

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

SETH LOOKHART, DMD,)	
)	
Appellant,)	
)	
v.)	Case No. 3AN-20-09037CI
)	OAH No. 17-607-DEN
STATE OF ALASKA, BOARD OF)	
DENTAL EXAMINERS,)	
)	
Appellee.)	
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DECISION AND ORDER

I. INTRODUCTION

Seth Lookhart, D.M.D., filed this appeal after the Alaska Board of Dental Examiners (“Board”) permanently revoked his dental license on October 16, 2020. Dr. Lookhart stipulated to the State’s allegations, which were largely based on his recent criminal convictions for Medicaid fraud. Rather than challenge the Board’s decision itself, Dr. Lookhart argues that the State should have shown leniency, and that license revocation is inconsistent with prior Board decisions. The State counters that none of the cases Dr. Lookhart cites are factually similar, and therefore the Board did not abuse its discretion. Even assuming Dr. Lookhart’s arguments on consistency have merit, the Board’s well-reasoned decision

sufficiently explains any departure from past disciplinary actions. For the reasons stated below, this court **AFFIRMS** the Board's decision.

II. FACTS

Dr. Lookhart received his Alaska dental license on June 4, 2014, and his parenteral sedation permit on May 27, 2015.¹ Dr. Lookhart's sedation permit at the time allowed him to perform up to moderate sedation, but not deep sedation or full anesthesia.² Alaska State Medicaid covers dentist-administered sedation in limited circumstances with written justification, up to a maximum of three hours.³

Between May 2016 and March 2017, Dr. Lookhart and Lookhart Dental LLC engaged in a criminal scheme to defraud Medicaid by unnecessarily sedating patients to the maximum extent payable without justification. In total, Dr. Lookhart fraudulently billed and overcharged Medicaid for \$1.6 million over this 11-month period. Dr. Lookhart also engaged in a scheme to defraud his former employer, Alaska Dental Arts LLC, of \$412,500. In so doing, Dr. Lookhart

¹ The underlying facts are not disputed, and Dr. Lookhart stipulated to the State's Second Amended Accusation. R. 488. This court therefore relies on the facts as detailed in the Second Amended Accusation and in the Board's decision. R. 433-57, 821-53.

² R. 821-22. Parenteral sedation refers to the administration of sedative drugs other than through the gastrointestinal tract. Alaska's parenteral sedation permits have since been replaced with moderate sedation permits. *See* 12 AAC 28.010.

³ *See* R. 822; 7 AAC 110.155.

recklessly endangered his patients by consistently using deep sedation in violation of his permit, running multiple sedations simultaneously, using sedation when not medically necessary, allowing untrained assistants to sedate patients, and even pressuring patients into unwanted sedation.⁴ On two occasions, Dr. Lookhart sedated patients to a condition “inconsistent with signs of life.”⁵ On other occasions, Dr. Lookhart improperly sedated at-risk patients, and even sent patients home without an escort while still under the effects of sedation. Text messages and emails from Dr. Lookhart himself confirmed this extensive criminal scheme.⁶

Dr. Lookhart was arrested for these violations on April 17, 2017. All told, the State brought 85 criminal charges against Dr. Lookhart and his LLC, including 15 class B and class C felony charges for medical assistance fraud, theft, and scheming to defraud, as well as 3 class A misdemeanor charges for reckless

⁴ Not to mention Dr. Lookhart’s infamous hoverboard incident, where he removed the tooth of a deeply sedated patient while riding on a hoverboard, and then distributed video of the act without the patient’s consent. R. 435. Indeed, this brief overview merely scratches the surface of the depth and range of misconduct Dr. Lookhart engaged in during this time. The Board’s decision devotes 13 pages to describing the factual basis for each of Dr. Lookhart’s convictions. R.823-35. Dr. Lookhart does not challenge the sufficiency of the evidence against him.

⁵ R. 442.

⁶ R. 436-41. For example, referring to his Medicaid patients, Dr. Lookhart texted that he “won’t see them unless they are going to be sedated,” and “[o]nce they are sedated, I just max their time for 3 hours.” R. 436.

endangerment.⁷ After a bench trial, the trial court found Dr. Lookhart and his LLC guilty on all counts. The trial court found that the evidence against Dr. Lookhart was “simply overwhelming.”⁸

Following the criminal trial, the State filed its Second Amended Accusation against Dr. Lookhart on February 11, 2020. Based on the grounds for discipline stated in AS 08.36.315,⁹ the State alleged 17 counts of professional misconduct and sought revocation of Dr. Lookhart’s dental license and sedation permit. The State argued that no prior case came close to the extent of wrongdoing Dr. Lookhart admitted to here. The State justified revocation as necessary “to protect the public and instill public respect and confidence,” observing that: “If this case does not require [revocation], no future case will.”¹⁰ Rather than dispute any of the allegations, Dr. Lookhart stipulated to the Second Amended Accusation and asked the Board to exercise leniency. Dr. Lookhart’s pre-hearing brief argued that

⁷ R. 443-51.

