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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

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MOUHANAD MARK ALWAN,  
Petitioner,

v.

THE SUPERIOR COURT OF SACRAMENTO COUNTY,  
Respondent;

MEDICAL BOARD OF CALIFORNIA,  
Real Party in Interest.

C044337

(Super. Ct. No.  
02CS01982)

In two separate criminal proceedings arising from two different incidents, Dr. Mouhanad Mark Alwan pled nolo contendere to the infraction of petty theft and guilty to a misdemeanor charge of vandalism. Based on these convictions, and Dr. Alwan's false statements to the Medical Board of California (Board), the Board suspended Dr. Alwan's medical license for six months, but stayed that suspension and placed

him on probation for three years. (Bus. & Prof. Code,<sup>1</sup> §§ 2227, 2234, subd. (b), (c).) The superior court denied his petition for a writ of administrative mandamus (Code Civ. Proc., § 1094.5). Pursuant to section 2337,<sup>2</sup> Dr. Alwan filed a petition for a writ of mandate in this court challenging the superior court's decision. We issued an alternative writ of mandate.

Dr. Alwan contends: (1) "there was no substantial evidence that [these two convictions] were 'substantially related to the qualifications, functions, or duties of a physician or surgeon'"; (2) the *infraction* of petty theft may not be the basis for the suspension of his license under section 2236, subdivision (a); and (3) "[t]he penalty imposed was an abuse of discretion." We disagree and shall deny the writ.

#### FACTUAL AND PROCEDURAL BACKGROUND

On June 22, 2001, the executive director of the Board filed an accusation before the Board against Dr. Alwan seeking to revoke or suspend his license to practice medicine. The accusation specified three separate causes for discipline: (1) Dr. Alwan's March 2000 conviction for the infraction of petty theft, and Dr. Alwan's November 1998 misdemeanor

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<sup>1</sup> All further statutory references are to the Business and Professions Code unless otherwise indicated.

<sup>2</sup> Section 2337 provides that review of a superior court's decision revoking, suspending, or restricting a license must be by petition for extraordinary writ.

conviction for vandalism;<sup>3</sup> (2) dishonesty and corruption based on those convictions and his violation of probation, as well as his failure to admit his misconduct to the Board; and (3) "General Unprofessional Misconduct" as evidenced by the prior two causes.

Dr. Alwan challenged the discipline and a hearing was held on the charges before an administrative law judge (ALJ).

At that hearing, the Board presented evidence of the underlying facts of the two convictions.

I

*Petty Theft Conviction*

Alex Rodriguez is a loss prevention agent for Costco. On November 7, 1999, Rodriguez noticed Dr. Alwan in the store in the early evening. Rodriguez saw that Dr. Alwan had a credit card tool package in his shopping cart. Rodriguez watched as Dr. Alwan cut the package open and put the item in his pocket. Dr. Alwan then discarded the package in a different part of the store.

Shortly thereafter, Dr. Alwan also had another package in his shopping cart containing a pocket fluorescent lantern. Dr. Alwan cut that package open and placed the flashlight in his pocket. Dr. Alwan discarded the packaging.

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<sup>3</sup> Real party in interest, the Board, requested that this court take judicial notice of the two exhibits presented to the Board demonstrating Alwan's two convictions. These documents are properly the subject of judicial notice as court records (Evid. Code, § 452, subd. (d)) and we grant the request for judicial notice.

Dr. Alwan paid for the items in his cart, but not the two items he placed in his pocket and left the store. The items Dr. Alwan paid for totaled \$97.27. The two items Dr. Alwan tried to steal had a retail value of approximately \$40 and had been available in the store for several months.

Rodriguez and his manager confronted Dr. Alwan outside the store and escorted him back inside. Dr. Alwan was cooperative. Rodrigueuz located the stolen items and the cutting tool Dr. Alwan used to cut open the packing in Dr. Alwan's pocket. Dr. Alwan told the store employees he had nothing to say to them.

Bradley Bubier is Rodrigueuz's manager at Costco. Bubier also witnessed Dr. Alwan cut open the pocket flashlight package. Bubier confirmed Rodrigueuz's testimony concerning the discovery of the items in Dr. Alwan's pockets and his statement after he was apprehended.

