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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5972-12T1

IN THE MATTER OF THE
SUSPENSION OR THE REVOCATION
OF THE LICENSE OF

GARY KARAKASHIAN, M.D.
LICENSE NO. 25MA05182300

TO PRACTICE MEDICINE AND
SURGERY IN THE STATE OF
NEW JERSEY.

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Argued September 10, 2014 – Decided March 16, 2015

Before Judges Espinosa and Rothstadt.

On appeal from the New Jersey State Board of Medical Examiners, Docket No. BDS 8660-07.

Stephen M. Pascarella argued the cause for appellant Gary Karakashian (Pascarella and Associates, P.C., attorneys; Mr. Pascarella, of counsel and on the briefs).

Bindi Merchant, Deputy Attorney General, argued the cause for respondent State Board of Medical Examiners (John J. Hoffman, Acting Attorney General, attorney; Andrea M. Silkowitz, Assistant Attorney General, of counsel; Ms. Merchant, on the brief).

PER CURIAM

Gary V. Karakashian, M.D., is a board-certified dermatologist, licensed to practice medicine and surgery. He appeals from a final administrative decision of the Board of

Medical Examiners (the Board), which found statements appellant made in his application for reappointment for staff privileges at Monmouth Medical Center in 2007 were false and deceptive and imposed a penalty for such conduct. We affirm.

The Attorney General filed a series of complaints against Karakashian. The initial complaint alleged acts of negligence in the treatment of patients and the violation of applicable professional standards, including requirements for honesty and integrity. The complaint was transferred to the Office of the Administrative Law (OAL) as a contested case. The allegations in the amended complaints that followed charged Karakashian with violations of N.J.S.A. 45:1-39, which provides in pertinent part:

> Any health care professional seeking to . . . obtain privileges at, a health care entity . . . who engages in fraud, misrepresentation or deception in the application or credentialing process shall be subject to disciplinary proceedings . . . .

After a hearing, the Administrative Law Judge (ALJ) dismissed all charges based on the quality of patient care and charges that related to statements made in forms filed for the renewal of his privileges for 2004-05 and 2006-07. However, the ALJ concluded the State had proven Karakashian conveyed false information to Monmouth Medical Center in his 2007 application for recertification to the medical staff and recommended the imposition of a penalty.

We derive the following facts relevant to the 2007 application from the evidence presented to the ALJ and the transcript of the proceeding before the Board's Preliminary Evaluation Committee (PEC).

In 2001, the Enforcement Bureau of the Attorney General's Office inspected Karakashian's office. The investigators reviewed and seized records from his office.

On February 27, 2002, Karakashian appeared before the PEC in response to a subpoena issued to him relating to his care and treatment of several patients who had seen him at his dermatology practice for breast augmentations and scar revisions. At the outset of this hearing, Karakashian was advised that the PEC did not make a final decision regarding the allegations, but would make a recommendation to the Board that could run "the gamut [from] a finding that there is no cause of any action against your license, to a finding that disciplinary action is warranted" and that the committee could also "recommend additional investigation." He was also advised his testimony before the PEC could be used for him or against him in further proceedings before the Board. The PEC members questioned Karakashian about his treatment of certain patients and his experience in performing breast augmentations. Karakashian testified that he stopped performing breast augmentations and liposuction in his office in April 2000.

In July 2002, Karakashian received correspondence from the Board that included a proposed consent order. He testified the Board wanted to suspend his license for three years and gave him instructions on how to close his practice. Karakashian retained an attorney, Steven Kern, Esq. During the period from 2002-2007, Karakashian received correspondence from the Board periodically and forwarded it to Kern.

Vincent Karakashian,[1] appellant's father, served as his office manager. On May 3, 2007, an administrative complaint naming Karakashian as the respondent was sent to Karakashian's office via certified mail. Vincent reviewed the complaint and forwarded it to Kern, who told Vincent he would take care of it. Vincent told his son he had received what he believed to be a duplicate of a document the Board had sent years earlier.

Kern prepared an answer to the administrative complaint, dated May 10, 2007. Although the answer was not filed by the Board until September 25, 2007, the case was transferred to the OAL as a contested case on August 25, 2007.

In the summer of 2007, Karakashian applied for renewal of his staff privileges at Monmouth Medical Center for the 2008-09 year. The third page of the application included the following question:

> HAVE INVESTIGATIONS OR PROCEEDINGS THAT COULD HAVE RESULTED IN A DENIAL, REVOCATION,

[1] We refer to Vincent Karakishian by his first name to avoid confusion.

