IN THE COURT OF APPEALS OF IOWA

No. 8-157 / 07-0875
Filed April 9, 2008

MONTE L. SKAUFLE, M.D.,
Petitioner-Appellant,

vs.

IOWA BOARD OF MEDICAL EXAMINERS,
Respondent-Appellee.

Appeal from the Iowa District Court for Scott County, Mark J. Smith, Judge.

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

Jill Cirivello, Davenport, for appellant.

Thomas J. Miller, Attorney General, and Theresa O'Connell Weeg, Assistant Attorney General, for appellee.

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

HUITINK, P.J.

Monte Skaufle, M.D., 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 Prior Proceedings

Skaufle was issued an Iowa medical license in July 1981. With the exception of a two-year period, Skaufle worked for Genesis Health System in Davenport from 1980 to 2004. He eventually became the director of the Genesis residency program.

In 2003 Genesis received complaints about Skaufle regarding mismanagement of the program and alleged sexual contact with students, residents, staff members, and a patient. After an internal investigation, Genesis gave Skaufle the option to either resign or face termination. Skaufle chose to resign in July 2004.

Six months later, the Board received a letter from a former coworker stating that there were reports that Skaufle had engaged in a sexual relationship with one of his patients. The author of this letter admitted she had no personal knowledge of the alleged relationship, but indicated she had heard reports of such allegations and felt compelled to notify the Board. The Board assigned an investigator to research the complaint.

The investigator interviewed numerous individuals, ranging from the patient with whom he had allegedly had a sexual relationship, to former employees, former residents, and former coworkers. The investigator also interviewed Skaufle, though he did not reveal the precise allegation in the

complaint. The investigator presented his final report to the Board in August 2005.

On October 12, 2005, the Board issued an "Evaluation Order" stating it had received information that Skaufle had engaged in "a pattern of inappropriate sexual misconduct in the practice of medicine" and that he "may suffer from a mental health condition which impairs his ability to practice medicine in a safe and/or competent manner." The Board stated there was probable cause to order Skaufle to undergo a comprehensive physical, neuropsychological, mental health and sexual misconduct evaluation and ordered Skaufle to undergo such an evaluation with a specific doctor in Atlanta, Georgia, at his own expense, by November 30, 2005.

Skaufle objected to this order and requested an evidentiary hearing before the Board pursuant to Iowa Administrative Code rule 653-12.3(3) (2005).[1] The Board held a full evidentiary hearing on this matter in January 2006. At this hearing, the Board investigator testified about the results of his investigation, which went far beyond the alleged affair with a patient. Skaufle's attorney cross-examined the investigator and presented evidence on Skaufle's behalf.

On February 10, 2006, the Board issued a detailed "Findings of Fact, Conclusions of Law, Decision, and Order" ordering Skaufle to undergo the aforementioned evaluation. This order stated there was "probable cause" to believe Skaufle had committed a regulatory violation and also stated there were "reasonable grounds" to conclude that Skaufle had engaged in sexual harassment and inappropriate sexual misconduct in the practice of medicine.

[1] The pertinent portions of rule 653-12.3 are now found in rule 653-24.4(3).

While the Board admitted there was no proof of a sexual relationship with the patient identified in the complaint, it did point out that this patient interpreted Skaufle's conduct as an invitation to engage in sexual conduct. The Board also pointed to evidence that Skaufle had made numerous inappropriate sexual remarks to coworkers and staff while employed at Genesis. Finally, the report described one instance in the late 1980s where Skaufle had taken off all of his clothes while speaking with a female resident. This resident interpreted this action as an invitation to have sex. The Board ordered Skaufle to have this evaluation completed within sixty days.

Skaufle did nothing to appeal this decision and did not undergo the evaluation within sixty days. On April 27, 2006, the Board filed a public statement of charges against Skaufle alleging that he had violated its order by refusing to undergo the evaluation. At the hearing on these charges, Skaufle admitted he had not followed the Board's prior order, but argued the Board did not have probable cause or legal authority to order the evaluation.

