SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1061-21

IN THE MATTER OF THE LICENSE OF:

COLIN A. PEMBERTON, M.D.
LICENSE NO. 25MA08530400

TO PRACTICE MEDICINE AND SURGERY IN THE STATE OF NEW JERSEY.

Submitted February 28, 2024 – Decided June 10, 2024

Before Judges Currier and Susswein.

On appeal from the New Jersey State Board of Medical Examiners, Division of Consumer Affairs, Department of Law and Public Safety.

Alan Dexter Bowman and Douglas Doneson (James E. McMillan, PC) of the New York bar, admitted pro hac vice, attorneys for appellant Colin A. Pemberton, M.D. (Alan D. Bowman and Douglas Doneson, on the brief).

Matthew J. Platkin, Attorney General, attorney for respondent New Jersey State Board of Medical Examiners (Janet Greenberg Cohen, Assistant Attorney General, of counsel; Michael A. Antenucci, Deputy Attorney General, on the brief).

PER CURIAM

Petitioner Colin A. Pemberton, M.D., appeals from the New Jersey State Board of Medical Examiners' (Board) October 25, 2021 final order and decision denying his motion to vacate several prior orders of automatic and consent suspension after testing positive for illegal substances. We affirm.

I.

Petitioner was employed at a hospital. In 2016, after numerous complaints regarding petitioner's conduct at work and poor quality of care, petitioner's employer placed him on a remediation plan, which included a referral to the Professional Assistance Program of New Jersey (PAP). Drug screens conducted over two months were positive for cannabinoid (CBD) and THC.[1] Upon being apprised of the results, petitioner stated he had unknowingly eaten a brownie containing marijuana and ingested secondhand smoke from others smoking marijuana at a concert.

Following a hearing before the Board's Impairment Review Committee (IRC), petitioner signed an agreement in November 2016 to participate with the

[1] THC stands for tetrahydrocannabinol, a mind-altering cannabinoid found in cannabis—also known as marijuana. U.S. Ctrs. for Disease Control & Prevention, About Cannabis, Cannabis & Pub. Health (Feb. 15, 2024), https://www.cdc.gov/cannabis/about/index.html.

PAP and comply with its recovery plan. Under the agreement, the PAP would not share treatment records with the IRC or the Board unless certain events occurred, such as a positive urine or blood test or refusing to participate in the PAP's treatment plan.

During a psychiatric evaluation in 2016, petitioner reported he was arrested twice for possession of marijuana as a minor. The evaluator recommended petitioner could continue to practice medicine, but suggested petitioner attend anger management sessions because of his conduct at the hospital.

In a separate 2017 evaluation, a psychologist described petitioner as "a man filled with anger" that manifested "in both overly aggressive (verbal) and passive aggressive ways." The doctor recommended psychotherapy and monitoring by the PAP.

Petitioner tested positive for cocaine in January and February 2017. After receiving the test results, petitioner sent an email to the PAP with information he obtained from the internet that cacao beans could cause a positive result for cocaine on a urine screen. Petitioner denied using cocaine and explained that his mother-in-law had gone to Peru where she obtained cacao beans. After her return, she made him hot chocolate containing the cacao beans. When

discussing the positive result at a later time, petitioner said he researched coca tea after his mother-in-law made it for him.

On March 1, 2017, the PAP sent petitioner a letter demanding he cease and desist from the practice of medicine due to having "multiple positive . . . results for [c]ocaine." The PAP also advised the Board that petitioner had been told to stop practicing medicine because he had four positive test results for cocaine. The PAP subsequently corrected this letter, explaining that two of the positive screens were for cocaine and two were for THC.

On March 2, petitioner's lawyer replied that petitioner had stopped ingesting cocoa beans and was willing to submit to an immediate drug screen and more frequent monitoring, and to accept out-patient treatment or counseling. Several days later, the PAP advised the Board it met with petitioner and increased the frequency of his drug screening to twice a week and the parties were entering into a private letter agreement (PLA).

