FOURTH DIVISION
December 26, 2013

Nos. 1-12-2160 and 1-12-2400, Consolidated

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MICHAEL A. CADOGAN, M.D. Plaintiff-Appellee/Cross-Appellant, v. DIVISION OF PROFESSIONAL REGULATION OF THE ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION, and JAY STEWART, in his official capacity as DIRECTOR OF DIVISION OF PROFESSIONAL REGULATION, Defendants-Appellants/Cross-Appellees.	)	Appeal from the Circuit Court of Cook County. 10 CH 24833 Honorable Neil H. Cohen, Judge Presiding.

PRESIDING JUSTICE HOWSE delivered the judgment of the court.
Justices Fitzgerald Smith and Epstein concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's judgment reversing the administrative agency's order reprimanding a doctor for disciplinary action taken by a sister state is affirmed. A reprimand of the doctor's license would be unrelated to the purpose of the

Medical Practice Act.

¶ 2 Plaintiff, Dr. Michael A. Cadogan, filed a complaint for administrative review of an administrative decision by defendants, the Illinois Department of Financial and Professional Regulation and the director of the Division of Professional Regulation (hereinafter collectively defendants and individually the Department and the Director). In May 2010 defendants reprimanded Dr. Cadogan's license and issued a $1000 fine. Dr. Cadogan filed a complaint for administrative review in the circuit court of Cook County. The circuit court remanded the matter to the Director for further findings in support of his order. In October 2011 defendants issued a new order imposing the same reprimand and fine, with additional findings by the Director. The matter returned to the circuit court.

¶ 3 In January 2012 the circuit court reversed defendants' order and remanded the matter for further proceedings. Defendants did not appeal the court's January 2012 judgment. In February 2012 defendants issued an order reprimanding Dr. Cadogan's license but eliminating the fine. The matter again returned to the circuit court, this time before a different trial judge. In addition to challenging the February 2012 order, plaintiff filed a motion for a finding of contempt and sanctions under Illinois Supreme Court Rule 137 (Ill. S. Ct. R. 137 (eff. Feb. 1, 1994)) against defendants. In June 2012 the circuit court reversed defendants' order in its entirety. This appeal, purportedly from the circuit court's January 2012 and June 2012 judgments, followed.

¶ 4 For the following reasons, we affirm the circuit court's June 2012 judgment.

¶ 5 BACKGROUND

¶ 6 Plaintiff is a licensed physician in Illinois, Maryland, New Jersey, Arizona, Georgia,

Michigan, Minnesota, Oregon, and Pennsylvania. In August 2008 the Maryland Board of Physicians charged plaintiff with violations of the Maryland Medical Practice Act. In December 2008 the Maryland Board and plaintiff entered a consent order. The Maryland Board found that in 2001 plaintiff failed to correctly interpret a patient's computerized tomography (CT) scan and to properly identify and diagnose abnormal masses visible on the CT scan and recommend appropriate follow-up testing to the referring physician. In 2003, the patient had the scan read by another physician who found a mass and recommended a biopsy. The patient ultimately underwent surgery and chemotherapy. The Maryland consent order found that plaintiff "failed to meet appropriate standards as determined by appropriate peer review for the delivery of quality medical and surgical care." The order reprimanded plaintiff's license to practice medicine in the State of Maryland and imposed conditions on plaintiff.

¶ 7 In July 2009 the Department filed a complaint against Dr. Cadogan under the Department of Professional Regulation Law (20 ILCS 2105/2105-1 *et seq*. (West 2008)), the Medical Practice Act of 1987 (Medical Practice Act) (225 ILCS 60/1 *et seq*. (West 2008)), and the Department's rules (68 Ill. Admin. Code § 1285.20 *et seq*. (2009)). The complaint alleged that Dr. Cadogan informed the Department of the consent order, the consent order constituted disciplinary action by another state against Dr. Cadogan's license, and the sister state disciplinary action is grounds for discipline pursuant to section 22(A)(12) of the Medical Practice Act (225 ILCS 60/22(A)(12) (West 2008)).

