STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0553

In the Matter of Marko Kamel, BDS, License No. D12206.

Filed December 23, 2024
Affirmed
Connolly, Judge

Minnesota Board of Dentistry

Julia J. Nierengarten, Nicole Brand, Meagher & Geer, P.L.L.P., Minneapolis, Minnesota (for relator Marko Kamel)

Keith Ellison, Attorney General, Michael McSherry, Nicholas Leinesch, Assistant Attorneys General, St. Paul, Minnesota (for respondent Minnesota Board of Dentistry)

Considered and decided by Connolly, Presiding Judge; Wheelock, Judge; and Kirk, Judge.*

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Relator argues that respondent-board's decision to suspend his license to practice dentistry is not supported by substantial evidence. We affirm.

FACTS

Relator Dr. Marko Kamel obtained a license to practice dentistry in Minnesota in April 2006, and opened his own dental practice, Woodbury Dental Arts, in 2011. Three

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

other licensed dentists work with Dr. Kamel at Woodbury Dental Arts, and a significant portion of Dr. Kamel's practice is devoted to dental-implant surgery. Although Dr. Kamel is a general practice dentist, not an oral and maxillofacial surgeon, he has completed hundreds of hours of trainings, classes, and continuing education credits with oral surgeons and various dental entities regarding dental implants.

The placement of a dental implant is a surgical procedure intended to replace missing natural teeth with a fixed prosthesis. Dental implants are placed directly into the bone so that prosthetic teeth can be attached to them. Traditional implants are placed into the bone at the approximate location where the root of the natural tooth was once located. In contrast, longer zygomatic implants are placed into the cheek bone for added security. Zygomatic implants are useful when a patient has bone loss or other issues that would result in a traditional implant being unsuitable.

Different techniques are used for placing dental implants. One technique is a single-tooth implant, wherein the implant is placed in the exact location of the tooth it is replacing. Another technique is called an arch, wherein a series of teeth are anchored by several implants. Traditionally, an arch technique is done with four implants, but if one of the implants fails, some or all the other implants may also need to be replaced.

Patient 1 first saw Dr. Kamel in June 2021, regarding full arch replacement options for her upper teeth. After consulting with an oral and maxillofacial surgeon, Dr. Kamel created a treatment plan for patient 1 that included both zygomatic and traditional dental implants. Dr. Kamel then performed oral surgery on patient 1 on August 2, 2021. During the surgery, Dr. Kamel removed all of patient 1's remaining upper teeth and placed a total

of eight implants in her upper and lower jaws: five traditional implants and three zygomatic implants.

At her three-month implant check on October 26, 2021, patient 1 complained of tenderness in her upper jaw and an occasional bad odor. And at a follow-up appointment on November 24, 2021, patient 1 complained that the dental implants were very sore. Dr. Kamel determined that some of the implants did not integrate to the bone and considered them implant failures. Dr. Kamel then performed oral surgery on patient 1 on November 30, 2021, and replaced implants #3 and #14. Dr. Kamel also removed implants #6, #8, and #11, but did not replace them.

Patient 1 visited Woodbury Dental Arts several times in early 2022 for various issues, including loose teeth, sinus concerns, gum and jaw soreness, and a screw that had fallen out. On May 24, 2022, Dr. Kamel performed a third oral surgery on patient 1, during which he removed and replaced implant #14. But on July 20, 2022, it was determined that implant #14 had failed and it was removed.

In September 2022, patient 1 returned to Woodbury Dental Arts complaining of pain in her upper right jaw. An examination revealed that implant #3 was loose, and patient 1 later reported that implant #2 was loose and painful. Dr. Kamel subsequently performed oral surgery on patient 1 on October 5, 2022, removing implant #3, and placing an implant at #2 and a zygomatic implant at #3. And on December 5, 2022, Dr. Kamel performed another oral surgery on patient 1 to remove the recently placed zygomatic implant at #3. The December 5, 2022, surgery marked the third time implant #3 failed.

In 2023, patient 1 continued to report pain and discomfort related to the dental implants, such as sinus infections, discomfort when chewing, and upper right jaw pain. Consequently, by July 2023, Dr. Kamel revaluated patient 1 and provided her with three treatment options: (1) remove the dental implants and change to a denture; (2) place four zygomatic implants and attach them to the bridge; or (3) place four zygomatic implants and use a denture temporarily during the healing period before attaching the bridge after the implants have integrated.