The PLA provided, in part, that petitioner would "maintain absolute abstinence from all psychoactive substances, including alcohol, unless prescribed by a treating physician for a documented medical condition" and submit random urine specimens for one year. Petitioner also agreed "to the entry of an Order of Automatic Suspension of his license without notice, upon the

. . . receipt of any information . . . that he ha[d] failed to comply with any of the conditions" in the agreement or "a confirmed positive [drug screen] result."

On June 1, 2017, petitioner tested positive for alcohol. Per the PLA, the Board entered an Order of Automatic Suspension of petitioner's medical license.

On July 7, 2017, petitioner moved to lift the suspension. He explained he did not remember drinking alcohol. However, after talking to his sister-in-law, he learned she had put vodka in a beverage he had consumed at a family gathering in May. He included a certification from his sister-in-law confirming the information. Petitioner stated that, except for the marijuana brownie, each positive test result was an "unwitting consumption."

The PAP recommended the reinstatement of petitioner's license conditioned on the entry of a consent order requiring him to "maintain absolute abstinence from all psychoactive substances including alcohol unless prescribed by a treating physician," that he become knowledgeable with and avoid all foods, over-the-counter medications, and "products that could potentially cause a positive urine drug screen result[]," and that he continue to be screened randomly twice a week for six months.

During a Medical Review Board hearing in July 2017, petitioner reiterated his story about the inadvertent consumption of alcohol. He stated he now had a

"social support network in place" and everyone was aware of the agreement. Petitioner stated he would not violate the agreement again and that all of his positive test results stemmed from social gatherings, not when he was taking care of patients.

On October 16, 2017, the Board entered a consent order with petitioner, suspending his medical license for six months, retroactive to June 26, 2017.

During a hearing before the Preliminary Evaluation Committee of the Board in November 2017, the PAP director explained petitioner had been compliant with the PAP's program and had not had any positive results since June 1, 2017. He also stated that the PAP's usual policy was to wait for at least six months before recommending patients for reinstatement. The director stated it was not clear petitioner had a substance abuse disorder under the diagnostic criteria, but the PAP would continue to test petitioner twice a week for a number of months.

Petitioner entered a consent order on January 29, 2018, reinstating his medical license. The consent order was conditioned on petitioner continuing to participate in the PAP, including his "[c]omplete abstinence from all psychoactive substances including alcohol and inhalants, unless prescribed by a treating physician" and "twice-weekly urine screens." The consent order

mandated that petitioner "become familiar with all foods, food additives or other products . . . which may affect the validity of urine screens" and established "that ingestion of such substances shall not be an acceptable reason for a positive urine screen and/or failure to comply with the urine monitoring program." Additionally, petitioner agreed that if he did not comply with the consent order, his license would automatically be suspended.

On May 31 and June 3, 2019, petitioner tested positive for CBD and THC. Although the PAP contacted petitioner about the positive results, petitioner did not respond until August when he called the PAP requesting a letter in support of his application for licensure in Florida. Petitioner stated he did not receive the initial letter. He further explained he had been using a CBD cream for arthritis. The PAP recommended he stop using the cream.

On August 12, 2019, the PAP informed the Board of petitioner's positive results and explanation. The Board requested a statement from petitioner's treating doctor. In September, George Hermann, M.D., sent an email to the PAP explaining that petitioner had recently suffered from acute lower-back pain. He had recommended petitioner use CBD oil and cream for the pain.

After disclosing his participation in the PAP while seeking licensure in Florida, petitioner was referred to the Caron Treatment Center to complete a

three-day "Healthcare Professionals Assessment." In the evaluation, petitioner explained his first positive test for marijuana resulted from "smok[ing] . . . a joint" at a bachelor party. He explained his second positive test for marijuana was due to CBC oil and beverages he had consumed to treat pain.

In its report, Caron noted petitioner was instructed to undergo a toxicology screen before coming to the evaluation, but "due to schedul[ing] issues," he did not. While at Caron, petitioner's hair follicles and blood samples came back with positive results for alcohol, cocaine, and THC. The report diagnosed petitioner with "History of Cannabis Use Disorder, Moderate" and "Cocaine Use, Unspecified, Uncomplicated." When informed of the lab and toxicology results, petitioner denied using any of the substances, stated there "may have been incidental exposure from foods or environment," questioned the reliability of the toxicology procedure, and requested independent testing.