¶ 8 In January 2010 an administrative law judge (ALJ) held an evidentiary hearing on the Department's complaint that Dr. Cadogan violated the Medical Practice Act by being subject to a

disciplinary action of another state against a license to practice as a medical doctor. In February 2010 the ALJ issued a report and recommendation to the Illinois State Medical Disciplinary Board (Board) pursuant to section 35 of the Medical Practice Act (225 ILCS 60/35 (West 2010)). The report and recommendation found that the evidence was clear and convincing that Dr. Cadogan's medical license in the State of Maryland was disciplined, Dr. Cadogan violated section 22(A)(12) of the Medical Practice Act when his Maryland medical license was disciplined, and discipline in Illinois is warranted. The ALJ recommended to the Board that Dr. Cadogan's Illinois license be reprimanded and that he be fined $1000. In March 2010 the Board adopted the findings of fact and conclusions of law contained in the ALJ's report and recommendation. The Board recommended to the Director that Dr. Cadogan's license be reprimanded and Dr. Cadogan be fined $1000. Dr. Cadogan filed a motion for rehearing seeking "the discretionary imposition of a lesser, non-reportable discipline." In May 2010 the Director issued an order finding that Dr. Cadogan had failed to allege new evidence, facts, or errors of law sufficient to warrant action contrary to the Board's recommendation. Accordingly, the Director reprimanded Dr. Cadogan's license and fined him $1000.

¶ 9 In June 2010 Dr. Cadogan filed a complaint for administrative review of the Director's order. Plaintiff alleged the Department failed to present sufficient evidence to support the ALJ's findings or to prove the charges by clear and convincing evidence, the Director's decision is arbitrary and capricious because it is based on findings and conclusions which are not supported by clear and convincing evidence, and the Director's decision is against the manifest weight of the evidence presented at the evidentiary hearing. Plaintiff's complaint alleged defendants failed

to consider mitigating evidence and the disciplinary decision is disproportionate to the violations proved at the hearing.

¶ 10 In August 2011 the circuit court issued a memorandum and order on plaintiff's complaint. The court found that "[i]t was not against the manifest weight of the evidence to conclude that Plaintiff could be disciplined under section 22 of the Medical Practice Act." The August 2011 order found that "[i]n this case, it is impossible to determine whether the sanctions imposed against Plaintiff were arbitrary or capricious because there is nothing in the ALJ's Report which states the reasoning behind recommending that Plaintiff be reprimanded and fined $1,000." The court found that the ALJ's report did not contain any findings regarding the sanction. Therefore, the court could not determine the basis for recommending the sanction. Nor did the Board's findings and Director's order state the reasoning behind adopting the ALJ's recommendation. The court cited the rule that an administrative decision must contain sufficient findings to make judicial review possible, including the grounds upon which the administrative agency acted. The court held "[t]his case should be remanded for further findings regarding the sanction imposed on Plaintiff."

¶ 11 In response to the circuit court's order, in October 2011, the Director issued an order. The Director's order stated that the circuit court "affirmed the Department's disciplinary action but remanded to the Department for further findings regarding the sanction imposed against [Dr. Cadogan.]" The Director's October 2011 order made the following findings:

> "2. That one of the ways in which the Department seeks to protect the public is by informing citizens of the disciplinary

history of physicians licensed in Illinois. In order to achieve this goal, it is necessary to notify the public when another state or jurisdiction has disciplined the license of a physician licensed in Illinois and take appropriate licensure action;

3. That the sanctions imposed in this case closely mirror the sanctions imposed by the Maryland Board of Physicians in the Consent Order entered into with [Dr. Cadogan;]

4. That the public discipline in this case was imposed in order to ensure that [Dr. Cadogan] will perform up to the appropriate standards for the delivery of quality medical and surgical care in the future and continues to warrant the public's trust. Moreover, the public discipline is necessary in order to inform and protect the citizens of the State of Illinois who may come under [Dr. Cadogan's] care;

5. That the gravity of the harm in this case justifies the imposition of the $1,000 fine as a measure of deterrence to [Dr. Cadogan.] Such a serious deviation from the standard of care demands a sufficient discipline to deter [Dr. Cadogan] from making further errors which could potentially harm the citizens of the State of Illinois."

