

IN THE COURT OF APPEALS OF IOWA

No. 9-340 / 08-1538
Filed June 17, 2009

LYNN LYONS, D.O.,
Petitioner-Appellant,

vs.

IOWA BOARD OF MEDICINE,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Douglas K. Staskal,
Judge.

A urologist appeals the district court decision affirming the Iowa Board of
Medicine's discipline of him, claiming multiple errors. **AFFIRMED.**

Michael Sellers of Sellers, Haraldson & Binford, Des Moines, for appellant.
Thomas J. Miller, Attorney General, and Theresa Weeg, Assistant
Attorney General, for appellee.

Heard by Vaitheswaran, P.J., and Potterfield and Doyle, JJ.

VAITHESWARAN, P.J.

Lynn Lyons appeals a district court decision affirming the Iowa Board of Medicine's suspension of his license to practice medicine in Iowa. He claims the board (A) was without authority to discipline him in connection with his treatment of a single patient, (B) did not have jurisdiction to commence a disciplinary action against him as a non-resident of Iowa with a lapsed license, (C) erred in refusing to appoint a new panel for his second hearing, and (D) erred in refusing to facilitate the production of certain medical records.

I. Background Facts and Proceedings

Lynn Lyons, a board-certified urologist, practiced in Fort Dodge, Iowa, from 2000 to 2001. One of his patients was a teenage girl with urination issues. To treat her condition, Dr. Lyons twice suffused the girl's bladder with a solution containing the drug capsaicin. The patient's kidneys soon failed, as did her bladder and ureters.

The patient was taken to the Mayo Clinic in Minnesota, where physicians transplanted one of her father's kidneys into her body and inserted a catheter to drain her urine.

Meanwhile, Lyons moved to Dallas, Texas, where he continued to practice medicine. His Iowa medical license became inactive in 2004.

In 2005, the board alleged that Lyons was professionally incompetent. Lyons did not appear at the hearing. Following the hearing, the board issued a proposed decision revoking Lyons's Iowa medical license. On learning of the ruling, Lyons asked to have the proposed decision rescinded on the ground that

he did not receive notice of the hearing. The board agreed to hold a second hearing.

Two of the three board members who served on the original panel sat on the second panel. Lyons initially objected to their participation. Before the hearing, however, his attorney softened his position, telling those board members, "If on the record both of you are prepared to willingly state that you are confident and positive [your participation in the prior hearing] will not be a problem, we will accept that." Both panel members effectively made that on-the-record affirmation. The panel considered evidence and issued a proposed decision finding Lyons professionally incompetent. The panel imposed a ninety-day suspension of Dr. Lyons's Iowa license.

After the proposed decision was filed, Lyons asked the board for an additional 3500 pages of medical records. The Department of Inspections and Appeals granted Lyons's request. Shortly thereafter, Lyons asked the board to issue a subpoena for all the patient's medical records from the Mayo Clinic. The State moved to quash the request and the administrative law judge granted the State's motion. The judge also denied Lyons's request to have the board obtain a medical release from the patient so that he could directly obtain the Mayo Clinic records. The case proceeded to an appeal hearing before the Board of Medicine after which the full board affirmed the proposed panel decision. On judicial review, the district court affirmed the board. This appeal followed.

II. Analysis

A. Lyons first contends the board did not have "authority to discipline a licensee in a case involving alleged simple negligence in a single case." This

argument appears to implicate the standard of review set forth in Iowa Code section 17A.19(10)(b) (2007) (“Beyond the authority delegated to the agency by any provision of law or in violation of any provision of law.”).

Lyons was disciplined for violation of Iowa Code sections 147.55(2) and 272C.10(2), as defined in a board rule. See Iowa Admin. Code r. 653-12.4(2)(a)–(c) (2005). Iowa Code section 147.55(2) provides that a license to practice a health-related profession shall be revoked or suspended when a licensee is guilty of professional incompetency. Section 272C.10(2) provides that the medical licensing board shall establish rules for the suspension or revocation of a professional license for multiple grounds, including “professional incompetency.” The Board’s rule defines “professional incompetency” as including:

- a. A substantial lack of knowledge or ability to discharge professional obligations within the scope of the physician’s or surgeon’s practice;
- b. A substantial deviation by the physician from the standards of learning or skill ordinarily possessed and applied by other physicians or surgeons in the state of Iowa acting in the same or similar circumstances;
- 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.