Caron recommended petitioner complete at least six weeks of inpatient treatment and that he not return to work until then. Petitioner declined residential treatment. Caron shared the results of petitioner's tests with the PAP.

During an October 2019 meeting, the PAP referred petitioner to inpatient treatment and provided him with the names of three treatment facilities. Petitioner was told to stop practicing medicine and to inform the PAP of the

facility he chose. The PAP also apprised the Board of the meeting and Caron's testing results.

On October 8, 2019, the Board found petitioner had violated the consent order and automatically indefinitely suspended his license. Petitioner requested a hearing with the Board to dispute the suspension.

The PAP informed the Board that petitioner was going to a new lab for his testing. However, that lab used a test that had higher cutoffs for positive results and its staff did not witness the testing. The PAP stated it could not rely on the test results. It recommended petitioner either comply with Caron's recommendations or complete a ninety-six-hour evaluation at a specific treatment center and comply with that center's recommendations. In December 2019, the PAP terminated its relationship with petitioner, stating it was "irreparably damaged as a result of petitioner and [his] attorney's threat to bring suit against" it.

II.

On February 6, 2020, petitioner moved to vacate the Board's prior orders of automatic and consent suspension and the January 29, 2018 consent order of reinstatement. Petitioner contended the Board did not have the power to suspend his license because there was no evidence his alleged alcohol and drug use

impaired his practice of medicine. Petitioner asserted the Board's suspension of petitioner's license in 2017 was not based on any statutory authority or contract, but on an agreement between he and the PAP. He stated the PAP did not have the authority to enter the agreement and did not conduct a hearing.

Petitioner included a report from a toxicology and pharmacology consultant who disputed all of the test results. The consultant concluded there was no data that petitioner had consumed marijuana, cocaine, or alcohol, and the positive results from the marijuana test was "most likely" residual caused by "an unknown ingestion source."

On January 13, 2021, the Board conducted two hearings—the first considered petitioner's motion to vacate the Board's previous orders suspending his medical license. In the second hearing, the Board addressed petitioner's motion to vacate its October 2019 order automatically suspending his license.

A.

During the first hearing, petitioner argued the Board did not have the power to suspend and revoke a medical license when he was never diagnosed with a drug or alcohol use disorder and there was no proof he was impaired. Petitioner contended the Board "improperly delegated" authority to the PAP to

make decisions regarding his license. Petitioner also challenged the "integrity" of the PAP's program.

The State responded that petitioner had not provided a legitimate reason to grant the requested relief. Instead of addressing the positive drug test results and presenting clinical evidence of rehabilitation, petitioner presented arguments. The State contended the Uniform Enforcement Act (UEA), N.J.S.A. 45:1-14 to -27, the Medical Practice Act (MPA), N.J.S.A. 45:9-1 to -27.9, and caselaw supported its orders. The State noted that if the PAP was unavailable to provide treatment, "the most reasonable solution" would be to choose a different treatment provider, not to restore the medical license.

The State asserted petitioner was impaired because he had not provided any evidence addressing either the PAP's or Caron's recommendations. Petitioner was referred to the PAP because of his behavioral conduct and treatment was recommended by a psychiatrist, a psychotherapist, and an addiction specialist. The State asserted the Board did not have to wait until petitioner harmed a patient to act and cited to N.J.S.A. 45:1-21(l), as authority for it to revoke a physician's license if they pose a risk of harming patients.

In a unanimous vote, the Board denied petitioner's motion to vacate the orders suspending his license. The Board issued its oral decision that same day.

B.

The Board then proceeded to the second hearing. During petitioner's testimony, he asserted his license was suspended in October 2019 because "of the fraud that everyone is trying to ignore." He contested the results of the drug screens, stating they were invalid because the records lacked chain of custody evidence.

