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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1280**

In the Matter of Alan Joshua Woggon, D.C. License No. 6076.

**Filed May 4, 2020
Affirmed
Bjorkman, Judge**

Board of Chiropractic Examiners
File No. 21-0901-35871

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Minneapolis, Minnesota (for relator Alan Joshua Woggon)

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Considered and decided by Bjorkman, Presiding Judge; Jesson, Judge; and Kirk,
Judge.*

UNPUBLISHED OPINION

BJORKMAN, Judge

Relator-chiropractor challenges respondent-chiropractic-board's decision to suspend his license, arguing that the decision (1) was outside of the board's authority and jurisdiction, (2) violated his constitutional due-process rights, (3) was unsupported by substantial evidence, and (4) imposed excessive discipline. We affirm.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

FACTS

Relator Alan Joshua Woggon, D.C., became a chiropractor in 2010 and obtained a Minnesota license in 2015. He worked at Woodlands Chiropractic Clinic in St. Cloud from May to December 2017, and then moved to the St. Cloud Chiropractic Clinic. This action arises from patient B.D.S.'s October 2018 complaint that Woggon released her private medical information to a third party without her authorization, violated patient boundaries, and abandoned her as a patient. Respondent Minnesota Board of Chiropractic Examiners (the board) suspended Woggon's license, investigated the complaint, and ordered a contested-case hearing before an administrative-law judge (ALJ), during which the following evidence was adduced.¹

B.D.S. began treating at Woodlands in September 2017, seeing Woggon up to three times per week. When Woggon left Woodlands, he was subject to a noncompete agreement that prevented him from treating his prior patients. But he arranged to continue treating B.D.S. Instead of paying St. Cloud Chiropractic for Woggon's services, B.D.S. performed volunteer work for Chiropractic Leadership, Educational Advancement, and Research Institute (CLEAR), where Woggon served as research director.² Woggon used a CLEAR email address to communicate with B.D.S. He attached B.D.S.'s x-rays and

¹ By statute, the board is authorized to oversee disciplinary proceedings against licensed chiropractors, and may designate a review panel to investigate complaints against a licensee and refer the matter to an ALJ for a contested-case hearing and disposition recommendation. Minn. Stat. § 214.10, subd. 2 (2018). The board makes the final decision whether discipline is warranted. Minn. Stat. § 148.10, subd. 1 (2018).

² Woggon held various positions at CLEAR from 2003 to 2018, and last served as its research director.

treatment information. Via email, B.D.S. gave Woggon a link to access all of her other medical records.

By April 2018, the relationship between Woggon and B.D.S. had become personal. In one text message, Woggon complimented B.D.S. and asked her to become his friend to share her “feminine perspective,” while acknowledging that he could be crossing boundaries. The next month, Woggon professed his sexual attraction to B.D.S. in what he later called “The Email.” In “The Email,” Woggon described how he felt love at first sight and a “mystical connection” with B.D.S. that went beyond mere physical attraction. He declared that he loved her “spirit and . . . mind and everything about [her],” and he wanted to know whether his “romantic interest [was] reciprocated.” He suggested that if she felt a romantic interest in him, they “slowly, delicately, and sincerely pursue it.” Thereafter, Woggon and B.D.S. exchanged thousands of personal text messages and emails that contained sexual references and innuendo. They did not have sexual intercourse, but B.D.S. described several intimate hugs. And she believed their in-person contacts and communications were sexual in nature.

Woggon initially told B.D.S. they would “follow . . . to the letter” the “rules for how doctors are allowed to begin romantic relationships with their patients.” Several months later, B.D.S. asked about the rules. Woggon explained that chiropractors cannot have a personal relationship with patients until two years after the patient’s last appointment. He also told B.D.S. he had deleted all of their personal text messages and emails, changed his password, and had taken other steps to keep their relationship secret.

In late June 2018, Woggon’s wife saw “The Email.” Woggon informed B.D.S., advising that his wife had the authority to decide whether he could keep seeing B.D.S. as a patient and had been “copied on all [his] emails” with B.D.S. even though he knew this violated HIPAA.³ Woggon also revealed B.D.S.’s identity and phone number to his wife. By early July, Woggon ended the personal relationship with B.D.S. via text message. On July 12, he referred her to another chiropractor. On August 1, he accompanied B.D.S. on her first visit to the new chiropractor.

