

No. 1-10-0218

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SIXTH DIVISION  
March 25, 2011

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IN THE APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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DAVID C. GROGG, D.C.,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	
	)	08 CH 47664
DIVISION OF PROFESSIONAL REGULATION	)	
OF THE ILLINOIS DEPARTMENT OF	)	
FINANCIAL AND PROFESSIONAL	)	
REGULATION,	)	Honorable
	)	Sophia Hall,
Defendant-Appellant.	)	Judge Presiding.
	)	

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JUSTICE McBRIDE delivered the judgment of the court.  
Presiding Justice Garcia and Justice R. E. Gordon concurred in the judgment.

ORDER

*HELD:* The judgment of the circuit court of Cook County, which reversed an order of the Director of the Division of Professional Regulation of the Illinois Department of Financial and Professional Regulation, was reversed and the case was remanded for a hearing to impose new sanctions where: (1) the circuit court had jurisdiction to consider plaintiff's action for administrative review; (2) the Director's findings were not clearly erroneous; and (3) the sanctions imposed upon plaintiff were unduly harsh.

\_\_\_\_\_ Following an administrative hearing, the Director of the Division of Professional

1-10-0218

Regulation of the Illinois Department of Financial and Professional Regulation (Director) found that plaintiff, David Grogg, engaged in conduct that violated two sections of the Medical Practice Act of 1987 (225 ILCS 60/1 *et seq.* (West 2008)). The Director ordered the indefinite suspension of Grogg's license to practice as a chiropractor for a minimum of 3 years. Grogg filed an action for administrative review in the circuit court of Cook County, which reversed the order suspending Grogg's license as against the manifest weight of the evidence. The Division of Professional Regulation of the Illinois Department of Financial and Professional Regulation (Department) appeals, arguing that the circuit court lacked jurisdiction to consider Grogg's complaint for administrative review and that the Director's order was not clearly erroneous and should therefore be affirmed.

\_\_\_\_\_The record establishes that on August 11, 2008, the Department filed an amended complaint against Grogg. The amended complaint alleged the following facts.

At all relevant times, Grogg was a licensed chiropractic physician in the state of Illinois. On or about February 25, 2005, Grogg was arrested and charged with the driving under the influence of alcohol (DUI), operating a motor vehicle without proof of insurance, and failure to yield at an intersection. On August 22, 2006, Grogg pled guilty to the misdemeanor offense of DUI and was sentenced by the circuit court of Peoria County to twelve months of conditional discharge and 350 hours of community service. Grogg was also required to pay a fine and to complete an alcohol evaluation and any recommended treatment.

The amended complaint further alleged that on or about February 28, 2006, Grogg was arrested and charged with the misdemeanor offense of attempted obstruction of justice. The

1-10-0218

information filed against Grogg alleged that he knowingly provided false information about his identity to a police officer in order to prevent his apprehension or obstruct his prosecution.

Respondent was found guilty of that offense by a jury in Peoria County and was sentenced to a six-month period of conditional discharge.

The Department alleged that the foregoing acts and/or omissions were grounds for revocation or suspension of Grogg's license pursuant to section 22(A)(5) of the Medical Malpractice Act (Act), which authorized such discipline for "engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public." 225 ILCS 60/22(A)(5) (West 2008). In count II, the Division alleged that the above acts were grounds for revocation or suspension under section 22(A)(7) of the Act, which authorizes such discipline for "[h]abitual or excessive use or abuse of drugs defined in law as controlled substances, of alcohol, or of any other substances which results in the inability to practice with reasonable judgment, skill or safety." 225 ILCS 60/22(A)(5) (West 2008).

On August 12, 2008, the Department held a hearing concerning the allegations in the amended complaint before an Administrative Law Judge (ALJ). Grogg elected to proceed without counsel at the hearing, where the following evidence was presented.

The Department introduced records substantiating the allegations in the amended complaint regarding Grogg's conviction for DUI and attempted obstruction of justice. According to a police report of the incident giving rise to the attempted obstruction of justice conviction, defendant falsely identified himself as "Dale Fleming" when a police officer arrived at the scene of an argument between Grogg and another man. The report notes that the person identifying

1-10-0218

himself as Dale Fleming was uncooperative and appeared to be intoxicated. Grogg failed to appear for two sentencing dates on the attempted obstruction conviction because he was completing a residential alcohol treatment program at Victory Acres.