Petitioner stated he was "coerced" into being treated by the PAP after he was threatened with the loss of his hospital privileges following an incident with a nurse. Petitioner stated he was forced to stay in the PAP program because if he did not comply, his license would be automatically suspended.

When asked if he had smoked marijuana before his initial two positive results, petitioner said no, and further stated he had not used or knowingly ingested marijuana.

Petitioner described his hearing before the IRC as a "witch hunt" and said he was "bullied." He explained that every time he was confronted with a positive test result, he had to prove why it was incorrect and he was not given a fair chance to do so.

Petitioner did not believe the positive cocaine results in January and February 2017 were accurate, although he did not explain his reasoning. He

said when the PAP confronted him with a positive test result, he felt "bait[ed]" into coming up with an excuse.

Although petitioner acknowledged reading the PLA, he said he did not understand that a violation of it could result in an automatic suspension of his license. Therefore, when he tested positive for alcohol in June 2017, petitioner said he was unaware that it would violate the PLA.

Petitioner stated he was unaware he tested positive for marijuana in May and June 2019 because he did not receive the letter informing him of the results. He again felt he was "bait[ed]" into explaining the result and he said he used the CBD cream after he hurt his back while jet skiing in Florida. Petitioner was unable to recall the name of the CBD cream he had used and whether it had any THC in it. He said it was given to him as a gift by a friend who was now deceased. Petitioner later clarified that Dr. Hermann recommended he use the product but had not given him a specific brand to obtain.

Petitioner initially testified he was sent to Caron for a fraudulent purpose, because when he applied to transfer his medical license from New Jersey to Florida, he was told by the Florida licensing authority that it was standard procedure for everyone to be evaluated at Caron. However, he then said he had to go to Caron because the PAP was concerned about his two positive results.

When asked whether his admission to Caron was voluntary, petitioner responded he was coerced to go to the center as it was required to obtain a medical license in Florida.

Petitioner challenged the validity of the positive cocaine result obtained at Caron, stating that when the individual took the hair sample from his chest, she did not open a package or use a sterile object to take the sample, but rather used hair clippers. Although he later received a negative test result from another lab, the PAP refused to accept it. Petitioner said he did not respond to the PAP's letter informing him he had to go to inpatient rehabilitation or have his license suspended because the PAP's director continuously "bait[ed] [him] with information and use[d] it against [him]."

Petitioner denied ever knowingly consuming cocaine, and stated he did not have a drug problem and was never diagnosed as having a drug problem. He conceded that since he stopped working with the PAP in 2019, he had not produced any drug screen results.

During his testimony, the PAP's director described his background, including his education and certifications, and his experience in the addiction medicine field and at the PAP. He explained that his certification from the

American Board of Addiction Medicine includes a designation as a medical review officer.

As a medical review officer, the director said when he receives a positive result, he goes through a checklist to make sure there is a chain of custody and compiles a litigation package. He explained he calls individuals to notify them of a positive result but then discusses the results in person. During the in-person conversation, he asks the individual if they had used the drug or used a product, consumed any food or drink, or had a prescription that might cause a positive result. He said he educates the individual so they do not make the same mistake in the future.

The director explained that all new participants in the PAP are randomly drug tested. Then, if they do not meet all the criteria of a substance use disorder in the Diagnostic and Statistical Manual of Mental Disorders-5, but there are concerns about their substance use, the PAP will use a rule-out protocol. Under that protocol, the individual is randomly tested twice a week for four months, then weekly for three months, and then twice a month for six months.

The director stated PAP personnel witness the collection of the urine sample, and they also work with laboratories that monitor the sample collection. The director said the PAP usually does not allow an individual to select their

own sample collectors because they are not always monitored, and sometimes individuals will get someone else to provide the sample.

PAP participants are given twenty-four hours' notice of the collection of a sample. If an individual takes a prescription drug, the information is noted and sent with the sample to the laboratory. He explained the laboratories also create a chain of custody litigation package.