Patient 1 sought a second opinion and was ultimately assessed by an oral surgeon at the University of Minnesota, who found that patient 1 "presents with loose and broken provisional implant supported prosthesis on the maxilla, loose pterygoid implant on the right, fractured pterygoid implant on the left, soft tissue infection associated with dehisced zygomatic implant on the left, peri-implantitis associated with implant #8." Patient 1 then underwent oral surgery at the University of Minnesota on September 27, 2023, during which patient 1's remaining four dental implants were removed, leaving patient 1 without any natural teeth or implants in her upper jaw.

Patient 2 first saw Dr. Kamel in May 2023, for an initial consultation regarding dental implants, and Dr. Kamel performed oral surgery on her on June 27, 2023. During the surgery, Dr. Kamel extracted all of patient 2's remaining natural teeth and placed 12 traditional dental implants, six on the upper jaw and six on the lower jaw. Dr. Kamel also removed approximately ten millimeters of bone during the surgery to help make patient 2's smile design more aesthetically pleasing.

Patient 2 experienced excruciating pain following the surgery and she returned to Woodbury Dental Arts the next day for cold laser therapy. The cold laser therapy, however, did not control patient 2's pain, nor did various pain medications that were prescribed.

By June 30, 2023, patient 2's pain was still unmanageable, prompting her to go to a hospital emergency room. During an examination, purulent discharge drained from patient 2's mouth, which indicated an infection. A CT scan was taken, which showed "premaxillary and premandibular soft tissue swelling and a small amount of ill-defined fluid in the premaxillary space. There is inflammatory stranding extending inferiorly along the anterior neck to the level of the thyroid gland." Hospital records indicated that patient 2 was diagnosed with "[i]nfection of dental prosthesis."

Hospital health-care providers recommended that patient 2 go to the University of Minnesota for further treatment. Patient 2's friend, who had been caring for patient 2, updated Woodbury Dental Arts with this information. Dr. Kamel subsequently called patient 2 and left her the following voicemail:

> Hi, . . . I am leaving this message for [patient 2]. This is Dr. Kamel from Woodbury Dental Arts. I see that . . . there is some complications going on, but I definitely do not recommend going to the University of Minnesota, ah, E.R. I definitely would like to . . . see the, the case to see if there is any complications going on. We can take care of it. The way that the University of Minnesota is dealing with . . . any complications . . . is not something that I would approve. So, ah, [patient 2], I would prefer if you do not take . . . the recommendation because they are not qualified to take care of such a case. So, . . . I hope you get this . . . voice message . . . on time . . . and . . . this is my cell phone number, please call me at any time . . . . Thank you.

Patient 2 disregarded Dr. Kamel's recommendation and went to the University of Minnesota. Patient 2 was then admitted with "rapidly progressing" infections, and surgery was promptly performed. During the surgery, the surgeon observed "copious purulent drainage," residual debris in the abscess cavities "consistent with bone fragments," and "chronic granulation tissue." The surgeon also noted that the chronic granulation tissue "was not acute from recent surgery," but was instead "consistent with more tenacious and mature chronic periapical pathology." The surgeon removed all of patient 2's prostheses and her postoperative diagnoses included a dental infection; sepsis indicated by an elevated white blood cell count, fever, and the source of infection being present; pressure necrosis from prostheses; bilateral canine space infection; and submental space infection.

Patient 1 and patient 2 filed complaints with respondent Minnesota Board of Dentistry (board) related to the treatment they received from Dr. Kamel. The board's Practitioner Review Committee (committee) then initiated contested-case proceedings against Dr. Kamel's dental license, alleging that Dr. Kamel engaged in conduct unbecoming of a person licensed to practice dentistry or conduct contrary to the best interest of the public, as such conduct is defined by the board's rules, in violation of Minn. Stat. § 150A.08, subd. 1(6) (2022), and Minn. R. 3100.6200 (2023). Specifically, the committee alleged that Dr. Kamel both engaged in personal conduct that brings discredit to the profession of dentistry, in violation of Minn. R. 3100.6200(A), and demonstrated gross ignorance or incompetence in the practice of dentistry or repeated performance of dental treatment that falls below accepted standard, in violation of Minn. R. 3100.6200(B).

An evidentiary hearing was held before an administrative law judge (ALJ). Two expert witnesses testified on behalf of the committee, and three expert witnesses testified on behalf of Dr. Kamel. Patient 2 and Dr. Kamel also testified at the hearing.

