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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1982**

A. L. G.,
Relator,

vs.

Minnesota Department of Health,
Respondent.

**Filed August 5, 2019
Affirmed
Florey, Judge**

Minnesota Department of Health
File No. 1426540

Alexander H. De Marco, St. Paul, Minnesota (for relator)

Keith Ellison, Attorney General, Lindsay K. Strauss, Assistant Attorney General, St. Paul,
Minnesota (for respondent)

Considered and decided by Florey, Presiding Judge; Worke, Judge; and Cochran,
Judge.

UNPUBLISHED OPINION

FLOREY, Judge

Relator A.L.G. challenges a decision of respondent Minnesota Department of Health (MDH) permanently disqualifying her from providing direct-contact services for state-licensed facilities. She argues that, because the Minnesota Board of Nursing (the

board) agreed to reinstate her nursing license upon her completion of specified terms and conditions, the state is estopped from disqualifying her. We affirm.

FACTS

In October 2005, the St. Peter Police Department was notified that relator, a registered nurse at St. Peter Regional Treatment Center, was allegedly having a sexual relationship with a “mentally ill and dangerous” patient, R.E.V., in the facility. Officers interviewed relator about the allegations, and she admitted to engaging in sexual acts with R.E.V. She acknowledged that she wanted to be involved in a relationship with R.E.V. and knew, as a professional, that it was prohibited. The state charged relator with two counts of third-degree criminal sexual conduct. *See* Minn. Stat. § 609.344, subd. 1(h) (2004).

The board was notified of the criminal allegations, and, ultimately, found relator “culpable for substantiated serious and recurring maltreatment under the Reporting of Maltreatment of Vulnerable Adults Act.” In early 2006, relator and the board entered into a written stipulation.¹ Pursuant to the stipulation, relator agreed to cease the practice of nursing pending the resolution of the criminal matter.

In January 2008, relator pleaded guilty to fourth-degree criminal sexual conduct. *See* Minn. Stat. § 609.345, subd. 1(h) (2004). The district court stayed imposition of sentence and placed relator on probation for up to seven years. Conditions of probation

¹ We note that, although the record contains an unsigned copy of the 2006 stipulation, relator concedes that she entered into the stipulation with the board, and, therefore, we consider the stipulation to be a valid agreement between the parties.

included completion of adult-sex-offender treatment. On December 4, 2008, the board adopted a stipulation-and-consent order suspending relator's license to practice nursing.²

On July 22, 2010, relator completed sex-offender-treatment programming. After having successfully satisfied all conditions of probation, she was discharged from probation on September 9, 2011, and the level of the fourth-degree criminal-sexual-conduct offense was reduced to a misdemeanor. Relator's probation-discharge report noted that relator had "remained law abiding and ha[d] not had any violations of her probation."

In a letter accompanying relator's sex-offender-treatment-completion report, relator's psychologist wrote to the board that relator did "NOT represent a threat to the community," and "recommend[ed] that her license be reinstated." (Emphasis in original.) Similarly, in another letter to the board, relator's probation officer wrote that relator had "taken full responsibility for her choices and behavior." Relator petitioned the board to reinstate her nursing license.

In October 2012, the board rescinded the 2008 stipulation-and-consent order, and executed a new order reinstating relator's nursing license subject to limitations and conditions. The 2012 stipulation-and-consent order provided:

- a. [Relator] must be supervised by a registered nurse who works the same shift during which [relator] works and who has responsibility for overseeing [relator's] activities.

² While publicly available, the 2008 stipulation-and-consent order is not part of the record nor was it submitted to or reviewed by MDH as part of relator's request for reconsideration. We, therefore, decline to consider it in our decision. See *Thiele v. Stich*, 425 N.W.2d 580, 582-83 (Minn. 1988) ("An appellate court may not base its decision on matters outside the record on appeal, and may not consider matters not produced and received in evidence below.").

- b. [Relator] may not function as a charge nurse or perform the administrative and supervisory tasks of a charge nurse.
- c. [Relator] may not work in the home care setting, group homes, assisted-living facilities or through temporary placement agencies.