On October 31, 2006, the Board issued an order indefinitely suspending Skaufle's medical license until he "fully complies" with the ordered evaluation. The Board also denied his subsequent application for rehearing. On December 11, 2006, Skaufle filed a petition for judicial review in district court challenging the basis for the Board's February 10, 2006 evaluation order. The State responded to this petition with a motion to dismiss, arguing Skaufle had failed to file a petition in district court appealing the Board's final decision on the evaluation order and was therefore precluded from arguing the merits of that

order in this proceeding. The district court heard a combined hearing on the motion to dismiss and the petition for judicial review.

On March 28, 2007, the district court entered an order affirming the Board's decision to suspend Skaufle's license. Even though it denied the State's motion to dismiss, labeling the February 2006 evaluation order an "interim decision," the district court ultimately concluded the Board had sufficient probable cause to order the evaluation.

On appeal, Skaufle once again challenges the propriety of the February 10, 2006 evaluation order.[2]

II. Standard of Review

We review agency action for correction of errors at law. *Doe v. Iowa Bd. of Med. Exam'rs*, 733 N.W.2d 705, 707 (Iowa 2007). Our review in this case is governed by the Iowa Administrative Procedure Act. Iowa Code § 17A.19(10) (2007); *Iowa Ag Constr. Co. v. Iowa State Bd. of Tax Review*, 723 N.W.2d 167, 172 (Iowa 2006).

III. Merits

Because we find the issue dispositive, we first address whether the district court had the authority to review the merits of the Board's February 10, 2006 decision.

[2] Specifically, he claims: (1) there was not sufficient evidence to find probable cause to order the evaluation, (2) the Board's evidence consisted of only hearsay, (3) the Board did not have the authority to order a comprehensive neuropsychological or sexual misconduct evaluation, (4) the Board violated its own administrative rules of procedural and substantive due process, and (5) the alleged facts in the evaluation order do not violate any standard of practice or principle of medical ethics.

"A timely petition for judicial review from an administrative decision is a jurisdictional prerequisite." *City of Des Moines v. City Dev. Bd.*, 633 N.W.2d 305, 309 (Iowa 2001). In a "contested case" proceeding, this time limit requires a petition for judicial review to be "filed within thirty days after the issuance of the agency's final decision in that contested case." Iowa Code § 17A.19(3).

Skaufle's petition for judicial review was filed on December 11, 2006. While it was labeled a petition for review of the Board's October 31, 2006 decision (and subsequent rehearing) to suspend his license, the petition only challenged the merits of the Board's February 10, 2006 decision to order the evaluation. Even though this petition was filed more than ten months after the evaluation order was issued, the district court concluded it had jurisdiction to review the merits of the earlier evaluation order because it viewed this order as "an interim decision" that "did not affect Dr. Skaufle's license at that time." We disagree.

The Iowa Code defines a contested case proceeding as a proceeding "in which the legal rights, duties or privileges of a party are required by Constitution or statute to be determined by an agency after an opportunity for an evidentiary hearing." Iowa Code § 17A.2(5). Iowa Code section 272C.9(1) provides the Board with the authority to order a licensee to submit to a physical, mental, or clinical competency examination so long as there is "probable cause" to do so. While this section does not expressly establish an opportunity for an evidentiary hearing, the inherent "probable cause" standard suggests a process to challenge this order through an evidentiary proceeding. The Iowa Administrative Code

establishes such a process. Iowa Administrative Code rule 653-12.3(3) outlines the procedure whereby a licensee can object to the examination order:

> *Objection to order.* A licensee who is the subject of a board order and who objects to the order may file a request for hearing. The request for hearing shall specifically identify the factual and legal issues upon which the licensee bases the objection. *The hearing shall be considered a contested case proceeding* and shall be governed by the provisions of rules 12.11(17A) to 12.43(272C). A contested case involving an objection to an examination order will be captioned in the name of Jane Doe or John Doe in order to maintain the licensee's confidentiality.