The Department called Dr. Larry McClain as an expert witness. Dr. McClain has been a physician since 1955 and at the time of the hearing was the Department's chief medical coordinator. In this capacity, Dr. McClain reviews complaints filed by citizens against physicians and chiropractors and also reviews investigations of those complaints. He then makes recommendations to the Medical Disciplinary Board, which is composed of physicians, osteopaths, and chiropractors. He testified that he has reviewed many complaints against chiropractors and that he had previously testified as an expert witness for the Department. The ALJ found Dr. McClain to be an expert witness "in this matter."

Dr. McClain testified that he was familiar with the standards for unprofessional and unethical conduct under the Act and that he had reviewed the information relating to Grogg. Dr. McClain testified that in his opinion, to a reasonable degree of medical certainty, there was "significant evidence" that Grogg's actions violated the unethical portion of section 222(A)(5) of the Act. There were multiple bases for this conclusion, including the convictions for DUI and attempted obstruction of justice. Dr. McClain testified that it was "highly inappropriate and unethical" for Grogg to have falsely identified himself as another healthcare provider. Dr. McClain also testified that in his opinion, to a reasonable degree of medical certainty, Grogg's actions "certainly would be considered unprofessional." He explained that the bases for this opinion were "what I stated prior, the criminal convictions, the use of another's name,

1-10-0218

obstructing justice.” The doctor also agreed that he believed to a reasonable degree of medical certainty that Grogg could present a potential harm to the people of the state of Illinois based on his criminal history. On cross, Grogg asked Dr. McClain whether it would be unprofessional or unethical for a doctor to have drinks while in a lodge or snowmobiling while on vacation. Dr. McClain responded that “it would be” if the person was arrested and his blood alcohol was found to be over the legal limit.

Grogg called Mark Ice as a character witness. Ice testified that he had known Grogg for 25 years and that the two men currently lived and worked together. Ice testified that Grogg does not drink alcohol and that he had never seen Grogg start a fight or “do anything unethical.” He believed Grogg was a good chiropractor, that he did not act unprofessionally, and that his skill as a chiropractor did not endanger the safety of his patients. Ice based this on his experience as a past patient of several chiropractors. Members of Ice’s family also went to Grogg for chiropractic care and he testified that Grogg had provided free care to many patients who could not afford his fee. Ice acknowledged that he had been convicted of the felony of criminal sexual abuse by force and that he was a registered sex offender.

Grogg, who was 54 years old at the time of the hearing, testified on his own behalf. He had been licensed to practice chiropractic medicine since 1978 but had not treated a patient except for Ice since 2001. Grogg presently worked in construction and testified that he wanted to avoid suspension of his license because he had been offered a position as an assistant professor. He also stated that he was presently involved in Rotary Club and Big Brothers in order to perform public services such as passing out blankets to the poor.

1-10-0218

Grogg testified that he does not have an alcohol problem and that he has not consumed alcohol since Thanksgiving of 2006. He needed to stop drinking because “there was always a female involved” when he drank. In “TAP Resources,” where Grogg completed his alcohol treatment, he also learned the effect of alcohol on the body and brain and that a person can have fun without drinking. Grogg also quit drinking because he was a pilot and wanted to become a helicopter pilot. He never drank while conducting his chiropractic business.

Regarding the DUI conviction, Grogg testified that he refused to submit to a Breathalyzer when he was stopped by police because he had too much to drink. Grogg acknowledged that he spent 90 days at Victory Acres and testified that he went there to complete his public service time. He claimed that a letter indicating that he was at Victory Acres for alcohol treatment was just a “form letter” and that he went to Victory Acres to “find a safe place to live” because he feared for his life, because he had nowhere else to go, and because Victory Acres was his church. Grogg denied that his time at Victory Acres was “inpatient” and stated that he could leave anytime he wanted and that he was not required to return at night. He also was not required to undergo drug screening while at Victory Acres, but he voluntarily submitted to drug tests. Grogg stated that he underwent 10 hours of risk evaluation at “TAP Resources” and that he completed 20 hours of group therapy at “Tazwood,” where his counselor found him to be “low risk” and told him he did not need further treatment. After leaving Victory Acres, one of Grogg’s counselors suggested that he go to New Beginnings, a place where Alcoholics Anonymous meetings are held. Grogg testified that he attends meetings at New Beginning in order to “meet women.” Grogg stated that his support system consisted of his friend Ice and that he currently

1-10-0218

has a good relationship with his family.