Additionally, the order provided that, “upon completion of 2000 hours of employment as a registered or practical nurse,” the limitations upon relator’s license “shall be administratively removed.” The order also required the periodic submission of various progress reports, and outlined consequences for noncompliance with the order’s terms and conditions.

In the summer of 2018, the Minnesota Department of Human Services (DHS) notified relator and relator’s employer, a state-licensed clinic, that relator was disqualified, by statute, from holding her position at the clinic. The letter ordered relator’s immediate removal. The letter to relator informed her that the clinic had submitted a background study request for her, and that the results of the background study showed that relator’s fourth-degree criminal-sexual-conduct conviction “disqualifie[d] [her] from any position allowing direct contact with, or access to, persons receiving services from programs licensed by [DHS] and [MDH].” *See* Minn. Stat. §§ 245C.03, subd. 1, .14, subd. 1(a), .15, subd. 1(a) (2018). The letter to relator stated that, based on the following statutory factors, she was considered to “pose an imminent risk of harm to persons” receiving the aforementioned services: “(1) [t]he vulnerability of the victim involved in [the] disqualifying characteristic;” and “(2) [relator] ha[d] a disqualifying characteristic which may not be set aside regardless of how much time ha[d] passed.” *See* Minn. Stat. § 245C.16, subd. 1 (2018).

The letter to relator stated that, pursuant to statute, the disqualifying conviction of fourth-degree criminal sexual conduct prohibited DHS “from setting aside [her] disqualification, regardless of how much time ha[d] passed,” and “from granting a variance to a disqualification.” *See* Minn. Stat. § 245C.15, subd. 1(a). The letter explained that, “if [relator] believe[d] that the information used to disqualify [her] [was] incorrect, [she] [could] ask for reconsideration of [the] disqualification.” *See* Minn. Stat. § 245C.21 (2018).

Relator submitted a request to DHS to reconsider her disqualification. In her request for reconsideration, relator stated that “some of the information [was] incorrect,” that “the notice of disqualification [was] untimely,” that she was “licensed with restrictions,” and that she was not a danger to society or her patients. Relator asked that, if her reconsideration was not granted, that she receive a hearing with an administrative judge to rule on the matter.

In October 2018, MDH affirmed relator’s disqualification. MDH informed relator that it “determined that the information used to disqualify [her] [was] correct,” that “the commissioner may not set aside [the] disqualification,” and that “the commissioner ha[d] no authority to grant a variance relating to [the] disqualification.” This certiorari appeal follows.

DECISION

I. The board's 2012 stipulation-and-consent order did not constitute a misrepresentation made on behalf of the state.

Relator argues that the board's 2012 stipulation-and-consent order, reinstating her nursing licenses, constituted a misrepresentation made on behalf of the state that, consequently, equitably estops MDH from disqualifying her under the Department of Human Services Background Studies Act (Background Studies Act), Minn. Stat. §§ 245C.01-.34 (2018).

A. Background Studies Act

The Background Studies Act requires the commissioner of human services (the DHS-commissioner) to conduct a background study on current or prospective workers providing direct-contact care to persons at facilities licensed by MDH or DHS. Minn. Stat. §§ 144.057, subd. 1 (2018), 245C.03, subd. 1(a)(3). If the subject of the study has been convicted of a crime listed in section 245C.15, the DHS-commissioner must disqualify the individual from direct-contact work. Minn. Stat. § 245C.14, subd. 1(a)(1).

The list of disqualifying crimes includes fourth-degree criminal sexual conduct—a crime, pursuant to section 245C.15, subd. 1(a), that constitutes a permanent disqualification. The Background Studies Act gives the DHS-commissioner discretion to “set aside” certain disqualifications if the commissioner finds that “the individual does not pose a risk of harm.” Minn. Stat. § 245C.22, subd. 4. However, the statute prohibits the DHS-commissioner from setting aside the disqualification, “regardless of how much time has passed, if the individual was disqualified for a crime or conduct listed in section

245C.15, subdivision 1.” Minn. Stat. § 245C.24, subd. 2(a).³ Likewise, the DHS-commissioner is prohibited from granting a variance for a disqualification that resulted from a person’s commission of a permanently disqualifying offense. Minn. Stat. § 245C.30, subd. 1(a).