⁸ R. 451.

⁹ The State relied on six grounds for revoking dental licenses. R. 452-57. In particular, AS 08.36.315(2) states that a license can be revoked if the dentist “engaged in deceit, fraud, or intentional misrepresentation in the course of providing or billing for professional dental services or engaging in professional activities.” The State also identified instances of patient care “that did not conform to minimum professional standards of dentistry” under AS 08.36.315(6)(A).

¹⁰ R. 503.

revocation as a sanction would be inconsistent with prior Board cases that only imposed revocation for repeated disciplinary action or “extreme patient harm.”¹¹

Due to the COVID-19 pandemic and Dr. Lookhart’s stipulation, the parties held an abbreviated, telephonic hearing before an administrative law judge (“ALJ”) on July 30, 2020. The ALJ issued its proposed decision on September 14. The ALJ first detailed the facts leading to Dr. Lookhart’s criminal convictions.¹² Addressing the parties’ consistency arguments, the ALJ observed that “there are simply no prior cases of this or any other Alaska board involving facts that are truly comparable to those presented here,” although prior cases provide “a useful starting point for discussion.”¹³

The ALJ rejected any comparison to prior Board cases. For example, *In re Ness* involved a “single negligent act” after a 17-year career. Although the Board ordered a four-month suspension, the superior court reversed, viewing the sanction as “unwarranted punishment.”¹⁴ But Dr. Lookhart’s “dangerous, arrogant scheme,” in contrast, “began at virtually the start of his career and continued until

¹¹ R. 520.

¹² R. 784-801.

¹³ R. 805.

¹⁴ R. 805-06.

he was caught and arrested.”¹⁵ As for *In re Greenough*, that case involved another criminal fraud conviction that only resulted in a two-year suspension.¹⁶ But the ALJ observed that the State only requested a two-year suspension in that case, which limited the Board’s options. Moreover, Dr. Lookhart’s \$2 million fraud scheme was “orders of magnitude greater than Dr. Greenough’s \$5,000 fraudulent billing.”¹⁷ The ALJ also reasoned that *State v. Smith*,¹⁸ where the Board revoked a dentist’s license after two patient deaths, was “useful in showing that the Board has previously revoked for reckless indifference to patient wellbeing in the context of shoddy sedation practices.”¹⁹ Finding no comparable Alaska case, the ALJ also

¹⁵ R. 806.

¹⁶ R. 806-07.

¹⁷ R. 807.

¹⁸ 593 P.2d 625 (1979).

¹⁹ R. 808. This court notes that, while the appeal in the *Smith* case did not relate directly to the Board’s decision to permanently revoke Dr. Smith’s license to practice dentistry in the State of Alaska, the *Smith* case and the Lookhart case have similarities in that both dentists over sedated two patients to the point of death. Unlike Dr. Smith, Dr. Lookhart was fortunate enough to revive his two patients who no longer showed vital signs. However, the Lookhart case is much more serious than the *Smith* case because of the many other counts of professional misconduct that Dr. Lookhart admitted to.

reviewed several out-of-state cases, where courts have routinely affirmed license revocations for Medicaid and insurance fraud.²⁰

Turning to the question of appropriate sanctions, the ALJ rejected attempts to draw analogies to prior cases, as “Dr. Lookhart has admitted an astonishing range of misconduct, most if not all of which was done to enrich himself at the expense of his patients’ safety and the public purse.”²¹ The ALJ reasoned that Dr. Lookhart’s conduct violated all five major principles of the American Dental Association’s ethical standards: patient autonomy, non-maleficence, beneficence, justice, and veracity.²² The ALJ also noted the particular nature of the misconduct, *i.e.*, unlawful sedation, which occurred “out of the public eye” and would have been “easy to conceal.”²³ The ALJ concluded that revocation would have been appropriate for any one of the 17 counts in the Second Amended Accusation, but viewed collectively, Dr. Lookhart’s conduct “was a breathtaking affront to the

²⁰ R. 809-12.

²¹ R. 813.

²² R. 813. The Board also adopted the same ethical standards by regulation. *See* R. 803; 12 AAC 28.905.