¶ 12 The October 2011 order "affirms" the May 2010 order and the sanctions imposed. In

January 2012, the circuit court issued another memorandum and order. The January 2012 memorandum and order stated that the only issue remaining to be decided was whether the sanction was overly harsh in view of mitigating circumstances. Based on the reasons set forth in the October 2011 order, the court held that "it is clear that the Director failed to consider any mitigating circumstances when imposing sanctions on [Dr. Cadogan.]" The court noted that "[w]hile the Director found that public discipline was necessary to protect the public, the Department is required to report discipline against physicians by other states to the public." The court found that when the Director disciplined Dr. Cadogan, the requirement to report discipline by other states was found in the Medical Practice Act, and that at the time of the memorandum and order, public reporting of the reprimand imposed by the State of Maryland would be required by the Patients' Right to Know Act (225 ILCS 61/10 (West 2012)). The court held "[i]t was not necessary to publicly discipline Plaintiff in order to notify the Illinois public of the Maryland discipline as the Department was already required to do so." The court also found that the record did not support the Director's assertion that the gravity of the harm stemming from the Maryland incident justified the discipline imposed, and noted that the Director failed to explain why the discipline Maryland already imposed was insufficient to deter Dr. Cadogan from making further errors. The court held that the "sanctions imposed against [Dr. Cadogan] should be reversed and the case remanded for the imposition of lesser sanctions." The court also ordered the Department to withdraw two adverse action reports it filed regarding Dr. Cadogan. The court noted that the Department reported discipline against Dr. Cadogan in June 2010 and again in October 2011, "making it appear that [he] had been sanctioned twice for two separate incidents, not sanctioned

once for one incident. The court also held that "[e]ven if the sanction was not reversed, withdrawal of the second report would be necessary to avoid improperly giving the impression that [Dr. Cadogan] had been sanctioned twice."

¶ 13 In February 2012 the Director issued an order in response to the circuit court's order remanding to the Director to impose lesser sanctions. The February 2012 order repeated the findings in the October 2011 order and made the following additional findings:

> "6. That the Department did consider mitigating evidence when determining an appropriate sanction in this matter ***. In this case, after considering the mitigating evidence and the sanctions imposed on [Dr. Cadogan's] Maryland license, the Department chose to issue a reprimand and a fine, as opposed to a severe sanction;
>
> 7. That both Maryland and Illinois chose to issue reprimands, and while Illinois chose not to issue a duplicate CE requirement as an additional sanction, it wanted to impose a comparable additional sanction in the form of a fine;
>
> 8. That even though [Dr. Cadogan] is licensed in several other states, he holds an Illinois physician license and as such is authorized to provide medical services for Illinois citizens. The Department is charged with the responsibility of protecting Illinois citizens who might come into contact with [Dr. Cadogan,] and it

> must therefore determine appropriate sanctions against [Dr. Cadogan] in order to adequately inform and protect its citizens;
>
> 9. That in its Order of January 11, 2012, the Court directed the Department to withdraw the two Adverse Action Reports it filed with the National Practitioner Data Bank regarding [Dr. Cadogan] on June 1, 2010 and October 11, 2011. The National Practitioner Data Bank is administered by the United States Department of Health and Humans Services. The States are required to report any actions taken in regards to a medical license. How the Data Bank uses or reports this information is not within the control of the States."

¶ 14 The Director's February 2012 order stated that the Director found "the reprimand *** and the $1,000.00 fine imposed in the Order of May 6, 2010 is an appropriate sanction in this matter." However, the order states, "given the Court's Order of January 11, 2012, the Department will not impose the $1,000.00 fine." The Director ordered that Dr. Cadogan's license be reprimanded. In March 2012 plaintiff filed a petition to reverse the administrative order following remand. Plaintiff also filed a motion for contempt and for sanctions pursuant to Illinois Supreme Court Rule 137.

¶ 15 In June 2012, the circuit court issued another memorandum and order, and reversed the February 2012 order in its entirety. The June 2012 memorandum and order found that the January 2012 memorandum and order "found that the imposition of public discipline against [Dr.