Regarding his conviction for attempted obstruction of justice, Grogg denied that he provided a false name to the officer and claimed that he only refused to provide his own name. Grogg explained that he was walking out of a building where he had an apartment when an African-American man approached and asked him for money to buy beer. The man pulled out a knife after Grogg refused, and Grogg grabbed the man in order to protect himself at the same time that a police officer arrived at the scene. The man then told Grogg that he would return and shoot him if he said anything to the police. Grogg further explained that Dr. Fleming was a doctor who was trying to buy Grogg's office. When the officer asked where he lived, Grogg pointed to the building, which had Dr. Fleming's name on it, because the African American man was standing nearby and Grogg believed his threat. Grogg testified that the police officer lied when he wrote in his report that Grogg provided a false identity and that this officer was later convicted of "helping some of these criminals." Grogg acknowledged that it was unethical to lie to a police officer but testified that he "could not believe" a jury found him guilty.

Grogg acknowledged that alcohol consumption led to two prior arrests: the DUI and a 2000 arrest for misdemeanor battery in Wisconsin. According to documents admitted into evidence, that arrest resulted from a complaint by Grogg's girlfriend that he repeatedly hit her during an argument while the two were on vacation. Grogg denied the allegations to a police officer who responded to the scene. The officer observed that Grogg spoke in a slow and slurred manner and reported that Grogg said he had 3 to 4 drinks that day. Grogg also told the officer that he drank almost every day but that he did not suffer from alcohol withdrawal.

1-10-0218

At the hearing, Grogg acknowledged that he pled no contest to the battery charge and that he was sentenced to 60 days' imprisonment and 24 months of probation. He also acknowledged that he was prohibited from making contact with the woman and was required to undergo an alcohol assessment. He denied hitting the woman and claimed that she was upset because Grogg's friends had teased her about crashing a snowmobile and because she felt "scorned" when Grogg told her he had another girlfriend.

Grogg also acknowledged that he pled guilty to the offense of aggravated discharge of a firearm in 1994. According to Grogg, he and a friend were driving and got into confrontation with men in another vehicle that cut them off. Grogg's friend followed the other vehicle and pulled it over. Grogg was in the passenger seat while his friend was arguing with the men in the other car when two of these men, who were armed with knives, approached his friend. Grogg took one of the guns that he and his friend had been hunting with earlier that day and fired a warning shot into the road. However, the bullet ricocheted off the road and struck the other vehicle. Grogg asked the men to get on their knees and he and his friend got into their vehicle and escaped unharmed. Grogg denied that he had been drinking prior to the incident. He admitted that he was sentenced to four months of work release as a result of the conviction and that he was put on probation.

Grogg admitted that he never reported the aggravated discharge of a firearm conviction or the Wisconsin battery conviction to the Department but that he continued to renew his chiropractic license after the convictions. He claimed that he did not know he was required to report these convictions and that his business manager prepared and signed the forms to renew

1-10-0218

his license.

The Department introduced into evidence a record showing that on September of 1996, Grogg entered into a consent order with the Department. According to that order, Grogg hired and advertised the services of an acupuncturist for purposes of providing treatment to patients, which was grounds for suspension or revocation of his license. Grogg received a reprimand of his license and a \$500 fine. At the hearing, Grogg denied any knowledge of the improper hiring of an acupuncturist and claimed that it had been done by another chiropractor in his building.

The ALJ who presided over the hearing issued a report and recommendation to the Medical Disciplinary Board (Board). The ALJ made the following findings, conclusions, and recommendations. The ALJ found that Grogg “was not a credible witness” and that his testimony was “vague and evasive throughout” the hearing and contradicted by exhibits introduced into evidence. Grogg “continually tried to minimize his abuse of alcohol and drugs, as well as the treatment and support he received.” For example, Grogg attempted to minimize his stay at Victory Acres as a “safe heaven” rather than being there for alcohol treatment. However, court orders indicated that Grogg’s sentencing for the attempted obstruction of justice charge was postponed twice while he was in treatment at Victory Acres. Grogg also attempted to minimize his attendance at meetings at New Beginnings as being social in nature rather than AA meetings when he stated that he went there to “meet women” and that the meetings lacked the formal structure of an AA meeting. However, this testimony was contradicted by exhibits introduced into evidence showing that New Beginnings was on a list of AA meetings in the Peoria area. The ALJ also found that Ice was not a credible witness in light of his bias and prior

1-10-0218

felony conviction. On the other hand, the ALJ found Dr. McClain to be a credible witness.