²³ R. 814.

dental profession.”²⁴ The ALJ thus recommended the revocation of Dr. Lookhart’s dental license and sedation permit as “the clear and obvious sanction here.”²⁵

On September 14, 2020, the same day as the ALJ issued her proposed Final Decision recommending permanent license and parenteral permit revocation, Judge Wolverton, the trial judge in Dr. Lookhart’s criminal trial, sentenced Lookhart to a composite sentence of 20 years in prison with eight years suspended and restitution.²⁶ Judge Wolverton found enhanced sentencing was warranted because the State proved 13 statutory aggravators beyond a reasonable doubt.²⁷ Dr. Lookhart has appealed his criminal convictions to the Court of Appeals.²⁸ Judge Wolverton has allowed Dr. Lookhart to remain on bail pending resolution of his criminal appeal.²⁹

²⁴ R. 815.

²⁵ R. 815.

²⁶ *State of Alaska v. Lookhart, Seth Albert*, 3AN-17-02990 CR, Docket 9/14/20.

²⁷ *Id.*

²⁸ *Lookhart v. State*, A13752 (10/26/20).

²⁹ *State of Alaska v. Lookhart, Seth Albert*, 3AN-17-02990 CR, Dockets 11/25/20 and 4/29/21.

On October 16, 2020, the Board adopted the ALJ's proposed decision in full.³⁰ Dr. Lookhart appeals the revocation of his dental license.³¹

III. STANDARD OF REVIEW

An agency's selection of the appropriate disciplinary sanction is reviewed for abuse of discretion.³² Courts will generally find an abuse of discretion when the reviewing court is "left with the definite and firm conviction that a mistake has been made."³³ Issues of statutory interpretation not involving an agency's expertise are reviewed de novo.³⁴

IV. DISCUSSION

Dr. Lookhart raises only one issue on appeal: whether the Board's decision was inconsistent with previous sanctions in similar disciplinary matters. Dr. Lookhart argues that the Board's decision must be consistent with the only two

³⁰ R. 853.

³¹ Although Dr. Lookhart's statement of points on appeal does not clarify the distinction, his opening brief only addresses the decision to revoke his dental license. *See* Appellant's Brief at 17. Any arguments Dr. Lookhart may have had regarding the revocation of his sedation permit are therefore waived.

³² *Odom v. State, Div. of Corps.*, 421 P.3d 1, 6 (Alaska 2018).

³³ *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851, 858 (Alaska 2010).

³⁴ *Rosauer v. Manos*, 440 P.3d 145, 147 (Alaska 2019).

prior cases in Alaska that revoked dental licenses.³⁵ Accordingly, revocation should only be available in cases of repeated malfeasance, drug abuse, or “extreme patient harm.”³⁶ The State responds that consistency is mandated only where precedent is factually similar. Because there is no prior Alaska case dealing with Medicaid fraud on this scale, the State asserts that the Board was not statutorily barred “from using its discretion” to revoke Dr. Lookhart’s license.³⁷ As detailed below, even assuming that the Board deviated substantially from prior disciplinary decisions involving similar facts, all that is required is an adequate explanation.

A. The Board Did Not Violate AS 08.01.075(f)

Dr. Lookhart’s sole argument is that the Board violated AS 08.01.075(f). That statute provides: “A board *shall seek consistency* in the application of disciplinary sanctions. A board *shall explain* a significant departure from prior decisions involving similar facts in the order imposing the sanction.”³⁸ Beginning

³⁵ See *State v. Smith*, 593 P.2d 625, 626-27 (Alaska 1979) (reviewing unrelated appeal where the Board revoked a dentist’s license after the deaths of two patients from improper anesthesia); *In re Robinson*, OAH No. 1200-95-013 at 10 (Sept. 13, 1996) (revoking dental license for improperly dispensing medication to facilitate others’ drug addictions).

³⁶ Appellant’s Brief at 4.

³⁷ Appellee’s Brief at 31.

³⁸ AS 08.01.075(f) (emphasis added).

with the plain text of the statute,³⁹ maintaining strict consistency in disciplinary sanctions is not an inviolable mandate but rather a goal. Indeed, the Board may significantly depart from prior decisions in similar factual scenarios, so long as it adequately explains its reasoning. In other words, the plain text of AS 08.01.075(f) gives the Board wide discretion to determine what sanctions are appropriate for any given scenario.⁴⁰ This is consistent with the established practice for judicial review of administrative sanctions.⁴¹ The parties' arguments on "consistency" and "similar facts" are thus misplaced.