Cadogan] was arbitrary and unreasonable." The court found that "contrary to the *** order of the court, the Director again imposed public discipline against [Dr. Cadogan.]" The court found, "[d]espite the fact that the January 11, 2012 Memorandum and Order was focused upon the Director's public sanction of [Dr. Cadogan,] the Director focused on the fine *** with which the court found no fault, and withdrew the fine." The circuit court found that the January 2012 memorandum and order "found that the public reporting sanction against [Dr. Cadogan] was arbitrary and unreasonable and the Director was ordered to impose a lesser sanction" but "did not find any fault with the $1,000 fine or even discuss that fine." The court found that the Director's additional findings were not properly before the court because "the case was remanded the second time solely for the purpose of imposing a lesser sanction" and because the Director never sought leave to make additional findings. The court agreed with Dr. Cadogan that the January 2012 memorandum and order barred the Director from imposing publically reportable sanctions.

¶ 16 The circuit court reversed the February 2012 order and ordered the adverse action report filed with the National Practitioner Data Bank withdrawn "together with any other public reporting of the February 9, 2012 decision." The court clarified that its judgment did not prevent the Director from reporting the Maryland discipline as required by the Medical Practice Act "and/or by the Illinois Patients' Right to Know Act."

¶ 17 The circuit court also denied plaintiff's request for a finding of civil contempt against the Director. Plaintiff's motion for contempt alleged "the Department violated the Order and instructions issued by the Court on January 11, 2012" and requested that the Director be held in civil contempt "to ensure compliance with the Court's Order." The court held a finding of civil

contempt would be improper because the Director's February 2012 order, which failed to comply with the January 2012 memorandum and order, "has been reversed and there is nothing left for the Director to comply with in connection with the January 11, 2012 Memorandum and Order." The court also held that the reporting of the discipline did not violate the terms of the January 2012 memorandum and order "or any other order of the court." Plaintiff failed to explain how the reporting of the February 2012 discipline "falls within the ambit of civil contempt." The court rejected plaintiff's request for sanctions because "the primary sanction requested *** is already being awarded" and the Code of Civil Procedure "does not provide for an awarding of costs as sanctions."

¶ 18 Finally, the circuit court denied plaintiff's request for sanctions pursuant to Illinois Supreme Court Rule 137. The court found that the "pleading, motion or other paper at issue is the February 9, 2012 decision." The court held that "sanctions are not intended to punish litigants for misapplying the law" and that it is not the purpose of Rule 137 to sanction a failure to comply with a court order, as plaintiff sought. The court also found it "possible *** that the Director simply wholly failed to comprehend the court's order."

¶ 19 The circuit court's June 2012 memorandum and order reversed the February 2012 order by the Director in its entirety, ordered the Department to rescind the adverse action report filed with the National Practitioner Data Bank and to withdraw any other public reporting of the February 2012 order, and denied plaintiff's motion for contempt and sanctions.

¶ 20 This appeal followed.

¶ 21 ANALYSIS

¶ 22 "[T]his court reviews the agency's decision and not the determination of the circuit court conducting the administrative review. [Citation.]" (Internal quotation marks omitted.) *Wolin v. Department of Financial and Professional Regulation*, 2012 IL App (1st) 112113, ¶¶ 19, 20. "Whether a party is guilty of indirect civil contempt is a question for the trial court, and its decision will not be disturbed on appeal unless it is against the manifest weight of the evidence or the record reflects an abuse of discretion." (Internal quotation marks omitted.) *Bank of America, N.A. v. Freed*, 2012 IL App (1st) 113178, ¶ 20. "A ruling on Rule 137 sanctions should not be overturned unless the trial court has abused its discretion." *Dismuke v. Rand Cook Auto Sales, Inc.*, 378 Ill. App. 3d 214, 217 (2007).

¶ 23 1. Defendants' Order Reprimanding Dr. Cadogan's License

¶ 24 On appeal, defendants argue that the Director was entitled to take disciplinary action against Dr. Cadogan, and the choice of a reprimand and fine was not an abuse of discretion. Plaintiff responds defendants' order was unreasonable and arbitrary, failed to consider mitigating evidence, and was unsupported by the record. The circuit court's June 2012 memorandum and order made a finding with regard to the sanction imposed in this case. It stated that the Director was barred from imposing publically reportable sanctions against plaintiff by the January 2012 memorandum and order, and reversed on that basis. The January 2012 memorandum and order expressly held that it "was not necessary to publicly discipline [Dr. Cadogan] in order to notify the Illinois public of the Maryland discipline as the Department was already required to do so." The court's order also states that the Director failed to consider any mitigating circumstances when imposing sanctions. In the January 2012 memorandum and order the court also held that

the gravity of the harm from Dr. Cadogan's conduct, resulting in the Maryland discipline, did not justify the reprimand in Illinois. On appeal, defendants argue that reprimanding Dr. Cadogan's license is appropriate. Plaintiff argues that the imposition of additional, cumulative, reportable discipline is unnecessary and inconsistent with the goals of the Medical Practice Act under the facts of this case.