If the individual believes that the information used by the DHS-commissioner is incorrect, the individual may seek reconsideration. Minn. Stat. § 245C.21, subd. 3. “The individual must submit the request for reconsideration to the commissioner in writing.” *Id.*, subd. 1. The commissioner of health (the MDH-commissioner) “shall review and decide reconsideration requests.” Minn. Stat. § 144.057, subd. 3 (2018). The MDH-commissioner’s decision is, generally, the final administrative agency action. *Id.* An individual disqualified based on a conviction listed in section 245C.15, subdivision 1, is not entitled to an agency hearing on the matter. Minn. Stat. § 245C.27, subd. 1(c). If the individual is not satisfied with the MDH-commissioner’s final decision, the individual may seek further review by certiorari appeal.⁴ See Minn. Stat. §§ 480A.06, subd. 3, 606.06 (2018); see *Rodne v. Comm’r of Human Servs.*, 547 N.W.2d 440, 444 (Minn. App. 1996).

³ Subdivision 2(b) provides a limited statutory exception to subdivision 2(a)—an exception that does not apply here. See Minn. Stat. § 245C.24, subd. 2(b).

⁴ In her appellate brief, relator indicates some confusion over why she received communications regarding her disqualification from both DHS and MDH. Minn. Stat. § 144.057, subd. 1, provides that the MDH-commissioner shall contract with the DHS-commissioner to conduct the respective background studies. Minn. Stat. § 144.057, subd. 2 (2018), explains that, if an individual is disqualified, DHS shall notify the facility and the individual, and shall inform the individual of the right to request reconsideration by submitting the request to MDH. Subdivision 3 provides that the MDH-commissioner is responsible for reviewing and deciding reconsideration requests.

Because there was no contested-case hearing in this matter, relator's certiorari appeal is not subject to the Minnesota Administrative Procedure Act (MAPA), Minn. Stat. §§ 14.001-.69 (2018).⁵ See *Rodne*, 547 N.W.2d at 444. On certiorari appeal from a quasi-judicial-agency decision not subject to MAPA:

[W]e examine the record to review questions affecting the jurisdiction of the agency, the regularity of its proceedings, and, as to the merits of the controversy, whether the order or determination in a particular case was arbitrary, oppressive, unreasonable, fraudulent, under an erroneous theory of law, or without any evidence to support it.

Anderson v. Comm'r of Health, 811 N.W.2d 162, 165 (Minn. App. 2012) (quotation omitted), review denied (Minn. Apr. 17, 2012). An agency decision is arbitrary and capricious if the commissioner:

(a) relied on factors not intended by the legislature; (b) entirely failed to consider an important aspect of the problem; (c) offered an explanation that runs counter to the evidence; or (d) the decision is so implausible that it could not be explained as a difference in view or the result of the agency's expertise.

Citizens Advocating Responsible Dev. v. Kandiyohi Cty. Bd. of Comm'rs, 713 N.W.2d 817, 832 (Minn. 2006). "Because we must afford deference to the agency's decision, our review of the Commission's decision is guided by the principle that the agency's conclusions are not arbitrary and capricious so long as a rational connection between the facts found and the choice made has been articulated." *In re Review of 2005 Annual Automatic Adjustment of Charges*, 768 N.W.2d 112, 120 (Minn. 2009) (quotation omitted). "This court reviews

⁵ A contested case is defined by MAPA as "a proceeding before an agency in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after an agency hearing." Minn. Stat. § 14.02, subd. 3.

questions of law, including interpretation of a statute, de novo.” *Smith v. Minn. Dep’t of Human Servs.*, 764 N.W.2d 388, 391 (Minn. App. 2009).