³⁹ See *State v. Planned Parenthood of the Great Nw.*, 436 P.3d 984, 993 (Alaska 2019) ("Statutory interpretation begins with the plain meaning of the statutory text."). Neither party presents any contrary legislative history, nor does this court see any need to apply interpretive canons.

⁴⁰ Alaska Statute 08.36.315 provides that the Board, after a hearing, "may revoke or suspend the license of a dentist" for a number of reasons, including "fraud . . . in the course of providing or billing for professional dental services," or if the dentist "has been convicted of a felony or other crime." Dr. Lookhart was convicted on 46 criminal counts in connection with his dental practice, 15 of which were class B or C felonies. Dr. Lookhart does not argue that revocation was not an available sanction for his misconduct.

⁴¹ See, e.g., 73 C.J.S. *Public Administrative Law and Procedure* § 182 ("The assessment of penalties and sanctions is a matter resting in the sound discretion of the agency, which should not be abused. . . . While an administrator should strive to impose discipline uniformly, mere unevenness in the application of an administrative sanction does not render its application in a particular case unwarranted in law, and the employment of a sanction within the authority of an administrative agency is not rendered invalid in a particular case because it is more severe than sanctions imposed in other cases." (footnotes omitted)).

Although the parties have identified no case law construing this exact provision,⁴² the Alaska Supreme Court applied a near-identical statute in *Odom v. State, Division of Corporations*.⁴³ In that case, the State accused a bariatric physician of misconduct for prescribing too much thyroid hormone to a patient.⁴⁴ After an evidentiary hearing, the ALJ concluded that the State failed to meet its burden of proof and no disciplinary action was necessary.⁴⁵ The State submitted a proposal for action disputing the ALJ's conclusions and requesting the Medical

⁴² Cf. *State, Dep't of Com., Cmty. & Econ. Dev., Div. of Corps., Bus. & Pro. Licensing v. Wold*, 278 P.3d 266, 270 n.9 (Alaska 2012) (clarifying that prior "memoranda of agreement" are not relevant "decisions" under AS 08.01.075(f)).

⁴³ 421 P.3d 1, 8 (Alaska 2018); see also AS 08.64.331(f) ("The board shall be consistent in the application of disciplinary sanctions. A significant departure from earlier decisions of the board involving similar situations must be explained in findings of fact or orders made by the board.").

⁴⁴ *Odom*, 421 P.3d at 4. The patient was clinically obese and pregnant at the time with heart problems, and she sought out the doctor for weight loss. The patient lost 33 pounds while using the prescribed medication, but six months after her last visit, she suffered a fatal heart attack. The State agreed that the medication bore no causal relationship to the patient's death. *Id.* at 3-5.

⁴⁵ *Id.* at 5.

Board to impose sanctions.⁴⁶ The Medical Board then rejected the ALJ’s decision, adopted the State’s proposal, and revoked the doctor’s medical license.⁴⁷

On appeal, the Court noted that “the Medical Board must be ‘consistent in the application of disciplinary sanctions,’” or explain any “significant departure” per statute.⁴⁸ Decisional documents are necessary to ensure careful deliberation and to facilitate judicial review, and “[a]n ALJ’s proposed decision is usually in a form that will serve these purposes, if it is adopted by the Board.”⁴⁹ But the proposal for action the Medical Board adopted contained no factual findings, merely assertions that its “conclusion can be reached ‘based on the evidence contained in the [ALJ’s] proposed decision . . . and the Board’s own medical expertise.’”⁵⁰ Moreover, the proposal itself expressly sought *suspension*, not revocation.⁵¹ Nor was the factual scenario so egregious that revocation was justifiable—in contrast to the Medical Board’s practice of imposing suspensions or

⁴⁶ *Id.*

⁴⁷ *Id.* at 5-6. In the first appeal, the superior court remanded for the Medical Board to consider the doctor’s opposition brief. *Id.*

⁴⁸ *Id.* at 8 (quoting AS 08.64.331(f)).

⁴⁹ *Id.* at 7-8.

⁵⁰ *Id.* at 8 (alteration in original).