The ALJ stated that Grogg had a lengthy criminal record along with documented intoxication. He “continually minimized his past use of alcohol, his criminal past, and his past and continuing treatment for alcohol abuse.” Thus, the ALJ concluded that the Department had met its burden and proven by clear and convincing evidence that Grogg engaged in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public pursuant to section 22(A)(5) of the Act. Moreover, the ALJ noted that Grogg had been convicted of two offenses that he committed while legally intoxicated and that he was required to seek treatment for alcohol abuse in each case. The ALJ thus concluded that the Department had also met its burden and proved by clear and convincing evidence that Grogg habitually or excessively used or abused drugs, alcohol, or any other substance which resulted in his inability to practice with reasonable skill, judgment or safety, pursuant to section 22(A)(7) of the Act. The ALJ recommended the indefinite suspension of Grogg’s license for a period of at least three years.

On October 15, 2008, the Board adopted the ALJ’s findings of fact and conclusions of law and it recommended that the indefinite suspension of Grogg’s licence for a period of at least three years. On November 24, 2009, the Director entered an order adopting the Board’s findings of fact, conclusions of law, and recommended sanctions against Grogg.

Grogg then filed a complaint for administrative review in the circuit court of Cook County. The circuit court reversed the Director’s order as against the manifest weight of the evidence and remanded the case to the Department. The court found no evidence to support the finding that Grogg was unable to practice as a chiropractor due to alcohol abuse and that there

1-10-0218

was insufficient evidence to support the finding that Grogg was dishonest or unethical. The court noted that the two misdemeanor offenses did not relate to practice as a chiropractor and that Dr. McClain's testimony did not support the Director's findings. This appeal followed.

We begin by setting forth the relevant standards of review. Under the Act, the final administrative decision of the Department is subject to review pursuant to the Administrative Review Law (ARL). See 225 ILCS 60/41 (West 2008). On appeal, this court's role is to review the administrative decision rather than the circuit court's decision. *Express Valet Inc. v. City of Chicago*, 373 Ill. App. 3d 838, 847 (2007).

For any given issue, the appropriate standard of review, which reflects the level of deference we afford the administrative agency, depends on whether the issue is one of fact, one of law, or a mixed question of law and fact. *Express Valet*, 373 Ill. App. 3d at 847. An agency's findings of fact are deemed *prima facie* true and correct and will not be overturned unless they are against the manifest weight of the evidence. *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 210 (2008). An agency's factual findings are against the manifest weight of the evidence "if the opposite conclusion is clearly evident." *Cinkus*, 228 Ill. 2d at 210. An agency's decision on a question of law, however, is not binding on a reviewing court and is reviewed *de novo*. *Cinkus*, 228 Ill. 2d at 210. An agency's ruling on a mixed question of law and fact - a question in which the historical facts are admitted, the rule of law is undisputed, and the only question is whether the facts satisfy a statutory standard with which the agency has expertise - will not be disturbed unless clearly erroneous. *Cinkus*, 228 Ill. 2d at 211. Under this standard, we afford some deference to the agency's experience and expertise and we

1-10-0218

must accept the agency's finding unless after reviewing the record we are left with the " 'definite and firm conviction that a mistake has been committed.' " *AFM Messenger Service Inc. v. Department of Employment Security*, 198 Ill.2d 380, 391-95 (2001), quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948); *Express Valet*, 373 Ill. App. 3d at 847.

The Department initially contends that the circuit court lacked jurisdiction to consider Grogg's action for administrative review. Because this issue presents a question of law, our review is *de novo*. *Blount v. Stroud*, 232 Ill.2d 302, 308-09 (2009). The Department argues that Grogg failed to exhaust his administrative remedies because he did not file a motion for rehearing after the Board issued its findings and recommendations, as permitted by section 40 of the Act. That section states:

"The Disciplinary Board shall present to the Director a written report of its findings and recommendations. A copy of such report shall be served upon the accused person, either personally or by registered or certified mail. Within 20 days after such service, the accused person may present to the Department their motion, in writing, for a rehearing, which written motion shall specify the particular ground therefor." 225 ILCS 60/40 (West 2008).