A Woodlands employee testified about her experiences with Woggon. She encountered Woggon and his wife arguing at a bar. Woggon was drunk, and showed the employee nude photos of his wife. The employee testified that Woggon appeared at work one day in a disheveled state with a “black eye”; Woggon acknowledged going to work hungover on three occasions. At the request of Woodlands’s owner, Woggon wrote a letter to all staff apologizing for these incidents, and admitting his “abuse of alcohol” and “poor choices.” In his December 2017 resignation email, Woggon wrote, “I understand you have a business to run and I am more of a liability than an asset. . . . I thought I could get my sh-t together but I can’t. I’m giving up[.]”

Sauk Rapids Police Officer Eric Norsten testified that police made more than 30 visits to Woggon’s home between November 2016 and December 2018. The police responded to domestic disturbances between Woggon and his wife, numerous instances of alcohol and methamphetamine use by Woggon, production of pornography, and other

³ The Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, 110 Stat. 1936.

sexual activity. Officer Norsten described an incident between the couple that resulted in a criminal charge against Woggon. And Woggon testified about his 2017 conviction for driving under the influence.

The ALJ also heard testimony and received reports from three experts. Dr. Jeffrey C. Morgan, a physician who focuses his practice on addiction, reviewed the board's investigation materials but did not examine Woggon. Dr. Morgan opined that Woggon has a "severe alcohol-use disorder," and "co-occurring psychosocial factors, such as legal impairment, interpersonal relationship issues" and methamphetamine use. Dr. Morgan testified that Woggon's use of alcohol and methamphetamine together impaired his decision-making ability by "creat[ing] a situation of impaired judgment, sometimes associated with feelings of grandiosity." Dr. Morgan also testified that Woggon's disorder affected his ability to practice chiropractic because it leads to "failed problem-solving," impairment of "the conversion of short-term to long-term memory," and would lower inhibitions, leading "to inappropriate actions and decisions," and "boundary transgressions with patients."

Dr. Ryne DeVries, an expert in chiropractic ethics and professionalism, also reviewed the communications between Woggon and B.D.S. He opined that Woggon had acted unprofessionally and unethically by engaging in an intimate relationship with B.D.S., and by abandoning her as a patient because of his wife's demands.

Dr. James Alsdurf, a licensed clinical psychologist retained by Woggon, personally examined Woggon, administered psychological testing, and reviewed the board's investigative file. Dr. Alsdurf diagnosed Woggon with a personality disorder with

borderline features including anxiety, depression, and chemical abuse. He opined that Woggon's mental-health issues impair his reasoning and require long-term cognitive behavioral therapy.

The ALJ made extensive findings of fact, determined that Woggon violated three provisions of the chiropractic licensing statute, Minn. Stat. § 148.10, subd. 1, and recommended that the board take disciplinary action. The board adopted most of the ALJ's factual findings and concluded that Woggon is subject to discipline because he (1) engaged in unprofessional conduct in that he "engaged in conduct with a patient that was sexual in nature, engaged in conduct that was reasonably interpreted by the patient as sexual in nature, and engaged in verbal behavior that was seductive"; (2) is "unable to practice chiropractic with reasonable skill and safety to patients by reason of a mental condition and substance abuse"; and (3) "revealed privileged communication from or relating to a patient," in violation of Minn. Stat. § 148.10, subd. 1(a)(11), (12), and (17). The board suspended Woggon's license indefinitely, with the ability to petition for a stay of the suspension after four years upon meeting certain conditions, and ordered him to pay a \$50,000 civil penalty. Woggon appeals by certiorari.

D E C I S I O N

Woggon urges this court to reverse or modify his license suspension. We will do so only if the board's decision violates the constitution, exceeds the board's statutory authority or jurisdiction, is based on unlawful procedure, is "affected by other error of law," is "unsupported by substantial evidence in view of the entire record as submitted," or is

“arbitrary and capricious.” Minn. Stat. § 14.69 (2018); see *Cable Commc’ns Bd. v. Nor-West Cable Commc’ns P’ship*, 356 N.W.2d 658, 668 (Minn. 1984).

A decision is supported by substantial evidence when it is supported by (1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; or (5) the evidence considered in its entirety.

Minn. Ctr. for Env’tl. Advocacy v. Minn. Pollution Control Agency, 644 N.W.2d 457, 464 (Minn. 2002). On appeal, we defer to an agency’s “conclusions regarding conflicts in testimony, the weight given to expert testimony and the inferences to be drawn from testimony.” *Cannon v. Minneapolis Police Dep’t*, 783 N.W.2d 182, 189 (Minn. App. 2010). Agency decisions are presumed correct, and we defer to the agency’s expertise and special knowledge. *Reserve Mining Co. v. Herbst*, 256 N.W.2d 808, 824 (Minn. 1977).