⁵¹ *Id.*

“lighter sanctions as alternatives,” the Court observed that revocations “are more likely to follow revocations in other states or convictions for crimes such as fraud, felony drug offenses, or sex offenses.”⁵² The Court therefore reversed the Medical Board’s significant departure from prior practice under AS 08.64.331(f), because the decisional document contained no findings or explanation.⁵³

Odom is distinguishable from the instant case. Here, the Board adopted the ALJ’s proposed decision in full, and the 33-page document is more than adequate to explain the Board’s reasoning and facilitate appellate review.⁵⁴ The ALJ here painstakingly detailed Dr. Lookhart’s numerous convictions for fraud and reckless endangerment. The ALJ carefully considered and rejected any comparison with prior Board cases as factually dissimilar. The ALJ also properly took notice of cases from other jurisdictions affirming revocation as a sanction for large-scale Medicaid fraud. This is all that AS 08.01.075(f) commands. Indeed, Dr. Lookhart does not challenge any part of the decisional document’s adequacy.⁵⁵ And unlike

⁵² *Id.*

⁵³ *Id.* at 8-9.

⁵⁴ *See* R. 821-53.

⁵⁵ Rather than attack the ALJ’s thorough analysis, Dr. Lookhart to a large extent merely recycles his pre-hearing brief on appeal. *See* R. 517-32.

the alleged malpractice in *Odom*, Dr. Lookhart engaged in over \$2 million of intentional fraud, all while recklessly endangering the lives of countless patients through his scheme of unnecessary and excessive sedation outside the scope of his parenteral license or training. The *Odom* Court explicitly acknowledged that criminal convictions for fraud *would* form a sufficient basis for license revocation.

Even assuming *arguendo* that revocation here is inconsistent with past Board decisions under similar facts, and that this represents a significant departure from precedent, that alone is no violation.⁵⁶ Alaska Statute 08.01.075(f) does not mandate strict consistency in the imposition of sanctions. The statute simply requires that, where the Board deviates from prior decisions, or where the Board addresses a completely new factual scenario, adequate explanation for the Board's decision is supplied. The Board fully complied with AS 08.01.075(f) here. And because Dr. Lookhart never challenges the adequacy of the Board's explanation or its logic, this argument is without merit.⁵⁷

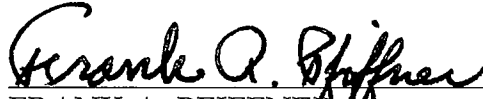
⁵⁶ To be clear, the State is correct that no Alaska case is factually comparable to the sheer scale of malfeasance here. Out-of-state decisions in similar situations also strongly indicate that revocation is the appropriate sanction. Moreover, the prior Board decision that Dr. Lookhart heavily relies on clearly indicated that criminal convictions for Medicaid or insurance fraud would be grounds for license revocation. *See In re Greenough*, OAH Nos. 1200-94-006 & 1200-96-5 at 42-43 (Dec. 22, 1998); R. 585-86. This court sees no inconsistency here.

⁵⁷ This court would normally review the Board's imposition of sanctions for abuse of discretion. *See Odom v. State, Div. of Corps.*, 421 P.3d 1, 6 (Alaska

V. CONCLUSION

For the reasons stated above, this court **AFFIRMS** the Board’s October 16, 2020 Decision.

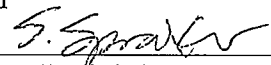
Dated this 15th day of June, 2022, at Anchorage, Alaska.


FRANK A. PFIFFNER
Superior Court Judge Pro Tempore

I certify that on 6/15/22 a copy of the above was delivered to:

C. Gilmore

J. Wilson


S. Spraker, Judicial Assistant

2018). But because Dr. Lookhart raises no such argument here, this court need not reach the issue. That said, this court observes that the Board properly exercised its discretion by revoking Dr. Lookhart’s dental license. Dr. Lookhart stipulated to the State’s Second Amended Accusation, which summarized each of his criminal convictions and set forth 17 counts of misconduct. R. 433-57; R. 488 (stipulation). Although the Board has never seen Medicaid fraud of this magnitude in Alaska, other jurisdictions have uniformly affirmed license revocations in similar situations. *See, e.g., Weiss v. New Mexico Bd. of Dentistry*, 798 P.2d 175, 178-81 (N.M. 1990) (affirming license revocation based on criminal convictions of at least \$7,000 in Medicaid fraud). Dr. Lookhart argues that misconduct in the first few years of his professional career should not preclude him from what could otherwise have been a 40-year dental career. Appellant’s Brief at 17. But the Board was not required to exercise leniency in response to Dr. Lookhart’s dangerous criminal scheme. *Cf. Hanna v. Dental Bd. of California*, 151 Cal. Rptr. 3d 335, 339 (Cal. App. 2012) (affirming revocation for Medicaid fraud despite 16-year “unblemished record” prior to misconduct and “no previous criminal record”). The Board did not abuse its discretion when it permanently revoked Dr. Lookhart’s dental license for the safety of vulnerable Alaskans and the deterrence of future criminal conduct.