¶ 25 Under the Medical Practice Act 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" based upon "[d]isciplinary action of another state or jurisdiction against a license or other authorization to practice as a medical doctor." 225 ILCS 60/22(A)(12) (West 2010).[1] It is for the Department to determine the appropriate sanction in each case. *Siddiqui v. Illinois Department of Professional Regulation*, 307 Ill. App. 3d 753, 764 (1999).

> "[A] reviewing court has the authority to review a sanction imposed. [Citation.] A sanction will be affirmed unless it constitutes an abuse of discretion. This will be found where the Department imposes a sanction that is (1) overly harsh in view of the mitigating circumstances or (2) unrelated to the purpose of the statute." *Albazzaz v. Illinois Department of Professional*

[1] The Medical Practice Act now reads that the Director "may revoke, suspend, place on probation, reprimand, refuse to issue or renew, or take any other disciplinary *or non-disciplinary action* as the Department may deem proper." (Emphasis added.) 225 ILCS 60/22 (A) (West 2012)

Regulation, 314 Ill. App. 3d 97, 101-02 (2000).

¶ 26 "Deference is not to be given to an agency's legal conclusions because they involve administrative interpretation of a statute it is charged with enforcing when the court finds that the legal conclusions reached by the agency are erroneous. [Citation.]" *Obasi v. Department of Professional Regulation*, 266 Ill. App. 3d 693, 699 (1994). "The purpose of the Medical Practice Act is to protect the public health and welfare from those not qualified to practice medicine." *Siddiqui*, 307 Ill. App. 3d at 764. Defendants argue that reprimanding Dr. Cadogan's license is not an abuse of discretion because the reprimand is related to the Medical Practice Act's purpose of protecting the public welfare. Defendants argue that a reprimand achieves that purpose in this case by informing the public of the disciplinary action against Dr. Cadogan in Maryland and by deterring future violations by Dr. Cadogan. Defendants state that with a reprimand, "the Department publicly admonishes the physician without further restricting his *** practice or imposing other conditions or requirements." Thus, defendants admit that their goal is not to prevent Dr. Cadogan from practicing medicine on Illinois citizens, but to "deter such deviations in the future[,] to inform the public of his [past] violation," and to "lay[] the foundation for more severe discipline in case of repeated violations."

¶ 27 Defendants acknowledge that Illinois citizens would be informed of Dr. Cadogan's discipline in Maryland whether or not defendants also reprimand his license. One of defendants' stated "purposes" for reprimanding Dr. Cadogan is, therefore, satisfied, without imposing a reprimand. Defendants argue it is irrelevant whether the discipline imposed is, in fact, necessary to achieve the purpose of the discipline. Instead, this court's only concern should be whether the

discipline is "related" to the statute's purpose. We disagree. We must also determine whether the discipline is reasonable under the circumstances. *Obasi*, 266 Ill. App. 3d at 704. Defendants suggest that, in this case, public reporting is necessary to protect the public because reporting is more extensive if defendants impose their own discipline under the Medical Practice Act rather than simply reporting Maryland's discipline under the Patients' Right to Know Act. Under the Medical Practice Act, defendants' discipline would become part of a permanent record that is available to the public (20 ILCS 2105/2105-200 (West 2012)), while the Patients' Right to Know Act only requires a physician's public profile to contain a description of any final disciplinary actions by licensing boards in other states within the most recent 5 years (225 ILCS 61/10 (West 2012)). Defendants argue that limiting disclosure of Dr. Cadogan's out-of-state disciplinary history to the Patients' Right to Know Act will allow him to "evade a permanent record of [his] discipline through the very state-hopping that section 22(A)(12) was enacted to prevent. We disagree.