Iowa Admin. Code r. 653-12.4(2)(a)–(c). Nothing in these cited statutory provisions or in the cited rule precludes the board from disciplining a physician for substandard treatment of a single patient. An unpublished court of appeals opinion on which Lyons relies for a contrary proposition did not construe these provisions and, for that reason, is inapposite. Additionally, the Iowa Supreme

Court has affirmed a finding of incompetency based on the treatment of a single patient in a related context, stating:

Logic does not support the idea that no matter how bad an incident of malpractice may be that the board must await further incompetent acts of dental practice before it can suspend the dentist's license. We reject this notion.

Bd. of Dental Exam'rs v. Hufford, 461 N.W.2d 194, 201 (Iowa 1990).

Under this subheading, Lyons also appears to assert that there was insufficient evidence to support the board's findings of professional incompetence. Our review of this assertion is for substantial evidence. Iowa Code § 17A.19(10)(f). A peer review report listing five significant violations of professional norms, together with other records and testimony, amount to more than substantial evidence supporting the agency's fact-findings. While pieces of this evidence, taken out of context, might support different findings, those pieces do not require reversal under the pertinent judicial review standard. See *Trade Prof'ls, Inc. v. Shriver*, 661 N.W.2d 119, 123 (Iowa 2003) (stating that agency, as fact-finder, is free to accept or reject evidence as it chooses).

B. Lyons next argues that the board did not have authority to pursue disciplinary action against him because his license was inactive. Again, we apply the standard of review set forth in Iowa Code section 17A.19(10)(b).

Contrary to Lyons's assertion, the legislature has authorized the board to regulate lapsed licenses. Specifically, a pertinent statute states that a lapsed license is not invalid. Iowa Code § 147.10 ("Failure to renew the license within a reasonable time after the expiration shall not invalidate the license, but a reasonable penalty may be assessed by the board."). Another statute allows the

board to address “inactive licensee re-entry.” See *id.* § 272C.1(3); see also *id.* § 272C.2(2)(f). Finally, board rules implementing the pertinent statute specify that “[a] physician whose license is inactive continues to hold the privilege of licensure in Iowa but may not practice medicine under an Iowa license until the license is reinstated to current, active status.” Iowa Admin. Code r. 653-9.12(1)(c) (2008). The board, therefore, was authorized to act on Lyons’s lapsed license.

We recognize that Lyons did not put his lapsed Iowa license in issue by expressing an intent to renew it. This fact cannot deprive the board of authority to consider a complaint arising from his treatment of a patient while he was practicing in Iowa. As the Iowa Supreme Court stated,

We do not consider the question involved moot, merely because the appellee is not at present making full use of his license to practice To hold otherwise places in the hands of the accused practitioner himself the power to escape the penalty provided by law for a violation of the rules governing the conduct of his profession, no matter how gross his misconduct may have been.

State v. Otterholt, 234 Iowa 1286, 1291–92, 15 N.W.2d. 529, 532 (1944). We conclude the board had authority to discipline Lyons notwithstanding the fact that his Iowa license lapsed and Lyons did not affirmatively seek reinstatement.

C. Lyons contends that it was improper for two members of the panel that authored the first proposed decision to serve on the panel at his second hearing. We conclude Lyons acquiesced in their participation at the second hearing and, accordingly, waived error on this issue.

D. Lyons finally takes issue with the administrative law judge’s refusal to facilitate the release of additional medical records. A party may request

additional evidence after the issuance of a proposed decision if certain criteria are met. Iowa Admin. Code r. 653-25.24(2)(e). Lyons was allowed to submit 3500 additional pages of medical records. Additionally, Lyons knew before the proposed decision was issued that the patient was treated at the Mayo Clinic, and he could have sought documents from that clinic in advance of the second hearing. For these reasons, we conclude the board did not act unreasonably or arbitrarily in denying Lyons's request for a subpoena or medical release.

AFFIRMED.