The ALJ determined that the committee failed to establish "by a preponderance of the evidence that [Dr. Kamel] engaged in personal conduct bringing discredit to the practice of dentistry." But the ALJ determined that "the greater weight of the evidence supports the conclusion that [Dr. Kamel's] treatment of [p]atient 1 and [p]atient 2, taken as a whole, demonstrated gross ignorance or incompetence in the practice of dentistry." The ALJ concluded that the board "may impose discipline on [Dr. Kamel's] license" because the committee has shown that Dr. Kamel "engaged in conduct unbecoming a person licensed to practice dentistry or conduct contrary to the best interests of the public, as defined in the rules of the [b]oard, in violation of Minn. Stat. § 150A.08, subd. 1(6)."

The board accepted the ALJ's report and recommendation and suspended Dr. Kamel's license to practice dentistry "for an indefinite period of time." But the board provided Dr. Kamel with the opportunity to petition to have his license suspension lifted after one year, provided that he satisfied certain conditions. Finally, the board precluded Dr. Kamel from performing "zygomatic or pterygoid implants for a period of at least five years." This certiorari appeal follows.

DECISION

Dr. Kamel challenges the board's decision to suspend his license to practice dentistry. "Administrative-agency decisions enjoy a presumption of correctness and may be reversed only when they are arbitrary and capricious, exceed the agency's jurisdiction

or statutory authority, are made upon unlawful procedure, reflect an error of law, or are unsupported by substantial evidence in view of the entire record." *In re Revocation of Fam. Child Care Lic. of Burke*, 666 N.W.2d 724, 726 (Minn. App. 2003); *see also* Minn. Stat. § 14.69 (2022). A reviewing court defers to the agency's fact-finding process and will not substitute its findings for those of the agency. *Burke*, 666 N.W.2d at 726.

Under Minnesota law, the board "may . . . suspend . . . the license of a dentist" for "conduct unbecoming a person licensed to practice dentistry, . . . or conduct contrary to the best interest of the public, as such conduct is defined by the rules of the board." Minn. Stat. § 150A.08, subd. 1(6). "Conduct unbecoming a person licensed to practice dentistry . . . includes a dentist . . . demonstrating gross ignorance or incompetence in the practice of dentistry *or* repeated performance of dental treatment that falls below accepted standards . . ." Minn. R. 3100.6200(B) (emphasis added and quotation omitted).

In the report that the board adopted, the ALJ determined that the committee did not establish that Dr. Kamel "engaged in repeated instances of substandard dental treatment." But the ALJ determined that the committee proved that Dr. Kamel "demonstrated gross ignorance or incompetence with [p]atient 1 and [p]atient 2's treatment." With respect to patient 1, the ALJ found that patient 1 "had at least 12 dental implants placed over the course of two years of treatment by [Dr. Kamel], and at least seven of those implants failed. That is a failure rate of approximately 58.3 percent, which stands in stark contrast to the average failure rate of 1 to 2 percent." The ALJ also noted the "multiple implant failures" at the #3 site, and determined that the "repeated immediate replacement of failed implants

at the same site without first permitting proper healing of said site constitutes a violation of professional best practices."

With respect to patient 2, the ALJ referenced the voicemail Dr. Kamel left patient 2 advising her not to seek treatment at the University of Minnesota, and evidence of the discovery of "bone fragments and chronic granulation tissue around the implants along with significant infection" when patient 2 underwent surgery at the University of Minnesota. The ALJ found that, based on the evidence presented, "[i]t is reasonably probable that after removing preexisting infection from [p]atient 2, [Dr. Kamel] failed to remove all sources of infection before placing dental implants and then told [p]atient 2 not to seek emergency care for an infection at the University of Minnesota three days later." As such, the ALJ determined that Dr. Kamel's "treatment of [p]atient 2 demonstrated gross ignorance or incompetence in the practice of dentistry."

Dr. Kamel argues that the board's decision to suspend his license is not supported by substantial evidence because (A) the ALJ's conclusion that Dr. Kamel demonstrated gross incompetence or ignorance in his care and treatment of patient 1 and 2 is not supported by record evidence, and (B) the ALJ's report "virtually ignores the entirety of Dr. Kamel's experts' testimony without explanation."

A. Substantial evidence supports the ALJ's decision that Dr. Kamel demonstrated gross incompetence or ignorance in providing treatment to patients 1 and 2.