> SUSPENSION, LIMITATION, TERMINATION, REDUCTION, PROBATION OR LACK OF RENEWAL EVER BEEN INSTITUTED OR ARE ANY SUCH INVESTIGATIONS OR PROCEEDINGS CURRENTLY PENDING FOR . . . Medical license in any state[?]
>
> [Emphasis added.]

Karakashian's answer was "No."

The fourth page included the question,

> Are there currently pending any professional/medical misconduct proceedings against you in this state or in any other state? If yes, please provide on a separate sheet the substance of the allegations in the proceedings, the substance of the findings in the proceedings, the final action taken if the proceeding is concluded, and any additional information deemed appropriate.
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> [Emphasis added.]

Again, Karakashian answered, "No."

Karakashian signed the last page of the form, dated September 4, 2007, and certified the information provided was correct. The certification included the following language, "I understand that if I have knowingly provided any misinformation, this will result in denial or revocation of Medical Staff membership and privileges."

In his initial decision, the ALJ noted that Karakashian was apprised when he was summoned to the February 2002 PEC meeting that the PEC's purpose was to make a recommendation to the Board that could include disciplinary action or further investigation. Karakashian's office had been "raided" by State authorities, who

inspected and seized some of his records. Within months of the PEC meeting, Karakashian "received a 'complaint' or at least a notice of some intention to revoke his license and shutter his practice." The ALJ reasoned, "Surely, given these facts, any reasonable doctor . . . would have understood that his practice was, at a minimum, under 'investigation' by the Board of Medical Examiners." The ALJ rejected the defense argument that the information indicated the Board was not yet committed to an investigation and stated, "Seemingly, this information would have left no doubt to a reasonable person, much less a reasonable physician, as to the answer that must aforesaid be provided to a question as to whether any 'investigation' had 'ever been instituted.'" Nonetheless, Karakashian answered "no" to the question regarding investigations in his applications for the renewal of staff privileges for the years 2004-05 through 2008-09.

The ALJ noted that, for the years 2004-07, Vincent completed and signed the forms after Karakashian had made specific inquiry of Monmouth Medical Center as to the appropriate responses. The ALJ concluded the inaccurate responses on the applications for the years 2004-07 were not knowing and intentional misrepresentations by Karakashian.

The ALJ explained why a different result was appropriate for the 2007 application, which had been modified to require a certification from the applicant:

> It seems most likely that despite any suggestion that the arrival of the May 2007 Complaint was merely treated in passing by Vincent, shipped off to Mr. Kern, and not shown to Gary, that the arrival of such a formal document upset Vincent enough that when it came time to file the reapplication, he saw fit to discuss the matter with his son. Mr. Kern's purported angry reaction to the Complaint might well have added to the likelihood that both Vincent and Gary knew about the Complaint before the Answer arrived, and before the form was filed. While Dr. Karakashian would have it that he knew nothing of the Complaint until mid-to late September, I have doubts about that. It seems more reasonable to understand Vincent's change in practice as reflective of a heightened concern about the turn of events vis a vis the State, a concern brought about by some knowledge of how the matter had now advanced to a more serious stage. Precisely why the doctor would have chosen to hide the existence of the misconduct proceeding from the hospital is not certain, but it is not necessary to appreciate his motive where the evidence is such that it is more likely than not that he knowingly provided false and misleading information.

The ALJ concluded the charges of false and deceptive statements on the 2007 form were established by a preponderance of the evidence and that such conduct violated N.J.S.A. 45:1-21(b),(e) and N.J.S.A. 45:1-39. He recommended a suspension of two years with an active suspension of four months, and a fine of $7500.

The Board adopted the ALJ's findings of fact and conclusions of law but modified the penalty to impose a two-year suspension, all of which was stayed and served as a period of probation. The Board also assessed a civil penalty of $7500 and costs of $24,444.66.

In his appeal, Karakashian argues the Board failed to establish he made materially false and deceptive statements on the 2007 re-application forms by sufficient and credible evidence and that the penalties imposed were disproportionate to the offense. We are not persuaded by these arguments.

The scope of our review in an appeal from a final decision of an administrative agency is limited. Circus Liquors, Inc. v. Governing Body of Middletown, 199 N.J. 1, 9 (2009). We must sustain the agency's action in the absence of a "'clear showing' that it is arbitrary, capricious, or unreasonable or that it lacks fair support in the record." Ibid.