While an individual can choose to take an additional test after receiving a positive result, the timeframe to take an accurate test is short. For example, if a person received a positive result on a Monday and a new sample was collected on that Thursday or Friday, the test would likely be negative because the window of detection had expired.

The director explained that petitioner's employer referred him to the PAP because of many incidents, not just a single conflict he had with a nurse. When asked about the March 1, 2017 positive test results and petitioner's subsequent explanation of the cacao beans, the director responded that he found the explanation plausible. He entered the PLA with petitioner because he wanted to give petitioner "the benefit of the doubt" and thought this was the best course of action as opposed to having the Board take official action.

As stated, petitioner's license was suspended on June 26, 2017, after he tested positive for alcohol. According to the director, the PAP supported the reinstatement of petitioner's license in January 2018 because he had six months of documented recovery.

The director also testified about petitioner's positive test results in May and June 2019 for marijuana. He stated the PAP was concerned about petitioner's explanation that he had used CBD cream because CBD products are not FDA approved, petitioner did not have a medical marijuana waiver card, and he had not previously disclosed any CBD use.

The director explained the May 31 and June 3, 2019 positive test results for THC were counted as two different positive results because "[t]hey [were] two positive tests. There's no other way to look at it. They're two separate tests." The director also noted there were positive results from Caron around that same time. The samples were not tested for CBD because petitioner did not mention use of the CBD cream until August. In addition, the positive results for THC violated the PLA so it did not matter if the test was also positive for CBD.

The director stated he continued to recommend that petitioner follow Caron's plan or be assessed at a treatment center. Because he was no longer in contact with petitioner, the director did not know if petitioner was substance

free, and the director could not "in good conscience and . . . with medical confidence say that [petitioner was] fit to return to practice."

In response to the questioning that petitioner only had seven positive test results out of 199 completed tests, the director pointed out that petitioner did not give a sample eleven times, missed ten screens without providing a reason, submitted sixteen screens that were diluted, and other screens with several other irregularities. The director did not think that was "a good record." He stated petitioner's "record . . . does not make it easy for me to say that he is safe and able to practice. I don't have enough information to say that with confidence."

The director explained that when an individual tests positive, he gives them an opportunity to give a reason for the result. If the individual does not admit using a forbidden substance, the PAP increases the frequency of the testing. The director subsequently reports the positive results and explanation to the Board. He stated it was not his determination whether petitioner's license was suspended or not.

George Jackson, Ph.D., a forensic toxicologist, testified for the State and discussed the results of testing on petitioner's hair sample that showed exposure to carboxy-THC, a metabolite of THC, and cocaine. Dr. Jackson opined that petitioner's hair sample was tested in accordance with "standard procedure for

laboratories" and that "proper scientific procedures (including chain of custody) were followed" in testing petitioner's urine samples. In addition, Dr. Jackson stated the urine samples taken May 31 and June 3, 2019 "confirmed positive finding[s] for carboxy-THC" at levels higher than that what would result from passive inhalation.

In an oral decision issued at the close of the second day of hearings, the Board denied petitioner's motion to vacate the October 2019 order of automatic suspension. It stated that petitioner's license would remain indefinitely suspended. The Board also awarded the State $132,280.20 in costs and fees.

On October 25, 2021, the Board issued a final order and decision.[2] It initially noted its statutory authority to suspend or revoke a physician's medical license after evidence demonstrated the physician's substance use could impair their professional ability to practice. Here, petitioner tested positive for marijuana, cocaine, and alcohol and "there was a more than ample predicate on which to conclude that such use was likely to impair his ability to safely practice." The Board stated it did not have to wait to act until there was evidence petitioner's practice was affected or a patient was harmed.

[2] The hearing and written decision were limited in scope to petitioner's three positive drug tests in May, June, and September 2019 for THC and cocaine.

The Board denied petitioner's motion to vacate the October 8, 2019 order suspending his license. It found the positive May and June 2019 urine screens and September 2019 positive body hair test established petitioner had not complied with the consent order. While its conclusion was based on the three results, the Board noted that any of the results individually would have been sufficient for suspension.