"With respect to factual findings made by the agency in its judicial capacity, if the record contains substantial evidence supporting a factual finding, the agency's decision must be affirmed." *In re Excelsior Energy, Inc.*, 782 N.W.2d 282, 290 (Minn. App. 2010)

(quotation omitted). Substantial evidence means "(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." *In re Appeal of Staley*, 730 N.W.2d 289, 294 (Minn. App. 2007) (quotation omitted). The party challenging an agency decision bears the burden of establishing that the agency findings are not supported by substantial record evidence. *In re Rev. of 2005 Ann. Automatic Adjustment of Charges*, 768 N.W.2d 112, 118 (Minn. 2009). Because the board adopted the ALJ's findings, Dr. Kamel challenges the ALJ's factual determinations that the committee established "gross incompetence" in Dr. Kamel's treatment of patients 1 and 2.

1. Patient 1

Dr. Kamel argues that "[t]he record does not support, with substantial evidence, the conclusion that [he] demonstrated gross incompetence in his care and treatment of [p]atient 1" because no expert could "identify any specific instance where Dr. Kamel breached the standard of care." We disagree. There is nothing in the applicable rule requiring specific instances of violations of the standard of care. *See* Minn. R. 3100.6200(B). Rather, the rule requires evidence of conduct "demonstrating gross ignorance or incompetence in the practice of dentistry." *Id.*

Here, the ALJ stated that it "cannot determine by a preponderance of the evidence that any single implant failure [related to patient 1], standing alone, constituted *gross* ignorance or incompetence." But the ALJ determined that Dr. Kamel's "acts and treatment

decisions, *taken all together*, do meet that standard." (Emphasis added.) Substantial evidence in the record supports this determination.

The record reflects that patient 1's dental implants failed at #3 on three separate occasions. And most concerning about these implant-failures is evidence that Dr. Kamel replaced the dental implants after the first two failures at #3 without allowing the site to heal. Expert testimony presented at the hearing reflects that such conduct constitutes a violation of professional best practices.

Moreover, the record reflects that patient 1 had at least 12 dental implants over the course of two years during her treatment by Dr. Kamel, and at least seven of those implants failed. This constitutes a failure rate of 58.3 percent, which the record reflects is substantially higher than the average failure rate of 1 to 2 percent. Although the expert witnesses agreed that any dentist or oral surgeon who performs dental implants has or will experience implant failures at some time, the experts generally agreed that it is extremely rare to have two implant failures in a single patient.

Dr. Kamel argues that the "ALJ plainly misused the concept of 'failure rate' to justify its decision" by comparing statistical averages to patient 1's case. According to Dr. Kamel, the "proper way to determine his overall failure rate is to put [p]atient 1's failures into context with *all* of the implants Dr. Kamel did in any given year." But, as the board observes, the ALJ "simply compared the failure rate of individual implants for [p]atient 1 with the average failure rate of individual implants in the profession." The ALJ then determined that the large disparity between the two rates supports a determination that Dr. Kamel's treatment of patient 1 reflected gross incompetence. The ALJ's determination

relied, in large part, on the credibility assessment of the expert witnesses, which is a determination to which we defer. *See In re Thompson*, 935 N.W.2d 147, 156 (Minn. App. 2019) (stating that, "[i]t is well-established that appellate courts generally defer to credibility determinations made by an agency's fact-finder"), *rev. denied* (Minn. Dec. 17, 2019). In light of the deference afforded the ALJ's credibility determinations, we conclude that substantial evidence supports the ALJ's determination that Dr. Kamel demonstrated gross incompetence in his care and treatment of patient 1.

2. Patient 2

Dr. Kamel also challenges the ALJ's determination that he acted with gross incompetence regarding the care he provided patient 2, arguing that, "[i]n reaching [this] conclusion, the ALJ disregarded the testimony from multiple witnesses . . . that Dr. Kamel's actual *treatment* of [p]atient 2 did not fall below the standard of care." But again, 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." *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 278 (Minn. 2001).