The crux of Karakashian's challenge to the finding of misconduct here is that the Board did not accept his factual assertion he was unaware he was the subject of an investigation when he certified to the contrary in the 2007 application form. However, we may not substitute our judgment for the fact-finding of an administrative agency. Campbell v. N.J. Racing Comm'n, 169 N.J. 579, 587 (2001). Rather, we are bound to defer to the Board's findings of fact "when they could reasonably be made considering

the proofs as a whole and with due regard to the opportunity of the one who heard the testimony to assess credibility." Klusaritz v. Cape May Cnty., 387 N.J. Super. 305, 313 (App. Div. 2006), certif. denied, 191 N.J. 318 (2007). "'If the Appellate Division is satisfied after its review that the evidence and the inferences to be drawn therefrom support the agency head's decision, then it must affirm even if the court feels that it would have reached a different result itself.'" Campbell, supra, 169 N.J. at 587 (quoting Clowes v. Terminix Int'l, Inc., 109 N.J. 575, 588 (1988)). In the absence of "a clear showing that it is arbitrary, capricious, or unreasonable or that it lacks fair support in the record," the decision will be sustained. In re Herrmann, 192 N.J. 19, 27-28 (2007); see also Brady v. Bd. of Review, 152 N.J. 197, 210 (1997); Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980).

Here, the ALJ had the opportunity to assess the credibility of the testimony provided by Karakashian and his father and tested their assertions against the undisputed facts. He expressed his doubts as to Karakashian's claim of ignorance. He noted the inspection of Karakashian's office and seizure of records, the information provided him regarding the mission of the PEC in February 2002, the proposed order sent to him in July 2002 that called for the suspension of his license for three years, and finally, the complaint received in May 2007. Drawing reasonable

inferences from these facts, the ALJ observed, "any reasonable doctor . . . would have understood that his practice was, at a minimum, under 'investigation' by the Board of Medical Examiners." This logic is unassailable. We find no reason to disturb the decision that the violations of N.J.S.A. 45:1-21(b),(e) and N.J.S.A. 45:1-39 were proven by a preponderance of the credible evidence.

Karakashian also challenges the penalty imposed as disproportionate. He argues he is being forced to bear the costs of an investigation for allegations regarding the treatment of patients that were ultimately dismissed. The State counters that public policy favors the imposition of costs being borne by disciplined licensees in contested cases where the State prevails.

The deferential standard applicable to our review "is not limited to whether a violation warranting discipline has been proven; . . . [it] 'applies to the review of disciplinary sanctions as well.'" In re Stallworth, 208 N.J. 182, 195 (2011) (quoting Herrmann, supra, 192 N.J. at 28). If the sanction imposed "is not illegal or unreasonable, the sanction will be affirmed." Herrmann, supra, 192 N.J. at 28 (citation omitted). The Court provided the following guidance:

> A reviewing court should alter a sanction imposed by an administrative agency only "when necessary to bring the agency's action into conformity with its delegated authority. The Court has no power to act independently as an

> administrative tribunal or to substitute its judgment for that of the agency." In light of the deference owed to such determinations, when reviewing administrative sanctions, "the test . . . is 'whether such punishment is so disproportionate to the offense, in light of all the circumstances, as to be shocking to one's sense of fairness.'" The threshold of "shocking" the court's sense of fairness is a difficult one, not met whenever the court would have reached a different result.
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> [Id. at 28-29 (internal citations and quotation marks omitted).]

The sanction imposed is not illegal and does not require our intervention "to bring the agency's action into conformity with its delegated authority." We are, therefore, only concerned with its reasonableness, specifically whether it is so disproportionate to the offense as to shock the conscience. In mitigating the sanction recommended by the ALJ, the Board noted "the vast majority of allegations in the various Complaints were dismissed," but explained the reason for the sanction imposed:

> That being said, the sole count on which the State prevailed involved the fundamentally dishonest act of failing to report a currently pending investigation/proceeding on an application for re-appointment for hospital staff privileges. Physicians are presented with situations daily where their fundamental honesty must be trusted. The public relies on the Board to assure that their health care providers are honest and trustworthy in all their actions. Physician[s] are entrusted with the most private information and must be trusted to truthfully report billing and accurately create and maintain medical records. Certainly, hospitals need to be able to rely on the truthfulness of the certified

> statements on privilege applications. The record before us supports entry of an Order imposing serious discipline.

The Board's reasoning that serious discipline was required to serve the policy that physicians must be trustworthy in their interactions with patients and hospitals is sound. We discern no lack of proportionality in the sanction imposed.

Affirmed.