Dr. Alwan was arrested. Dr. Alwan told the arresting officer he had the items prior to entering the store and that he did not steal them. Ultimately, Dr. Alwan pleaded nolo contendere to the infraction of petty theft. (Pen. Code, § 490.1.) Dr. Alwan was fined \$270.

Dr. Alwan wrote a letter to the Board after he was convicted and denied that he was guilty of this crime.

## II

### *Vandalism Conviction*

Dr. Alwan's vandalism conviction arose out of a confrontation in the parking lot of Knott's Berry Farm.

Larry Abel testified he went to Knott's Berry Farm on May 23, 1998, in his Mercedes. He had just dropped off his family for dinner and found a parking spot where some people were getting into their car and getting ready to pull out. The next thing he knew, a gold Lexus sports utility vehicle backed up quickly to that spot and kept inching toward his Mercedes as if he were going to hit it. The driver of the SUV, Dr. Alwan, opened the door and informed Abel that was his parking space. Abel backed up. Dr. Alwan took the space. Abel noticed the license plate of the car. It was Dr. Alwan's license plate. Abel pulled up behind Dr. Alwan's car and when he asked Dr. Alwan what his problem was, Dr. Alwan flipped him "the finger." Abel parked two spaces down from Dr. Alwan's car.

After this altercation, two witnesses saw Dr. Alwan return to Abel's car and "key" the car, putting deep scratches in the paint. Then they saw Dr. Alwan drive his car away to another part of the parking lot. They reported this to park security and identified Dr. Alwan as the culprit and identified his car license plate number. Both witnesses testified before the Board as to their observations. Dr. Alwan's lawyer challenged these witnesses' testimony on cross-examination, and drew out testimony that the witnesses saw Dr. Alwan make upwards and downwards motions, not side-to-side motions.

The security guard the two witnesses reported this crime to also testified. The security guard confirmed the testimony of these witnesses. The security guard located Dr. Alwan's car in another part of the lot later in the day.

When Abel returned to his car, he noticed a note on his car asking him to call security. Further, Abel noticed five deep scratches on his car. The security officer asked if Abel wished to notify the police, and Abel stated that he did. Abel identified Dr. Alwan as the driver in the prior altercation. The damage to Abel's car cost \$780 to repair.

Detective Vern Joseph Wadell contacted Dr. Alwan about this incident. Dr. Alwan denied being responsible for the damage to the car. Dr. Alwan was cooperative and soft-spoken in his dealings with Detective Wadell. Detective Wadell also confirmed that the two independent witnesses picked Dr. Alwan out of a photographic lineup as the person who scratched Abel's car.

Dr. Alwan pled guilty to the misdemeanor charge of vandalism. He was placed on informal probation for three years, required to pay restitution, and perform 80 hours of community service.

In speaking with the investigator for the Board after his conviction, Dr. Alwan denied he was responsible for the damage to Abel's car.

### III

#### *Evidence in Mitigation*

Dr. Alwan presented mitigating evidence at that hearing. Dr. Alwan testified on his own behalf. He is board certified in OB/GYN. He was the chairman of the OB/GYN department at his employer -- U.S. Family Care. He has received awards and certificates for his practice of medicine. He also provides a half-day of free medical services twice a month at a local

medical clinic.<sup>4</sup> He claimed he had never been sued for malpractice,<sup>5</sup> nor has he had any prior problems with the Board. Dr. Alwan submitted a number of letters from his patients and colleagues attesting to his performance as a physician.

On the date of the vandalism incident, Dr. Alwan testified he and his family arrived at the park at about 1:00 p.m. He dropped his wife and children off at the front entrance and went to park in a lot that offered three hours of free parking.

At 4:00 p.m., he moved the car out of the lot, ran an errand and returned to the same parking place. He remembered backing up to get into the space and that a Mercedes was behind him. He returned to his family in the park. He did not remember anyone asking him what was his problem and he denied giving anyone the "finger."

Dr. Alwan returned to his car an hour or so later and was informed by someone that another man had "keyed" the side of his car. Dr. Alwan noticed a number of scratches on the side of his car. Dr. Alwan checked other cars in the vicinity and noticed a Mercedes had also been scratched. Dr. Alwan decided to move his car to a safer place in the lot.

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<sup>4</sup> On cross-examination, Dr. Alwan admitted he had only done this for the month prior to the hearing.

<sup>5</sup> On cross-examination, Dr. Alwan did admit that his name appeared on at least three complaints for malpractice. Later, Dr. Alwan testified that he thought "sued" meant he had paid a claim through settlement or a jury had returned a verdict against him.