In this case, after the administrative hearing, the ALJ issued a report and recommendation to the Board. The Board thereafter adopted the ALJ's findings of fact and conclusions of law and recommended that sanctions be imposed upon Grogg. The Director subsequently issued an order adopting the Board's recommendations and imposing sanctions upon Grogg. There is no dispute

1-10-0218

that Grogg did not file the motion for rehearing referenced in section 40 of the Act after the Board issued its recommendation to the Director, and the Department contends that Grogg's failure to do so precluded him from seeking judicial review in the circuit court under the exhaustion of remedies doctrine.

The exhaustion of remedies doctrine provides that a party aggrieved by the action of an administrative agency generally cannot seek judicial review without first exhausting all available administrative remedies. The purposes of the doctrine are to allow full development of the facts before the agency prior to its final decision, to allow the agency to utilize its expertise and to permit the aggrieved party to succeed before the agency, thus rendering judicial review unnecessary. *Castaneda v. Illinois Human Rights Comm'n*, 132 Ill. 2d 304, 308 (1989). If there is an agency rule which specifically provides for a rehearing, then an agency decision is not an appealable "administrative decision" until the aggrieved party requests rehearing and his request is denied. *Hoffman v. Illinois Department of Registration and Education*, 87 Ill. App. 3d 920, 924 (1980). If there is no agency rule which specifically provides for rehearing, the final order becomes ripe for administrative review when it is rendered by the agency. *Hoffman*, 87 Ill. App. 3d at 924.

The flaw in the Department's argument is that the exhaustion of remedies doctrine applies when an agency rule allows for a motion or petition for rehearing after the agency issues an "administrative decision" and section 40 only provides for a motion for a rehearing from the report of the Board's findings and recommendations, which does not constitute an "administrative decision." The Act allows for judicial review of "all final administrative

1-10-0218

decisions” of the Department and defines an “administrative decision” as “any decision, order or determination of any administrative agency rendered in a particular case, which affects the legal rights, duties or privileges of parties and which terminates the proceedings before the administrative agency.” See 225 ILCS 60/41 (West 2008) (“All final administrative decisions of the Department are subject to judicial review pursuant to the Administrative Review Law and its rules. The term “administrative decision” is defined as in Section 3-101 of the Code of Civil Procedure”); 735 ILCS 5/3-101 (West 2008) (defining an “administrative decision). The report of the Board’s findings and recommendations is not an “administrative decision” because it is only a recommendation from the Board to the Director, who is not required to adopt those recommendations. See 225 ILCS 60/40 (West 2008) (“At the expiration of the time allowed for filing a motion for rehearing, the Director *may* take the action recommended by the Disciplinary Board”) (Emphasis added). As such, the Board’s report does not affect any legal rights or privileges of the parties or terminate the proceedings before the administrative agency. Because the Board’s report is not an administrative decision, Grogg’s failure to file the motion for rehearing contained in section 40 did not deprive the circuit court of jurisdiction.

Under the Act, the “administrative decision” that affects the rights of the parties and terminates the proceedings before the agency is the order issued by the Director. The Act does not provided a method for obtaining a rehearing of the Director’s order and it does not allow for any further actions by the Department after that order is issued. Moreover, if the Director imposes any sanctions, such as suspending or revoking a medical professional’s license, that person is required to surrender his or her license to the Department. See 225 ILCS 60/41 (West

1-10-0218

2008) (“Upon the suspension, revocation, placement on probationary status, or the taking of any other disciplinary action, including the limiting of the scope, nature, or extent of one's practice, deemed proper by the Department, with regard to the license, certificate or visiting professor permit, the accused shall surrender their license to the Department \*\*\*”). Therefore, the Director’s order is the final and appealable “administrative decision” of the Department and it is ripe for administrative review when it is issued. See *Hoffman*, 87 Ill. App. 3d at 924-25 (finding that the Act provides method for rehearing a case from the Medical Disciplinary Board's recommendation, which is not a final administrative decision, but not from an order entered by the Director, such that the time for seeking judicial review of suspension of plaintiff’s license began to run from the date on which the Director’s order was served on the chiropractor). There is no dispute that Grogg timely filed his complaint for administrative review in the circuit court after receiving the Director’s order, and we therefore find that the circuit had jurisdiction to consider Grogg’s complaint for administrative review.

The Department next contends that we should uphold the Director’s decision that Grogg violated section 22(A)(5) of the Act.

