2011 IL App (1st) 101972-U

THIRD DIVISION
September 28, 2011

No. 1-10-1972

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

GEORGE S. LAKNER, M.D. Plaintiff-Appellant, v. ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION; ILLINOIS DIVISION OF PROFESSIONAL REGULATION; DANIEL E. BLUTHARDT, IDPR DIRECTOR, in his OFFICIAL CAPACITY, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County. No. 09 CH 34447 Honorable William O. Maki, Judge Presiding.

JUSTICE SALONE delivered the judgment of the court.
Presiding Justice Steele and Justice Neville concurred in the judgment.

ORDER

HELD: Plaintiff's due process rights were not violated at the administrative hearing where he had an opportunity to present his own witnesses and rebut the Department's evidence; section 22(A)(12) of the Illinois Medical Practice Act permits reciprocal discipline upon a showing of disciplinary action taken from another state or jurisdiction; the administrative decision to indefinitely suspend plaintiff's medical license was not against the

manifest weight of the evidence.

¶ 1 Plaintiff filed a complaint for administrative review of defendant's final order that his medical license be indefinitely suspended and fined in the amount of five-thousand dollars. The circuit court of Cook County affirmed plaintiff's suspension and vacated the fine. On appeal, plaintiff contends that his due process rights were violated at the administrative hearing, and that his license suspension was against the manifest weight of the evidence. For the reasons that follow, we affirm the administrative decision.

¶ 2 BACKGROUND

¶ 3 On April 5, 2006, the Illinois Department of Financial and Professional Regulation (Department) filed a complaint against plaintiff, George S. Lakner, M.D., with the Medical Disciplinary Board (Board), charging that pursuant to Section 22 of the Illinois Medical Practice Act (Act) (225 ILCS 60/22 (a)(12) (West 2008)), plaintiff's Illinois physician and surgeon license, No. 036077045, should be suspended, revoked, or otherwise disciplined. The statute provides in pertinent part:

> "(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 without operative surgery upon any of the following grounds:

> (12) Disciplinary action of another state or jurisdiction against a license or other authorization to practice as a medical doctor, doctor of osteopathy, doctor of osteopathic medicine or doctor of chiropractic, a certified copy of the record of the action taken by the other state or jurisdiction being prima facie evidence thereof."

Thereafter, the Department filed an amended complaint, and plaintiff filed an answer. The Department then filed a second amended complaint on November 19, 2008 which contained the following allegations:

> Count I: On August 24, 2005, the Maryland State Board of Physicians suspended plaintiff's license for one year and pending reinstatement of his California license.
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> Count II: On May 22, 2003, the New Jersey State Board of Medical Examiners indefinitely suspended plaintiff's license to practice as a physician and surgeon.
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> Count III: On March 31, 2003, the Division and Licensing of the Medical Board of California denied plaintiff's application for a license to practice as a physician and surgeon.
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> Count IV: On December 19, 2001, the Board of Medical Examiners of the state of Nevada revoked plaintiff's license to practice medicine.

> Count V: On May 17, 2006, the Surgeon General of the United States Army revoked plaintiff's clinical privileges to practice medicine.
>
> Count VI: On June 6, 2008, the Administrative Board for Professional Medical Conduct for the New York State Department of Health revoked plaintiff's license to practice as a physician and surgeon.

¶ 4 A hearing was conducted before an administrative law judge (ALJ) on March 13, 2009. Plaintiff appeared *pro se*. As a preliminary matter, the Department voluntarily dismissed count IV of the second amended complaint which alleged that plaintiff's medical license was revoked in the state of Nevada.

¶ 5 Thereafter, the Department moved to admit exhibits 1 through 6 into evidence, which the ALJ granted. The Department's exhibits included copies of disciplinary orders that revoked or suspended plaintiff's license to practice medicine in the states of Maryland, New Jersey, and New York. Additionally, the Department presented an order from the United States Army Surgeon General's Office that indicated plaintiff's privileges were revoked to practice medicine with the United States Army. Finally, the Department presented a decision from the Medical Board of California denying plaintiff's license application.