B. Equitable Estoppel

A party seeking to invoke the doctrine of equitable estoppel against the government must prove five elements: “(1) that the government made a misrepresentation of material fact; (2) that the government knew the misrepresentation was false; (3) that the government intended that its representation be acted upon; (4) that the other party did not know the facts; and (5) that the other party relied on the government’s misrepresentation to their detriment.” *AAA Striping Servs. Co. v. Minn. Dep’t of Transp.*, 681 N.W.2d 706, 720 (Minn. App. 2004).

The party seeking to invoke the doctrine has a high burden to meet. *See id.* (“Equitable estoppel should be applied sparingly against the government and only if the wrongful conduct threatens to work a serious injustice.”). “Affirmative misconduct, rather than simple inadvertence, mistake, or imperfect conduct is required for estoppel to be applied against the government.” *REM-Canby, Inc. v. Minn. Dep’t of Human Servs.*, 494 N.W.2d 71, 74 (Minn. App. 1992), *review denied* (Minn. Feb. 25, 1993).

Relator argues that the board’s 2012 stipulation-and-consent order “created an equitable estoppel type circumstance whereby the [s]tate made representations to her that it ultimately revoked despite her compliance.” Without articulating a legal basis to support her claims, she contends that the order with the board, a state entity, equitably estopped MDH, another state entity, from permanently disqualifying her under section 245C.15, subd. 1(a). We are not persuaded.

The board's 2012 stipulation-and-consent order did not constitute a misrepresentation of relator's obligations related to the reinstatement of her nursing license. Pursuant to state law, a license issued and governed by the board is a separate and statutorily distinct license from one issued by the DHS-commissioner.

1. Board-issued licenses

As expressly stated in relator's 2012 stipulation-and-consent order, the board "is authorized pursuant to Minnesota Statutes sections 148.171 to 148.285 to license and regulate registered and licensed practical nurses and to take disciplinary action as appropriate." The order provided that relator held "licenses from the [b]oard to practice professional and practical nursing in the State of Minnesota," and she was "subject to the jurisdiction of the [b]oard with respect to the matters referred to in this [order]."

A licensed practical nurse is defined by the Minnesota Nurse Practice Act (Nurse Practice Act), Minn. Stat. §§ 148.171-.285 (2018), as "an individual licensed by the board to practice practical nursing." Minn. Stat. § 148.171, subd. 8. A registered nurse is defined as "an individual licensed by the board to practice professional nursing." *Id.*, subd. 20. Definitions of the "practice of practical nursing" and the "practice of professional nursing" are provided for in the Nurse Practice Act. *See id.*, subds. 14, 15.

Section 148.261 of the Nurse Practice Act authorizes the board to take disciplinary action pertaining to board-issued licenses. Subdivision 1 provides that "[t]he board may deny, revoke, suspend, limit, or condition the license and registration of any person to practice advanced practice, professional, or practical nursing under sections 148.171 to 148.285." Minn. Stat. § 148.261, subd. 1. As stated in the board's 2012 order, relator

acknowledged that her criminal conduct “constitute[d] a violation of Minnesota Statutes section 148.261, subdivision 1(3), (6), (9), (11), (12), and (18), and justify[d] the disciplinary action” taken by the board. While the board’s authority to take disciplinary action affecting relator’s *nursing licenses* is governed by the Nurse Practice Act, the authority of DHS and MDH to disqualify relator from holding certain *nursing positions* is governed by the Background Studies Act.

2. DHS-issued licenses

As provided in the Background Studies Act, a license, as used in the context of the act, is a “certificate issued by the commissioner [of human services] authorizing the license holder⁶ to provide a specified program for a specified period of time and in accordance with the terms of the license and the rules of the commissioner.” Minn. Stat. §§ 245C.02, subds. 7, 12, 245A.02, subd. 8 (2018). The disqualification provision of the act provides that the DHS-commissioner “shall disqualify an individual who is the subject of a background study *from any position* allowing direct contact with persons receiving services from” state-licensed programs if the individual has been convicted of a disqualifying crime.