That section provides:

“(A) The Department may revoke, suspend, place on probationary status, refuse to renew, or take any other disciplinary action as the Department may deem proper with regard to the license or visiting professor permit of any person issued under this Act to practice medicine, or to treat human ailments without the use of drugs and

1-10-0218

without operative surgery upon any of the following grounds:

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(5) Engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public.” 225 ILCS 60/22(A)(5) (West 2008).

The Department argues that the evidence of Grogg’s past criminal conduct that was introduced at the administrative hearing was sufficient to demonstrate a violation of this provision. Grogg, on the other hand, argues that while the Department introduced evidence of Grogg’s two Class A misdemeanor convictions for DUI and attempted obstruction of justice, it failed to introduce evidence that those convictions constituted “dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public.” 225 ILCS 60/22(A)(5) (West 2008). Grogg also claims that the Department’s expert, Dr. McClain, never testified that these two convictions, by themselves, met this standard and that such an inference is not reasonable because the convictions do not directly relate to Grogg’s chiropractic practice.

The Rules for Administrative Hearings applicable to the Department provide that the Department must prove its allegations by clear and convincing evidence. Illinois Administrative Code, Title 68, Section 1110.190. Proof by clear and convincing evidence has been defined as “the quantum of proof that leaves no reasonable doubt in the mind of the trier of fact as to the truth of the proposition in question” and also as “evidence which leaves the mind well-satisfied of the truth of a proposition.” *Bazydlo v. Volant*, 164 Ill. 2d 207, 213 (1995); *In re Estate of Ragen*, 79 Ill. App. 3d 8, 14 (1979). Although stated in terms of reasonable doubt, proof by clear

1-10-0218

and convincing evidence is considered to be a more stringent standard than proof by a preponderance of the evidence, but less stringent than the level proof required in a criminal trial. *Bazydlo*, 164 Ill. 2d at 213.

Neither party challenges the Director's underlying factual findings on this issue and instead disagree only as to whether those facts satisfy the statutory standard. Thus, the Department's contention raises a mixed question of law and fact and we will not reverse the Director's finding that the Department proved its allegation on this issue by clear and convincing evidence unless we are convinced that finding was clearly erroneous. See *Cinkus*, 228 Ill. 2d at 211.

In this case, the Department alleged in the amended complaint that Grogg pled guilty to the charge of DUI in August of 2006 and that was convicted by a jury in 2006 of attempted obstruction of justice. The evidence introduced at the hearing substantiated these allegations and established that as a result of his DUI conviction, Grogg was sentenced to 12 months of conditional discharge, ordered to pay a fine and perform public service, and ordered to submit to an alcohol evaluation and to submit to any recommended treatment. Grogg also spent three months in inpatient treatment at Victory Acres for alcohol treatment. With respect to the attempted obstruction of justice conviction, the evidence introduced at the hearing established that Grogg falsely identified himself to a police officer. As a result of this conviction, Grogg was sentence to six months of conditional discharge and ordered to pay a fine. The Department also presented the expert testimony of Dr. McClain, the Department's chief medical officer who is responsible for reviewing investigations into chiropractors and for making recommendations to

1-10-0218

the Board. Dr. McClain testified that he was familiar with the standards for unprofessional and unethical conduct under the Act and that, in his opinion to a reasonable degree of medical certainty, Grogg's actions "violate[d] the unethical and misconduct" portion of the Act, were "highly inappropriate and unethical," were "unprofessional," and that "it ha[d] reached the degree" to which Grogg presented a potential harm to the people of the state of Illinois.

The Director ultimately adopted the ALJ and the Board's finding that the Department proved by clear and convincing evidence that Grogg engaged in "dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public." After reviewing the record, we cannot say that the Director's decision was clearly erroneous. The Department proved the allegations in the complaint by evidence relating to Grogg's convictions for DUI and attempted obstruction of justice and by expert testimony that those convictions and the conduct underlying them satisfied the standards under section 22(A)(5) of the Act. Although Grogg claims that these two convictions are insufficient because they do not relate directly to his chiropractic practice, he cites no authority holding that the conduct at issue must be directly related to the profession. Moreover, section 22(A)(5) contains no requirement that the conduct at issue must relate directly to the profession. And although the Act does not define "dishonorable, unethical or unprofessional conduct," it has been recognized that a statute such as the one at issue in this case must be broad because it "would be impossible for a statute to catalog specifically every act of unprofessional or dishonorable conduct which would justify the revocation of a license." *Pundy v. Dep't of Professional Regulation*, 211 Ill. App. 3d 475, 485-86 (1991), citing *Chastek v. Anderson*, 83 Ill. 2d 502, 510 (1981).