¶ 28 In support of their argument that the Medical Practice Act's purpose is to prevent physicians from "state hopping" and that purpose would be thwarted if Dr. Cadogan is not disciplined in Illinois, defendants cite *Ming Kow Hah v. Stackler*, 66 Ill. App. 3d 947, 955 (1978). In *Stackler*, the issue was whether the Medical Practice Act "improperly allows the delegation of authority over Illinois licenses to other states, and denies equal protection of the laws by discriminating against Illinois doctors with out-of-state licenses." *Stackler*, 66 Ill. App. 3d at 954. The court rejected those arguments, holding that "a statute establishing a revocation in a sister state as a possible ground for revocation in Illinois" is not "patently arbitrary" and does

bear a rational relationship to legitimate state interests, and therefore does not violate equal protection. *Stackler*, 66 Ill. App. 3d at 955. The court found that "[v]arious interests, such as the general desire to hold physicians to the highest standards of competency and integrity or the prevention of 'state-hopping' by physicians whose licenses have been revoked, suggest themselves as rational bases for the statute." *Id*.

¶ 29 Our understanding of the legitimate state interest expressed in *Stackler* was the interest in having a means of preventing physicians who could not practice medicine in another state from practicing medicine in Illinois. *Stackler*, 66 Ill. App. 3d at 955. That concern is not present in this case. Defendants did not seek to limit plaintiff's ability to practice medicine in Illinois. In this case, the only question is whether Illinois must discipline Dr. Cadogan's license to protect the public by informing it of his Maryland discipline. It is undisputed that Illinois' citizens will be informed of the Maryland discipline. The only real question is for how long that information will be publicly available. The fact that Dr. Cadogan's Maryland discipline may not be available in a permanent Illinois record does not mean that Dr. Cadogan will avoid the effects of discipline in another state. Thus, *Stackler* is inapposite. Moreover, defendants have failed to argue why the information regarding the Maryland discipline needs to be available to Illinois citizens in perpetuity to protect the public, when both Illinois and Maryland would allow Dr. Cadogan to continue to practice medicine.

¶ 30 Defendants argued public reporting in Illinois "provides the public with basic, relevant information for each licensed physician's disciplinary history to make informed decisions." But defendants did not argue that Dr. Cadogan's Maryland discipline would remain relevant to

Illinois citizens' decisions regarding their health care five years after the single incident wherein Dr. Cadogan's performance failed to meet appropriate standards for the delivery of quality medical care, if such a failure in performance does not recur and there is no additional discipline during or after that time period. We discern no such relevance and no need to protect the public by reprimanding Dr. Cadogan's license such that a patient could learn that Dr. Cadogan was reprimanded more than 5 years earlier but had not engaged in any conduct warranting disciplinary action under the Medical Practice Act since.

¶ 31 Defendants' argument the Patients' Right to Know Act is insufficient because of its limited reporting period must fail. The statutory framework of the Medical Practice Act recognizes that it may be unreasonable to subject a physicians to discipline for remote occurrences in the name of public protection. The Medical Practice Act contains limitations on the time in which the Department may act in disciplinary proceedings. With certain exceptions, "no action [under section 22] shall be commenced more than 10 years after the date of the incident or act alleged to have violated this Section" (225 ILCS 60/22 (West 2012)) and except for conduct constituting "a pattern of practice or other behavior which demonstrates incapacity or incompetence to practice," any "all proceedings to suspend, revoke, place on probationary status, or take any other disciplinary action as the Department may deem proper, with regard to a license on any of the foregoing grounds, must be commenced within 5 years next after receipt by the Department of a complaint alleging the commission of or notice of the conviction order for any of the acts described herein" (225 ILCS 60/22(A) (West 2012)). Effective January 2014, the Patients' Right to Know Act will require reporting of "any final disciplinary actions by licensing

boards in other states within the most recent 10 years." We find that, as demonstrated within the text of the Medical Practice Act, the need for, and the reasonableness of measures taken in the name of, protecting the public from those not qualified to practice medicine, absent repeat infractions, diminishes over time.