⁶ License holder is defined as “an individual, corporation, partnership, voluntary association, or other organization that is legally responsible for the operation of the program, has been granted a license by the commissioner under this chapter or chapter 245D and the rules of the commissioner, and is a controlling individual.” Minn. Stat. § 245A.02, subd. 9 (2018).

Section 245D.02 further differentiates “license holder” from a “licensed health professional.” Minn. Stat. § 245D.02, subds. 14, 15 (2018). The latter is defined as “a person licensed in Minnesota to practice those professions described in section 214.01, subdivision 2,” which includes professions licensed by the board. *Id.*, subd. 14; see Minn. Stat. § 214.01, subd. 2 (2018).

Minn. Stat. § 245C.14, subd. 1(a)(1) (emphasis added). Relator does not dispute that she was convicted of fourth-degree criminal sexual conduct which, pursuant to section 245C.15, constitutes a permanent disqualification. See Minn. Stat. § 245C.15, subd. 1(a).

3. Board's 2012 stipulation-and-consent order

The board's 2012 order reinstating relator's licenses to practice practical and professional nursing, and providing that the limitations and conditions on her licenses would be administratively removed upon the completion of 2000 hours of employment as a registered or practical nurse, is not a misrepresentation. The order does not state that, upon the fulfillment of the specified requirements, relator "could later return to full and unconditional license status"—as relator contends. Rather, the stipulation-and-consent order provides that the limitations and conditions, as specified in the agreement, would be administratively removed.

The board's order specifically concerns relator's board-issued licenses to practice practical and professional nursing. The order does not concern, nor does it make any mention of, relator's ability to hold a direct-care position in a state-licensed facility. Indeed, at oral argument before us, relator's counsel conceded that there is no evidence in the record that the board told relator she would be able to practice again at a state-licensed facility.

"[R]elator is not disqualified from working in every position in [her] profession; [she] is only disqualified from working in state-regulated facilities." *Sweet v. Comm'r of Human Servs.*, 702 N.W.2d 314, 320 (Minn. App. 2005), review denied (Minn. Nov. 15, 2005). While we acknowledge that relator's employment options may be limited as a result

of her disqualifying conviction, the law governing direct-contact care in state-licensed facilities is clear. Where, as here, the intention of the legislature is clear from the statutory language, resolution of relator's concerns is outside the province of the courts. See *State Campaign Fin. & Pub. Disclosure Bd. v. Minn. Democratic Farmer Labor Party*, 671 N.W.2d 894, 899 (Minn. App. 2003).

Because relator has failed to establish the first element of an equitable estoppel claim, her contention that MDH was equitably estopped from disqualifying her is without any legal merit.⁷

II. MDH's disqualification decision did not violate relator's due-process rights.

Although somewhat difficult to decipher, the heart of relator's certiorari appeal appears to focus on whether the disqualification decision violates her due-process rights. She contends that her due-process rights were violated, at least in part, because she was denied an administrative hearing following MDH's decision affirming her

⁷ At oral argument before us, relator's counsel alluded to an order for indefinite continuance issued in 2006 by an administrative law judge (ALJ) of the DHS. Relator's counsel alleged that the ALJ ordered that an administrative hearing be continued until after relator's criminal proceedings were resolved. According to relator's counsel, the administrative file was never reopened and relator was never provided an administrative hearing despite her compliance with all court and board-ordered conditions. Relator's counsel alleged that relator complied with all conditions under an honest and good-faith belief that, upon completion of the conditions, she would be able to practice again in a state-licensed facility. Relator's counsel argued that, following the resolution of relator's criminal charges, the ALJ should have revisited the order for indefinite continuance and provided relator with the opportunity for an evidentiary hearing.