Dr. Alwan denied keying Abel's car. He explained he pled guilty to the misdemeanor charge based on the advice of his attorney and to avoid the cost and inconvenience of a trial and time away from his practice. Dr. Alwan admitted he signed a document that stated "I understand I have violated this section by (factual basis) I . . . unlawfully and maliciously scratched the paint on the victim's car, causing damage in excess of \$400 or less than \$5,000 in Orange County on 5/23/98."

Dr. Alwan's attorney in the vandalism case testified that Dr. Alwan always claimed he was innocent of this misdemeanor charge. She further testified she advised Dr. Alwan that he would be on one-hour call for up to 10 days when the matter was ready for trial. Dr. Alwan told his lawyer he would plead guilty because he could not put his patients on hold for two weeks while he was on one-hour call.

Dr. Alwan denied having stolen the items from Costco. He claimed to have bought his own credit card tool and flashlight more than a year prior to this visit. Dr. Alwan produced receipts that he thought were for those two items, but he was not sure those were actually the receipts. On cross-examination, Dr. Alwan admitted one of the receipts was for a "Swiss Army" brand card, while the card from Costco was a "Tool Logic" brand card. Dr. Alwan also admitted he provided copies of receipts for these items to his criminal lawyer and the ones he presented at the Board disciplinary hearing were not the same receipts he gave to his other lawyer.



Dr. Alwan testified he pled nolo contendere to the infraction of petty theft on the advice of counsel to avoid the cost of a trial and the time that it would take to try the case.

Dr. Alwan's wife, Hanadi Alwan, testified that Dr. Alwan was gentle with their children. She testified Dr. Alwan was very involved in his family, his church, and his community.

Hanadi Alwan confirmed that during their visit to Knott's Berry Farm, a man told them that someone had keyed their car. She saw scratches on their car, and Dr. Alwan decided to move the car as a result.

Hanadi Alwan testified that Dr. Alwan had approximately 12 small flashlights, including four that look like the one in his possession at Costco. She testified Dr. Alwan had owned a credit card tool kit for several years as well. She did not know her husband had been arrested for petty theft.

Dr. Steven C. Reiner testified Dr. Alwan was his preferred consultant for OB/GYN clinical problems. Dr. Reiner testified Dr. Alwan had an excellent reputation as a surgeon and as a clinician and was the referral consultant of choice for much of the female medical staff who interacted with him. Dr. Reiner further testified Dr. Alwan was quite soft spoken and even-tempered. Dr. Reiner had no problems with Dr. Alwan's honesty and routine audits disclosed no problems with Dr. Alwan's practice. Dr. Reiner testified he would be surprised if Dr. Alwan had been convicted of misdemeanor vandalism and the infraction of petty theft because those acts were incompatible with the man he knew.

Nurse Karen Ornelas testified she worked with Dr. Alwan for the prior 10 years and found him to be very calm in life-or-death situations in the operating room. She had never heard him raise his voice. She testified Dr. Alwan is respected and trusted by his patients and staff. She believed Dr. Alwan had a reputation in the community for honesty. She was unaware of either of Dr. Alwan's convictions.

Nurse Kay Mixon testified she worked with Dr. Alwan for two years. She testified Dr. Alwan had a very mild manner and was quiet. He reacted very calmly in life-or-death situations. Nurse Mixon testified Dr. Alwan was well respected by his peers and staff and had a reputation for honesty. Nurse Mixon was unaware of Dr. Alwan's conviction for the infraction of petty theft.

Dr. Jeffrey Phelan also testified on Dr. Alwan's behalf. Dr. Phelan had known Dr. Alwan professionally for over 10 years. Dr. Phelan testified he respected Dr. Alwan's abilities and that he was compassionate, caring, knowledgeable, and a superb clinician. Dr. Phelan testified Dr. Alwan was quiet and well mannered, very professional, and always courteous. Dr. Phelan had never seen Dr. Alwan be disrespectful. Dr. Phelan believed Dr. Alwan had an excellent reputation for competence and had never heard anything negative about his honesty.