1-10-0218

Moreover, “when a broad statutory standard has been delegated to an agency’s discretion, the reviewing court should rely on the agency’s interpretation as controlling.” *Pundy*, 211 Ill. App. 3d at 486. In this case, the agency interpreted “dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public” to include the conduct giving rise to Grogg’s convictions for DUI and attempted obstruction of justice. There is support for this interpretation and we defer to the agency’s experience and expertise. It has been recognized that “[t]he practice of medicine, in addition to skill and knowledge, requires honesty and integrity of the highest degree, and inherent in the State’s power is the right to revoke the license of those who violate the standards it set.” *Kaplan v. Dep’t of Registration and Education*, 46 Ill. App. 3d 968, 975 (1977). The requirement of honesty and integrity is reflected in the definitions of the conduct listed in section 22(A)(5) of the Act. “Unprofessional” is defined as “at variance with or contrary to professional standards or ethics; not befitting members of a profession, as language, behavior, or conduct.” Webster’s Unabridged Dictionary Second Edition 2083 (1998). Although the dictionary does not define “unethical,” ethical is defined as “being in accordance with the rules or standards for right conduct or practice, esp. the standards of a profession.” Webster’s Unabridged Dictionary Second Edition 665 (1998). Dishonorable is defined as “showing lack of honor or integrity.” Webster’s Unabridged Dictionary Second Edition 565 (1998). The dishonesty reflected in the attempted obstruction conviction and the disregard for the safety of others reflected in the DUI conviction could certainly be construed as violating the standards set forth in section 22(A)(5) of the Act.

Grogg is incorrect when he claims that Dr. McClain did not consider whether the DUI

1-10-0218

and attempted obstruction convictions, by themselves and without regard for Grogg's other criminal conduct, violated section 22(A)(5) of the Act. Dr. McClain testified that there were "multiple" bases for his opinion that Grogg engaged in unethical conduct. He listed the aggravated discharge of a firearm, the obstruction of justice conviction, and the "episodes of DUI." Thus, the doctor testified that each conviction constituted unethical conduct, including the two that formed the basis of the complaint filed against Grogg. Dr. McClain also specifically testified that it was "highly inappropriate and unethical" to falsely identify yourself as another doctor to a police officer. When asked for the bases of his opinion that Grogg had engaged in unprofessional conduct, Dr. McClain stated that the bases were "what I stated prior, the criminal convictions, the use of another's name, obstructing justice." Thus, the doctor again testified that each conviction, and not the convictions when viewed together, represented unprofessional conduct.

Grogg claims that the ALJ erred by allowing discussion of his convictions for battery in Wisconsin and aggravated discharge of a firearm. However, Grogg was found to have violated section 22(A)(5) of the Act based upon his convictions for DUI and attempted obstruction of justice, not the battery and aggravated discharge convictions. Moreover, contrary to Grogg's suggestion, and as set forth above, Dr. Fleming did separate DUI and attempted obstruction convictions from Grogg's other convictions and testified that each constituted a violation of section 22(A)(5) of the Act.

Finally, Grogg claims that the police report regarding the attempted obstruction charge was hearsay and therefore improperly admitted into evidence. He argues that without that report

1-10-0218

there was no evidence to rebut his testimony that he did not provide a false identify but instead only refused to provide his own identity. Initially, there is no dispute that Grogg was convicted by a jury of attempted obstruction of justice and the police report was not used to prove that conviction. Moreover, the information charging Grogg with attempted obstruction of justice alleged that Grogg knowingly provided false information as to his identify to a police officer to prevent apprehension or obstruct a prosecution, and the information also lists his name as David Charles Grogg “AKA Fleming, Dale R.” Grogg himself acknowledged that Fleming was another doctor but claimed that he only pointed to Fleming’s name on a building instead of verbally identifying himself as Fleming. This was more than sufficient to permit the inference that the attempted obstruction charge was based upon Grogg falsely identifying himself to a police officer as another doctor, Dale Fleming, in order avoid apprehension or obstruct a potential prosecution. It is evident that his conduct alone was sufficient to support Dr. McClain’s expert opinion that Grogg violated section 22(A)(5) of the Act.