¶ 32 We do not hold, as defendants suggest, that the existing reporting requirement for discipline by sister states acts to "replace or repeal the Department's authority to publicly discipline physicians for sister-state discipline under section 22(A)(12)." Nor does our holding render section 22(A)(12) superfluous. Nothing in this order limits defendants' ability to impose discipline meant to provide additional safeguards to the public's health and safety, *other than those already in place*, based on sister state discipline. Rather, where, as in this case, the only purpose for the discipline is to inform the public that another state has disciplined the physician, and not to otherwise proscribe the physician's practice of medicine in Illinois in any way, then "discipline" for the alleged purpose of "protection" that is wholly duplicative of protections that are already in place in Illinois is unreasonable and unrelated to the purpose of the Medical Practice Act. The Patients' Right to Know Act is not a restriction on defendants' discretion to discipline an Illinois physician for discipline by a sister state under appropriate circumstances. We simply find that the reporting requirements that exist, without further reprimanding Dr. Cadogan's license, are sufficient to inform the public such that they may protect themselves from one not qualified to practice medicine, which is the purpose of the Medical Practice Act and defendants alleged reason for reprimanding Dr. Cadogan.

¶ 33 We also find that the reprimand is too harsh in view of the mitigating circumstances. The

Director agreed that Dr. Cadogan has never had his privileges restricted or modified at any hospital since becoming licensed in 1997, has never been a defendant in any medical negligence case, has never been the subject of any peer review process, and the Maryland consent order was the only incident for which Dr. Cadogan has been investigated during his medical career. In view of the mitigating circumstances, we find that reprimanding Dr. Cadogan's license is not necessary to deter him from similar conduct in the future. Therefore, a reprimand will not serve to protect the public health and welfare--which further demonstrates that the reprimand is not related to the purposes of the Medical Practice Act--and constitutes an abuse of discretion.

¶ 34 Defendants' only argument that the additional reprimand was necessary to deter Dr. Cadogan was that Maryland's discipline was of limited significance to Dr. Cadogan because he has already decided to no longer practice medicine in Maryland. We disagree. Dr. Cadogan is subject to discipline for "[a] pattern of practice or other behavior which demonstrates incapacity or incompetence to practice under this Act." 225 ILCS 60/22(A)(26) (West 2012). "[A] pattern of practice or other behavior includes all incidents alleged to be part of the pattern of practice or other behavior that occurred *** within the 10-year period preceding the filing of the complaint." 225 ILCS 60/22 (West 2012). Thus, the Medical Practice Act itself incentivizes Dr. Cadogan to remediate his conduct, lest a repeat of similar malfeasance might result in the establishment of a pattern of behavior.

¶ 35 "While a reviewing court must defer to the administrative agency's expertise and experience in determining what sanction is appropriate to protect the public interest [citation], a reviewing court has authority to review a sanction imposed [citation]. The test is not whether the

reviewing court would have imposed a lesser sanction if it were making the decision in the first instance, but whether, in view of the circumstances, the agency acted unreasonably or arbitrarily." *Obasi*, 266 Ill. App. 3d at 704. The crux of defendants' arguments is that they were statutorily authorized to discipline Dr. Cadogan's license. We agree that defendants had statutory authority to discipline Dr. Cadogan's license. But the fact that discipline may be authorized does not make discipline reasonable in every case. In this case, defendants' reprimand was an abuse of discretion because reprimanding Dr. Cadogan's license is not related to the purposes of the Medical Practice Act and is too harsh given the mitigating circumstances. "If the reviewing court finds that the sanction is unreasonable, it cannot modify the sanction; rather, the court must remand to the agency for further proceedings consistent with the court's expressed opinion." *Obasi*, 266 Ill. App. 3d at 704. Accordingly, defendant's order is set aside, and the cause remanded to the Director for entry of an order consistent with this court's judgment.

¶ 36 2. Plaintiff's Motion for Contempt and Sanctions

¶ 37 Plaintiff has cross-appealed the circuit court's denial of his motion for finding of contempt and for sanctions pursuant to Illinois Supreme Court Rule 137. Plaintiff argues the Director's actions on remand directly contravened the circuit court's January 2012 memorandum and order and defendants' conduct is sanctionable. Plaintiff complains defendants prematurely reprimanded Dr. Cadogan's license and published the discipline against him despite plaintiff's request for further review of the Director's February 2012 order.