(Emphasis added.)

When Skaufle was first ordered to undergo the evaluation, he objected to the Board's order and requested a hearing pursuant to rule 653-12.3(3) to determine whether there was probable cause to order the evaluation. The State represented the public's interest at this "contested case proceeding." Skaufle's wife, who was also his attorney, cross-examined the State's witness and presented evidence to prove why there was not probable cause to order such an evaluation. Beyond the witness testimony, the parties presented the Board with more than forty-five exhibits. At the close of evidence, the Board convened in a closed session and ultimately issued a decision ordering Skaufle to undergo the evaluation.

In light of the statutory authority setting forth the "probable cause standard" for an examination order, the administrative rule establishing the hearing as a "contested case proceeding," and the adversarial nature of the hearing in this proceeding, we conclude that the January 12, 2006 evidentiary hearing was a contested case proceeding. *See* Arthur E. Bonfield, *The Definition of Formal Agency Adjudication Under the Iowa Administrative Procedure Act*, 63

Iowa L. Rev. 285, 312 (1977) ("[T]here is nothing in the 'required by constitution or statute' language, in its legislative history, or in good policy, that indicates that the hearing requirement referred to must be express—that is, linguistically blunt on the face of the Constitution or the statute.").

We also find that the February 10, 2006 order was the Board's final decision in this contested case proceeding. The only issue before the Board at this rule 653-12.3 hearing was whether there was probable cause to order Skaufle to undergo the aforementioned evaluation. After a full evidentiary hearing, the Board issued a ten-page decision ordering Skaufle to complete the evaluation. This decision was a definitive resolution of the sole issue before the Board. There were no further issues to be determined and there was no pending disciplinary action against Skaufle.

On appeal, Skaufle claims this was not a final decision from which he was entitled to judicial review because he was not "aggrieved and adversely affected" by this decision as he had to "wait and see" what the Board's response would be to his failure to comply with the order. *See* Iowa Code 17A.19(1) ("A person or party who has exhausted all adequate administrative remedies and is aggrieved or adversely affected by any final agency action is entitled to judicial review thereof under this chapter."). We disagree. It would be strange indeed if Skaufle had to disobey the Board and suffer discipline in order to garner a final decision from which he could seek judicial review. However, that is not the circumstances of this case. Skaufle was immediately "aggrieved or adversely affected" by this decision in that he was required to undergo a very personal evaluation and required to pay more than $5000 to do so. He also faced a suspension or

revocation of his license if he failed to undergo the evaluation. *See* Iowa Code §§ 148.6(2)(i); 148.7(7). Consequently, we find no reason to conclude the Board's order was an "interim decision" or that Skaufle had to "wait and see" what the Board would do before he filed a petition for judicial review.[3]

The February 10, 2006 decision was a final decision on the sole issue before the Board. Skaufle did not appeal this decision in a timely manner. He is precluded from doing so now.

IV. Conclusion

Beyond his argument that the evaluation order was improper, Skaufle presents no argument as to why the Board improperly suspended his license. Because Skaufle admits to violating the February 10, 2006 order, we find no reason to overturn the Board's October decision suspending his medical license.

AFFIRMED.

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[3] On appeal, Skaufle also argues this was not a contested case proceeding because he was not afforded "due process" during the proceeding. We find this argument irrelevant to our jurisdictional analysis. Claims that he was denied due process during the administrative proceeding should have been raised by a timely petition for judicial review.

Skaufle also claims the Board's decision in this matter was not final because the decision was confidential and not an open record for the public. To support this argument, Skaufle cites Iowa Administrative Code rule 653-25.24(1), which states, "A final decision of the board is an open record." We reject this argument because rule 653-24.4(5) specifically states "[a]n evaluation order and any subsequent evaluation reports issued in the course of a board investigation are confidential investigative information pursuant to Iowa Code section 272C.6(4)." Therefore, we find the confidential nature of this order does not make the Board's decision anything less than a final decision.