Curtis D. Booraem, Ph.D., is a clinical psychologist. Dr. Booraem submitted Dr. Alwan to a battery of tests and evaluated Dr. Alwan. Dr. Booraem concluded Dr. Alwan showed no signs of psychological symptomatology. Dr. Booraem stated

Dr. Alwan had no anger management problems and that he was honest and forthright. On cross-examination, Dr. Booraem conceded that Dr. Alwan's behavior was the best indicator of his future conduct.

#### IV

##### *ALJ's Findings of Fact and Conclusions of Law*

At the conclusion of the hearing, the ALJ found Dr. Alwan had been convicted of both crimes and actually had committed them. The ALJ found the witnesses to the crimes to be credible and that their credibility overshadowed Dr. Alwan's on this subject. Further, the ALJ found Dr. Alwan maintained his innocence before the Board of both charges. The ALJ found "Respondent's conduct underlying the [misdemeanor] conviction [for vandalism] reflects poorly on his ability to exercise sound judgement and to control his anger and therefore to a substantial degree demonstrates [Dr. Alwan's] present and potential unfitness to safely discharge his duties as a physician." As to the conviction of the infraction of petty theft, the ALJ found this conviction "is for a crime that includes dishonesty as one of its essential elements. Dishonesty is a trait that demonstrates, to a substantial degree, [Dr. Alwan's] present and potential unfitness to discharge the duties of a physician." The ALJ found Dr. Alwan's denial of his guilt of these crimes to the Board to be acts of dishonesty that also demonstrated present and potential unfitness to discharge the duties of a physician. The ALJ recited the favorable evidence proffered concerning Dr. Alwan.

The ALJ's proposed decision concluded Dr. Alwan was subject to discipline and ordered his license suspended for six months but stayed that suspension and placed Dr. Alwan on probation for three years under the condition that he take anger management courses and an ethics course.

V

*The Board's Ruling*

The Board adopted the ALJ's decision. The Board then granted Dr. Alwan's petition for reconsideration. After reconsideration, the Board came to the same conclusions as the ALJ and imposed the same discipline but added the requirement that Dr. Alwan undergo a psychiatric evaluation.

VI

*The Superior Court's Ruling*

Dr. Alwan filed a petition for writ of mandamus in the Sacramento County Superior Court challenging his discipline. After a hearing and exercising its independent judgment, the trial court denied Dr. Alwan's petition for the writ and affirmed the Board's decision in its entirety. This writ petition followed. (§ 2337.)

## DISCUSSION

### I

#### *Propriety of Discipline*

### A

#### *Dr. Alwan's Convictions are Substantially Related to his Qualifications as a Physician*

Dr. Alwan contends his convictions for misdemeanor vandalism and the infraction of petty theft do not substantially relate to the qualifications of a physician, and, therefore, the suspension of his license violates both section 2236, subdivision (a), and his due process rights. We disagree.

#### 1. *Standard of Review*

"The Medical Board, through its Division of Medical Quality, has authority to investigate, to commence disciplinary actions, and to take disciplinary action against a physician's license based on unprofessional conduct as defined in the Medical Practice Act." (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 768.) "After an administrative agency imposes discipline on a professional licensee, the trial court to which application for mandate is made exercises its independent judgment on the facts. [Citations.] After the trial court exercises its independent judgment in reviewing the facts, the appellate court confines itself to determining whether substantial evidence supports the trial court's findings. The appellate court, however, independently exercises its ability to decide issues of law. [Citation.]" (*Id.* at pp. 767-768.) The question of whether particular conduct substantially relates to

the qualifications of a physician is a question of law. (*Krain v. Medical Board* (1999) 71 Cal.App.4th 1416, 1424.)

“Credibility, or lack thereof, is for the factfinder, not the reviewing court, to determine.” (*Thompson v. State Personnel Bd.* (1988) 201 Cal.App.3d 423, 428.) “On the cold record a witness may be clear, concise, direct, unimpeached, uncontradicted—but on a face to face evaluation, so exude insincerity as to render his credibility factor nil. Another witness may fumble, bumble, be unsure, uncertain, contradict himself, and on the basis of a written transcript be hardly worthy of belief. But one who sees, hears and observes him may be convinced of his honesty, his integrity, his reliability.’ [Citation.]” (*Wilson v. State Personnel Bd.* (1976) 58 Cal.App.3d 865, 877-878.) We, as the appellate court, cannot “reweigh the evidence and consider the credibility of witnesses.” (*Packer v. Board of Medical Examiners* (1974) 37 Cal.App.3d 63, 69.)