¶ 6 Plaintiff then moved to admit thirty-five exhibits into evidence which consisted of letters written by his attorneys in the out-of-state disciplinary proceedings, documents from the intermediate stages of the out-of-state proceedings, and documents showing that he had not been

disciplined in states or jurisdictions that were not indicated in the complaint. Approximately twenty exhibits were admitted into evidence, although none disputed the disciplinary orders presented by the Department.

¶ 7 The ALJ issued a report with recommendations on April 30, 2009. The ALJ found that the certified copies from other states was sufficient evidence to indefinitely suspend plaintiff medical in the state of Illinois. ALJ specifically found that Maryland and New Jersey disciplined plaintiff because he made false statements on his license renewal applications regarding the disciplinary action taken by the state of California. The California board denied plaintiff a license to practice medicine because he altered an official document during his application process, and for the disciplinary actions the other states took against him. The Army disciplined plaintiff for falsifying documents and letters of recommendations that he sought to use in his state-based disciplinary matters which were separate from the documents originally at issue in the California case. The New York board revoked plaintiff's license for the disciplinary actions of other states and misrepresentations made on license renewal applications. The ALJ recommended that pursuant to section 22 of the Act that plaintiff's medical license be indefinitely suspended, and imposed a fine in the amount of five-thousand dollars.

¶ 8 On June 3, 2009, the Board issued a final decision adopting the ALJ's recommendation. Plaintiff filed a motion for rehearing on June 26, 2009, which was denied.

¶ 9 Plaintiff then timely filed a complaint for administrative review in the circuit court of Cook County on September 21, 2009. In his complaint, plaintiff argued that his due process rights were violated, and the Board's decision was against the manifest weight of the evidence.

The circuit court affirmed the Board's decision on June 11, 2010. This timely appeal followed.

¶ 10 DISCUSSION

¶ 11 Plaintiff first contends that the proceedings conducted by the Department deprived him of due process of law. Specifically, plaintiff maintains that he was denied a full hearing before the Board because the Department failed to present any witnesses for the plaintiff to cross-examine.

¶ 12 We review questions of law *de novo*. *Provena v. Department of Revenue*, 236 Ill. 2d 368, 387 (2010). A fair hearing before an administrative agency includes the opportunity to be heard, the right to cross-examine adverse witnesses and impartiality in ruling upon the evidence. *Pundy v. Department of Professional Regulation*, 211 Ill. App. 3d 475, 488 (1991).

¶ 13 Plaintiff was given proper notice of the hearing before the Board, and appeared *pro se.* At the hearing, the Department presented certified copies of disciplinary orders from other states and jurisdictions. Plaintiff was given an opportunity to present his case and rebut the Department's evidence. Pursuant to section 22(A)(12) of the Act, a certified copy of the record of the action taken by the other state or jurisdiction is prima facie evidence of the disciplinary action which permits the Board to suspend a physician's license in the state of Illinois. Therefore, we find that the Department did not violate plaintiff's due process rights.

¶ 14 Plaintiff next argues that his due process rights were further violated because the Board relied on disciplinary action that occurred outside the state of Illinois without any regard as to whether those actions would constitute grounds for discipline in Illinois.

¶ 15 Plaintiff contends that his arguments are not supported by the decision in *Ming Kow Hah,*

M.D. v. Stackler, 66 Ill. App. 3d 947 (1978). However, we initially note that plaintiff failed to cite to any authority in support of his position. In *Stackler*, the court held that an Illinois medical license was properly revoked on the basis of revocation of a medical license in a sister state, whether or not the sister state's revocation was for conduct which would also constitute ground for revocation in Illinois. *Ming Kow Hah*, 66 Ill. App. 3d 947 at 951-52. The Department is not required to re-weigh the evidence from an out of state hearing. Thus, the Illinois board is not the proper venue to contest the outcome of another state's administrative decision. Accordingly, we find that the Board did not violate plaintiff's due process rights by enforcing reciprocal discipline as permitted under the Act.