The record here reflects that, when patient 2 underwent surgery at the University of Minnesota, the surgeon discovered bone fragments and chronic granulation tissue around the implants along with infection. This evidence supports the ALJ's determination that "[i]t is reasonably probable that[,] after removing a preexisting infection from [p]atient 2, [Dr. Kamel] failed to remove all sources of infection before placing [patient 2's] dental implants." Although Dr. Kamel testified that he was positive that he did not leave any granulation tissue or bone fragments behind during the procedure conducted, and that he

did not believe that patient 2 had an infection, the ALJ noted that Dr. Kamel never saw patient 2 again after the implant surgery. For this reason, the ALJ did not find Dr. Kamel's testimony to be credible. We must defer to that credibility determination. *See id.*

Moreover, the ALJ found that the voicemail Dr. Kamel left patient 2 further supports a determination that Dr. Kamel's treatment of patient 2 demonstrated gross ignorance or incompetence in the practice of dentistry. Indeed, Dr. Kamel advised patient 2 in the voicemail not to seek emergency care for an infection at the University of Minnesota, claiming that the university was not competent to handle her case. At least one expert witness testified that this voicemail was inappropriate and a violation of the standard of care in the dental industry because "the documented infection that [was] found . . . can rapidly progress to very serious." Although Dr. Kamel contends that his voicemail was "misinterpreted" because he inadvertently "worded his message in a way that left it open to interpretation that he was asking her not to seek medical care at all," the ALJ considered Dr. Kamel's testimony in support of his position and rejected it as not credible. We must defer to this credibility determination. *See id.* Thus, in light of the deference afforded the ALJ's credibility determinations, substantial record evidence supports the determination that Dr. Kamel's treatment of patients 1 and 2 demonstrated gross incompetence or ignorance in the practice of dentistry in violation of Minn. R. 3100.6200(B).

B. The ALJ properly considered all of the experts' testimony in recommending that Dr. Kamel's dental license be suspended.

Dr. Kamel also contends that the board's decision is unsupported by substantial evidence because the ALJ's "report virtually ignores the entirety of Dr. Kamel's experts'

testimony without explanation." He goes on to recite his experts' testimony at length, and claims that the ALJ's failure to adequately acknowledge this testimony indicates that the board failed to take a hard look at the salient problems and resulted in a decision that lacks articulated standards and reflective findings.

We are not persuaded. The substantial-evidence test requires a reviewing court to evaluate the evidence relied upon by the agency in view of the entire record submitted. *Minn. Power & Light Co. v. Minn. Pub. Util. Comm'n*, 342 N.W.2d 324, 332 (Minn. 1983). "If an administrative agency engages in reasoned decisionmaking, the court will affirm, even though it may have reached a different conclusion had it been the factfinder." *Cable Commc'ns Bd. v. Nor-West Cable Commc'ns P'ship*, 356 N.W.2d 658, 669 (Minn. 1984). And the substantial-evidence test "is rooted in the deference [reviewing courts] show to matters that are properly within an agency's particular expertise." *In re NorthMet Project Permit to Mine Application Dated Dec. 2017*, 959 N.W.2d 731, 749 (Minn. 2021) (*NorthMet*). But a reviewing court will "intervene . . . where there is a combination of danger signals which suggest [an] agency has not taken a hard look at the salient problems and the decision lacks articulated standards and reflective findings." *Cable Commc'ns Bd.*, 356 N.W.2d at 669 (quotations omitted).

Here, there are no danger signals indicating that the board failed to take a hard look at the salient problems. A review of the ALJ's report, which was adopted by the board, indicates that all the evidence presented at the hearing was considered, including Dr. Kamel's testimony and the testimony of his expert witnesses. In making his decision, the ALJ acknowledged that "numerous expert witnesses testified" and gave well-reasoned

explanations for adopting the testimony of some expert witnesses, while rejecting the testimony of others. In fact, the ALJ determined that the testimony of the committee's experts failed to establish that Dr. Kamel "*repeatedly* provided treatment falling below the standard of practice." (Emphasis added.) And in concluding that Dr. Kamel's treatment of patients 1 and 2 reflected gross ignorance or incompetence in the practice of dentistry, the ALJ relied, in large part, on his determinations that Dr. Kamel's testimony lacked credibility. Although the ALJ did not recite Dr. Kamel's experts' testimony in detail, the ALJ's rejection of some of this testimony is implicit. *See Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009) (noting that district court's findings "implicitly indicate[d]" it found certain evidence credible).

The ALJ made extensive and thoughtful findings and reached a decision after weighing the evidence presented and making credibility determinations. We must defer to the ALJ's conclusions, which the board adopted, regarding conflicts in testimony, the weight given to expert testimony, and the inferences to be drawn from testimony. *Blue Cross & Blue Shield*, 624 N.W.2d at 278. Deference is also appropriate in light of the board's expertise in this matter. *See NorthMet*, 959 N.W.2d at 749. Accordingly, Dr. Kamel is unable to meet his burden of showing that the board's decision to suspend his license to practice dentistry is not supported by substantial evidence.

Affirmed.