## 2. *Qualifications of a Physician*

With this in mind, we turn to the relevant standards against which we must measure the actions of the Board and the trial court. Under section 2236, subdivision (a), “[t]he conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.” Under section 2234, subdivision (e), unprofessional conduct includes, “The

commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.”

Dr. Alwan’s due process challenge to the suspension of his license raises a substantially identical standard. “[T]he state can impose discipline on a professional license only if the conduct upon which the discipline is based relates to the practice of the particular profession and thereby demonstrates an unfitness to practice such profession. ‘There must be a logical connection of licensees’ conduct to their fitness or competence to practice the profession or to the qualifications, functions, or duties of the profession in question.’

[Citation.]” (*Griffiths v. Superior Court, supra*, 96 Cal.App.4th at p. 769.) The statutory language and the constitutional test constitute different formulations of the same test. The conduct for which the physician has been disciplined must “substantially relate to” or have a “logical connection to” the qualifications of a physician. We turn now to the case law that has examined that question.

“There is no other profession in which one passes so completely within the power and control of another as does the medical patient.” (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 578.) That relationship is built on trust and honesty. (*Ibid.*) The qualifications of a physician therefore include honesty, integrity, and sound judgment.

A physician’s commission of crimes related to honesty substantially relates to and is logically connected to his or

her qualifications as a physician. In *Matanky v. Board of Medical Examiners* (1978) 79 Cal.App.3d 293, 296-298, the physician's license was revoked based upon his conviction of 39 counts of filing fraudulent Medicare reimbursement requests. "Based on the testimony and letters of physicians, patients and friends attesting to his reputation in the community in which he resides for truth, honesty and integrity and to his reputation in the community in which he practices for competence and skill, [the physician] argues that there is no evidence demonstrating his unfitness to practice medicine." (*Id.* at p. 305.) The appellate court disagreed. "A physician can be subject to disciplinary action notwithstanding his technical competence or skill under circumstances where his moral character is in dispute. [Citations.] Intentional dishonesty, especially involving moral turpitude, demonstrates a lack of moral character and satisfies a finding of unfitness to practice medicine." (*Ibid.*) This intentional dishonesty substantially relates to the physician's qualifications to practice medicine. (*Ibid.*)

Similarly, in *Krain v. Medical Board, supra*, 71 Cal.App.4th at page 1419, the physician was disciplined based on his misdemeanor conviction for suborning perjury. "[T]he intentional solicitation to commit a crime which has as its hallmark an act of dishonesty cannot be divorced from the obligation of utmost honesty and integrity to the patients whom the physician counsels, as well as numerous third party entities and payors who act on behalf of patients." (*Id.* at p. 1425.)



Thus, the appellate court concluded this conviction substantially related to the physician's qualifications to practice medicine. (*Id.* at p. 1425.)

The court reached the same result in *Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461, 470, based on the physician's conviction for tax evasion. The court explained, "First of all, we find it difficult to compartmentalize dishonesty in such a way that a person who is willing to cheat his government out of \$65,000 in taxes may yet be considered honest in his dealings with his patients. In this connection, however, we should point out that today's doctor deals financially with the government--state, local and federal--in many ways that have nothing to do with his own personal tax obligation. We also point out that respondent's chosen specialty--forensic medicine--demands a high degree of honesty in reporting concerning examinations and in testifying, if called upon to do so. [¶] Quite apart from these contacts with various governmental agencies, most practicing physicians deal with various private insurance carriers on a basis which demands utmost honesty in reporting. Above all, however, there is the relation between doctor and patient. It is unnecessary to describe the extent to which that particular relationship is based on utmost trust and confidence in the doctor's honesty and integrity." (*Ibid.*)

In assessing the honesty and integrity of the physician, the Board, and the trial court, can take into account the fact

that the physician lied during the disciplinary proceedings.  
(*Landau v. Superior Court* (1998) 81 Cal.App.4th 191, 223.)