Relator's counsel conceded that the 2006 order is not part of the record, and relator did not move to supplement the record under Minn. R. Civ. App. P. 110.05. Consequently, we decline to consider the order for indefinite continuance in this appeal. See *Thiele*, 425 N.W.2d at 582-83.

disqualification.⁸ “This court reviews the procedural due process afforded a party de novo.” *Staeheli v. City of St. Paul*, 732 N.W.2d 298, 304 (Minn. App. 2007).

The United States and Minnesota Constitutions provide that a person may not be deprived of life, liberty, or property without due process of law. U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 7. The due process afforded by the Minnesota Constitution is identical to the due process guaranteed under the United States Constitution. *Sartori v. Harnischfeger Corp.*, 432 N.W.2d 448, 453 (Minn. 1988).

“Procedural due process imposes constraints on governmental decisions which deprive individuals of ‘liberty’ or ‘property’ interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment.” *Mathews v. Eldridge*, 424 U.S. 319, 332, 96 S. Ct. 893, 901 (1976). Procedural due-process protections include “reasonable notice, a timely opportunity for a hearing, the right to be represented by counsel, an opportunity to present evidence and argument, the right to an impartial decisionmaker, and the right to a reasonable decision based solely on the record.” *Humenansky v. Minn. Bd. of Med. Exam’rs*, 525 N.W.2d 559, 565 (Minn. App. 1994), review denied (Minn. Feb. 14, 1995). However, not every protectable interest requires a hearing. *Id.*

⁸ It appears that relator’s overarching argument on appeal is that her due-process rights were violated because (1) the state, through the board’s 2012 reinstatement order, “misrepresented to her, consciously or not, what she must do and can lawfully do” and (2) she was denied an administrative hearing following MDH’s decision affirming her disqualification. Because we address relator’s misrepresentation argument in the preceding section, the following analysis addresses whether the absence of an administrative hearing in this matter violated her procedural due-process rights.

We analyze an individual's procedural due-process claim by determining, first, whether a protected interest is at stake, and, second, what process is due to that interest. *Sweet*, 702 N.W.2d at 319. There is no dispute that relator has a constitutionally protected interest in holding a direct-care position in a state-licensed facility. See *Anderson*, 811 N.W.2d at 167 (“[A] nurse has a protected property interest in holding direct-care positions in state-licensed facilities.”); *Obara v. Minn. Dep’t of Health*, 758 N.W.2d 873, 878 (Minn. App. 2008) (holding that relator had a protected property interest in pursuing nursing career in MDH-licensed facility); see also *Fosselman v. Comm’r of Human Servs.*, 612 N.W.2d 456, 461 (Minn. App. 2000) (“[D]isqualification proceedings are subject to the requirements of procedural due process.”).

Next, to determine what process is due to relator's protected interest, we balance the three factors articulated in *Mathews*:

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

424 U.S. at 335, 96 S. Ct. at 903.

Although relator's procedural due-process argument is slim, her argument appears to be that the lack of an administrative hearing deprived her of adequate process to protect her interest as a direct-care nurse in a state-licensed facility. In support of her argument that her due-process rights were violated, relator cites to our decision in *Fosselman*, which

held that the DHS-commissioner’s “failure to grant relators a state agency hearing deprived them of due process.” 612 N.W.2d at 467.

While we hold, consistent with caselaw, that relator has a constitutionally protected interest in pursuing employment as a direct-care nurse in a state-licensed facility, we conclude that relator’s due-process rights in protecting that interest were not violated. With regard to the first *Mathews* factor—relator’s private interest that will be affected by the disqualification—the state concedes that it favors relator. *See Sweet*, 702 N.W.2d at 320 (“Employment in an individual’s chosen field is significant and weighs heavily in the individual’s favor.”); *Fosselman*, 612 N.W.2d at 462 (holding that, because disqualification precluded relators from working in their chosen field, the first *Mathews* factor weighed heavily in relators’ favor). However, as this court has stated before, “the concept of procedural due process is flexible” and “an individual’s interest in working in a chosen profession is not absolute.” *Sweet*, 702 N.W.2d at 320.

