

**IN THE COURT OF APPEALS OF IOWA**

No. 6-558 / 05-1721  
Filed August 9, 2006

**RICHARD A. STRICKLER, D.O.,**  
Petitioner-Appellant,

**vs.**

**IOWA BOARD OF MEDICAL  
EXAMINERS,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Polk County, James S. Heckerman, Judge.

A physician appeals the district court's ruling on a petition for judicial review. **AFFIRMED.**

Michael M. Sellers of Sellers Law Office, West Des Moines, for appellant.

Thomas J. Miller, Attorney General, and Heather L. Adams, Assistant Attorney General, for appellee.

Considered by Huitink, P.J., and Mahan and Zimmer, JJ.

**HUITINK, P.J.**

Richard Strickler, D.O., appeals from a district court ruling that affirmed a decision by the Iowa Board of Medical Examiners (Board) imposing discipline on his medical license. We affirm.

**I. Background Facts and Proceedings**

Strickler is a licensed Iowa physician who was practicing as an emergency room physician when the events giving rise to this case occurred. On December 12, 2001, the Board filed formal disciplinary charges against Strickler, alleging that he violated statutes and rules pertaining to the practice of medicine in his care of three patients (referred to as patients #1, #2, and #3). The Board charged Strickler with professional incompetency (count I)<sup>1</sup>, and being guilty of practice harmful or detrimental to the public (count II).<sup>2</sup>

A three-member Board panel issued its proposed decision following a contested case hearing. In addressing count I, the panel concluded Strickler's errors in providing care to patients #2 and #3 could not be characterized as substantial deviations from the standard of care, but that a citation and warning should be issued for violations related to Strickler's care of patient #1. The panel recommended dismissal of count II. Both parties appealed from that decision. See Iowa Admin. Code r. 653-12.32(2)(b).

On December 11, 2003, the Board issued its final decision. The Board dismissed count II, but ordered that Strickler be issued a written citation and

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<sup>1</sup> See Iowa Code §§ 147.55(2), 148.6(2)(g), 148.6(2)(i), 272C.10(2) (2001); Iowa Admin. Code r. 653-12.4(2)(a) - (d).

<sup>2</sup> See Iowa Code § 147.55(3); Iowa Admin. Code r. 653-12.4(3)(c).

warning for violations under count I regarding his treatment of all three patients. The Board ordered Strickler to complete a forty-hour comprehensive emergency medicine review course and to pay fees and costs.

Strickler filed a petition for judicial review in the district court. The district court affirmed the Board's decision. Strickler appeals, arguing (1) the Board's decision is not consistent with the law and (2) his request for injunctive relief must be granted.<sup>3</sup>

## **II. Standard of Review**

We review agency actions for correction of errors of law on the part of the agency. *Glowacki v. Iowa Bd. of Med. Exam'rs*, 516 N.W.2d 881, 884 (Iowa 1994). The district court functions in an appellate capacity in exercising its judicial review power. *Hill v. Fleetguard, Inc.*, 705 N.W.2d 665, 669 (Iowa 2005). When reviewing the district court's decision, we apply the standards of chapter 17A to determine whether the conclusions we reach are the same as those of the district court. *Id.* We affirm if the conclusions are the same; otherwise we reverse. *Id.*

## **III. Discussion**

### ***A. Whether the Board's decision is consistent with the law***

Strickler argues the Board's final decision was contrary to Board statutes and rules, and to this court's unpublished decision in *Poole v. Board of Medical*

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<sup>3</sup> Strickler argued before the district court that the Board's decision was not supported by substantial evidence. The district court rejected Strickler's argument, concluding substantial evidence existed to support the Board's factual findings. Strickler does not challenge the district court's conclusion on appeal.

*Examiners*, No. 99-0074 (Iowa Ct. App. Jan. 26, 2000).<sup>4</sup> He spends a significant portion of his brief discussing changes to the panel’s proposed decision made by the Board in its final decision. However, any arguments related to discrepancies between the proposed decision and the Board’s final decision should have been the subject of an application for rehearing before the Board. See Iowa Code § 17A.16 (2003); Iowa Admin. Code r. 653-12.34. Our review is limited to the final decision of the Board, not the proposed decision of the panel. See Iowa Code § 17A.19(1) (permitting judicial review of *final* agency action when a party has exhausted all administrative remedies).

