenever he saw a female patient. We are not persuaded by the opinion of evaluator Witt that [Joachim] poses a low to moderate risk of re-offending. Dr. Witt was not even aware of much of the background of the matter including that [Joachim] was on probation with chaperones required at the time of the latest offense, among other factors. Additionally, we find patients should not be put even to a low to moderate risk of [Joachim's] improper behavior, and ability to sidestep whatever restrictions we could fashion.

Incredibly less than two months prior to this latest instance of sexual impropriety[,] [Joachim] testified to a Board Committee in support of his application for an unrestricted license how much he had learned from an intensive boundaries course and the importance of the use of chaperones voluntarily. This testimony occurred at a time when he was already violating the chaperone requirement. We cannot envision circumstances under which this licensee, having been found to have engaged in serious sexual misconduct three times over twenty years, would ever be able to practice again. Despite every protective and remedial action we have taken, [Joachim] has found a way to sidestep and ignore our

efforts designed to protect patients repeatedly. Aside from the need to impose sanctions for this licensee's heinous acts, we have concluded he may no longer be trusted with the privilege of licensure.

As to the monetary penalties and costs, the Board noted Joachim "has raised no objection to the amount of costs sought other than providing tax returns showing his dramatically reduced income (from \$250,000 in 2011) for 2012 and 2013." The Board, however, noted Joachim acknowledged "a family income of more than \$171,000" for 2014. The Board further noted Joachim "presented no certified statement of assets as requested if he wished to claim financial hardship." It concluded:

Given the recent substantial income and failure to document hardship as to assets, we do not find it appropriate to reduce the amount of penalties or costs imposed for the grave violations found in this matter. The tax return and financial information submitted are insufficient to alter the Board's determination that it is appropriate to impose significant monetary penalties and the full costs of investigating and prosecuting this matter.

Joachim appeals, contending revocation of his license and the penalties and costs imposed by the Board were "arbitrary, capricious, unreasonable, and without fair support in the record, warranting reversal." We cannot agree.

Our role in reviewing the decision of an administrative agency is limited. In re Carter, 191 N.J. 474, 482 (2007). We

accord a strong presumption of reasonableness to an agency's exercise of its statutorily delegated responsibility, City of Newark v. Nat. Res. Council in Dep't of Env'tl. Prot., 82 N.J. 530, 539, cert. denied, 449 U.S. 983, 101 S. Ct. 400, 66 L. Ed. 2d 245 (1980), and defer to its fact finding, Campbell v. N.J. Racing Comm'n, 169 N.J. 579, 587 (2001). We will not upset the determination of an administrative agency absent a showing that it was arbitrary, capricious, or unreasonable; that it lacked fair support in the evidence; or that it violated legislative policies. In re Stallworth, 208 N.J. 182, 194 (2011); Campbell v. Dep't of Civil Serv., 39 N.J. 556, 562 (1963).

Especially relevant here, "appellate review of an agency's choice of sanction" is likewise limited. In re License to Zahl, 186 N.J. 341, 353 (2006). The Board is the agency charged by the Legislature in the Medical Practices Act, N.J.S.A. 45:9-1 to -27, to regulate the practice of medicine in the State. The Supreme Court has recognized that the "Board's supervision of the medical field is critical to the State's fulfillment of its 'paramount obligation to protect the general health of the public.'" Zahl, supra, 186 N.J. at 352 (quoting In re Polk License Revocation, 90 N.J. 550, 565 (1982)).

The Board has the unquestioned power under the Uniform Enforcement Act, N.J.S.A. 45:1-14 to -27, in tandem with the

Medical Practices Act, to revoke the license of any physician who has engaged in gross malpractice, repeated acts of malpractice, professional misconduct, been convicted of an offense involving moral turpitude or failed to comply with any act or regulation administered by the Board as Joachim has admitted, and the facts demonstrate, occurred here. See N.J.S.A. 45:1-21c, d, e, f, h. Further, the Court has repeatedly admonished that reviewing "'courts should take care not to substitute their own views of whether a particular penalty is correct for those of the body charged with making that decision.'" Stallworth, supra, 208 N.J. at 191 (quoting Carter, supra, 191 N.J. at 486).

Applying those standards here, we find no basis to reverse the Board's order. Joachim, now sixty-two years old, has engaged in repeated acts of sexual misconduct with several different patients spanning over twenty years of practice. He has done so despite the opprobrium of a criminal conviction and having been already twice sanctioned by the Board. Procedural safeguards and stayed costs of \$50,000 have obviously not been sufficient to deter his misconduct. Joachim's most recent victim was a young woman struggling with addiction and seeking a prescription for narcotics. The Board did not exaggerate in describing his conduct toward her as nothing short of heinous.

Although Joachim contends revocation was a disproportionate penalty considering he proposes to restrict his license to the treatment of only males in a structured environment with clear oversight, he ignores the Board's well-supported finding that he has repeatedly side-stepped such oversight in the past and lied to the Board about it in an effort to have prior restrictions on his license lifted. In light of this record, we cannot fault the Board for having lost confidence in any sanction short of revocation to ensure patient safety.

Joachim complains that the penalties and costs are excessive. He has not, however, raised any specific objection to those sums, \$50,000 of which were imposed on consent pursuant to a previous order. We further agree with the Board that his failure to have completed a certified statement of assets precludes any argument of financial hardship. His contention that "what was essentially a single act of indiscretion has resulted in the Board imposing fines and costs of \$134,000" grossly mischaracterizes the record and is without sufficient merit to warrant further discussion here. See R. 2:11-3(e)(1)(E). We certainly do not find the penalties and costs imposed, which are fully in accordance with N.J.S.A. 45:1-25a and d, so disproportionate to the offense in light of all the

circumstances as to shock our sense of fairness. See Polk, supra, 90 N.J. at 578.

Finally, Joachim's counsel takes issue with the Board's statement that it "cannot envision circumstances under which this licensee, having been found to have engaged in serious sexual misconduct three times over twenty years, would ever be able to practice again." He claims the statement "is tantamount to a finding that the Board intended to permanently revoke [Joachim's] license," which in itself warrants reversal as contrary to an agency's inherent authority to reconsider a prior action.

The Deputy Attorney General counters that "the Board did not order the permanent revocation of Dr. Joachim's license." She further contends, however, that "there is no statutory prohibition to the Board ordering the permanent revocation of Dr. Joachim's medical license" as N.J.S.A. 45:9-16, the statute at issue in In re Markoff, 299 N.J. Super. 607, 611-12 (App. Div. 1997), was repealed in 2000. See L. 1999, c. 403, § 12 (eff. Jan. 18, 2000).

We do not decide this issue. Appeals are taken from orders, not the reasons expressed for their entry. State v. Maples, 346 N.J. Super. 408, 417 (App. Div. 2002). The order at issue provides that Joachim's license is revoked. It is silent

as to whether the revocation bars an application for reinstatement. We decline to provide the parties an advisory opinion on a question not properly before us.

Affirmed.

I hereby certify that the foregoing is a true copy of the original on file in my office.



CLERK OF THE APPELLATE DIVISION