The Board found Dr. Jackson's testimony and report were credible, but the report submitted by the forensic consultant was not credible. The Board concluded that the May and June 2019 urine screens showed that petitioner had used marijuana at least once, and that it was not a passive inhalation. It stated that the consultant's opinion was not confirmed by "any reliable laboratory testing or other medically credible documentation supported in the record."

The Board also rejected petitioner's explanation that the May and June 2019 positive test results were caused by CBD cream. It noted that under the consent order, petitioner agreed that any positive results from urine screens would be presumptively valid and that he would become aware of and avoid food and products that could cause a positive result. Therefore, even if the positive result was caused by petitioner's use of CBD cream, he could not sustain any challenge to the test results.

The Board also found that the September 2019 body hair test credibly showed petitioner had used cocaine and THC. It explained that cocaine and THC were detectable in a person's hair for up to twelve months, which was the period during which petitioner was supposed to comply with the consent order. It rejected the consultant's opinion that the hair test did not show cocaine use.

The Board stated there was no evidence, besides petitioner's "own self-serving testimony" that the hair sample tested by the laboratory was not his. It found petitioner's claim that the hair sample was not his was "purely speculative" and "of the very same fabric as his speculation" about the other positive urine screens. It reasoned that petitioner's arguments were " little more than opaquely thin attempts to explain away and deny what is otherwise the only reasonable conclusion one can reach from the scientific evidence in this case—namely, that [petitioner] . . . continued to use illicit substances . . . while subject to the PAP's monitoring."

The Board noted petitioner did not undergo any independent testing of a hair sample until fifteen days after testing positive for THC and cocaine in September 2019. Therefore, those subsequent lab results did "not invalidate or give lesser weight" to the earlier results.

III.

On appeal, petitioner contends he was denied a fair hearing because the Board precluded him from questioning the State's witnesses on certain issues and imposed time limitations on the examination of others. Petitioner further contends the State did not prove its case by a preponderance of the evidence and the imposed penalties were unreasonable.

An administrative agency's decision is reviewed "under an arbitrary and capricious standard." Zimmerman v. Sussex Cnty. Educ. Servs. Comm'n, 237 N.J. 465, 475 (2019). We will only reverse the agency's decision if it was "arbitrary, capricious or unreasonable or it [was] not supported by substantial credible evidence in the record as a whole." Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980).

Our inquiry is limited to determining:

> (1) whether the agency's action violates express or implied legislative policies, that is, did the agency follow the law; (2) whether the record contains substantial evidence to support the findings on which the agency based its action; and (3) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors.
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> [Mazza v. Bd. of Trs., Police & Firemen's Ret. Sys., 143 N.J. 22, 25 (1995).]

An agency's decision that meets these three criteria is "owe[d] substantial deference." In re Herrmann, 192 N.J. 19, 28 (2007).

In addressing petitioner's assertions regarding the conduct of the hearing, our careful review of the record reveals there is no merit to the contentions. The Board permitted extensive examination and cross-examination of all the witnesses. Petitioner agreed to the admission of documents into evidence prior to the hearing. Petitioner's counsel vigorously represented his interests.

We turn to petitioner's assertion that the Board erred in revoking his medical license because there was no proof he used illegal substances or was impaired while practicing medicine.

Under N.J.S.A. 45:1-21(l), a licensing board may suspend or revoke an individual's license upon proof that they are "presently engaged in drug or alcohol use that is likely to impair the ability to practice the profession or occupation with reasonable skill and safety. For purposes of this subsection, the term 'presently' means at this time or any time within the previous 365 days."

The PAP is an entity that provides services to individuals holding professional licenses that "suffer[] from chemical dependencies or other impairments." N.J.A.C. 13:35-11.1. In that capacity, the PAP is authorized to enter letter agreements with participants detailing their plan for recovery and

obligations. N.J.A.C. 13:35-11.3(a)(4). The PAP is required to immediately report to an IRC the identity of a participant that "[h]as not complied with the terms of the letter agreement," "been the subject of a urine or blood test report which is positive for the presence of a substance not appropriately prescribed for a legitimate documented reason," and "otherwise demonstrated a relapse or impairment." N.J.A.C. 13:35-11.3(a)(6). After review of the report, the IRC must report to the Board "notice of any information, which appears to be reliable and for which no acceptable explanation has been proffered, concerning noncompliance." N.J.A.C. 13:35-11.4(a)(12).