Doctors of chiropractic are subject to extensive training and examination, and must maintain a valid license in order to practice in Minnesota. Minn. Stat. § 148.06 (2018). The board is authorized to discipline chiropractors, including suspending or revoking their licenses for, among other things, engaging in unprofessional conduct. Minn. Stat. § 148.10, subd. 1(a). The standard of proof for professional licensing proceedings is proof by a preponderance of the evidence. *In re License of Friedenson*, 574 N.W.2d 463, 466 (Minn. App. 1998), review denied (Minn. Apr. 30, 1998).

Woggon argues that (1) the board exceeded its authority and jurisdiction by disciplining him based on personal conduct that was “wholly unrelated” to his chiropractic practice; (2) the board violated his due-process rights by failing to order a mental

examination as required by Minn. Stat. § 148.10, subd. 1(a)(12); (3) the evidence does not substantially establish that he engaged in “sexual conduct” within the meaning of Minn. Stat. § 148.10, subd. 1(e)(2), revealed any “privileged communications” within the meaning of Minn. Stat. § 148.10, subd. 1(a)(17), or otherwise engaged in conduct warranting discipline; and (4) the discipline imposed is excessive. We address each argument in turn.

I. The board did not exceed the scope of its authority or jurisdiction.

Minn. Stat. § 148.10, subd. 1(a)(12), authorizes the board to discipline a chiropractor who is “unable to practice chiropractic with reasonable skill and safety to patients by reason of illness, professional incompetence, senility, drunkenness, use of drugs, narcotics, chemicals or any other type of material, or as a result of any mental or physical condition.” Woggon argues that the board has no authority to consider or punish him for out-of-clinic conduct because there is no nexus between his chemical-use and mental-health issues and his professional performance. This argument is unavailing for two reasons.

First, this court has rejected the argument that evidence about a medical professional’s personal conduct is irrelevant to his or her professional conduct. *Friedenson*, 574 N.W.2d at 466. In *Friedenson*, a patient complained that her obstetrician/gynecologist did not use gloves during an examination. *Id.* at 465. During its investigation, the medical board learned *Friedenson* had been arrested for soliciting prostitutes. He objected to the board’s consideration of his arrests as unrelated to his conduct with the patient. *Id.* at 466. We disagreed, stating that “the relevance of such behavior by a

physician practicing in the area of obstetrics and gynecology is obvious. Respect for appropriate boundaries is essential.” *Id.* We also noted that while the physician’s solicitation of prostitutes may not have provided sufficient grounds for initiating an investigation, those actions “were relevant and worthy of the board’s consideration.” *Id.*

Second, the discipline imposed is not based on Woggon’s alleged private transgressions; it was based on the impact his mental-health issues and chemical use had on his ability to reasonably and safely treat patients. As in *Friedenson*, evidence of Woggon’s behavior, chemical use, and mental health obtained during the investigation helps explain his “boundary transgressions” and other improper conduct toward B.D.S. Dr. Morgan opined that use of alcohol and methamphetamines results in failed problem-solving, improper formation of “appropriate treatment plans,” “impair[ment] [of] conversion of short-term memory to long term memory,” and “bad decisions” due to the brain’s pleasure/reward function dominating its executive function. Woggon’s retained expert likewise connected Woggon’s personality disorder to his recklessness and impaired capacity for “self-appraisal” and clear reasoning, which explain his boundary-related and professional transgressions. The evidence Woggon deems irrelevant is highly probative of whether he is able to safely practice chiropractic. Indeed, the board would not have fulfilled its statutory duties if it failed to consider these aspects of Woggon’s personal life.

II. The board’s failure to order a mental examination did not violate Woggon’s due-process rights.

A license to practice chiropractic is a property right entitled to due-process protections. *Humenansky v. Minn. Bd. of Med. Exam’rs*, 525 N.W.2d 559, 566 (Minn.

App. 1994), *review denied* (Minn. Feb. 14, 1995). The board may suspend a license if the chiropractor is “unable to practice chiropractic with reasonable skill and safety to patients by reason of . . . any mental or physical condition.” Minn. Stat. § 148.10, subd. 1(a)(12). But when the board has probable cause to believe that a licensee falls within this provision, it “shall direct the person to submit to a mental or physical examination.” *Id.* The board did not do this. Instead, the board hired Dr. Morgan to review Woggon’s records. Woggon argues that the board’s failure to order an examination violated his due-process rights. We are not persuaded.