Sections 147.55(2) (2001) and 272C.10(2) provide the Board may discipline a physician for professional incompetency. Section 148.6(2) provides in relevant part:

Pursuant to this section, the board of medical examiners may discipline a licensee who is guilty of any of the following acts or offenses:

. . . .

g. Being guilty of a willful or repeated departure from, or the failure to conform to, the minimal standard of acceptable and prevailing practice of medicine and surgery, osteopathic medicine and surgery or osteopathy in which proceeding actual injury to a patient need not be established; . . . .

. . . .

i. Willful or repeated violation of lawful rule of regulation adopted by the board . . . .

Iowa Administrative Code rule 653-12.4(2) further defines “professional incompetency” to include the following:

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<sup>4</sup> Strickler did not attach a copy of this unpublished decision to his appellate brief, nor did he include the required certification of diligent search, as required by our rules of appellate procedure. See Iowa R. App. P. 6.14(5)(b). We note that this court’s unpublished decisions do not constitute controlling legal authority. *Id.*

c. A failure by a physician or surgeon to exercise in a substantial respect that degree of care which is ordinarily exercised by the average physician or surgeon in the state of Iowa acting in the same or similar circumstances;

d. A willful or repeated departure from or the failure to conform to the minimal standard of acceptable and prevailing practice of medicine and surgery, osteopathic medicine and surgery or osteopathy in the state of Iowa.

In its final decision, the Board concluded the preponderance of the evidence established that Strickler violated Iowa Code sections 147.55(2) and 272C.10(2) and Iowa Administrative Code rule 12.4(2)(c) when he discharged a patient (patient #1) who came into the emergency room with abdominal cramping, low back pain, and heavy vaginal bleeding without performing a pelvic examination, and when he documented a pelvic examination in the patient's record that he did not perform. According to the Board, Strickler's actions "constitute substantial deviations that were very significantly below the standard of care. These errors constitute more than ordinary negligence."

The Board further concluded that in his treatment of two patients (patients #2 and #3) on separate occasions during a two-month period in the early 1990s, Strickler "repeatedly failed to conform to the minimum standard of acceptable and prevailing practice of medicine and surgery," in violation of Iowa Code sections 148.6(2)(g) and (i), 147.55(2), and 272C.10(2), and Iowa Administrative Code rule 653-12.4(2)(d). The Board continued, "The fact that these errors occurred over a two-month period nearly ten years ago does not change the fact that [Strickler] was guilty of repeated violations of the standard of care and should only be considered as a mitigating factor in the determination of the appropriate disciplinary sanction."

As mentioned, Strickler argues the Board's final decision was contrary to Board statutes and rules, as analyzed and applied in the *Poole* decision. The court of appeals, in the unpublished *Poole* decision, held (1) proof of willful or repeated deviation from the standard of care pursuant to Iowa Code sections 147.55(8) and 148.6(2)(g), and rule 653-12.4(2)(d) "requires evidence of conduct more culpable than a single transaction or occurrence of ordinary negligence," and (2) a finding of professional incompetency pursuant to rule 653-12.4(2)(c) "requires evidence of acts or omissions more culpable than ordinary negligence." Because the charges against the physician in *Poole* involved a single incident of "simple negligence," the court of appeals determined the physician could not be disciplined under these statutes and rules.

Here, the Board disciplined Strickler for repeated acts of professional incompetency in his treatment of patients #2 and #3. The Board concluded Strickler was negligent with regard to each patient in several separate respects during each patient's treatment. Thus, the Board applied the appropriate legal standards in reaching its conclusions with respect to patients #2 and #3.

Similarly, the Board disciplined Strickler for errors related to his care of patient #1 that amounted to "substantial deviations that were very significantly below the standard of care," and constituted "more than ordinary negligence." Again, the Board correctly applied the appropriate legal standard in reaching its conclusions. Accordingly, we affirm the district court's decision affirming the Board's decision.

***B. Request for injunctive relief***

In his brief on judicial review, Strickler requested the district court issue an injunction “ordering expungement and affirmative withdrawals of all prior notices and press releases” in this case and prohibiting “any further dissemination of any information relating to this case.” The district court did not address the issue in its ruling, and Strickler did not file a motion requesting a ruling on the issue. Therefore, we have nothing to address on appeal. *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) (“It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal.”).

**AFFIRMED.**