¶ 16 Plaintiff next contends that section 22(A)(12) of the Act is constitutionally void for vagueness because it fails to define a "reciprocal action".

¶ 17 Section 22(A)(12) of the Act provides that the Department may revoke, suspend, place on probationary status, or take any other disciplinary action as the Department may deem proper * * * upon any of the following grounds:

> "(12) Disciplinary action of another state or jurisdiction against a license or other authorization to practice as a medical doctor, doctor of osteopathy, doctor of osteopathic medicine or doctor of chiropractic, a certified copy of the record of the action taken by the other state or jurisdiction being prima facie evidence thereof."

¶ 18 The cardinal rule for statutory interpretation is that a court must ascertain and give effect

to the intent of the legislature. *Ikpoh v. Department of Professional Regulation*, 338 Ill. App. 3d 918, 923-24 (2003). The statute's plain language provides the best indication of the legislature's intent. *Ikpoh*, 338 Ill. App. 3d at 923-24. We review the interpretation of a statue *de novo*. *Ikpoh*, 338 Ill. App. 3d at 923-24. When an agency is charged with the administration and enforcement of a statute, we give deference to the agency's decision because they are in a better position to make informed judgments on the issues based on its experience and expertise. *Ikpoh*, 338 Ill. App. 3d at 923-24.

¶ 19 This court has previously held that a statute does not violate the due process clause of the United States or the Illinois Constitution, on grounds of vagueness, if it is explicit enough to serve as a guide to those who must comply with it. *Chastek v. Anderson*, 83 Ill. 2d 502, 507 (1981). In *Chastek*, the court found that the statute's use of the term "unprofessional conduct" was found to be sufficiently clear in itself, and that there was no need to list all of the possible types of professional misconduct. *Chastek*, 83 Ill. 2d 502 at 508. We find that section 22, and the regulations promulgated in connection with it, clearly give the Department authority to discipline a physician for any discipline taken against his license in another state or jurisdiction. Consequentially, we hold that section 22(A)(12) is not unconstitutionally vague.

¶ 20 Plaintiff next argues that the Board's decision to indefinitely suspend his medical license was against the manifest weight of the evidence. Specifically, plaintiff argues that his license denial in the state of California does not constitute a disciplinary action from another state. Additionally, plaintiff argues that the United States Army is not a state or jurisdiction pursuant to section 22(A)(12).

¶ 21 The findings and conclusions of the administrative agency on questions of fact are considered to be prima facie true and correct. *Provena v. Department of Revenue*, 236 Ill. 2d 368, 386-87 (2010). It is not the function of this court to re-weigh evidence or to make an independent determination of the facts. *Provena*, 236 Ill. 2d 368 at 386-87. We review an administrative agency's factual findings against the manifest weight of the evidence. *Provena*, 236 Ill. 2d 368 at 386-87.

¶ 22 The Act clearly states that "a certified copy of the record of the action taken by the other state or jurisdiction being prima facie evidence thereof." The Department presented certified copies of the disciplinary orders either revoking or suspending plaintiff's medical license in the states of Maryland, New Jersey, and New York. We agree with plaintiff that the California license denial should not be considered a disciplinary action from another state pursuant to section 22(A)(12) of the Act, since a person must hold a medical license before the license itself can be disciplined. However, the Department presented certified copies of disciplinary orders from the states of Maryland, New Jersey, and New York, all of which were a valid basis to discipline plaintiff's medical license in the state of Illinois. We find that the Board's decision was not against the manifest weight of the evidence.

¶ 23 Having already concluded that the Board's decision based on the disciplinary action taken by the states of Maryland, New Jersey, and New York was not against the manifest weight of the evidence, we need not address the issue whether the United States Army is considered a state or jurisdiction for purposes of the Act.

¶ 24 CONCLUSION

¶ 25 For the foregoing reasons, the decision of the Board is affirmed.

¶ 26 Affirmed.