Generally, the use of “shall” in statutory language is mandatory. Minn. Stat. § 645.44, subd. 16 (2018). But it is well-settled that a statute that includes “a requirement but provide[s] no consequence for noncompliance” is merely directory and not mandatory. *In re M.O.*, 838 N.W.2d 577, 583 (Minn. App. 2013), *review denied* (Minn. Oct. 23, 2013). Minn. Stat. § 148.10, subd. 1(a)(12), does not provide a consequence if the board fails to order a mental or physical examination of a licensee pending a board disciplinary hearing. As such, the statutory language is merely directory. “[W]hen a statutory rule is directory, a petitioner is not entitled to relief unless the lack-of-compliance caused him prejudice.” *Reeves v. Comm’r of Pub. Safety*, 751 N.W.2d 117, 121 (Minn. App. 2008).

We discern no prejudice here. While the board did not direct Woggon to submit to an examination, Woggon was examined by his own qualified expert. Dr. Alsdurf’s conclusion that Woggon suffers from mental illness that impairs his judgment and requires long-term therapy is consistent with the evidence provided by the board’s two retained experts and supports the board’s decision. Further, we note that it is not clear that due-

process protections are extended to the investigatory period of a licensing case. See *Humenansky*, 525 N.W.2d at 566 (recognizing that a medical examination of a licensee is a “procedural stage” with “an investigatory purpose,” and a licensee’s constitutionally protected property interest in a license is not implicated “until the board begins formal adjudicatory proceedings”).

III. Substantial evidence supports the board’s decision.

A. The evidence supports the board’s determination that Woggon engaged in unprofessional conduct of a sexual nature.

The board found that Woggon was subject to discipline because he engaged in “unprofessional conduct,” which is defined to include “conduct with a patient that is sexual or may reasonably be interpreted by the patient as sexual, or . . . any verbal behavior that is seductive or sexually demeaning to a patient,” Minn. Stat. §148.10, subd. 1(a)(11), (e)(2). In construing licensing statutes, words “are to be given their ordinary meaning in the absence of persuasive reasons to the contrary.” *Humenansky*, 525 N.W.2d at 564; see Minn. Stat. § 645.08(1) (2018).

Woggon asserts that, because his conduct with B.D.S. involved no physical contact, it was not sexual in nature. We disagree. First, the record belies Woggon’s assertion. B.D.S. testified that Woggon hugged her in an intimate way; she described the hugs as sexual, not platonic. See *Friedenson*, 574 N.W.2d at 467 (construing the physician’s act of hugging patients as sexual conduct when the hugs “were reasonably interpreted by each patient to be sexual”). Second, the statute proscribes more than physical contact. Woggon sent B.D.S. hundreds of sexually explicit text messages and emails, including naked

photographs of himself. B.D.S. viewed these communications as sexual. “Unprofessional conduct” expressly includes “verbal behavior that is seductive.” Woggon’s written communications included sexually tempting or alluring material. For example, Woggon’s emails and texts told B.D.S. that he had “very naughty thoughts” about her, “want[ed] to see her sex appeal,” had been “wanting [her] for months,” imagined “danc[ing] [his] fingers along the hidden recesses of [her] body, lightly touching those intimate areas where romance blossoms,” was “fill[ed] with desire” when he imagined her naked, and was afraid that she would “feel [his] desire for [her]” when he hugged her. B.D.S. reasonably interpreted Woggon’s conduct and statements as sexual.

B. The evidence supports the board’s determination that Woggon released privileged communications to a third party.

The board determined that Woggon violated Minn. Stat. § 148.10, subd. 1(a)(17), by revealing privileged communications concerning B.D.S. to his wife. Woggon argues that he is not subject to discipline because he did not intend to reveal privileged information and it was his wife who obtained it by hacking into his email account. We are not persuaded. As the board notes, “[t]here is no mens rea requirement in the statute.” And the record shows that Woggon intentionally revealed to his wife confidential information regarding B.D.S. and knew that this violated HIPAA. When his wife discovered “The Email,” Woggon told her B.D.S.’s name and phone number, revealed B.D.S.’s status as his patient, and provided his wife access to B.D.S.’s medical records. Woggon even suggested to B.D.S. that his wife could oversee his communications with B.D.S. and attend the appointment with B.D.S.’s new chiropractor. Ample evidence supports the board’s

determination that Woggon is subject to discipline for releasing privileged communications about a patient.

C. The evidence supports the board's determination that Woggon is not able to reasonably and safely practice chiropractic.