A physician's lack of judgment also substantially relates to and is logically connected to his or her qualifications to practice medicine. In *Griffiths v. Superior Court, supra*, the court concluded that three separate convictions for drinking and driving had a "'logical connection' to a physician's fitness to practice medicine." (96 Cal.App.4th at pp. 762-763, 770.) Thus, discipline based on this conduct did not violate the physician's due process rights. (*Id.* at p. 762.) The court explained, "[c]onvictions involving alcohol consumption reflect a lack of sound professional and personal judgment that is relevant to a physician's fitness and competence to practice medicine. Alcohol consumption quickly affects normal driving ability, and driving under the influence of alcohol threatens personal safety and places the safety of the public in jeopardy. It further shows a disregard of medical knowledge concerning the effects of alcohol on vision, reaction time, motor skills, judgment, coordination and memory, and the ability to judge speed, dimensions, and distance." (*Id.* at p. 770.) That the physician drove under the influence of alcohol demonstrated his inability or unwillingness to follow the law. (*Ibid.*) Further, multiple convictions for alcohol use "reflect[ed] poorly on [the physician's] common sense and professional judgment, which are essential to the practice of medicine." (*Id.* at p. 771.) "[T]here is more to being a licensed professional than mere knowledge and ability. Honesty and integrity are deeply and

daily involved in various aspects of the practice.'

[Citation.]" (*Id.* at p. 772.)

The physician argued that the discipline was invalid "because no evidence showed his alcohol use impaired his medical practice." (*Griffiths v. Superior Court, supra*, 96 Cal.App.4th at p. 771.) The court noted, "For a nexus to exist between the misconduct and the fitness or competence to practice medicine, it is not necessary for the misconduct forming the basis for discipline to have occurred in the actual practice of medicine." (*Ibid.*) The appellate court rejected "the argument that a physician can seal off or compartmentalize personal conduct so it does not affect the physician's professional practice." (*Ibid.*)

The court further rejected the physician's argument that he could not be disciplined because the Board had not demonstrated his patients had been harmed. (*Griffiths v. Superior Court, supra*, 96 Cal.App.4th at p. 772.) "We reject this argument because it overlooks the preventative functions of license discipline, whose main purpose is protection of the public [citation], but whose purposes also include prevention of future harm [citation] and the improvement and rehabilitation of the physician [citation]. To prohibit license discipline until the physician-licensee harms a patient disregards these purposes; it

is far more desirable to discipline *before* a licensee harms any patient than after harm has occurred." (*Ibid.*, fn. omitted.)<sup>6</sup>

These cases instruct us that honesty, as well as careful judgment, are qualifications of a competent physician. Therefore, criminal convictions that demonstrate dishonesty and a lack of that careful judgment may properly form the basis to discipline a physician under section 2236, subdivision (a), and the constitutional due process limitations on professional discipline.

Under section 2236, subdivision (c), "[t]he division may inquire into the circumstances surrounding the commission of a crime in order to fix the degree of discipline or to determine

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<sup>6</sup> Under prior versions of section 2236, the Board had to demonstrate that misdemeanor convictions were crimes of moral turpitude before they could form the basis for the discipline of a physician. (See, e.g., *Wyatt v. Cerf* (1944) 64 Cal.App.2d 732, 738.) Under this standard, a physician's commission of the crime of disturbing the peace by using indecent language, challenging someone to a fight, and interfering with a police officer did not, as a matter of law, constitute conduct that exhibited "moral turpitude" and therefore could not be the basis for discipline under that statute. (*Id.* at pp. 734, 738.) Further, offering alcohol to a minor did not reach the level of moral turpitude as a matter of law. (*Lorenz v. Board of Medical Examiners* (1956) 46 Cal.2d 684, 687; see also *Weissbuch v. Board of Medical Examiners* (1974) 41 Cal.App.3d 924, 929 [a conviction for possession of marijuana for personal use could not form the basis for discipline when that substance was removed from California's schedules of narcotics].) These cases provide Dr. Alwan with no assistance here because of their focus on moral turpitude rather than on the relationship between the conviction and the qualifications, duties, or responsibilities of the physician required by the current statute and constitutional standard.

if the conviction is of an offense substantially related to the qualifications, functions, or duties of a physician and surgeon." Thus, the Board properly examined the circumstances surrounding the convictions to determine whether they substantially related to Dr. Alwan's qualifications as a physician.