The second factor—which “considers the procedures used by the governmental agency, the potential risk of an erroneous decision, and the probable value of an oral hearing”—weighs in the state’s favor. *Id.* at 321. Contrary to relator’s position, caselaw establishes that she was not entitled to an evidentiary hearing, and the process afforded to her was constitutionally sufficient. In *Obara*, for example, the relator had been disqualified from pursuing his career as a nurse in a MDH-licensed facility after being convicted of felony assault. 758 N.W.2d at 876-77. We held, “Because relator’s convictions required proof of guilt beyond a reasonable doubt, he was afforded due process of law incident to a criminal proceeding.” *Id.* at 879. Accordingly, we concluded that “procedural due process

d[id] not require that DHS provide [the] relator an evidentiary hearing on his disqualification.” *Id.*

In *Sweet*, another case involving the disqualification of an employee from a direct-contact position in a state-licensed facility, we concluded that, because the relator’s disqualification was based on convictions that were not in dispute, he had “already been afforded the full panoply of rights in the criminal proceedings leading up to his convictions.” 702 N.W.2d at 321. Consequently, we held that relator was not entitled to an evidentiary hearing. *Id.* at 322.

Relator cites to *Fosselman* in support of her argument that she should have been afforded a hearing. However, her reliance on *Fosselman* is misplaced. In *Fosselman*, we concluded that the relators were entitled to an oral hearing because the evidence supporting their disqualification was in dispute. 612 N.W.2d at 463. Unlike relator in this case, the relators in *Fosselman* were disqualified based on *alleged* conduct that was never criminally charged. *Id.* at 459. In both *Obara* and *Sweet*, we noted that *Fosselman* was distinguishable based on these factual differences. *Obara*, 758 N.W.2d at 878; *Sweet*, 702 N.W.2d at 321. The second factor weighs in the state’s favor.

The third *Mathews* factor—which considers the government’s interest—also weighs in favor of the state. As we have articulated before, “We have no difficulty in identifying the state’s legitimate interest here—to safeguard patients in licensed health-care facilities from assault—or in recognizing a reasonable relationship between this legitimate interest and disqualifying those convicted of criminal sexual conduct from having direct access to those patients.” *Anderson*, 811 N.W.2d at 167; *see also Sweet*, 702 N.W.2d at 321 (“[T]he

governmental interest in protecting the public, especially vulnerable individuals . . . is of paramount importance.”).

Additionally, the government has an interest in conserving time and resources by reconsidering disqualifications in an efficient manner. *Sweet*, 702 N.W.2d at 321. “If an individual disqualified for criminal convictions were due an oral evidentiary hearing, the commissioner would need to hold one on the same issue every time the same individual was hired or rehired by a state-licensed program.” *Id.* at 321-22. While financial considerations are not controlling, the government’s interest “in conserving scarce fiscal and administrative resources is a factor that must be weighed.” *Mathews*, 424 U.S. at 348, 96 S. Ct. at 909. Because “the cost outweighs the limited benefit, if any, of providing an evidentiary hearing,” the third factor weighs in the state’s favor. *Sweet*, 702 N.W.2d at 322; *see also Obara*, 758 N.W.2d at 879.

In sum, we conclude that MDH’s disqualification decision “was not arbitrary, unreasonable, oppressive, fraudulent, made under an error of law, or unsupported by the evidence.” *Smith*, 764 N.W.2d at 392. While we are mindful of evidence demonstrating that relator has taken significant steps to learn from her criminal conviction and show that she does not pose a risk of harm to patients, the law governing direct-care positions in state-licensed facilities is clear. Minnesota law expressly provides that, based on relator’s conviction of fourth-degree criminal sexual conduct, she is permanently disqualified, regardless of how much time has passed, from working in a direct-contact position with persons receiving services from DHS or MDH-licensed facilities. Minn. Stat. §§ 245C.14, subd. 1(a)(1), .15, subd. 1(a). Relator has failed to show that the board’s 2012 stipulation-

and-consent order constituted a misrepresentation, or that her due-process rights were violated by MDH's disqualification determination.

Affirmed.