Under petitioner's PLA with the PAP, he agreed that upon testing positive for drugs or alcohol, the PAP would report it to the Board. The PAP complied with the agreement. Any of petitioner's positive test results sufficed to suspend his license. Thereafter, the Board imposed the suspensions and entered consent orders.

We also discern no merit in petitioner's argument that the State had to demonstrate proof that he was impaired. Under N.J.S.A. 45:1-21(l), a board may suspend or revoke a license if an individual's present "drug or alcohol use . . . is likely to impair the[ir] ability to practice" medicine. The Board applied this standard and found petitioner's positive results for cocaine and THC were

clear evidence that he was using illegal substances and there was "more than ample predicate" to show petitioner's ability to practice medicine was likely to be impaired. The Board did not have to wait for petitioner to cause harm to take action.

Similarly, petitioner's argument that the number of negative tests outweighed the number of positive tests misapplies the standard. It is sufficient that petitioner used drugs or alcohol any time in the prior 365 days, which the tests established he did. N.J.S.A. 45:1-21(l).

Petitioner also challenges the suspension of his license as being penal instead of rehabilitative and it was disproportionate to his few positive test results. He also contests the award of counsel fees.

We alter an administrative agency's sanction "only when necessary to bring the agency's action into conformity with its delegated authority." In re Revocation of the License of Polk, 90 N.J. 550, 578 (1982). We consider whether the "punishment is '"so disproportionate to the offense, in the light of all the circumstances, as to be shocking to one's sense of fairness."'" Ibid. (quoting In re Pell v. Bd. of Educ. of Union Free Sch. Dist. No. 1, 313 N.E.2d 321, 327 (N.Y. 1974)). The standard is not met merely because this court might have decided the matter differently. Herrmann, 192 N.J. at 29.

The UEA and MPA vest licensing boards with the authority to maintain public safety and protect licensed individuals. In re Kim, 403 N.J. Super. 378, 385 (App. Div. 2008). The Board has "broad regulatory authority" and consequently "act[s] 'as the guardian of the health and well-being of . . . citizens.'" Id. at 387 (quoting Polk, 90 N.J. at 566).

Although the UEA is remedial in nature, it also empowers a licensing board to issue a variety of punishments, including suspending or revoking a license. N.J.S.A. 45:1-14, -21, -22.

As described, after the first suspension of petitioner's license, he entered a consent order in January 2018 reinstating his license. Nevertheless, he continued to test positive for drugs and alcohol. Even after being apprised of those results, petitioner later tested positive for THC and cocaine. The Board allowed petitioner more than ample time to demonstrate rehabilitation and compliance with the consent orders. Petitioner only presented excuses for the test results and never accepted the proffered services or responsibility for his actions. Given petitioner's persistent violation of the January 2018 consent order, the Board's decision to continue the suspension of his license was neither """disproportionate to the offense""" nor """shocking to one's sense of fairness.""" Polk, 90 N.J. at 578 (quoting Pell, 313 N.E.2d at 327).

Under N.J.S.A. 45:1-25(d), a licensing board is authorized to order the petitioner an individual to pay the State's costs, including monies expended for investigation and expert witness and attorney fees. The Board reviewed the State's application for fees and costs and the hourly rates established by the Acting Director of the Division of Law. The Board concluded the legal work was "not only appropriate, but necessary." On appeal, petitioner has not provided any specific reason to overturn the award other than it is "inequitable." After our review, we conclude the Board's thorough and well-reasoned decision was not "arbitrary, capricious or unreasonable or . . . not supported by substantial credible evidence in the record as a whole." Henry, 81 N.J. at 579-80.

Affirmed.