Here, the evidence presented to the Board demonstrated Dr. Alwan has on at least two occasions demonstrated dishonesty and lack of judgment. The conviction for the infraction of petty theft, while for a minimal amount of merchandise, carries with it the element of dishonesty. (Pen. Code, §§ 484, 488, 490.1.) Theft is dishonest conduct. That Dr. Alwan stole something of small value is of no significance to the underlying fact that this criminal conviction involved dishonesty, and thus related to his qualification as a physician. (See, e.g., *Matanky v. Board of Medical Examiners, supra*, 79 Cal.App.3d at p. 305.) Dr. Alwan did not steal a loaf of bread to feed his family. He stole merchandise (a flashlight and a pocket tool kit) from a commercial establishment for no apparent reason. No matter how Dr. Alwan attempts to parse his conviction for this infraction, it demonstrates his dishonesty.

The Board also concluded Dr. Alwan was not truthful before the Board prior to the hearing on the discipline. The Board's conclusion that Dr. Alwan committed both of the crimes in light of his testimony to the contrary demonstrates he testified falsely at the hearing itself. Even when he was caught red-handed, and pled no contest and guilty, Dr. Alwan has still not

owned up to his own misconduct and has again demonstrated his lack of honesty and integrity. This integrity and honesty is fundamental to the physician-patient relationship. His failure in this regard substantially relates to and is logically connected to his qualifications as a physician.

The misdemeanor vandalism conviction demonstrates Dr. Alwan's lack of judgment. Keying a car and causing over \$500 of damage over a parking space at an amusement park is an act of poor judgment. Judgment is a critical qualification for a competent physician. (*Griffiths v. Superior Court, supra*, 96 Cal.App.4th at p. 762.) Thus, this misdemeanor conviction is also substantially related to his qualifications as a physician.

Dr. Alwan argues he may not be disciplined for originally pleading not guilty and later admitting the conduct by pleading no contest and guilty. The record does not support his contention that he was disciplined for this. Rather, Dr. Alwan was taken to task for the underlying convictions and continuing to maintain his innocence before the Board in light of his prior pleas of no contest and guilty, and the evidence heard by the Board on the facts of his crimes. While he had every right to challenge these charges in the criminal courts, and even the convictions before the Board, the Board and the trial court also had every right to judge his credibility and to impose discipline based upon his dishonesty before the Board. (*Landau v. Superior Court, supra*, 81 Cal.App.4th at p. 223.) We will not disturb that conclusion on appeal.

Even in this court, Dr. Alwan argues the evidence he committed these crimes was not conclusive. We are not in a position to reweigh the evidence that he in fact committed both of these crimes. He entered pleas to both crimes. The eyewitnesses testified before the Board as to their observations and the ALJ judged that these independent witnesses were more credible than Dr. Alwan. The testimony of these witnesses is substantial evidence that supports the Board's and the trial court's conclusions. Our review of this matter begins and ends with that conclusion.

Dr. Alwan also argues these crimes are minimal and the other evidence he presented in mitigation unquestionably establishes "that [Dr. Alwan] is an outstanding physician who does not have problems with anger or dishonesty in practicing his profession." Like the courts before us on this point, we are not prepared to allow Dr. Alwan to compartmentalize his "personal" life from his "professional" life this neatly. (*Griffiths v. Superior Court, supra*, 96 Cal.App.4th at p. 771; *Krain v. Medical Board, supra*, 71 Cal.App.4th at p. 1425.) While Dr. Alwan's crimes are minor compared to some that visit our courts on a regular basis, we are not prepared to dismiss them as aberrations such that discipline cannot be imposed upon him. The vast majority of people in our society go their entire lives without criminal convictions on their records. Dr. Alwan has not one but two.

Further, the weighing of these episodes of dishonesty and lack of judgment against the counterbalance of evidence of his

good character was a question involving the credibility of the physician and his witnesses. This evaluation was for the Board in the first instance and the trial court in exercising its independent judgment. (*Griffiths v. Superior Court, supra*, 96 Cal.App.4th at pp. 767-768.) We are not at liberty to reweigh this evidence a third time. (*Packer v. Board of Medical Examiners, supra*, 37 Cal.App.3d at p. 69.)

We conclude these two convictions and Dr. Alwan's dishonest conduct before the Board substantially related to and were logically connected to Dr. Alwan's qualifications as a physician. Substantial evidence supports the Board's decision.

B

*Section 2236, Subdivision (a) Applies to Infractions*

Dr. Alwan traces the history of section 2236 and argues it does not apply to "infractions." Thus, he argues his conviction for the infraction of petty theft cannot support the discipline imposed here. We disagree.