After a full administrative hearing, the Director ultimately concluded that the Department proved by clear and convincing evidence that Grogg violated section 22(A)(5) of the Act. After reviewing the record, we are not left with a “definite and firm conviction that a mistake has been committed” (*AFM Messenger Service*, 198 Ill.2d at 391-95), and the Director’s findings are therefore not clearly erroneous. Accordingly, we reverse the judgment of the circuit court of Cook County which reversed the Director’s order as against the manifest weight of the evidence.

The Department next contends that we should uphold the finding that Grogg violated section 22(A)(7) of the Act in that his excessive alcohol use resulted in the inability to practice

1-10-0218

medicine with reasonable skill, safety and judgment. However, we need not consider this issue in light of our conclusion that the Director's finding that Grogg violated section 22(A)(5) of the Act was not clearly erroneous.

Finally, Grogg contends that the sanctions imposed against him were unduly harsh. He specifically claims that an indefinite suspension for a minimum of three years is overly harsh and disproportionate to the alleged violations because the convictions underlying the charges against him were both Class A misdemeanors.

The standard of review is whether the Department abused its discretion by the sanctions it imposed. *Reddy v. Illinois Department of Professional Regulations*, 336 Ill. App. 3d 350, 354 (2002). An agency abuses its discretion when it imposes a sanction that is overly harsh in view of the mitigating circumstances or unrelated to the purpose of the statute. *Pundy*, 211 Ill. App. 3d at 488.

In this case, it is undisputed that the two convictions giving rise to the sanctions against Grogg were both Class A misdemeanors. Based upon these convictions, Grogg's license was suspended indefinitely for a minimum of three years. The record, however, does not contain any explanation as to the basis of the sanctions that were imposed. Although the Department has a legitimate interest in regulating medical professionals in order to promote and protect the public welfare (*Albazzaz v. Illinois Department of Professional Regulation*, 314 Ill. App. 3d 97, 101 (2000)), we are aware of no case in which an indefinite suspension of the length imposed in this case was upheld for misdemeanor convictions. Rather, indefinite suspensions typically involve serious felony convictions or conduct causing direct harm to the medical professional's patients.

1-10-0218

See, e.g., *Albazzaz*, 314 Ill. App. 3d at 102 (indefinite suspension for a minimum of 5 years imposed and upheld for improper sexual conduct with 6 patients); *Ziporyn v. Zollar*, 311 Ill. App. 3d 638, 639 (1999) (physician's medical license indefinitely suspended for prescribing over 1 million milligrams of a schedule II controlled substance to a patient). In other cases, a significantly shorter or less severe sentence was imposed for conduct that directly harmed a patient. See *Pundy*, 211 Ill App. 3d at 488 (Department suspended physician's license for 6 months and placed him on probation for six years where physician had a sexual relationship with a former patient); *Reddy*, 336 Ill. App. 3d at 354-55 (psychiatrist's license suspended 6 months based on romantic relationship with patient). Finally, we note that in *Metz v. Department of Professional Regulation*, 332 Ill. App. 3d 1033 (2002), the doctor's license to practice as a physician and surgeon was suspended for 6 months and he was placed on indefinite probation for at least 5 years where the doctor had a history of drug and alcohol abuse and where he engaged in non-therapeutic self-prescribing of controlled substances).

While we recognize that the Department has the responsibility to determine the sanctions necessary to protect the public, a reviewing court has the authority to review a sanction imposed. *Albazzaz*, 314 Ill. App. 3d at 101-02. In this case, we conclude that the sanctions imposed, particularly the indefinite nature of the suspension of Grogg's license, was unduly harsh given that the underlying convictions were misdemeanors and the underlying conduct did not involve conduct with his patients. Accordingly, we remand the case to the Department to hold a new hearing to impose sanctions against Grogg and to set forth the reasons for those sanctions so that if necessary a reviewing court may determine whether they are proportionate to the conduct at

1-10-0218

issue. If the Department again imposes an indefinite suspension, it should further set forth the reasons for the indefinite nature of that suspension. See *Siddiqui v. Illinois Department of Professional Regulations*, 307 Ill. App. 3d 753, 764 (1999) (given the need for uniformity in sanctions in disciplinary proceedings, hearing officer may consider sanctions imposed in similar cases).

For the reasons stated, the judgment of the circuit court of Cook County is reversed. The order of the Director finding that Grogg violated section 22(A)(5) of the Act is reinstated. The cause is remanded to the Department for a new hearing to impose sanctions and to set forth the basis for the particular sanction imposed.

Reversed and remanded.