Finally, Woggon argues that the evidence does not support the board's conclusion that he "is unable to practice chiropractic with reasonable skill and safety to patients by reason of a mental condition and substance use." The record includes evidence provided by three experts, police officers, former coworkers, and Woggon himself to establish that Woggon has serious mental-health and chemical-use issues that implicate his ability to practice chiropractic "with reasonable skill and safety to patients." Minn. Stat. § 148.10, subd. 1(a)(12). Woggon's own expert opined that his personality disorder, depression, and chemical abuse impair his judgment. Dr. Alsdurf testified that Woggon could attempt to function normally if he had long-term cognitive behavioral therapy, but he recognized that success in cognitive therapy is difficult and limited. Dr. Morgan testified that Woggon has a severe alcohol-use disorder that affects his reasoning and boundaries with patients, and impairs his memory. The testimony and evidence provided by other witnesses, particularly B.D.S., demonstrates Woggon's erratic behavior as a chiropractor. The record as a whole amply supports the board's determination that Woggon is not able to reasonably and safely practice chiropractic at this time.

IV. The board did not abuse its discretion in imposing discipline.⁴

A professional licensing board has discretion to determine and impose appropriate discipline, and we will not disturb its decision absent an abuse of discretion. *Proetz v. Minn. Bd. of Chiropractic Exam'rs*, 382 N.W.2d 527, 532-33 (Minn. App. 1986), review denied (Minn. May 16, 1986); *Padilla v. Minn. State Bd. of Med. Exam'rs*, 382 N.W.2d 876, 886-87 (Minn. App. 1986), review denied (Minn. Apr. 24, 1986).

Discipline “must reflect the seriousness of [a] violation,” *In re Revocation of Family Child Care License of Burke*, 666 N.W.2d 724, 728 (Minn. App. 2003), and must also support the public interest in encouraging proper conduct of licensees, see *Padilla*, 382 N.W.2d at 887 (recognizing “harm to the public” if licensing violations are not punished). Generally we will not reverse a license sanction unless it grossly exceeds the seriousness of the violation or is not supported by the record, such as when it is based on gravely erroneous findings. See, e.g., *In re Haugen*, 278 N.W.2d 75, 80-81 (Minn. 1979) (finding abuse of discretion when the “drastic sanction” of revocation of real estate broker’s license was “completely uncalled for, based on the evidence,” which consisted of a broker, upon advice of counsel and in good faith, depositing earnest money into a trust account); *Burke*, 666 N.W.2d at 728 (reversing for sanction reconsideration when revocation of a daycare

⁴ At oral argument, Woggon argued that his \$50,000 civil penalty is excessive under Minn. Stat. § 148.10, subd. 3(3) (2018), which sets a \$10,000 limit for “each separate violation.” Because this issue was not raised in Woggon’s appellate brief to this court, we decline to consider it, other than to note that each of Woggon’s three statutory violations reflects multiple individual acts. See *City of Morris v. Sax Invs.*, 749 N.W.2d 1, 14 (Minn. 2008) (declining to consider an issue not raised below or in appellate brief).

license was based on erroneous grounds, no children were injured, and daycare parents supported the licensee). We are not persuaded that this high standard is met here.

Woggon contends that the discipline he received is excessive, reflecting the board's will rather than its judgment. He cites 15 other matters in which the board imposed less stringent discipline under circumstances he contends are more egregious. And he suggests the board's discipline was primarily based on the chaos in his personal life that is unrelated to patient care. This argument has some merit. None of the cited matters involve suspensions even close in duration to Woggon's four-year suspension. And Woggon largely admitted B.D.S.'s allegations, cooperated with the complaint-investigation panel, and is willing to participate in treatment to improve his practice. This record appears to support a lesser sanction.

But our standard of review prevents us from substituting our judgment for that of the board. See *834 VOICE v. Indep. Sch. Dist. No. 834*, 893 N.W.2d 649, 652 (Minn. App. 2017) (stating that school board decision is "entitled to judicial deference" and appellate court "will not substitute our own judgment for that of a board"); *Trout Unlimited, Inc. v. Minn. Dep't of Agric.*, 528 N.W.2d 903, 907 (Minn. App. 1995) (stating that an agency decision is arbitrary and capricious if it represents the agency's will rather than its judgment), *review denied* (Minn. Apr. 27, 1995). The board was free to reject comparisons to other disciplinary cases, particularly because the licensee in each of the 15 cited cases negotiated the sanction with the board. And while Woggon's conduct did not include sexual intercourse or subject B.D.S. to physical harm, it was egregious and pervasive. He repeatedly violated core principles related to patient care, confidentiality, and professional

boundaries. In short, we discern no principled basis upon which we could modify Woggon's discipline on this record given our narrow standard of review. We observe no abuse of discretion in the board's imposition of the four-year suspension and fine.

Affirmed.