Prior to 1957, section 2383 (the precursor to section 2236) read "[t]he conviction of a felony, or of any offense involving moral turpitude, constitutes unprofessional conduct . . . ." (Stats. 1951, ch. 792, § 1, p. 2280; *Morris v. Board of Medical Examiners* (1964) 230 Cal.App.2d 704, 709.) In 1957, the Legislature amended the language to read "[t]he conviction of either (1) a felony or (2) of any offense, misdemeanor or felony, involving moral turpitude constitutes unprofessional conduct . . . ." (Stats. 1957, ch. 1372, § 1, pp. 2705-2706; *Morris*, at p. 707, fn. 1.) In 1978, the statute was amended to



read, "the conviction of any offense, substantially related to the qualifications, functions and duties of a physician and surgeon constitutes, unprofessional conduct . . . ." (Stats. 1978, ch. 1161, § 129, p. 3625; *Windham v. Board of Medical Quality Assurance*, *supra*, 104 Cal.App.3d 466, fn. 5.) In 1980, the language of the statute was amended again to its current language, "[t]he conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct." (Stats. 1980, ch. 1313, p. 4474; § 2236, see Historical and Statutory Notes, 3A, pt. 2 West's Ann. Bus. & Prof. Code (2003 ed.) foll. § 2236, p. 390.) From this review of the history of the statute, Dr. Alwan draws the conclusion that section 2236 applies only to misdemeanors and felonies and thus does not apply to "infractions." We reject this argument.

"The rules governing statutory construction are well settled. We begin with the fundamental premise that the objective of statutory interpretation is to ascertain and effectuate legislative intent. [Citations.] "In determining intent, we look first to the language of the statute, giving effect to its 'plain meaning.'" [Citations] Although we may properly rely on extrinsic aids, we should first turn to the words of the statute to determine the intent of the Legislature. [Citation.] Where the words of the statute are clear, we may not add to or alter them to accomplish a purpose that does not appear on the face of the statute or from its legislative history." (Ibid.) [¶] "If the statutory language is clear and

unambiguous, there is no need for construction.' [Citation.]" (*Poliak v. Board of Psychology* (1997) 55 Cal.App.4th 342, 348.)

Here, we conclude the term "offense" as used in section 2236 is unambiguous. Penal Code section 16 defines "public offenses [to] include: [¶] 1. Felonies; [¶] 2. Misdemeanors; and [¶] 3. Infractions." Black's Law Dictionary defines the term "offense" to mean "[a] violation of the law; a crime, often a minor one." (Black's Law Dict. (7th ed. 1999) p. 1108, col. 1.) From these definitions, we conclude section 2236, which applies to "convictions of any offense," includes infractions, misdemeanors, and felonies.

Contrary to Dr. Alwan's argument, what we draw from the various forms of the statute over the past years is that the Legislature knows how to draft the statute in a manner that says what it means. If the Legislature meant this statute to apply only to felonies and misdemeanors, the Legislature could have written the statute that way. It did not. The discipline was properly based upon Dr. Alwan's conviction for the infraction of petty theft.

## II

### *Severity of Penalty Imposed*

Dr. Alwan also claims "[t]he penalty imposed in the present case is severe when considered in light of the lack of evidence connecting the convictions to [his] medical practice." We reject this claim.

"In reviewing the severity of the discipline imposed, we look to the correctness of the agency's decision rather than

that of the trial court. We review the actions of the Medical Board to determine whether the discipline imposed constituted a manifest abuse of discretion." (*Landau v. Superior Court, supra*, 81 Cal.App.4th at p. 217.) "'In reviewing the exercise of this discretion we bear in mind the principle "[c]ourts should let administrative boards and officers work out their problems with as little judicial interference as possible . . . . Such boards are vested with a high discretion and its abuse must appear very clearly before the courts will interfere." [Citations.]' [Citation.]" (*Id.* at p. 218.)

Here, the Board suspended Dr. Alwan's license for six months, but stayed that suspension and placed him on probation for three years. He was also directed to undergo a psychiatric evaluation and enroll in anger management and ethics courses. We do not find this measure of discipline to be an abuse of discretion.

DISPOSITION

The alternative writ is discharged and the petition for writ of mandate is denied. Dr. Alwan shall reimburse the Board for its costs in the writ proceeding before this court. (Cal. Rules of Court, rule 56.4.)

ROBIE, J.

We concur:

SCOTLAND, P.J.

NICHOLSON, J.