"Generally, civil contempt occurs when a party fails to do

> something ordered by the trial court, resulting in the loss of a benefit or advantage to the opposing party. [Citation] Contempt that occurs outside the presence of the trial court is classified as indirect contempt. [Citation.] The existence of an order of the trial court and proof of willful disobedience of that order is essential to any finding of indirect civil contempt. [Citation.] The burden initially falls on the petitioner to prove by a preponderance of the evidence that the alleged contemnor has violated a court order. [Citation.] The burden then shifts to the alleged contemnor to show that noncompliance with the court's order was not willful or contumacious and that he or she had a valid excuse for failure to follow the court order. [Citation.]" (Internal quotation marks omitted.) *Freed*, 2012 IL App (1st) 113178, ¶ 20.

¶ 38 Plaintiff argues defendants' conduct was contemptuous and he should be awarded monetary sanctions for being forced to litigate the propriety of public reprimand despite the finality of the circuit court's judgment that public discipline was unavailable. "The circuit court, *** in its discretion may determine not to enter an order for monetary, civil contempt or criminal sanctions. A circuit court abuses its discretion if no reasonable person would take the view adopted by the trial court." (Internal quotation marks omitted.) *People v. R.J. Reynolds Tobacco Co.*, 2011 IL App (1st) 101736, ¶ 32. We hold the circuit court did not abuse its discretion in denying plaintiff's motion for a finding of contempt and for monetary sanctions.

¶ 39 "Because a sanction in a civil contempt proceeding is strictly coercive, the court is without the authority to compensate an aggrieved party for its damages." *Keuper v. Beechen, Dill and Sperling Builders, Inc.*, 301 Ill. App. 3d 667, 670 (1998). The court could not compensate plaintiff for any harm suffered as a result of the erroneous reporting. The court also correctly noted that reporting the reprimand after the Director issued the February 2012 order was not a violation of any court order. Rather, the reporting of the reprimand was the consequence of the alleged failure to follow the January 2012 memorandum and order to impose a "lesser sanction" than reprimand.

¶ 40 As to whether the alleged failure to follow the order was itself contemptuous, the circuit court did not abuse its discretion in denying plaintiff's motion because it correctly found that an order of contempt could have no coercive effect on defendants. "The circuit court did not abuse its discretion in striking the request for sanctions because civil contempt is coercive rather than punitive in nature and is designed to bring a defendant's conduct in line with a prior court order." *R.J. Reynolds Tobacco Co.*, 2011 IL App (1st) 101736, ¶ 33. The memorandum and order reversing the Director's February 2012 order, and this court's judgment, effectively place defendants in compliance with the court's January 2012 memorandum and order. Given the posture of the case, imposing a monetary sanction on defendants would be a punishment for the consequences of their order issuing a reprimand. Moreover, "the contempt finding should give the contemnor the ability to purge at any time." *In re Marriage of Doty*, 255 Ill. App. 3d 1087, 1095 (1994). Because defendants cannot purge the contempt in light of the circuit court's judgment reversing the Director's order in its entirety, and our judgment, we affirm the circuit

court's judgment denying plaintiff's motion for a finding of contempt.

¶ 41 Plaintiff also argued that defendants should be sanctioned pursuant to Illinois Supreme Court Rule 137 because the Director's order "contained various provisions which were known to be unsupported by fact or law."

> "By its terms, the rule authorizes the imposition of sanctions against a party or his attorney for filing a pleading, motion, or other paper that is not well grounded in fact and warranted by existing law or which has been interposed for any improper purpose. An appropriate sanction may include an order to pay the other party's reasonable expenses, including reasonable attorney's [*sic*] fees, incurred as a consequence of the offending pleading, motion, or other paper. [Citation.] Rule 137 does not authorize a trial court to impose sanctions for all acts of misconduct by a party or his attorney, only for the filing of pleadings, motions, or other papers in violation of the rule itself. [Citation.] Further, as a general sanction provision, Rule 137 is not properly used to sanction conduct such as discovery violations where other more specific sanction rules apply." *In re Marriage of Adler*, 271 Ill. App. 3d 469, 476 (1995).

¶ 42 The Director's February 2012 order, and his reprimanding Dr. Cadogan's license and reporting the reprimand, even if wilful acts, would not fall within the ambit of Rule 137. The

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circuit court properly denied plaintiff's motion.

¶ 43 CONCLUSION

¶ 44 For the foregoing reasons, the circuit court's judgement is affirmed and defendants' February 2012 order is set aside and the cause remanded to the Director for entry of an appropriate order.

¶ 45 Affirmed, order set aside, and remanded.